



INTERIOR BOARD OF INDIAN APPEALS

Estate of Norma A. Tsoodle

50 IBIA 129 (08/12/2009)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
801 NORTH QUINCY STREET  
SUITE 300  
ARLINGTON, VA 22203

ESTATE OF NORMA A. TSOODLE ) Order Docketing and Dismissing  
) Appeal, and Referring Appeal to  
) Southern Plains Regional Director  
)  
) Docket No. IBIA 09-126  
)  
) August 12, 2009

On August 7, 2009, the Board of Indian Appeals (Board) received a notice of appeal from Marilyn Threlkeld (Appellant), seeking review of an Order Dismissing Petition for Rehearing entered on June 24, 2009, by Administrative Law Judge (ALJ) Richard L. Reeh, in the estate of Norma A. Tsoodle (Decedent), deceased Wichita Indian, Probate No. P 0000 48477 IP. The order let stand an April 7, 2009, “Order Determining Heirs, Referring Dispute to [the Bureau of Indian Affairs (BIA),] Approving Will and Decreeing Distribution.” Appellant is Decedent’s sister, and objected to the inventory for Decedent’s estate as improperly including certain properties for which Decedent executed gift deed applications that were approved by BIA, but for which Decedent did not execute deeds. The ALJ referred the inventory dispute to BIA, pursuant to 73 Fed. Reg. 67,256, 67,294 (Nov. 13, 2008) (effective Dec. 15, 2008), *to be codified at* 43 C.F.R. § 30.128, and made the decree of distribution subject to resolution of the inventory challenge.

We docket this appeal but dismiss it as untimely because an appeal from an order on rehearing must be filed within 30 days from the date that the order and correct appeal instructions are mailed, *see* 73 Fed. Reg. at 67,288, *to be codified at* 43 C.F.R. § 4.321, and Appellant filed this appeal more than 30 days after June 24, 2009, the date that the Order Dismissing Petition for Rehearing and correct appeal instructions were mailed.<sup>1</sup>

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<sup>1</sup> The ALJ gave notice that an appeal from the Order Dismissing Petition for Rehearing must be filed with the Board within 30 days, and gave the Board’s correct address. Instead of sending her appeal to the Board within the 30-day deadline, Appellant mailed her appeal to the ALJ on July 31, 2009, who transmitted it to the Board. The Board received the appeal on August 7, 2009.

Although the Board lacks jurisdiction over this appeal from the ALJ's probate order, our dismissal is without prejudice to Appellant's right to pursue her inventory challenge before BIA, which includes an eventual right of appeal to the Board. *See* 43 C.F.R. §§ 4.330 - 4.340 (appeals to Board from administrative actions of BIA officials). The Board has obtained from the ALJ's office a copy of a May 21, 2009, letter to Appellant from the Superintendent (Superintendent) of the Anadarko Agency (Agency), BIA. In the letter, the Superintendent addresses and rejects Appellant's inventory challenge, and the letter appears to be the Superintendent's decision on the merits of Appellant's challenge. The Superintendent's letter does not, however, advise Appellant, pursuant to 25 C.F.R. § 2.7, of her right to appeal the Superintendent's decision to the Southern Plains Regional Director (Regional Director), *see id.* § 2.4(a).<sup>2</sup>

Under section 2.7(b) of 25 C.F.R., the time period for appealing a BIA decision to the next level does not begin to run until the BIA official making the decision has given proper appeal instructions. Thus, if the Superintendent failed to give proper appeal instructions, Appellant would still have a right to appeal the Superintendent's May 21, 2009, decision to the Regional Director, if she has not already done so. Thus, the Board's dismissal of this appeal from the ALJ's order is without prejudice to Appellant's appeal rights within BIA, and the Board refers Appellant's appeal to the Regional Director for consideration as an appeal from the Superintendent's decision.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board docketed this appeal but dismisses it as untimely, without prejudice to Appellant's right to pursue her inventory challenge before BIA. The Board refers Appellant's appeal to the Regional Director.

I concur:

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// original signed  
Steven K. Linscheid  
Chief Administrative Judge

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// original signed  
Debora G. Luther  
Administrative Judge

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<sup>2</sup> BIA's regulations provide for a right of appeal from a Superintendent's decision to an "Area Director." "Area Directors" are now designated "Regional Directors."