



INTERIOR BOARD OF INDIAN APPEALS

Estate of Phillip Loring

50 IBIA 178 (09/04/2009)

Petition for Reconsideration denied:

50 IBIA 259



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 PHILLIP LORING) Order Affirming Decision
)
) Docket No. IBIA 08-60
)
) September 4, 2009

Norma Donahue Loring (Norma or Appellant) appeals to the Board of Indian Appeals (Board) from a Third Modification Order (Nunc Pro Tunc) and Dismissal of Stay of Distribution (Third Modification Order) entered February 7, 2008, by Indian Probate Judge Melanie M. Daniel in the Estate of Phillip Loring (Decedent), deceased Pima Maricopa (Salt River) Indian, Probate No. P000075912IP (formerly, SL-379G-98). The Third Modification Order effectively refused to grant a reopening request and let stand a Second Modification Order to Correct Distribution entered June 26, 2007. Appellant argues that the Office of Hearings and Appeals (OHA) misconstrued her husband's Last Will and Testament (Will) by distributing, to Decedent's son, a 1/5 undivided interest in a specified allotment. Appellant believes the Will directed distribution of only 1/5 of *Decedent's interest* in the allotment.

We affirm Judge Daniel's Order. Appellant's burden was to show that Judge Daniel made an error of fact or law in construing the Will. The Will contains unambiguous language directing that a 1/5 interest in the allotment be distributed to Decedent's son. Judge Daniel properly construed the Will based on its plain language rather than on the basis of extrinsic evidence. Appellant has not shown that Judge Daniel erred in issuing the Third Modification Order.

Background

Decedent, an enrolled member of the Salt River Pima Maricopa Band of Indians, was born April 15, 1910, and died on June 21, 1997, a resident of Arizona. He was survived by his wife of approximately 55 years (Appellant) and 9 children, with 2 children from 2 marriages having predeceased him. He possessed undivided interests in real estate held in trust by the United States. On May 23, 1991, he prepared a will for their distribution, with two provisions relevant here:

SECOND — I give, devise, and bequeath to my beloved son, GERARD LORING . . . my one-fifth (1/5) interest in SRAL-288, LILLIE HICE, Original Allottee.

THIRD — to my beloved wife, NORMA DONAHUE LORING, . . . the remaining [sic] of my entire estate.

Will. There is no dispute that Gerard, born in 1949, is the son of Phillip and Norma Loring — Decedent and Appellant.

In 1998, Administrative Law Judge James H. Heffernan conducted a probate hearing. He issued a Decision approving the Will on August 16, 1999. This Decision distributed to Gerard 100 percent of Decedent's interest in the "Salt River Allotment No. 288"; it distributed all other interests held by Decedent to Appellant. There is no issue in this appeal regarding the validity of the Will, the identity of the heirs, or any property other than Salt River Allotment No. 288. As for the distribution of that allotment to Gerard, Judge Heffernan's 1999 Decision turned out to be error, because the allotment had been divided into two parcels; Decedent owned more than a 1/5 undivided interest in one parcel and less than a 1/5 undivided interest in the other. Accordingly, a brief description of the history of Salt River Allotment No. 288 is in order.

The United States issued Trust Patent 387195 on February 25, 1914, to Lillie Hice, a Salt River Reservation Indian, for 30 acres of land including (a) 10 acres in the NE¹/₄SW¹/₄NW¹/₄ sec. 22, and (b) 20 acres in the E¹/₂NW¹/₄SW¹/₄ sec. 1, both in T. 2 N., R. 5 E., Gila and Salt River Meridian, Arizona. This was Salt River Allotment No. 288. When Hice's estate was probated in 1931, her allotment descended in equal shares to her five children including William French #1. On March 7, 1955, William French #1 sold his 1/5 undivided interest in the 10-acre portion (sec. 22) to Decedent, who was his nephew. This action established different trust owners for the portion of the allotment found in sec. 22 from the persons holding interests in trust in the portion in sec. 1. The Land Title and Records Office (LTRO) of the Bureau of Indian Affairs (BIA) thereafter identified the 10-acre sec. 22 portion of the allotment as Salt River Allotment No. 288-A, and the remainder of the allotment (the 20-acre portion in sec. 1) as Salt River Allotment No. 288. According to the Salt River Pima-Maricopa Indian Community (SRPMIC), SRPMIC maintained its own land records and referred to the two portions of the allotment as SRAL 288-A and 288-B, or alternatively as SRAL 28810 and SRAL 28820. From this point forward, we address the two parcels as 288-A and 288-B.¹

¹ According to testimony given at a hearing conducted in this matter on February 4, 2008, the allotment was formally partitioned in 1995. Allotment No. 288-A was the "primary,"
(continued...)

In addition to acquiring a 1/5 undivided interest in 288-A in 1955, Decedent acquired additional undivided interests in both 288-A and 288-B on several occasions. With respect to 288-A, Decedent acquired a total of three additional interests ultimately leading to his ownership in trust of a 7/25 undivided interest in that parcel at the time of his death. On April 20, 1940, he acquired a 1/30 undivided interest in 288-A from relative Mary Loring; in 1971, he received a 1/150 undivided interest from relative George Loring (Wolf). Both acquisitions resulted from the probate of his relatives' estates and together resulted in him owning an additional 1/25 undivided interest.² On May 22, 1991, he acquired by Gift Deed a 1/25 undivided interest in 288-A from relative May Loring. With respect to 288-B, it is undisputed he ultimately acquired an undivided 1/25 interest prior to his death.³

Therefore, when he executed the Will, Decedent owned a 7/25 undivided interest in trust in 288-A and a 1/25 undivided interest in trust in 288-B. The Will's devise of "my one-fifth (1/5) interest in SRAL-288" therefore contained an ambiguity regarding whether he meant to give an interest in 288-A or 288-B to his son, though he did not own a 1/5 interest in 288-B. Though Appellant and Gerard, and five additional Loring children, appeared at the 1998 hearing conducted by Judge Heffernan, options for construing that devise were not discussed. *See* Transcript of Hearing, October 23, 1998.

After Judge Heffernan issued his 1999 Decision granting to Gerard 100 percent of Decedent's interest in the Salt River Allotment No. 288, it became clear to SRPMIC that there had been confusion. SRPMIC began to raise questions no later than 2000. *See, e.g.*, Letter from SRPMIC to Judge Heffernan, Mar. 8, 2000. In title status reports printed on May 9, 2007, BIA listed the ownership of the parcels as follows: 7/25 undivided interest in 288-A were listed under the ownership of Appellant; 1/5 undivided interest in 288-B (identified there as sec. 1) were listed under Gerard's name. The source of the "1/5" interest is unclear and the 7/25 distribution to Appellant is plainly contrary to Judge Heffernan's order distributing all of the allotment to Gerard. The record indicates that SRPMIC communicated on numerous occasions with OHA and Appellant, and conducted meetings with various persons involved, including Gerard and Appellant. Some discussion took place

¹(...continued)

irrigated parcel, while 288-B was the "secondary," non-irrigated parcel. *See* Transcript of Hearing, Feb. 4, 2008 (Tr.), at 9 (testimony of Scott Johnson, SRPMIC).

² $1/30 = 5/150$. $5/150 + 1/150 = 6/150 = 1/25$.

³ The precise manner in which he obtained this total interest in Allotment No. 288-B is not explained in the record, but is unnecessary to the outcome here.

among Appellant and her children, including Gerard, about resolving the matter. *See, e.g.*, Interoffice Memorandum, SRPMIC, Dec. 15, 2005. No settlement resulted.

Appellant submitted a “Notice of Appeal” to the probate judge on November 21, 2006 (2006 Petition), seeking to correct the 1999 decision with respect to the devise to Gerard. In documents associated with this 2006 Petition, she set forth various averments about either 288-A or “Allotment 288.” She claimed that her husband had applied for a homesite of .3085 acres on Allotment No. 288-A, and had been given a 25-year lease from the Salt River Housing Authority or SRPMIC in 1968. 2006 Petition ¶ 1. She asserted that the Lorings’ son, Sylvester, had received approval of a lease for a 0.5-acre homesite within 288-A. *Id.* ¶ 2. She asserted at one point that Decedent meant to give Gerard $1/5$ of *Decedent’s interest* in 288-A. *Id.* ¶ 4. But she then claimed that the “ $1/5$ ” interest that Decedent meant to give Gerard was the “ $1/5$ (420/10500) interest” deeded to Decedent by May Loring in 1991.⁴ *Id.* ¶ 5. She claimed that there are “39 Allottees in Allotment 288,” and the 1999 Decision directing distribution of a “100% interest in Allotment 288 to Gerard Loring displaces the other 38 heirs.” *Id.* at Relief Sought. She asked for a rehearing, but did not clarify in her request for relief what she believed Gerard should receive under the Will.

Judge Daniel, to whom the case was by then reassigned, construed Appellant’s document as a Petition for Rehearing under 43 C.F.R. § 4.241 (2000). She conducted a hearing on March 8, 2007, at which the will scrivener, Verna Espinoza, apparently testified.⁵ On March 27, 2007, Judge Daniel issued a Modification Order to Correct Distribution (First Modification Order). She modified the 1999 Order, which had directed distribution of 100 percent of Decedent’s undivided interest in the “Salt River Allotment No. 288” to Gerard, to instead distribute “a $1/5$ interest in SRAL-288.” First Modification Order at 1. On May 30, 2007, SRPMIC sent a Memorandum to Judge Daniel seeking clarification of the modification order to determine whether the modification applied to Allotment No. 288-A, 288-B, or both. On June 12, 2007, SRPMIC sent a letter to Norma Loring explaining that it could not interpret the First Modification Order.

Judge Daniel issued a Second Modification Order to Correct Distribution on June 26, 2007 (Second Modification Order). It directed distribution to Gerard of “the $1/5$ interest in SRAL-288A (Primary) William French #1.”

⁴ This statement may have been a typographical error by Appellant because May Loring issued a Gift Deed to Decedent for a $1/25$ interest, not a $1/5$ interest. $420/10500 = 1/25$.

⁵ The transcript of that hearing is not within this record, and apparently neither the hearing tape nor the transcript can be located.

The next day, SRPMIC conveyed to LTRO a memorandum which construed the Second Modification Order as giving Gerard only a 1/25 share of 288-A. Memorandum from SRPMIC to LTRO, June 27, 2007. SRPMIC posed the following query: “Phillip Loring owned a 7/25 undivided interest in 288-A (primary). What then would be the total share that his heirs would own in 288-A? Would Gerard Loring own a 1/25 share in the allotment? And Norma Loring a 6/25 share?” *Id.* LTRO answered these questions, explaining that Gerard would receive the 1/5 undivided interest in 288-A that Decedent received from William French #1, while Appellant would receive the remaining 2/25 undivided interest in 288-A. *See* LTRO telefax to SRPMIC, July 12, 2007.⁶

By letter dated August 10, 2007, SRPMIC conveyed this information generally to Norma and Gerard Loring.⁷ It also pointed out that Norma would receive any interest that Decedent had owned in 288-B.

On August 20, 2007, Appellant submitted another document titled “Notice of Appeal” to Judge Daniel, and a document setting forth her position entitled “Appeal in Response to Second Modification Order.” In these pleadings, Appellant set forth her view that Decedent’s intent “was for his son Gerard to receive 1/5 interest from the Allotment 288A purchased and received from May Loring in Deed No. 615-5-91, an undivided 420/10500 (1/25) interest” Notice of Appeal, Aug. 20, 2007, at 2. Pointing out that the Will itself did not mention “any inherited interest from William French #1,” *id.* Appellant asserted that the Will showed Decedent’s “intent to use the 420/10500 (1/25) interest he received by Deed from May Loring for his son Gerard Loring. This is shown in his Will where he conveyed one-fifth (1/5) of that 420/10500 (1/25) interest in Allotment 288A only to Gerard”⁸ *Id.*

⁶ The answer to the question of how much interest Decedent’s heirs would own under a Will that bequeathed all of Decedent’s interest, is *all of his interest* that he owned at the time of his death. Thus, since Decedent owned a 7/25 undivided interest in 288-A,, he necessarily could bequeath up to a 7/25 undivided interest to his heirs, which he did. As to how to divide that amount between Gerard and Norma, the Second Modification Order expressly gave “the” 1/5 undivided interest in 288-A to Gerard.

⁷ This letter misrepresented the interests conveyed. SRPMIC advised Norma and Gerard that Gerard would receive a “1/5 share” in 288-A “which is equal to 2.0000 acres” while Norma would receive a “2/25 share (equal to 0.8000 acres).” But Decedent owned a 7/25 *undivided* interest in the entire 10-acre allotment held in trust by the United States. *See* note 12, *infra*. He did not own specific acreage within the allotment.

⁸ 1/5 of 420/10500 (1/25) is 1/125.

Judge Daniel considered these documents together. She scheduled another hearing and issued subpoenas to the Realty Office of SRPMIC, as well as to will scrivener Espinoza.

The hearing was conducted on February 4, 2008.⁹ Appellant's representative Renay Peters argued that it was Appellant's position that Decedent meant to transfer "the one-fifth of that 1/25th [interest] he acquired" from May Loring in 1991. Tr. at 24. Peters conceded that "there are some discrepanc[ies] and things specifically should have been done at the time the will was written [t]o possibly clarify his true intent." *Id.* at 30. But she took the position that, because Appellant and Gerard received leases from the Salt River Housing Authority permitting them to place houses within the boundaries of the 288-A parcel, this somehow was probative of Decedent's intent to distribute his estate in his Will.¹⁰

Espinoza testified, as she had apparently done in the March 2007 hearing for which we have no transcript. Initially, she asserted that Decedent's intent was to transfer to Gerard "a one-fifth share of my, of [his] own interest." Tr. at 6. She asserted that Decedent told her what he wanted for the Will; that she took this information away and came back to him after she "figured it out fractional-wise"; and that she "remember[ed] working on his fractional." *Id.* at 34, 35. She concluded: "it did come out to a one-fifth share of Phillip's own share of that, what, seven, or 25, (inaudible) almost exactly to the acreage that Gerard was going to get." *Id.* at 34-35. The following colloquy took place:

A (Renay Peters) I guess the question then in the relationship to the one-fifth interest, how much . . . property did that reflect?

A (Verna Espinoza) Off hand I can't recall it.

Id. at 36. As the hearing proceeded, Judge Daniel attempted to sort out whether Decedent had intended to convey to Gerard 1/5 of the 1/25 undivided interest he received from May Loring, and whether Espinoza had previously testified to such an interpretation.

⁹ Espinoza testified that Decedent's discussion with her regarding a devise to Gerard pertained exclusively to 288-A. Tr. at 6. Scott Johnson, of SRPMIC, also testified as to this point. *Id.* at 10-13. From the 2008 Transcript, it seems clear that this ambiguity was resolved without further debate with such extrinsic evidence and is no longer at issue. *Id.* at 19. Thus, there is no dispute that the devise to Gerard pertained only to 288-A.

¹⁰ Peters's logic on this point is unclear to us. Johnson and Peters generally described leases issued by the Salt River Housing Authority, and the fact that such a lease "doesn't ever divide the land" or "affect the underlying undivided interest." Tr. at 27-28.

Nonetheless, Judge Daniel explained that “the order’s correct” and that she based her conclusion on what “the Will says.” *Id.* at 38-39. “It was one-fifth of the whole.” *Id.* at 40. She rejected the parties’ efforts to discuss the allotment as if one party received 0.56 or 2 acres, reminding them that Decedent held an undivided interest in the entirety of 288-A. *Id.* She concluded: “[W]e’re not changing the distribution at all.” *Id.* at 42.

On February 7, 2008, Judge Daniel issued the Third Modification Order. In this document she determined that the reference to the “primary” parcel received by William French #1 had confused matters, and deleted that reference. Nonetheless, she did not change the ultimate distribution. She concluded that Gerard should receive a distribution of a “1/5 interest in SRAL-288A,” consistent with what was directed to be distributed in the Second Order of Modification. No appeal rights were provided with this order.

On February 28, 2008, Appellant submitted to Judge Daniel a “Motion Requesting Clarification of Order Dated February 7, 2008.” Appellant parsed through the hearing transcript to claim inconsistencies between Judge Daniel’s comments and the outcome in the order. Appellant also appeared to misunderstand the nature of an undivided interest in the allotment, and to believe that she and her son Gerard obtained particular acres identifiable out of the allotment. She demanded “all actual calculations used to determine the distribution of the inherited interests for Gerard and Norma Loring Please include identification of the individual/department/agency that made the calculations” *Id.* at 2.

On March 6, 2008, Judge Daniel issued an “Order Dismissi[ng] Motion Requesting Clarification of Order Dated February 7, 2008.” She explained that she no longer had jurisdiction of “the petition for rehearing.” She explained that Appellant had no authority for asserting requests for documents “post-hearing.” She dismissed the motion and gave appeal rights pursuant to 43 C.F.R. § 4.332.

On April 3, 2008, Appellant submitted to the Board a Notice of Appeal from the Third Modification Order. She avers that this Order directs an incorrect distribution and asserts that it was “decedent’s intent to devise a one-fifth interest from his overall 7/25 interest in SRAL 288-A to his son Gerard,” which “equates to one-half acre.” Notice of Appeal at 2-3. She believes that Gerard should be given 0.5 acres and that she should be given 2.3 acres in Allotment No. 288-A. In an Opening Brief submitted December 31, 2008, Appellant repeats her contention that specifically .056 acres should be distributed to Gerard and 2.2399 acres distributed to herself. Opening Brief at 5.

On July 21, 2009, this Board received a document entitled Request for Expedited Decision Due to Appellant’s Age. Explaining that she is 91 years old, Norma asserts that she wishes to “continue to reside in this house” and seeks distribution to herself of 2.23999 acres.

No other briefs were submitted.

Discussion

In order to consider the appeal, we take it as one from a decision on reopening. 43 C.F.R. § 4.242 (1999). The Third Modification Order purported to be based on a petition for rehearing, but the rules in effect at the time would have required such a petition to be filed within 60 days of the 1999 Order, and a Petition for Rehearing had already been entertained. 43 C.F.R. § 4.241 (1999). The record generates other procedural questions; the authority to consider Appellant's several "appeals" and motions described herein was not explained in the series of modification orders.

The current regulations, however, provide probate judges with greater authority than they previously possessed to reopen a closed estate. *See* 73 Fed. Reg. 67,256, 67,302 (Nov. 13, 2008), *to be codified at* 43 C.F.R. § 30.242. Because the Board has jurisdiction over this timely appeal from Judge Daniel's Third Modification Order, which effectively was an order on reopening, and because no purpose would be served by vacating and remanding for the sole purpose of requiring Judge Daniel to explain her jurisdictional reasoning (or to issue a new order on reopening under authority contained in the current regulations, but with the same substantive result), the Board proceeds to consider and decide the merits of the case.

Appellant bears the burden of establishing that an order issued on the basis of a decision to reopen a probate, whether deriving from an Appellant's motion or a motion of the probate judge, is erroneous. *Estate of Darryl Edwin Rice*, 49 IBIA 16, 18 (2009) (citing *Estate of Martha Marie Vielle Gallineaux*, 44 IBIA 230, 234 (2007)). Appellant has not met this burden. To the contrary, we find in Appellant's argument considerable confusion over the nature of the interests bequeathed by Decedent to his beneficiaries.

In his Will, Decedent left his real property interests held in trust by the United States to Gerard and Norma. What Decedent owned in Allotment No. 288-A was a 7/25 undivided interest in the entire 10 acres. He did not own 2.8 acres out of 10 acres.¹¹ Therefore, what he conveyed by the Will, in total, to the two beneficiaries, was a 1/5 (or 5/25) *undivided*

¹¹ An "undivided interest" in real property means that the interest is held in the parcel as a whole, rather than in a discrete, identifiable subparcel (or acreage) that corresponds to the amount of ownership interest in the whole. If the parties desire to partition 288-A, they may contact their Tribe or BIA for assistance. *See, e.g.*, 25 C.F.R. § 152.33(b). Partitioning the parcel into separate acreages, however, is not the subject of Decedent's Will or this appeal.

interest to Gerard and $2/25$ *undivided* interest to Norma. Together $5/25$ and $2/25$ add up to Decedent's total $7/25$ undivided interest. Appellant's suggestion in her Notice of Appeal and Opening Brief that she expects to receive approximately 2.3 acres, if she prevails, reflects a misunderstanding. Whatever interest she or Gerard receives as a result of the Will is an undivided interest in the entire 10-acre parcel that constitutes 288-A.

To the extent Appellant has concerns about her husband's lease(s), the continued effect of any lease is not the subject of the probate proceeding. That she, her husband, or one of her sons was permitted to place a home on land included within the 10-acre 288-A parcel is a result of leases issued, apparently, by the Salt River Housing Authority. Such leases are not found within the probate record.¹²

What is before us is the Will. Judge Daniel corrected the error created by Judge Heffernan who distributed 100 percent of Decedent's interest in the Salt River Allotment No. 288 to Gerard. She accepted extrinsic evidence to correct the ambiguity generated by the Will's failure to distinguish between 288-A and 288-B, a correction not in dispute. She implemented the language of the Will by directing distribution of Decedent's $1/5$ undivided interest in 288-A to Gerard and the remaining $2/25$ undivided interest in 288-A to Appellant.

Though Appellant demanded the source of Judge Daniel's "calculations," the source of the figure or calculation is the Will itself. Decedent signed an original Will which expressed his intent to devise "my one-fifth ($1/5$) interest in SRAL 288" to Gerard. It is clear that Appellant believes Decedent meant to do something else, but the result of her various suggestions would be to cause OHA to change the fraction ($1/5$) plainly stated in the Will to $1/25$, $7/125$, or $1/125$, depending on her arguments.¹³ Judge Daniel properly looked to the terms of the Will to distribute the appropriate interests in 288-A. It was not her role to

¹² According to testimony at the hearing conducted on February 4, 2008, Appellant's lease will expire in 2018, because it was renewed for a period of 25 years after expiration of the original 1968 lease issued to Decedent.

¹³ Appellant takes the position in her Notice of Appeal that Gerard should be given $1/5$ of Decedent's interest in 288-A, effectively asking that Gerard be given a $7/125$ undivided interest in 288-A and also that the Will's language be edited from "my $1/5$ interest" to " $1/5$ of my interest." Previously, she argued to Judge Daniel that Gerard should receive a distribution of $1/5$ of the $1/25$ interest Decedent received from May Loring — a $1/125$ undivided interest — or else of the entire $1/25$ interest from May Loring. Normally, we do not take up an issue raised for the first time on appeal. *Isaac A. Bunney and Cheri L. Bunney v. Pacific Regional Director*, 49 IBIA 26, 31 (2009) (citing 43 C.F.R. § 4.318).

rewrite the terms of the Will, even if a party believes that Decedent meant to do something else. Had Decedent meant to devise a different fractional interest in 288-A to Gerard, it would have been necessary for him to sign a will with such language. He did not.

Because we do not find the fractional devise of the Will to be ambiguous (but rather, the problem was created by the 1999 Decision which distributed 100 percent of Decedent's interest in the Salt River Allotment No. 288 to Gerard), we find no reason to reconsider Judge Daniel's order. Moreover, we do not find that she was required to consider extrinsic evidence as to the meaning of the quoted clause. *Estate of Verna Mae Pepion Hill Hamilton*, 45 IBIA 48, 63 (2007). As we stated there:

The words used in a will are to be interpreted according to their ordinary and natural meaning. [80 Am. Jur. 2d Wills] § 1018; 95 C.J.S. Wills § 599. Extrinsic evidence can be considered to determine the meaning of language used in a document only when that language is ambiguous. *Hall-Houston Oil Co.*, 42 IBIA [227,] 232; [(2006)]; *see also* 80 Am. Jur. 2d Wills § 997; 95 C.J.S. Wills § 636a.

Id. at 68.

Judge Daniel properly implemented the Will without advertence to extrinsic evidence except with respect to the distinction between parcels 288-A and 288-B. Nonetheless, she did entertain extrinsic evidence on any will constructions proffered by the various participants. We agree with her that the evidence was insufficient to overcome the express language of the Will.¹⁴

Accordingly, we find that the record demonstrates that Judge Daniel did not err in reaching her conclusion in the Third Modification Order. We recognize that Appellant wishes for a different outcome, but such a desire is not a sufficient basis upon which OHA can amend language in a will.¹⁵

¹⁴ As she found in the Second Modification Order, the fraction in the Will was supported by such extrinsic evidence as Decedent's acquisition of a 1/5 undivided interest in the Salt River Allotment No. 288 (sec. 22) from William French #1.

¹⁵ To the contrary, should OHA determine that a term of a will is too ambiguous to implement, and that the extrinsic evidence is insufficient to remedy any ambiguity, the appropriate course would be to probate that property that is the subject of the ambiguity as
(continued...)

Conclusion

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 Third Modification Order is affirmed.

I concur:

____ // original signed _____
Lisa Hemmer
Administrative Judge*

____ // original signed _____
Debora G. Luther
Administrative Judge

*Interior Board of Land Appeals, sitting by designation.

¹⁵(...continued)

if Decedent died intestate. *See Estate of Hamilton*, 45 IBIA at 71. OHA would not simply distribute the estate in accordance with the wishes or beliefs of a beneficiary.