



INTERIOR BOARD OF INDIAN APPEALS

Estate of Irma Ross

51 IBIA 21 (12/16/2009)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ESTATE OF IRMA ROSS)
) Order Docketing and Dismissing
) Appeal
)
) Docket No. IBIA 10-016
)
) December 16, 2009

On November 10, 2009, the Board of Indian Appeals (Board) received a notice of appeal from Jerry Ross (Appellant), seeking review of an October 8, 2009, Modification Order entered by Administrative Law Judge (ALJ) Richard D. Hines, in the estate of Appellant's mother, Irma Ross (Decedent), deceased San Carlos Apache, Probate No. WS6160010. The ALJ's order reopened Decedent's estate to modify the inventory and remove Kiowa Tracts M-952 and S-952 (Kiowa Tracts) from the estate, thus conforming the inventory for Decedent's estate to an order issued in 2007 in the estate of Decedent's father, Kline (Cline) Hosay (Hosay).¹ Decedent had inherited an interest in the Kiowa Tracts from Hosay's estate, under a probate order issued in 2000. But Hosay's estate was reopened in 2007 to approve Hosay's will and distribute his estate accordingly, and under Hosay's will, Decedent received nothing from Hosay's estate.²

We docket this appeal, but dismiss it because the substance of Appellant's complaint concerns the adjudication in 2007 to reopen Hosay's estate; approve Hosay's will; and remove Decedent as a beneficiary of Hosay's estate, which removed any basis to include the Kiowa Tracts in Decedent's estate. The issue of Decedent's entitlement (or non-entitlement) as an heir to Hosay's estate was not reopened by the Modification Order issued for Decedent's estate, and thus that issue is not within the scope of this appeal. *See* 43 C.F.R. § 4.318 (Scope of review).

¹ In the Department of the Interior's probate tracking system, ProTrac, Decedent's probate is identified as WS6160010, and Hosay's probate is identified as WS 616 0010, the only difference being the spacing. Neither of these probates has been assigned a number under the current ProTrac numbering protocol, P[9 digits]IP.

² Under Hosay's will, executed July 10, 1974, the sole beneficiary of his trust estate was another daughter, Roselind Patterson.

Appellant argues in his appeal that because the original probate decision in Decedent's estate, issued on August 22, 2003, became final 60 days thereafter, *see* 43 C.F.R. § 4.240(c) (2003), the doctrine of finality should have precluded issuance of the Modification Order. The finality of a probate decision, however, does not, by itself, preclude reopening a closed estate. *See* 73 Fed. Reg. 67,256, 67,302 (Nov. 13, 2008), *to be codified at* 43 C.F.R. § 30.242. And in the present case, the Modification Order was, in effect, a ministerial act to conform the record of Decedent's estate inventory to the 2007 order reopening Hosay's estate. It was the 2007 order, by approving Hosay's will, that substantively divested the individuals determined to be his heirs (including Decedent) of a right to inherit from Hosay. The doctrine of finality, and the fact that there may have been successive distributions of trust property through subsequent probate proceedings, are appropriate considerations in determining whether to reopen an estate and whether to alter the heirs or beneficiaries to property, but here those considerations are relevant to the reopening of Hosay's estate, and not the Modification Order for Decedent's estate.

We note that, although Hosay's estate is not within the scope of this appeal, it is unclear whether the ALJ gave proper notice to interested parties prior to reopening Hosay's estate in 2007 to approve Hosay's will and change the beneficiaries of his estate. The service list accompanying the 2007 order includes Decedent — but Decedent had died in 2000, and her heirs had been determined in 2003. It is unclear from the limited record before the Board whether Appellant, as an heir to Decedent's estate and thus an interested party to the reopening for Hosay's estate, received notice of the reopening proceedings. Undoubtedly, he was entitled to such notice, and an opportunity to present any arguments he wished to make.³ Although we express no opinion whether Appellant has any grounds to seek reopening in Hosay's estate, nothing in this order should be construed, as a procedural matter, to preclude Appellant from seeking reopening in Hosay's estate.⁴

³ Where, as here, the reopening of one estate may affect property that has already been distributed in a subsequent probate proceeding, the notice of possible reopening must be calculated to reasonably inform successors in interest (e.g., heirs of subsequently deceased heirs of the decedent whose estate may be reopened) why they may have an interest in the reopening proceedings and what property interests may be affected.

⁴ The orders issued in Hosay's estate indicate that a copy of Hosay's will was presented during the initial probate proceedings, but could not be approved because the location and existence of the original will could not be accounted for. Subsequently, the Bureau of Indian Affairs (BIA) produced the original will. Because the will apparently had been in BIA custody all along, the ALJ concluded in 2007 that it would be manifestly unjust not to reopen Hosay's estate, approve the will, and have Hosay's estate pass according to his will.

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 because Appellant's challenge is outside the scope of the ALJ's order and outside the scope of this appeal.⁵

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debra G. Luther
Administrative Judge

⁵ Appellant hand-delivered his appeal to the Albuquerque, New Mexico, office of the Probate Hearings Division (PHD), Office of Hearings and Appeals, which forwarded it to the Board. The Board received the appeal outside the 30-day time period for filing appeals, and thus dismissal might also, or alternatively, be required for lack of timeliness. *See* 73 Fed. Reg. at 67,288, *to be codified at* 43 C.F.R. § 4.321; 43 C.F.R. § 4.310(a) (effective date of filing documents). On the other hand, the Board cannot determine, on the limited record before us, whether the appeal is in fact untimely, because we cannot determine whether the Modification Order was mailed to Appellant at his address of record. *See* 73 Fed. Reg. at 67,301, *to be codified at* 43 C.F.R. § 30.236 (requirement to mail probate decisions to each interested party). Because we summarily dismiss this appeal on other grounds, we decline to further address the issue of timeliness.