



INTERIOR BOARD OF INDIAN APPEALS

Estate of William Earl Moore, Jr.

51 IBIA 98 (01/22/2010)



## United States Department of the Interior

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

ESTATE OF WILLIAM EARL )  
MOORE, JR. )  
)  
)  
) Docket No. IBIA 10-011  
)  
)  
) January 22, 2010

Marie Phillips (Appellant) seeks to appeal to the Board of Indian Appeals (Board) “in the matter of William Earl Moore’s Inventory Challenge,” which we construe as a reference to an Order After Rehearing (Order) issued on September 30, 2009, by Indian Probate Judge (IPJ) Albert C. Jones, and an accompanying Notice of Referral of Inventory Challenge (Notice).<sup>1</sup> Both the Order and Notice were issued in the probate of the estate of Appellant’s father, William Earl Moore, Jr. (Decedent), deceased Assiniboine & Sioux (Fort Peck) Indian, Probate No. P000045552IP. In the Order, the IPJ denied a petition for rehearing filed by another of Decedent’s daughters, Susan Ott, on the grounds that the petition constituted a challenge to the Bureau of Indian Affairs’ (BIA) inventory of Decedent’s trust estate,<sup>2</sup> and the Department’s probate regulations now require such disputes to be referred to BIA. *See* 73 Fed. Reg. 67,256, 67,294 (Nov. 13, 2008), *to be*

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<sup>1</sup> Appellant’s notice of appeal did not enclose the Notice and Order, but the IPJ had previously sent copies to the Board; after receipt of the appeal, the Board also obtained from the IPJ a copy of the original probate decision issued on May 9, 2008 (Decision).

<sup>2</sup> Ott’s petition for rehearing contended that, during Decedent’s lifetime, he had conveyed by gift certain mineral interests to Ott and her five siblings, and thus they should not have been included in the inventory of Decedent’s estate. As indicated by the Order and by various pleadings submitted in response to the petition for rehearing, the property at issue was one-half of Decedent’s 100% mineral interest in Fort Peck Allotment 206-M3679. Under the original probate decision, which approved Decedent’s will, Decedent’s property was devised in equal shares to four of his biological children (including Appellant, but excluding Ott) and three of his step-children. *See* Decision at 4.

*codified at* 43 C.F.R. § 30.128. The Notice formally referred Ott's inventory challenge to BIA for a decision. We summarily affirm the portion of the IPJ's Order at issue in this appeal because the IPJ correctly recognized that the revised probate regulations had divested him of jurisdiction to adjudicate the inventory dispute.

The IPJ's Order was primarily, but not solely, devoted to discussing the inventory dispute.<sup>3</sup> Although Appellant's notice of appeal appeared to relate solely to the inventory dispute, the Board ordered Appellant to clarify the grounds for her appeal and to explain what errors allegedly had been committed by the IPJ. *See* Pre-Docketing Notice, Order to Serve Interested Parties, and Order for Statement Clarifying Grounds for Appeal, Nov. 9, 2009, at 2-3.

Appellant's response to the Board's order is limited to addressing the inventory dispute on the merits. She does not dispute the jurisdictional grounds relied upon by the IPJ. Thus, Appellant does not contend that the IPJ erred in finding that he lacked jurisdiction to adjudicate the dispute and that the matter must be referred to BIA for a decision under 43 C.F.R. § 30.128, 73 Fed. Reg. at 67,294.

The IPJ correctly concluded that he lacked jurisdiction over the claims disputing BIA's inventory of Decedent's trust estate and that such claims did not state a proper ground for rehearing. *See id.*; *Estate of Frances Marie Ortega*, 50 IBIA 322, 325-26 (2009). Thus, we affirm that portion of the Order.<sup>4</sup> As noted in the IPJ's Notice, the effect of the referral is that BIA has the responsibility to issue a decision on the merits of the inventory dispute, and BIA's decision is subject to the separate appeal rights and procedures provided in 25 C.F.R. Part 2, ultimately including a right of appeal to the Board by a party adversely affected by BIA's decision.

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<sup>3</sup> In one respect, the Order was favorable to Appellant: Judge Jones decided that, contrary to an order by an IPJ to whom the case was previously assigned, the property interests received by Appellant from Decedent's estate would pass to her in trust rather than in fee. *See* Order at 11.

<sup>4</sup> The remainder of the IPJ's Order is not within the scope of this appeal.

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 and affirms the portion of the IPJ's Order that denied Ott's petition for rehearing.<sup>5</sup>

I concur:

          // original signed            
Steven K. Linscheid  
Chief Administrative Judge

          // original signed            
Debora G. Luther  
Administrative Judge

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<sup>5</sup> Appellant's notice of appeal and subsequent filings also request that names, addresses, and the status of interested parties to this probate be updated. Appellant has not provided updated addresses, and the Board does not have any evidence (e.g., returned mail) to indicate that any addresses are incorrect. Appellant also requests certain information regarding two of Decedent's stepchildren, who were among the devisees in Decedent's will and who Appellant contends are now deceased. Appellant further asserts that Decedent's stepchildren have no interest in the mineral rights devised to them and should be allowed to "resign from" the estate. Whether or not those individuals (or their heirs) wish to give up the interests devised to them, and what procedures to do so may be available, are not matters that are within the scope of this appeal. And to the extent that Appellant seeks to raise issues regarding the effect on the probate decision of the death of certain devisees, that issue was not the subject of the Order and is also not within the scope of this appeal.