



## INTERIOR BOARD OF INDIAN APPEALS

Estate of John Henry Nicholson

51 IBIA 126 (02/12/2010)

Related Board cases:

55 IBIA 1

55 IBIA 137



Decedent's interests in Allotment No. 101-889 (Allotment 889);<sup>2</sup> (2) to correct what they contended was the improper omission from the estate of interests in Allotment No. 101-T3514, which they argued had been improperly conveyed by Decedent to his sister, Millie Fincher, during his lifetime; (3) to obtain intervention by the ALJ in a leasing dispute with BIA regarding a portion of Allotment 889; and (4) to "appeal" from a February 7, 2007, probate decision issued in the estate of Decedent's brother, Raymond L. Nicholson (Probate No. P000036248IP), on the grounds that certain property (designated as Allotment 889-A) should not have been included in Raymond's estate because it was originally included in Decedent's estate inventory and should have been distributed to Decedent's heirs.<sup>3</sup>

The ALJ correctly concluded that the claims raised by Appellant did not constitute proper grounds to reopen Decedent's estate to adjudicate the disputes. Under the Department of the Interior's probate regulations, as revised in 2008, inventory disputes that arise during a probate proceeding must be referred to BIA for a decision. *See* 43 C.F.R.

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<sup>2</sup> The inventory attached to and incorporated in the original 1982 probate order in Decedent's estate described the total acreage owned by Decedent in Allotment 889 at the time of death as 119.89 acres. In 1988, ALJ Keith Burrows issued a Modification Order Correcting Description, to account for and subtract from the total acreage two conveyances during Decedent's lifetime (in 1981) of portions of Allotment 889. One conveyance was from Decedent to his sister Mary (21.178 acres), and the other was from Decedent to his brother Raymond (19.459 acres). In 1992, BIA issued an Administrative Correction to make further modifications to correct certain mathematical errors contained in ALJ Burrows' order, which had actually understated the total acreage remaining in Decedent's estate following the two conveyances. The resulting inventory identified a total of 79.25 acres of Allotment 889 as remaining in Decedent's ownership at the time of his death.

On December 17, 2009, the Acting Northwest Regional Director (Regional Director), BIA, issued a decision regarding the dispute over ownership of Allotment 889, after the matter was referred to him by ALJ Gordon. Appellant has separately appealed BIA's decision to the Board. *See Lisa Nicholson-True v. Acting Northwest Regional Director*, Docket No. IBIA 10-043. Our disposition of the present appeal does not affect that pending appeal.

<sup>3</sup> Appellant's NOA does not include the third and fourth claims raised in the request for reopening that she submitted to the ALJ. However, because we are summarily deciding this appeal without seeking clarification from Appellant, *cf. Estate of William Earl Moore, Jr.*, 51 IBIA 98, 99 (2010), we assume, for purposes of this decision, that she intends to reassert all four claims on appeal.

§ 30.128)(2009); see *Estate of Moore*, 51 IBIA at 99; *Estate of Frances Marie Ortega*, 50 IBIA 322, 325-26 (2009). Those regulations clearly apply to the first and second claims asserted by Appellant in the petition to reopen, and which were addressed by the ALJ.

The third claim included in the petition for reopening was not expressly addressed by the ALJ, but it involves a leasing dispute between Appellant and BIA. To the extent that the ALJ understood the leasing dispute to be derivative of the inventory dispute (i.e., dependent upon a determination of current ownership, as determined by resolution of the inventory dispute), he was correct that it is encompassed within the regulatory requirement that inventory disputes must be referred to BIA. But even to the extent that the leasing dispute is not considered purely derivative of the inventory dispute, it is still a matter outside the subject matter jurisdiction of a probate judge, and thus is not a ground to reopen an estate. Appellant contended in her petition for reopening Decedent's estate that BIA is not complying with the leasing regulations found at 25 C.F.R. Part 162. But a probate judge does not have either supervisory or appellate jurisdiction to review BIA's compliance with its leasing regulations.

Appellant's fourth claim, which also was not expressly addressed by the ALJ, was not a proper ground for reopening because it is directed at an order in the probate for Decedent's brother, Raymond, and thus is not within the scope of the probate of Decedent's estate. But even if it can be construed as a direct request to reopen Raymond's estate, the result would be the same: because the underlying dispute is an inventory dispute — i.e., what property was subject to distribution from Raymond's estate? — the matter was properly referred to BIA as part of the dispute concerning Allotment 889. Appellant does not contest the heirship determination made in Raymond's estate, but only the property that was distributed, which included the 889-A portion of Allotment 889.

In summary, none of the alleged grounds submitted to the ALJ for reopening Decedent's estate constitute matters within the adjudicatory authority of the ALJ, and thus the ALJ properly denied reopening. As the ALJ noted in his order, if BIA or the Board (in an appeal from BIA's decision) determined that an error exists in Decedent's estate inventory, BIA or an interested party may *then* request reopening to correct an error of fact.

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 affirms the

ALJ's order denying Appellant's request for reopening, in which he referred the inventory disputes to BIA for resolution.<sup>4</sup>

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>4</sup> Because we summarily affirm the ALJ's denial of reopening, Appellant's "Petition for Stay on all Property Transactions" relating to this probate, *see* Notice of Appeal (NOA), Ex. I, is moot.

We note that although the Regional Director has issued a decision addressing the ownership dispute involving Allotment 889, *see supra* note 2, we have no information to indicate whether a BIA decision (either at the agency or regional level), has been issued to address the allegedly improper omission of T3514 from Decedent's estate, or to address Appellant's complaints regarding BIA's actions concerning leasing and use of the property. In the event that no such decisions have issued, and if Appellant believes that issuance of a decision by BIA has been unreasonably delayed, Appellant is referred to the procedures and requirements in 25 C.F.R. § 2.8 for appealing alleged inaction.