



INTERIOR BOARD OF INDIAN APPEALS

Estate of Alfred Chalepah, Sr.

51 IBIA 148 (02/23/2010)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ESTATE OF ALFRED CHALEPAH, SR.) Order Docketing Appeal and Affirming
) Decision
)
) Docket No. IBIA 10-048
)
) February 23, 2010

The Board of Indian Appeals (Board) received a notice of appeal from Alonzo Chalepah (Appellant), who appeals from an Order Dismissing Petition for Rehearing (Order Dismissing Petition), entered on December 31, 2009, by Administrative Law Judge (ALJ) Richard L. Reeh in the estate of Appellant's father, Alfred Chalepah, Sr. (Decedent), deceased Apache Indian of Oklahoma, Probate No. P000067381IP. According to the Order Dismissing Petition, Appellant sought rehearing based on the affidavit of an attorney who averred that she had prepared a will for Decedent; that Decedent had informed the attorney that he signed the will she prepared for him; and that she saw several other wills previously executed by Decedent. But, no executed will was presented to the ALJ, for which reason he dismissed the petition for rehearing. Appellant appeals to this Board, arguing that he believes Decedent's executed wills have been located, and he seeks "remand and rehearing based on the other wills." Notice of Appeal at 2 (unnumbered). He also argues for an "evidentiary hearing as to the intent of my father." *Id.* We summarily affirm the ALJ's decision because Appellant does not dispute that a properly executed will has not been presented to the ALJ and evidence of the "intent" of Decedent's father is irrelevant in the absence of a duly executed will.

It is well established that the scope of probate appeals before the Board is limited to the issues presented to the probate judge. 43 C.F.R. § 4.318. Appellant does not disagree with any of the ALJ's findings or determinations in the Order Dismissing Petition, nor does Appellant contend that the ALJ failed to decide issues that were presented to him. Instead, Appellant appears intent on keeping his father's estate open for an indeterminate time to permit him to search for a will executed by Decedent.¹ It is not the function of this Board to provide the parties further opportunity to obtain documents and evidence for use in a probate proceeding that has already occurred. *See Estate of Drucilla (Trucilla) W. Pickard,*

¹ According to the Order Dismissing Petition, the ALJ offered the parties time to search for an executed will, and none was found.

50 IBIA 82, 92 (“A petition for rehearing is *not* an opportunity for a [will] contestant to start an investigation to support her position.”). If a will executed by Decedent is located, it may be presented to the ALJ in accordance with 43 C.F.R. § 30.242, which provides for the reopening of closed probates under certain circumstances.²

To the extent that Appellant seeks an order from the Board for an evidentiary hearing to establish his father’s intent, the request is denied. As the ALJ correctly noted, evidence of a decedent’s intent cannot serve as a substitute for a properly executed will. *See Estate of Edith Walker Brown*, 43 IBIA 221, 227 (2006) (“It is immaterial whether [d]ecedent desired to execute a new will — *intent alone is not sufficient to create, alter, or revoke an Indian will.*” Emphasis added.). Appellant concedes that, to date, a duly executed will has not been located. Therefore, in the absence of a valid will and a reopening of Decedent’s estate in accordance with applicable regulations, Decedent’s trust assets pass in accordance with the ALJ’s application of the laws of intestacy as set forth in the November 20, 2009, Order Determining Heirs and Decreeing Distribution.

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 summarily affirms the ALJ’s December 31, 2009, Order Dismissing Petition for Rehearing.

I concur:

// original signed
Debora G. Luther
Administrative Judge

// original signed
Steven K. Linscheid
Chief Administrative Judge

² We express no opinion on whether the actual discovery of a will would, in fact, be grounds to reopen Decedent’s estate. We refer Appellant to the requirements set forth at 43 C.F.R. § 30.242.