INTERIOR BOARD OF INDIAN APPEALS

Estate of David Bravo

51 IBIA 198 (04/02/2010)

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ESTATE OF DAVID BRAVO	)	Order Vacating Recommended Decision
	)	and Referring Inventory Dispute to
	)	Bureau of Indian Affairs
	)	
	)	Docket No. IBIA 08-18
	)	
	)	April 2, 2010

Dennis Bravo (Appellant) appeals the September 17, 2007, Recommended Decision Confirming Inventory (Recommended Decision) issued by Indian Probate Judge (IPJ) Albert C. Jones in the estate of Appellant's father, David Bravo (Decedent), deceased Crow Indian, Probate No. P000001555IP.[1] We vacate the Recommended Decision and refer the matter to the Bureau of Indian Affairs (BIA) because the revised Indian trust probate regulations, which became effective on December 15, 2008, and require that inventory disputes be referred to BIA for decision, preclude the Board from reviewing a probate judge's recommended decision in an inventory dispute and limit the Board to considering and deciding the dispute only after BIA issues its decision based on the record before BIA.

Background

In the initial probate hearing conducted for this estate, Appellant challenged the inclusion of various parcels in the inventory of Decedent's trust estate. Appellant averred that, before his death, Decedent had prepared gift deed applications for eight tracts of land, five naming Appellant as the grantee and three naming Tyrone Bravo, another one of Decedent's sons, as the recipient. Appellant contended that the gift deeds should be approved and the affected tracts removed from the inventory of Decedent's estate.

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[1] The IPJ also issued a Decision Distributing Estate (Probate Decision) on September 17, 2007, which determined the distribution of Decedent's estate. Appellant sought rehearing of the Probate Decision, which the IPJ denied on May 30, 2008. Appellant did not appeal the IPJ's Order Denying Rehearing.

In accordance with the Board's standing order in *Estate of Douglas Leonard Ducheneaux*, 13 IBIA 169 (1985), which authorized probate judges to consider inventory disputes that arose during a probate proceeding, the Administrative Law Judge initially assigned to the matter and the subsequently appointed IPJ held a number of hearings to receive evidence on Appellant's objection to the inventory. BIA personnel and some of Decedent's other heirs testified in response to Appellant's contentions.

The IPJ issued his Recommended Decision on September 17, 2007. After summarizing the testimony received at each of the hearings, the IPJ determined, based on his credibility findings and all the evidence, that Appellant had not met his burden of proving by a preponderance of the evidence that BIA Crow Agency employees either had done something they should not have done or had not done something they should have done, and that such error was responsible for the failure to complete the gift deed applications during Decedent's life. The IPJ concluded that since the Crow Agency personnel followed normal procedures, the gift deed applications signed by Decedent could not be approved, and that the inventory submitted with Decedent's estate should be affirmed.

Appellant submitted objections to the Recommended Decision. By order dated March 14, 2008, the Board stayed consideration of the appeal pending completion of the IPJ's review of Appellant's petition for rehearing of the September 17, 2008, Probate Decision. *See* n.1, *supra*. The Board lifted that stay by order dated August 15, 2008, and, by order dated October 30, 2008, set the briefing schedule for this appeal. No briefs were filed.

While the appeal was pending before the Board, the Department promulgated revised Indian trust probate regulations, which became effective on December 15, 2008. *See* 73 Fed. Reg. 67,256 (Nov. 13, 2008). In relevant part, these regulations provide:

> **§ 30.128 What happens if an error in BIA's estate inventory is alleged?**
> This section applies when, during a probate proceeding, an interested party alleges that the estate inventory prepared by BIA is inaccurate and should be corrected.
> (a) Alleged inaccuracies may include, but are not limited to, the following:
> (1) Trust property interests should be removed from the inventory because the decedent executed a gift deed or gift deed application during the decedent's lifetime, and BIA had not, as of the time of death, determined whether to approve the gift deed or gift deed application;
> . . . .

> (b) When an error in the estate inventory is alleged, the OHA [(Office of Hearings and Appeals)] deciding official will refer the matter to the BIA for resolution under 25 CFR parts 150,[2] 151,[3] or 152[4] and the appeal procedures at 25 CFR part 2.

43 C.F.R. § 30.128.

Discussion

In *Estate of James Jones, Sr.*, 51 IBIA 132 (2010), the Board addressed the question of whether the revised regulation requiring alleged errors in estate inventories to be referred to BIA for resolution, 43 C.F.R. § 30.128(b), applies to probate proceedings completed by a probate judge but pending on appeal before the Board on the effective date of the revised regulations.[5] The Board concluded that the regulation does apply because the Board is part of OHA and thus should be considered an "OHA deciding official" under § 30.128. 51 IBIA at 135. The Board further determined that,

> [a]s we held in *Estate of Ortega*, when section 30.128 became effective, the Board's standing order in *Ducheneaux* was superseded and dissolved. Although the inventory dispute in the present case was initiated, hearings were held, and a recommended decision was issued before the revised regulations became effective, the revised regulations do not "grandfather" *Ducheneaux* proceedings that were pending when the regulations took effect. *See Estate of Ortega*, 50 IBIA at 326. In the absence of such a provision, the otherwise clear language of the regulation controls, and requires us to refer the matter to BIA for a decision.

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[2] Regulations governing land records and title documents.

[3] Regulations governing land acquisitions.

[4] Regulations governing the issuance of patents in fee, certificates of competency, removal of restrictions, and sale of certain Indian lands.

[5] The Board had previously held that the Board's standing order in *Ducheneaux* had been superceded and dissolved by operation of law when section 30.128 became effective and that the revised regulation applied to inventory disputes which had been initiated and the subject of hearings held prior to the effective date of the revised regulations. *Estate of Francis Marie Ortega*, 50 IBIA 322, 326 (2009); *see also Estate of John Henry Nicholson*, 51 IBIA 126, 127-28 (2010); *Estate of William Earl Moore, Jr.*, 51 IBIA 98, 99 (2010).

51 IBIA at 136. Our role therefore is limited to considering and deciding the dispute only after BIA has issued its decision based on BIA's own administrative record. *Id.* at 133.

As we acknowledged in *Estate of Ortega*, 50 IBIA at 326, the IPJ and BIA have exerted substantial effort in collecting evidence and developing a record, and nothing in our decision precludes BIA from accepting the evidentiary record developed by the IPJ as the record for considering the inventory dispute or prevents BIA from adopting the IPJ's Recommended Decision, in whole or in part, as BIA's decision. Nor does our decision prevent BIA from requiring Appellant to clearly specify the grounds for his disagreement with the findings in the Recommended Decision. However, should BIA decide to adopt the conclusions in the Recommended Decision in whole or in part, its decision must be based on *BIA's* own review and consideration of Appellant's arguments and of the record. BIA's decision must also advise interested parties of their appeal rights as required by 25 C.F.R. § 2.7(c).

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 Board vacates the Recommended Decision and refers the matter to the Rocky Mountain Regional Director for a decision by BIA.[6]

I concur:

// original signed
Sara B. Greenberg
Administrative Judge*

// original signed
Debora G. Luther
Administrative Judge

*Interior Board of Land Appeals, sitting by designation.

[6] We leave it to the Regional Director to decide whether the initial BIA decision should be made at the agency or regional level. *See Estate of Ortega*, 50 IBIA at 327 n.8.