



INTERIOR BOARD OF INDIAN APPEALS

Estate of Michael Lawrence Study, a.k.a. Michael Lawrence Steady

51 IBIA 227 (04/09/2010)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

ESTATE OF MICHAEL LAWRENCE)	Order Docketing and Dismissing
STUDY, a.k.a. MICHAEL)	Appeals and Referring Inventory
LAWRENCE STEADY)	Dispute to the Bureau of Indian
)	Affairs for a Decision
)	
)	Docket Nos. IBIA 10-001
)	10-009
)	
)	April 9, 2010

Roslyn Study (Study) and Summer Ann Small (Small) (collectively “Appellants”) appealed to the Board of Indian Appeals (Board) from an Amended Order Denying Rehearing (Order Denying Rehearing) entered on September 23, 2009, by Administrative Law Judge (ALJ) Earl J. Waits, in the estate of Study’s nephew and Small’s brother, Michael Lawrence Study, a.k.a. Michael Lawrence Steady (Decedent), deceased Shoshone-Bannock Indian, Probate No. P000070471IP.¹ The Order Denying Rehearing (1) rejected as untimely a “Notice of Claim” filed by Study, and (2) dismissed for lack of standing a challenge to the ALJ’s paternity finding that Decedent was the father of, and had been survived by, two children.²

We conclude that Study’s “claim” is properly construed as a challenge to the inventory of Decedent’s estate, which we must dismiss for lack of jurisdiction in these proceedings, but which we refer to the Bureau of Indian Affairs (BIA) for a decision. We dismiss, for failure to prosecute, the appeal from the ALJ’s dismissal of the paternity challenge, because Appellant Small did not respond to the Board’s order for clarification and information related to this portion of the appeal.

¹ Study filed an appeal individually, which was assigned Docket No. IBIA 10-001; Study and Small jointly filed a second appeal, through David J. Archuleta, Tribal Court Advocate, which was assigned Docket No. IBIA 10-009.

² In the initial probate Decision, dated August 17, 2009, the ALJ determined that these children were Decedent’s only heirs.

Study's "Notice of Claim"

Study filed a "Notice of Claim" with the ALJ, to which she attached a copy of an application apparently signed by Decedent to convey by gift deed certain property to Study. The nature of Study's claim was not clear from the limited documentation, and the ALJ dismissed it as untimely.

Appellant's notice of appeal to the Board provided additional information, which clarifies that her "claim" was not intended as a monetary claim against the estate, but instead sought to challenge the inventory of Decedent's estate. Appellant contends that Decedent intended to transfer to Appellant two acres from Fort Hall Allotment No. 1610, and that the conveyance was approved and completed by BIA following Decedent's death. Therefore, Appellant argues that the two-acre parcel should not be included in the inventory of Decedent's estate.

In support of her contention, Appellant enclosed with her notice of appeal a copy of an Application for Gift of Indian Land, dated July 17, 2006, to convey 1½ acres, more or less, to Appellant, which apparently was signed by Decedent on that date. Decedent died 2 years later, on July 6, 2008. Appellant also enclosed a Deed to Restricted Indian Land (Deed), dated October 30, 2008, conveying a two-acre parcel in Allotment 1610 from Decedent to Appellant. The Deed was executed by the Fort Hall Agency Superintendent (Superintendent) on behalf of Decedent, approved by the Superintendent, and recorded on November 4, 2008, by BIA's Northwest Land Title and Records Office (LTRO), with identification number 180-16125, and a new parcel number of 1610 H.³

A subsequent memorandum from a BIA Legal Instruments Examiner to the BIA Realty Officer of the Fort Hall Agency, however, declined to "encode" Deed No. 180-16125, and questioned its legality because it had been executed by the Superintendent, whom the Examiner asserted did not have authority to sign on behalf of a deceased person. The Examiner recommended that the deed be cancelled and the property added to Decedent's estate. Appellant also submitted to the Board copies of letters from the Superintendent, dated September 30 and October 7, 2009, attempting to further explain the gift deed transaction and the refusal of BIA staff to encode the deed, and possibly

³ The gift deed application includes a description of the land, which appears to reference an address, but which does not include either an allotment number or a legal description. The Board assumes, solely for purposes of deciding this appeal, that the parcel that was the subject of the 2006 gift deed application is the same parcel that was the subject of deed No. 180-16125, notwithstanding the one-half-acre difference in the stated size.

suggesting that BIA now considered the property to be part of Decedent's estate. In one of the letters, the Superintendent asserted that his office was not the decision maker with respect to the gift deed transaction, but that he was confident that the probate judge would review the documentation and decide the matter. *See* Letter from Superintendent to Appellant, Oct. 7, 2009.

The Superintendent's letter suggests that he believed that the decision whether the property is or is not properly included in the inventory of Decedent's estate is a matter to be decided in the probate proceedings. That was not correct. Although previously an inventory dispute could be considered by a probate judge, the Department of the Interior's probate regulations now provide that when an error in BIA's estate inventory is alleged during a probate proceeding, the matter will be referred to BIA for resolution, subject to a right of appeal under BIA's administrative appeal regulations. *See* 43 C.F.R. § 30.128; *Estate of Violet Guardipee Cobell*, 51 IBIA 202, 203-05 (2010); *Estate of David Bravo*, 51 IBIA 198, 199-201 (2010); *Estate of James Jones, Sr.*, 51 IBIA 132, 135-36 (2010); *Estate of John Henry Nicholson*, 51 IBIA 126, 127-28 (2010); *Estate of Frances Marie Ortega*, 50 IBIA 322, 325-26 (2009).

As now clarified through her appeal documents, we conclude that Appellant's "claim" is properly viewed as a challenge to the inventory of Decedent's estate, which is governed by 43 C.F.R. § 30.128 and which must be referred to BIA for a decision. It remains unclear to the Board whether the property has, in fact, been included in BIA's inventory of Decedent's estate, but we leave that for BIA to determine in response to this referral by the Board. If BIA considers Appellant to be the owner of the two-acre parcel, it should resolve Appellant's uncertainty by confirming her ownership, notifying her, and declaring her inventory challenge to be moot. On the other hand, if BIA does not consider Appellant to be the owner of the two-acre parcel, it must issue a decision under 25 C.F.R. § 2.7, setting forth its reasoning and evidence to support its position, and giving appeal rights.⁴

⁴ The Board issued an order for BIA to clarify its position on the current ownership of the property. *See* Pre-Docketing Notice, Order Consolidating Appeals, Order for Appellant Study to Serve Interested Parties, Order for Information from Northwest Regional Director, and Order for Clarification from Appellant Small, Nov. 30, 2009. In that order, the Board asked BIA to inform it whether a decision had been issued to Appellant, under 25 C.F.R. § 2.7 and with appropriate appeal rights. The Board received no response from BIA.

Appeal from ALJ's Dismissal of Paternity Challenge

The ALJ's Order Denying Rehearing also dismissed for lack of standing an objection that challenged the ALJ's finding in the original probate decision that Decedent was the father of two children. The ALJ concluded that among those who sought rehearing, only Small (as Decedent's sibling) could possibly be an interested party with standing to raise the paternity claim, and only if Decedent had not been survived by a parent (who would be next in line to inherit if Decedent died without issue).⁵ The ALJ noted that Decedent had been survived by his father, Richard Whiteclay, and thus Small was not a potential or actual heir and did not have standing to raise the paternity challenge.

In her notice of appeal to the Board, Small contended that "[t]he finding that [Decedent] has a surviving parent, namely Richard Whiteclay is in error." Notice of Appeal at 2, Docket No. IBIA 10-009.⁶ In response to this contention, the Board ordered Small to clarify, on or before January 8, 2010, whether she was contending that Richard Whiteclay was not Decedent's natural father or otherwise not Decedent's surviving parent for purposes of heirship determination, and to identify evidence to support her contention. The Board advised Small that if she failed to respond to the Board's order, her appeal might be summarily dismissed without further notice.

The Board has received no response from Small. Therefore, the Board dismisses Docket No. IBIA 10-009 with respect to the paternity challenge.

Conclusion

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 these appeals but dismisses Study's claim (in Docket Nos. IBIA 10-001 and 10-009) for lack of jurisdiction and refers it to BIA for a

⁵ The probate regulations define "interested party," in relevant part, to include "[a]ny potential or actual heir." 43 C.F.R. § 30.101. The other objecting individuals were either more remotely related to Decedent than is Small, or unrelated by blood.

⁶ Although the notice of appeal in Docket No. IBIA 10-009 was filed jointly by Study and Small, Study makes no claims to be an interested party with respect to the paternity issue — i.e., she does not claim, as Decedent's aunt, to be a potential or actual heir.

decision on the inventory dispute.⁷ Pursuant to 43 C.F.R. § 30.128(b)(2), the probate Decision is subject to administrative modification once the inventory dispute has been resolved. The Board dismisses the paternity challenge (in Docket No. IBIA 10-009) for failure to prosecute.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debora G. Luther
Administrative Judge

⁷ In Docket No. IBIA 10-001, the Board ordered Study to serve a copy of her notice of appeal on interested parties. The Board received no response. Because the same inventory claim is raised in Docket No. IBIA 10-009 (for which the notice of appeal was served), the Board declines to dismiss Docket No. IBIA 10-001 for failure to serve. In considering the inventory issue, BIA may, as appropriate, require Study to complete, or assist her in completing, any necessary service requirements. *See* 25 C.F.R. § 2.12(c).