



INTERIOR BOARD OF INDIAN APPEALS

Estate of Dominic Orin Stevens, Sr.

51 IBIA 252 (05/04/2010)

was filed, the Department promulgated revised Indian probate regulations that superseded and displaced the Board's *Ducheneaux* order, and which now require inventory disputes arising during probate to be referred to BIA for a decision. *See* 43 C.F.R. § 30.128;² *see also Estate of Michael Lawrence Study*, 51 IBIA 227, 228-29 (2010) (referring inventory dispute to BIA for a decision); *Estate of Violet Guardipee Cobell*, 51 IBIA 202, 203-05 (2010) (same); *Estate of David Bravo*, 51 IBIA 198, 199-201 (2010) (same); *Estate of James Jones, Sr.*, 51 IBIA 132, 135-36 (2010) (same); *Estate of John Henry Nicholson*, 51 IBIA 126, 127-28 (2010) (same); *Estate of Frances Marie Ortega*, 50 IBIA 322, 325-26 (2009) (same). Therefore, we must refer the dispute over Decedent's estate inventory and the 39 gift deed applications to BIA for a decision.³

As discussed in recent Board decisions applying 43 C.F.R. § 30.128, when an administrative record for an inventory dispute has already been developed by a probate judge under the former *Ducheneaux* procedures, that record may — and should — be considered by BIA in deciding the dispute under new section 30.128.⁴ *See, e.g., Estate of Bravo*, 51 IBIA at 201; *Estate of Ortega*, 50 IBIA at 326. Thus, to the extent that the IPJ in the present case developed a record that is relevant to the inventory dispute, BIA has the benefit of that record. But as we have emphasized in other decisions, BIA's decision must be based on BIA's own review and consideration of the record developed by the IPJ, arguments presented by the parties, and any supplemental record developed by, or evidence presented to, BIA. *See, e.g., id.*⁵

² Section 30.128 provides, in relevant part, that “[w]hen an error in the estate inventory is alleged, the [Office of Hearings and Appeals] deciding official will refer the matter to BIA for resolution . . . [subject to] the appeal procedures at 25 CFR part 2.”

³ Although we refer this dispute to the Regional Director, we leave it to the Regional Director to decide whether the initial BIA decision should be made at the agency level or the regional level.

⁴ Although the Board stayed this appeal when it was received, *see supra* note 1, and the probate record was not requested in this appeal, nor added to the appeal record, BIA should consider the portions of the probate record that are relevant to the inventory dispute, including but not limited to the transcript of an April 16, 2008, hearing held by the IPJ on the inventory dispute.

⁵ Moreover, even if BIA were to reach the same result as the IPJ — an issue on which we express no opinion — BIA may be required to provide different or additional reasoning because BIA's decision whether or not to retroactively approve gift conveyances may

(continued...)

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 dismisses this appeal and refers the inventory dispute to the Rocky Mountain Regional Director, BIA, for a decision. Upon issuance of a decision, BIA must advise interested parties of their appeal rights as required by 25 C.F.R. § 2.7(c).

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Sara B. Greenberg
Administrative Judge*

*Interior Board of Land Appeals, sitting by designation.

⁵(...continued)

involve an exercise of discretion, or may require the resolution of legal issues that were not addressed in the IPJ's Recommended Decision. *See Estate of Jones*, 51 IBIA at 138 (probate judge's inquiry under *Ducheneaux* narrower than the issues that may be considered and decided by BIA in an inventory dispute).