



INTERIOR BOARD OF INDIAN APPEALS

Estate of Phillip Quaempts

52 IBIA 348 (12/14/2010)

Related Board case:
41 IBIA 252



United States Department of the Interior

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INTERIOR BOARD OF INDIAN APPEALS
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ESTATE OF PHILLIP QUAEMPTS) Order Remanding Case to
) Probate Hearings Division
)
) Docket No. IBIA 03-140-1
)
) December 14, 2010

This appeal was decided by the Board of Indian Appeals (Board) on September 28, 2005. 41 IBIA 252. In that decision, the Board upheld an order by Administrative Law Judge William E. Hammett (ALJ) in the estate of Phillip Quaempts (Decedent), deceased Yakama Indian, Probate No. IP SA 197 N 98 (P000000592IP). The ALJ and the Board concluded that Appellant, Johanna Senator, was not lawfully married to Decedent as a matter of Yakama tribal law, and therefore was not Decedent's surviving spouse and not an heir to his trust property. *See* 41 IBIA at 252, 254-56.¹

Appellant sought judicial review and the U.S. District Court reversed the Board's decision with respect to the validity of Appellant's marriage to Decedent. *See Senator v. United States*, No. CV-05-3105-RHW (E.D. Wash. Feb. 26, 2010).² The court relied on a declaration, submitted during the litigation, of a former chairman of the Yakama Nation Tribal Council, and held that the marriage between Appellant and Decedent was valid under Yakama tribal law.³ By letter dated November 30, 2010, the Department of the Interior's Office of the Solicitor formally advised the Board of the court's judgment and of the fact that the United States did not pursue an appeal from the court's decision.

¹ The ALJ concluded that Decedent had remained married to Bernadine Napyer Quaempts and determined that she was his heir.

² The court's decision did not affect the Board's decision with respect to Appellant's creditor claims.

³ The Board had relied on the Yakama Nation's tribal code, as interpreted by and applied to Appellant by the Yakama Tribal Court. *See* 41 IBIA at 255. The U.S. District Court found that the Yakama Tribal Court's legal conclusion was contradicted by the former chairman's declaration, who had stated that tribal custom prevails over the tribal code.

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 remands this case to the Probate Hearings Division, with directions to implement the Court's ruling that Appellant and Decedent were validly married under Yakama tribal law.⁴

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debora G. Luther
Administrative Judge

⁴ Bernadine Napyer Quaempts, *see supra* note 1, was not a party to the litigation and it is unclear whether she had notice of the litigation and the court's decision. Because the court expressly held that the marriage between Appellant and Decedent was valid under Yakama tribal law, and reversed, rather than vacated, the Board's decision, the Board finds it unnecessary to conduct further proceedings before remanding the case to the Probate Hearings Division with instructions to implement the court's decision.