



INTERIOR BOARD OF INDIAN APPEALS

Estate of Beverly Ann Vernwald

52 IBIA 350 (12/16/2010)



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 BEVERLY ANN)	Order Docketing and Dismissing Appeal
VERNWALD,)	
a.k.a. BEVERLY ANN JENKINS,)	
a.k.a. BEVERLY LEMIEUX)	Docket No. IBIA 11-038
)	
)	
)	December 16, 2010

Howard Timothy Blonien, a.k.a. Howard Timothy Hagen, a.k.a. Howard Timothy Jenkins (Appellant), appeals to the Board of Indian Appeals (Board) from an Order Including Property in the Estate Inventory (Modification Order), dated November 30, 2010, by Administrative Law Judge (ALJ) Richard J. Hough in the estate of Appellant’s biological mother, Beverly Ann Vernwald, a.k.a. Beverly Ann Jenkins, a.k.a. Beverly Lemieux (Decedent), deceased Lake Superior Chippewa (Bad River Band) - Wisconsin Indian, Probate No. P000037217IP. The ALJ’s order modified Decedent’s estate inventory to add trust property interests located on the L’Anse Reservation in Michigan, and to distribute them to another son of Decedent, Edward Bryan Jenkins, as her legal heir in accordance with Michigan law. We docket this appeal but summarily dismiss it because the substance of Appellant’s appeal — that under Wisconsin law Appellant should be an heir of Decedent, even though he was adopted out — is directed at the Order Determining Heirs, and not the Modification Order.

Decedent died on February 19, 2006, and a December 30, 2009, Order Determining Heirs applied Wisconsin state rules of intestacy because the inventory of Decedent’s trust property identified only trust real property interests located in Wisconsin. *See Estate of Richard Crawford*, 42 IBIA 64, 68-69 (2005) (trust assets of an intestate Indian decedent are distributed according to the intestacy laws of the state in which the property is located). In the Order Determining Heirs, the ALJ found that Appellant had been adopted out, and therefore, the ALJ concluded, Appellant did not qualify as an heir to Decedent. *See Order Determining Heirs at 1* (citing Wis. Stat. Ann. § 854.20(2)).

In this appeal, Appellant argues that Wisconsin state law does not bar him from inheriting. *See Notice of Appeal at 2-3* (citing Wis. Stat. § 854.20(2)). However, the Modification Order, which apparently prompted this appeal, did not reopen the issue of

whether Appellant is entitled to inherit from Decedent under Wisconsin law. Instead, the Modification Order adds trust property to Decedent's estate, which the ALJ ordered to be distributed according to Michigan state laws of intestacy because the newly identified property is located in Michigan. *See* Order to Show Cause, Oct. 27, 2010 (citing Mich. Comp. Laws Ann. § 700.2103); *see also* Mich. Comp. Laws §§ 700.2114(2) (“An adopted individual is the child of his or her adoptive parent or parents and not of his or her natural parents . . .”) & 700.2114(3) (“The permanent termination of parental rights of a minor child by an order of a court of competent jurisdiction . . . ends kinship between the parent whose rights are so terminated and the child for purposes of intestate succession by that parent from or through that child.”).

Because the Modification Order was limited to distributing property interests in Michigan under Michigan law, the question of Appellant's eligibility to inherit under Wisconsin law is not within the scope of an appeal from the Modification Order. *See* 43 C.F.R. § 4.318 (Scope of review); *see also Estate of Caroline Davis*, 51 IBIA 101 (2010) (probate judge's modification order did not reopen original probate decision; challenge to original probate decision was not within the scope of an appeal from the modification order). Appellant's challenge and statutory argument are aimed at the Order Determining Heirs and not the Modification Order, and therefore his appeal must be dismissed. *See Estate of Davis*, 51 IBIA at 101-02 (docketing and dismissing appeals).¹

¹ Although we dismiss this appeal, we note that the Order Determining Heirs relied on Wisconsin law's general rule that “a legally adopted person ceases to be treated as a child of the person's birth parent.” Wisc. Stat. § 854.20(2). In § 854.20(2)2.a., the law creates an exception to the general rule when a minor child has been adopted by a stepparent following the death of a birth parent, in which case the child may still inherit from the birth parent. Those facts are not present in this case, but Appellant relies on additional language stating that “[s]ubdivision 2.a. does not apply if the parental rights of the deceased birth parent had been terminated.” § 854.20(2)2.c. Appellant reads the “does not apply” language as referring to the *general rule*, but by its express terms the “does not apply” language refers to § 854.20(2)2.a. It creates an “exception to the exception,” and not an exception to the general rule. Thus, even if we were to resolve this appeal on the merits, we would not be convinced by Appellant's argument.

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 dismisses it because Appellant's challenge is outside the scope of the ALJ's Modification Order.²

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debora G. Luther
Administrative Judge

² Even if we were to construe Appellant's appeal as from the Order Determining Heirs, we would be required to dismiss it because it would be untimely. An appeal from a probate judge's decision must be filed with the Board within 30 days after the date on which the decision was mailed with accurate appeal instructions. *See* 43 C.F.R. § 4.321(a). An untimely appeal will be dismissed. *Id.* The ALJ provided accurate appeal instructions for the Order Determining Heirs, and included a certification that it was mailed to the listed interested parties (including Appellant) on December 30, 2009, and thus the 30-day deadline expired on January 29, 2010. Appellant's appeal, which was received by the Board on December 7, 2010, was filed well after the 30-day deadline expired for appealing the Order Determining Heirs.