



INTERIOR BOARD OF INDIAN APPEALS

Estate of Roland Dean DeRoche

53 IBIA 114 (03/21/2011)



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 ROLAND DEAN)	Order Docketing and Dismissing Appeal
DEROCHE)	
)	
)	
)	Docket No. IBIA 11-076
)	
)	March 21, 2011

In this appeal, Marisha Black Weasel (Appellant), the mother of Roland Dean DeRoche, a.k.a. Roland Dean Black Weasel (Decedent), deceased Blackfeet Indian, asks the Board of Indian Appeals (Board) to declare unconstitutional the “tribal heir rule” in the American Indian Probate Reform Act of 2004 (AIPRA), as amended.¹ *See* 25 U.S.C. § 2206(a)(2)(D)(iii)(IV). But the Board lacks jurisdiction to consider constitutional challenges to a Federal statute, and therefore we docket, but must summarily dismiss, the appeal.

Decedent died intestate owning trust real property interests that constituted less than 5 percent of the respective allotments. The IPJ applied AIPRA’s tribal heir rule to those interests, under which they pass to the Blackfeet Tribe. *See* Decision at 2-3 (Nov. 12, 2009).² Appellant, who is Decedent’s sole heir for his trust personalty (i.e., Individual

¹ Appellant appeals from an Order Denying Rehearing issued on February 23, 2011, by Indian Probate Judge (IPJ) Albert P. Jones in Decedent’s estate, Probate No. P000068074IP.

Both the Rehearing Order and the Department of the Interior’s probate tracking system, ProTrac, spell Decedent’s last name as “DeRoche.” Appellant spells Decedent’s last name as “DeRouche.”

² Decedent died on February 12, 2008, was never married, and had no children. *See id.* at 1. Based on the date of death, the IPJ found that AIPRA’s rules of intestate succession apply. AIPRA has special rules that apply to trust real property interests that are not disposed of by a valid will and that represent less than 5 percent of the undivided ownership in a parcel. Under those rules, if a decedent dies without a surviving spouse (who might

(continued...)

Indian Money account funds on deposit or accrued on the date of death), objected to the Decision, arguing that she is Decedent's only heir and should inherit all of his property. The IPJ construed the objection as a petition for rehearing but denied it, in relevant part, on the ground that he lacked authority to consider a constitutional challenge to AIPRA. *See* Order Denying Rehearing at 2.

On appeal to the Board, Appellant continues her objection to the distribution of Decedent's trust real property interests to the Tribe, arguing that the tribal heir rule is unconstitutional because it took her property, and property in Decedent's estate, without due process or just compensation.³ Appellant notes that while Decedent "only ow[n]ed a small percentage of land in various allotments, the total of his small tracts of land was approximately 233 acres." Notice of Appeal at 2. Thus, Appellant states that she is being deprived of "233 acres of land, valued at well over \$60,000," and the Tribe is receiving an "illegal windfall." *Id.*⁴ Appellant contends that her son had no knowledge of the tribal heir rule or of the need to make a will if he wanted to give his land to someone, and Appellant argues that application of the law is unfair. For these reasons, Appellant requests that the Board declare unconstitutional AIPRA's tribal heir rule, which prevented her from inheriting Decedent's trust real property. *Id.*

It is well-established that the Board lacks jurisdiction to consider a constitutional challenge to a Federal statute or to declare a Federal law, such as AIPRA's tribal heir rule, unconstitutional. *See, e.g., Cloud v. Alaska Regional Director*, 50 IBIA 262, 277 n.21 (2009) ("[T]he Board lacks jurisdiction to declare a Federal statute unconstitutional."); *Hern v. Northwest Regional Director*, 48 IBIA 141, 145 (2008) ("[T]he Board consistently has held that it lacks authority to declare a statute unconstitutional.") (citing *Shawano County v. Midwest Regional Director*, 40 IBIA 241, 247 (2005)); *Oklahoma Petroleum Marketers Assoc.*

²(...continued)

otherwise be entitled to a life estate) and without any surviving children, grandchildren, or great-grandchildren, the heir that is next in line is the Indian tribe with jurisdiction over the trust real property interest. *See* 25 U.S.C. § 2206(a)(2)(D)(iii)(IV). A decedent's parent is not in the line of succession under this rule.

³ The IPJ found that the only trust real property interests in Decedent's estate were those constituting less than 5 percent of the respective allotments, and therefore the IPJ's heirship determination with respect to Decedent's trust real property interests was limited to those interests.

⁴ Because we summarily dismiss this appeal, we have not ordered the record. We assume, solely for purposes of this order that Appellant's factual assertions are correct.

v. Acting Muskogee Area Director, 35 IBIA 285, 287 (2000) (“The Board has no authority to declare an act of Congress unconstitutional.”) (citation omitted). Because the Board lacks jurisdiction to consider Appellant’s constitutional challenge to AIPRA’s tribal heir rule or to grant the relief Appellant seeks, the Board must dismiss this appeal. *See Shoalwater Bay Indian Tribe v. Acting Northwest Regional Director*, 36 IBIA 1, 2 (2001).

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 but dismisses this appeal for lack of jurisdiction.⁵

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debora G. Luther
Administrative Judge

⁵ We dismiss the appeal, rather than affirm the IPJ’s Rehearing Order, because Appellant asks the Board directly to declare AIPRA’s tribal heir rule unconstitutional. But to the extent that Appellant’s appeal could be construed as challenging the IPJ’s determination that he similarly lacked jurisdiction to consider Appellant’s constitutional challenge, we would affirm. As the IPJ explained, AIPRA represents “the current state of the law, as passed by the United States Congress and [he] must apply that law.” Order Denying Rehearing at 2.