



INTERIOR BOARD OF INDIAN APPEALS

Estate of Nancy Marie Foundagun, a.k.a. Nancy Marie Oldchief

54 IBIA 133 (11/03/2011)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ESTATE OF NANCY MARIE)
FOUNDAGUN, a.k.a. NANCY)
MARIE OLDCHIEF)
)
)
) Order Docketing and Dismissing Appeal
) Docket No. IBIA 12-003
)
) November 3, 2011

On October 3, 2011, the Board of Indian Appeals (Board) received a creditor claim from Whitted Funeral Chapel (Appellant) for \$1,370 against the estate of Nancy Marie Foundagun (a.k.a. Nancy Marie Oldchief) (Decedent), deceased Blackfeet Indian, Probate No. P000030925IP. Appellant's claim was previously rejected as untimely by Indian Probate Judge (IPJ) James Yellowtail in a June 16, 2006, decision (Decision). Appellant states that it is "refiling" its claim, apparently through this appeal to the Board from a September 21, 2011, order by Administrative Law Judge (ALJ) R.S. Chester to add trust real property interests to Decedent's estate and distribute them to Decedent's will beneficiaries in accordance with the 2006 Decision.¹ We docket this appeal but summarily dismiss it because the Modification Order did not reopen or reconsider the timeliness of Appellant's claim, and therefore it is not within the scope of review for an appeal from the Modification Order.

After an Indian trust estate has been probated through issuance of a final decision, a probate judge's modification order to add property to a decedent's estate, and to distribute that property pursuant to the terms of a prior and final probate decision, does not, without more, reopen the estate for other purposes or reopen prior determinations. In the present case, the Modification Order was limited to adding trust real property to Decedent's estate. The ALJ's order did not reconsider or otherwise address Appellant's claim, and therefore Appellant's claim 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 Beverly Ann Vernwald*, 52 IBIA 350, 351 (2010) (because appellant challenged the original decision and not the modification

¹ *See* Modification Order to Include Omitted Property (Modification Order), Sept. 21, 2011. The Modification Order added trust real property interests located on the Blackfeet Reservation in Montana, and decreed that those interests be distributed in equal shares to Decedent's sons, Alvin Gene Old Chief and David Paul Old Chief, in accordance with the IPJ's Decision.

order, his appeal was dismissed); *Estate of Caroline Davis*, 51 IBIA 101 (2010) (challenge to original probate decision was not within the scope of an appeal from the modification order); *Estate of Irma Ross*, 51 IBIA 21 (2009) (same).² Because the claim that Appellant seeks to present on appeal is outside the scope of review for an appeal from the Modification Order, we summarily dismiss the appeal.

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.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debora G. Luther
Administrative Judge

² Nor is there any authority in the regulations to permit a creditor to either file or refile a claim directly with the Board.