



INTERIOR BOARD OF INDIAN APPEALS

Estate of Phillip Quaempts

54 IBIA 278 (03/09/2012)

Reconsideration denied:  
54 IBIA 290



further determined that, as Decedent's surviving spouse, Senator, not Quaempts, was entitled to inherit a one-half interest in Decedent's trust property.<sup>2</sup>

Appellant appealed from the ALJ's Order, asking the Board to revisit the issue of Senator's marriage to Decedent and to find that Quaempts, whom Appellant describes as her step-mother, is Decedent's surviving spouse.<sup>3</sup>

Upon receipt of the appeal, the Board issued an order for Appellant to show cause why the appeal should not be dismissed for lack of standing, or in the alternative why the ALJ's Order should not be summarily affirmed as properly implementing the Federal court's decision. *See* Pre-Docketing Notice, Order for Appellant to Serve Interested Parties, Order for Appellant to Show Cause, and Order on Objection to Appeal (OSC), July 1, 2011. Appellant responded to the OSC, but none of the arguments that she makes demonstrate that she has standing.<sup>4</sup>

### Discussion

In order to have standing (i.e., be permitted to bring an appeal to the Board), an appellant must be an interested party whose *own* interests are adversely affected by the decision being appealed. *See* 43 C.F.R. §§ 30.240(d) ("interested parties who are adversely affected have a right to appeal"), 30.245(a) (same), and 4.320 (same); *Estate of Zane Jackson*, 46 IBIA 251, 256 (2008) ("A showing of injury is required to establish standing in probate proceedings."). "Without an injury to an *appellant's* legally protected interest, an appeal will be dismissed." *Biegler v. Great Plains Regional Director*, 54 IBIA 160, 164

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<sup>2</sup> Quaempts married Decedent in November 1973 and separated from him permanently, with no intent to reunite, in May 1980. *Estate of Phillip Quaempts*, 41 IBIA 252, 252 n.1 (2005) (*Quaempts I*). In the initial Order Determining Heirs, ALJ William Hammett concluded that Decedent had remained married to Quaempts, and that she was Decedent's surviving spouse. Order Determining Heirs at 2 (unnumbered). In *Quaempts I*, the Board upheld that determination, but the Board's decision was reversed by the Federal court. *See Senator*, 2010 WL 723792, at \*3-\*4.

<sup>3</sup> Quaempts did not appeal from the Order.

<sup>4</sup> Senator filed an objection to Appellant's appeal and an answer to Appellant's response to the OSC.

(2011) (emphasis added). It is Appellant's burden to establish that she has standing to challenge the Order. See *Reeves v. Great Plains Regional Director*, 54 IBIA 207, 213 (2012).

In response to the Board's OSC, Appellant argues that if Senator is determined to be Decedent's surviving spouse, then Appellant and Decedent's other children and grandchildren "will be wrongfully deprived of significant trust land holdings that should strictly remain in the decedent's family." Response to the IBIA's Show Cause Order (OSC Response), Aug. 1, 2011, at 2. But the Order only removed Quaempts as an heir to Decedent. It did not alter the finding that Decedent's six living children and grandchild would inherit the portion that did not go to Decedent's surviving spouse. And Appellant does not contend that Decedent had *no* surviving spouse — only that it was Quaempts and not Senator. Appellant may be suggesting that if Quaempts were to inherit from Decedent, Appellant and other descendants of Decedent would be more likely to eventually obtain the property, i.e., from Quaempts. But an expectancy about what a third party might do, in this case about what Quaempts might do with property inherited from Decedent, is not a cognizable right or legally protected interest. See *Shelbourn v. Acting Great Plains Regional Director*, 54 IBIA 75, 79 (2011).

Appellant also argues that she and her siblings will be adversely affected if Senator receives a share in Decedent's trust property because Senator "would not be a collaborative land co-owner" and therefore the Order deprived Appellant and her siblings of "unencumbered ownership." Letter from Appellant to Board, Oct. 7, 2011. But, in seeking to challenge an heirship determination, an appellant does not have any right or legally protected interest in ensuring that only individuals who are "collaborative" and will work well with the appellant should be entitled to become co-owners of property with the appellant. Cf. *Reeves*, 54 IBIA at 212 (owner of a parcel of land within a range unit had no legally protected interest that was adversely affected by BIA's issuance of a grazing permit to the individual awarded preference rights by the tribe, instead of to the owner's grandson).

Appellant next contends that the Order wrongfully deprived Quaempts of a portion of Decedent's Individual Indian Money account. OSC Response at 2. But as noted above, Appellant's right to appeal must be based on Appellant's own status as an interested party who was adversely affected by the Order. See 43 C.F.R. §§ 30.240(d), 30.345(a), and 4.320. She "cannot rest her claim of relief upon the rights and interests of others." *Reeves*, 54 IBIA at 213; see also *Biegler*, 54 IBIA at 166 (the appellant lacked standing to assert the rights of others). Thus, Appellant cannot rely on an injury to *Quaempts* to establish *Appellant's* standing to appeal from the Order. Quaempts must assert her own interests and, as noted earlier, Quaempts did not appeal from the Order.

Appellant expresses her concern, as an enrolled member of the Yakama Nation, that the Federal court's ruling "contradict[s] and change[s] the *Unwritten Laws* of the Yakama Nation which have been in place since *time immemorial*." OSC Response at 2. An individual tribal member's general "interest" or concern about how a Federal court applied her tribe's laws, in a case involving only the legal rights or interests of others, is not a legally protected interest, and therefore provides no basis for us to find that Appellant has standing to bring this appeal.

Even if Appellant could show that she has standing to appeal from the Order, we would summarily affirm the ALJ's Order. The Board ordered the ALJ to implement the court's decision, a decision that is binding on both the Board and the ALJ. The Federal court expressly held that the marriage between Senator and Decedent was valid. Appellant disagrees with the court's ruling, but the ALJ was not free to disregard that ruling and to revisit the issue of Decedent's marriage to Senator. *See Brown v. Muskogee Area Director*, 19 IBIA 318, 319 (1991) (even if the Board had jurisdiction over the matter, it would be bound by the Federal district court's decision).

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 for lack of standing.

I concur:

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Steven K. Linscheid  
Chief Administrative Judge

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// original signed  
Debora G. Luther  
Administrative Judge