



## INTERIOR BOARD OF INDIAN APPEALS

Lisa Nicholson-True v. Acting Northwest Regional Director, Bureau of Indian Affairs

55 IBIA 1 (05/01/2012)

Related Board cases:

51 IBIA 126

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# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
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LISA NICHOLSON-TRUE,	)	Order Affirming Decision
Appellant,	)	
	)	
v.	)	
	)	Docket No. IBIA 10-043
ACTING NORTHWEST REGIONAL	)	
DIRECTOR, BUREAU OF INDIAN	)	
AFFAIRS,	)	
Appellee.	)	May 1, 2012

Lisa Nicholson-True (Appellant) appealed to the Board of Indian Appeals (Board) from a December 17, 2009, decision (Decision) of the Acting Northwest Regional Director (Regional Director), Bureau of Indian Affairs (BIA), in which the Regional Director decided an inventory dispute concerning the estate of Appellant’s father, John Henry Nicholson (Decedent).<sup>1</sup> The Regional Director confirmed that two portions of the original Josephine Nicholson Allotment, No. 101-889 (Allotment 889) were not part of Decedent’s trust estate inventory because Decedent had conveyed them through approved deeds before his death. Appellant, who is an heir to Decedent’s estate, contends that the conveyances were not valid. We affirm the Decision because the record fully supports the Regional Director’s finding that Decedent validly conveyed the parcels before his death. Therefore, they were not part of his estate inventory and could not be inherited by Decedent’s heirs.

## Background

Decedent acquired title to a full interest in Allotment 889, consisting of 119.89 acres, through six deeds executed by fractional interest owners and approved by BIA between May and August 1968. Administrative Record (AR) Part 2, Attach. C-H.<sup>2</sup> On September 17, 1981, Decedent executed deeds conveying one portion of Allotment 889 to

<sup>1</sup> Decedent was a Colville Indian; his estate was assigned Probate No. P000078355IP.

<sup>2</sup> Allotment 889 originally consisted of Lot 1 of Section 5 in Township 33 North and the East ½ of the Southeast ¼ of Section 32 in Township 34 North, all in Range 27 East of the Willamette Meridian, Washington. AR Part 2, Attach. B.

his brother, Raymond L. Nicholson (Raymond), consisting of approximately 19.459 acres, and another portion of Allotment 889 to his sister, Mary E. Nicholson (Mary), consisting of approximately 21.178 acres. AR Part 2, Attach. I-J. The deeds were approved the same day by the BIA Colville Agency Superintendent, and recorded by BIA's Land Title and Records Office (LTRO) in Portland, Oregon, on October 15, 1981. *Id.* The parcels conveyed to Raymond and Mary became identified as Allotments 889-A and 889-B, respectively.

Decedent died on April 9, 1982. The probate judge determined that Appellant and her two siblings were Decedent's heirs, each entitled to equal shares in Decedent's estate. *See Order Determining Heirs*, Nov. 17, 1982 (*Order Determining Heirs*) (AR Part 2, Attach. K). When the *Order Determining Heirs* was issued, the inventory for Decedent's estate showed his interest in Allotment 889 as including the entire 119.89 original acres. *Id.* at 2 (unnumbered).<sup>3</sup>

On November 11, 1988, Administrative Law Judge (ALJ) Keith L. Burrowes issued a *Modification Order Correcting Description* (*Modification Order*), which modified Decedent's estate inventory to remove the land encompassed in Allotments 889-A and 889-B. AR Part 2, Attach. L, M. The Portland LTRO later issued an administrative correction (*Correction*) on April 29, 1992, which corrected the probate file number on the *Modification Order* and also corrected a mathematical error in the acreage for the portion of Allotment 889 remaining in Decedent's estate. *See* AR Part 3.<sup>4</sup>

Appellant filed a petition to reopen Decedent's estate (*Petition*) with the Probate Hearings Division in June 2009, arguing that Allotments 889-A and 889-B should not have been removed from Decedent's estate inventory and should have passed to Appellant and her siblings as Decedent's heirs. ALJ Thomas F. Gordon denied the petition to reopen for lack of jurisdiction over the inventory dispute, and referred the matter to the Regional

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<sup>3</sup> The inventory also included interests in Allotments 151-H44 and 151-H314. Those interests are not implicated in this appeal.

<sup>4</sup> The LTRO did not change the legal descriptions of any property, but corrected certain mathematical calculations of the acreage that were incorrect in the ALJ's *Modification Order*, which had slightly understated the total acreage for Allotment 889 remaining in Decedent's estate. The correct total for the acreage still owned by Decedent at the time of his death was 79.253 acres.

Director in accordance with 43 C.F.R. § 30.128(b). Order Referring Inventory Dispute to BIA, Nov. 16, 2009 (AR Part 2, Attach. A).<sup>5</sup>

The Regional Director found no basis to conclude that the modification to remove Allotments 889-A and 889-B from Decedent's estate inventory was in error, because Decedent conveyed those portions of Allotment 889 during his lifetime. Therefore, they were not owned by him at the time of his death, were not part of his estate, and could not be inherited from Decedent by his heirs.<sup>6</sup>

Appellant appealed the Regional Director's Decision to the Board. Appellant filed an opening brief, but her certificate of service did not include the Regional Director or counsel for the Regional Director, who had entered an appearance in this case that was served on Appellant 1 month before she filed her opening brief. The Regional Director filed an answer brief, reporting that neither counsel nor the Regional Director had received any filing from Appellant, but also defending the Decision on the merits.<sup>7</sup> Appellant did not file a reply brief.

### Discussion

Because Appellant did not serve her opening brief on the Regional Director or his counsel, we will only consider the arguments raised in her notice of appeal. *See Billco Energy v. Acting Albuquerque Area Director*, 35 IBIA 1, 3 (2000).<sup>8</sup> In her notice of appeal, Appellant contends that at the time that Decedent conveyed Allotments 889-A and 889-B, he had mortgaged the property, and thus he could not convey any interest to Raymond or Mary as a matter of law. We affirm the Decision because, as the Regional Director correctly and succinctly responds in his answer brief, Appellant is incorrect.

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<sup>5</sup> In *Estate of John Henry Nicholson*, 51 IBIA 126 (2010), we affirmed ALJ Gordon's denial of Appellant's Petition and his referral of the inventory dispute to BIA for a decision.

<sup>6</sup> Appellant and her siblings later inherited interests in Allotment 889-A from Raymond when he died in 2005. *See Estate of Raymond Lester Nicholson*, Dept. of Int. Probate No. P000036248IP (Order Determining Heirs, Feb. 6, 2007) (Regional Director's Answer Brief, Attach. 3).

<sup>7</sup> We understand this to mean that they received no opening brief from her, because the answer brief refers to Appellant's notice of appeal. *See Answer Br.* at 2.

<sup>8</sup> The Board advised Appellant in its February 12, 2010, Notice of Docketing that she must serve copies of all submissions to the Board on all interested parties, or the filings may not be considered.

Appellant contends that Decedent could not convey Allotments 889-A and 889-B while the property was encumbered by a mortgage, and that our decision in *Estate of Dragswolf*, 31 IBIA 228 (1997), is controlling on this point.<sup>9</sup> In *Dragswolf*, the Board held that BIA had authority to declare null and void a conveyance when the grantor did not own an interest in the land at the time of the conveyance. But Decedent's mortgage of Allotment 889, while creating an encumbrance, did not divest Decedent of ownership, nor did it mean that Decedent did not have the legal ability to convey his interest. *See* 55 Am. Jur. 2d, *Mortgages* § 1018 (2012) ("Real property is transferable even though the title is subject to a mortgage or deed of trust").<sup>10</sup> Thus, we reject Appellant's argument that Decedent could not convey 889-A and 889-B while they were subject to a mortgage, and *Dragswolf* is not relevant to those conveyances.<sup>11</sup>

Appellant also asserts that BIA did not uphold its trust responsibility "to transfer the deeds to us within 75 days." Notice of Appeal at 1. It is not clear whether or how Appellant believes that this assertion is relevant to the Decision.<sup>12</sup> It is not. In fact, even if BIA had such an obligation, BIA could not validly transfer property that was not in Decedent's estate. Thus, if *Dragswolf* has any relevance in this appeal, it stands for the proposition that because Decedent no longer owned Allotments 889-A and 889-B when he

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<sup>9</sup> The record shows that when Decedent died, there was a balance of approximately \$1700 remaining on a \$9,300 loan that was secured by Allotment 889. *See* Letter from Colville Tribal Credit Corp. to Appellant, Dec. 16, 2009 (attached to Notice of Appeal). A Satisfaction of Mortgage was executed by the Colville Tribe's Credit Manager on February 5, 1988. *See* Answer Brief, Attach. 5.

<sup>10</sup> Appellant also complains that William E. Nicholson, who was the Collville Agency Superintendent and also Decedent's brother, should not have approved the conveyances of Allotments 889-A and 889-B after Decedent's death. Appellant is mistaken on the timing of events; the Superintendent approved the conveyances during Decedent's lifetime.

<sup>11</sup> In her opening brief, Appellant cites (former) 43 C.F.R. § 4.250 (2008) in support of her contention that no transfer of interest in Allotment 889 could occur while it was encumbered by a mortgage. Former section 4.250 addressed creditor claims in probate; it neither applied to, nor is it relevant to the validity of, Decedent's conveyances during his lifetime.

<sup>12</sup> Appellant cites no authority for this assertion, but she may be referring to a provision, which was at one time included in the probate regulations (although not when Decedent's estate was probated), that directed superintendents to *initiate* the distribution of estate property 75 days after a probate judge's final decision, unless a request for rehearing or an appeal had been filed. *See* 43 C.F.R. § 4.273 (2008).

died, he had no ownership interest in those parcels that BIA could transfer to Decedent's heirs.<sup>13</sup>

Appellant has not demonstrated that Decedent's conveyances of Allotments 889-A and 889-B were invalid. The approved deeds from Decedent to Raymond and Mary divested Decedent of his interest in those parcels. It was error for those parcels to be included in the original estate inventory that accompanied the Order Determining Heirs, and the Regional Director correctly concluded that the estate inventory, as modified through the Modification Order and the related Correction, is correct with respect to Allotment 889. At the time of his death, Decedent only owned the remaining 79.253 acres in Allotment 889.

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 affirms the Decision.

I concur:

          // original signed            
Steven K. Linscheid  
Chief Administrative Judge

          // original signed            
Debora G. Luther  
Administrative Judge

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<sup>13</sup> In her opening brief, Appellant claims that, with one exception, there are no deeds in her BIA file. As noted earlier, Appellant did not serve her opening brief on the Regional Director, and thus he had no opportunity to respond. In any event, the Regional Director's Decision only addressed Decedent's conveyances of Allotments 889-A and 889-B. Any other issues concerning deeds or records of title for interests in land that Appellant may claim were not addressed by the Decision and are not within the scope of this appeal. *See* 43 C.F.R. § 4.318. Appellant also objects in her opening brief to the exclusion of Allotment 101-T3514 from Decedent's estate inventory. Allotment T3514 is another parcel that Appellant apparently contends Decedent invalidly conveyed to another sibling, his sister Millie Fincher, during his lifetime. *See Nicholson*, 51 IBIA at 127, 129 n.4. The Decision does not address Allotment T3514, and thus it is also outside the scope of this appeal.