



INTERIOR BOARD OF INDIAN APPEALS

Estate of Clifford E. Loudner, Sr.

55 IBIA 87 (05/25/2012)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
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SUITE 300  
ARLINGTON, VA 22203

ESTATE OF CLIFFORD E. ) Order Affirming Decision  
LOUDNER, SR. )  
) Docket No. IBIA 10-104  
)  
) May 25, 2012

Joyce Coleman (Appellant) appealed to the Board of Indian Appeals from a May 10, 2010, Order Denying Rehearing (Rehearing Order) in the estate of Clifford E. Loudner, Sr. (Decedent).<sup>1</sup> Appellant owns a one-third undivided interest in Crow Creek Allotment S33-D (Allotment). Decedent also owned a one-third undivided interest in the Allotment, which he inherited from his brother Kenneth Loudner (Kenneth) as Kenneth's closest surviving relative. Appellant does not claim to be an heir or beneficiary to Decedent's estate.<sup>2</sup> But Appellant contends that there are unresolved issues regarding ownership of a house in which Appellant lives that is located on the Allotment. Appellant also argues that Decedent should not have been Kenneth's heir because Kenneth had a daughter.

Appellant sought, through a petition for rehearing in Decedent's probate proceedings, to have these issues addressed by the IPJ. The IPJ questioned Appellant's standing to petition for rehearing but also concluded that Appellant's petition must be dismissed because the issues she sought to raise are not relevant to the probate of Decedent's estate. We agree and, accordingly, we affirm the IPJ's decision dismissing Appellant's petition.

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<sup>1</sup> The Rehearing Order was issued by Indian Probate Judge (IPJ) Ange Aunko Hamilton, and left in place a June 18, 2009, Order Determining Heirs and Decree of Distribution (Order Determining Heirs). Decedent was a Crow Creek Sioux, and the probate number assigned to Decedent's case in the Department of the Interior's (Department) probate tracking system, ProTrac, is No. P000068715IP.

<sup>2</sup> In the Order Determining Heirs, the IPJ determined that Decedent's trust real property interests constituting five percent or more in a parcel of land (which includes his one-third interest in the Allotment) pass by intestacy in equal shares to Decedent's three sons, Gary, Charles, and Louis Loudner. Administrative Record (AR) Tab 23 at 3. Appellant does not dispute the IPJ's heirship finding.

## Background

The Allotment originally was owned by Appellant's grandmother, Lucille Turner (Lucille). It was inherited by Appellant's mother, Cecelia Beverly Turner Loudner (Cecelia), who was married to Kenneth, Appellant's stepfather. When Cecelia died, her trust estate, including her full interest in the Allotment, passed in equal shares, one third each, to Kenneth and to Cecelia's two daughters, Appellant and Jean Marie Harmon/Nahomni-Mani. *See Estate of Cecelia Loudner*, No. IP RC 067Z 90, Nov. 27, 1990 (Order Determining Heirs and Decree of Distribution) (AR Tab 64).

The house at issue was built as part of a Mutual-Help Project of the Crow Creek Housing Authority, and designated Unit 128-01. Apparently, the house was originally assigned to Lucille, who requested a release and assignment to Cecelia in 1978. AR Tab 67. Cecelia died in April 1989, and in October 1989, the Crow Creek Tribal Council passed a resolution to "approve and authorize the Crow Creek Housing Authority office to issue deeds" to certain individuals who had paid for their homes, and named Kenneth as among those entitled to a deed. AR Tab 68.<sup>3</sup> The record contains a form document, apparently from the Crow Creek Housing Authority, giving notice to the "HOMEOWNER" that "[y]ou have fully paid off your indebtedness to your home, Unit No. 128-01," and that the Housing Authority is "pleased to convey to you ownership of your home." AR Tab 66. The form refers to an "attached Deed of Conveyance," but no such deed is included in the record. *Id.* The form is signed by Kenneth as "Homebuyer" and is dated September 13, 1991. *Id.*<sup>4</sup>

Kenneth died in 1994, and when his trust estate was probated, Administrative Law Judge (ALJ) Harvey S. Sweitzer determined that Kenneth's sole heir was Decedent, as his surviving sibling. *See Estate of Kenneth L. Loudner*, No. IP SL 161H 95, May 31, 1996 (Decision) (AR Tab 60). As a result, Decedent inherited Kenneth's one-third interest in the Allotment. In separate proceedings, the Crow Creek Tribal Court appointed Appellant as administratrix of Kenneth's estate, *see* AR Tab 59, but the record contains no additional information regarding tribal court proceedings in the matter, e.g., to probate assets in Kenneth's estate that were subject to tribal court jurisdiction.

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<sup>3</sup> The record does not indicate the nature of the rights or interests assigned to Cecelia or Kenneth in the house, and does not indicate the basis upon which the Tribal Council decided to deed the house to Kenneth.

<sup>4</sup> The form is not signed by any tribal official, but the reference to an attached deed suggests that a separate formal deed of conveyance may have been signed by a tribal official.

In 2000, Appellant filed a petition with the Department's Office of Hearings and Appeals (OHA) to reopen Kenneth's trust estate, alleging that Kenneth had a biological daughter named Dorothy Loudner, who should have been named as his heir instead of Decedent. *See* AR Tabs 56, 57.<sup>5</sup> In 2002, ALJ Marcel S. Greenia denied reopening for lack of sufficient evidence. AR Tab 56. Appellant did not appeal from the denial of reopening.

Decedent died on April 8, 2008, and during the probate of his estate, Appellant became involved as a co-owner who was interested in purchasing Decedent's one-third interest in the Allotment.<sup>6</sup> The purchase did not occur, and at some point Appellant's occupancy of the house (at least without paying rent) became a matter of dispute between Appellant and Gary, Decedent's oldest son.<sup>7</sup>

After the IPJ issued the Order Determining Heirs, Appellant filed a petition for rehearing, arguing that "since the AIPRA [American Indian Probate Reform Act] became effective, there are still unresolved issues regarding the house that [Cecelia] owned which could possibly change the outcome of your decision." Letter from Appellant to IPJ, July 15, 2009 (AR Tab 19). Appellant did not explain how she thought AIPRA might

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<sup>5</sup> In support of her petition to reopen Kenneth's estate, Appellant submitted a letter and photograph, which she contended were evidence that Kenneth had a daughter and that Decedent had known about her. *See* AR Tabs 57, 62, and 69. Apparently, no such individual was found at the time or has since been found.

<sup>6</sup> At the probate hearing, Appellant also asserted that she had an interest in the house "that I inherited back in 1989," apparently referring to Cecelia's death. Hearing Tr. at 4 (AR Tab 2).

<sup>7</sup> In a July 28, 2009, letter to U.S. Senator John Thune, in response to an inquiry prompted by Gary because of the payment dispute over occupancy of the house by Appellant and her sister, the Acting Regional Director of BIA's Great Plains Region advised Senator Thune that the house is "*non-trust* property," and that the proper venue to determine the inheritance of Kenneth's non-trust property would be the Crow Creek Tribal Court. Letter from Acting Regional Director to Sen. Thune, July 28, 2009 (AR Tab 17); *see also* AR Tab 29 (copies of Sen. Thune's inquiry to BIA and Gary's letter to Sen. Thune). The Acting Regional Director also reported that to BIA's knowledge, Kenneth's non-trust property had never been probated. It is not apparent that a copy of BIA's response was ever provided to Appellant or made available to her, except by inclusion as part of the probate record. While not relevant to our disposition of this probate appeal, it is unclear to the Board whether Appellant would disagree with BIA's response to Senator Thune. There is no evidence in the record that either Appellant or Gary sought to resolve the issue of the ownership or inheritance of the house in tribal court.

affect the IPJ's decision in Decedent's estate, but asserted that during the probate hearing, the IPJ had mentioned that "OHA would have to go back to [Cecelia's] probate and proceed forward to determine how this affects ownership of the house." *Id.* Appellant also referred to her earlier effort to reopen Kenneth's probate and suggested that Decedent fraudulently withheld information that Kenneth had a daughter. *Id.* Appellant argued that under Crow Creek tribal law, if a person commits fraud in order to inherit an estate, that person is precluded from being an heir. *Id.*

In considering Appellant's petition for rehearing, the IPJ first questioned whether Appellant had standing to seek rehearing because she did not appear to be an interested party: she did not claim to be an heir or beneficiary of Decedent's trust estate, nor did she challenge the IPJ's determination that her effort as a co-owner to purchase Decedent's interest in the Allotment had been unsuccessful. *See* Rehearing Order at 1; 43 C.F.R. § 30.101 (definition of "Interested Party"). Regardless of whether Appellant might be considered an "interested party" under the regulations, the IPJ concluded that Appellant's petition must be dismissed because the alleged omitted child from Kenneth's probate was not relevant to the probate of Decedent's estate. The IPJ did not address Appellant's concerns about the house.

Appellant appealed the Rehearing Order to the Board on two grounds: (1) there are unresolved issues regarding the house on the Allotment; and (2) the IPJ was notified in this case, as was the judge in Kenneth's probate, that Kenneth had a daughter. Appellant contends that since AIPRA was passed and implemented, the IPJ's decision in Decedent's estate would adversely affect Appellant and her sister "in the decision of ownership" of the house that is on the Allotment in which they each hold a one-third ownership interest. Notice of Appeal at 1.

### **Discussion**

Appellant does not contend that she is an "interested party," as defined by 43 C.F.R. § 30.101, i.e., she does not claim to be an heir of Decedent, a beneficiary under a will of Decedent, or a co-owner who is exercising a purchase option. Instead, Appellant contends that she was adversely affected by the IPJ's Rehearing Order because the IPJ refused to address what Appellant characterizes as unresolved issues regarding ownership of the house, or to address on rehearing whether Kenneth had a daughter who should have been named as his heir instead of Decedent. But those issues are outside the scope of Decedent's probate proceeding, to which Appellant is not an interested party. An individual has no legally protected right or interest in having matters outside the scope of a probate proceeding addressed by a probate judge. The issues that Appellant sought to have addressed by the IPJ were outside the scope of Decedent's probate proceeding, and thus

Appellant had no legally protected interest that was adversely affected by the IPJ's denial of rehearing, and the IPJ properly dismissed Appellant's petition.

Appellant argues, as administratrix of Kenneth's estate seeking to represent Kenneth's offspring, that Decedent was not entitled to inherit Kenneth's one-third interest in the Allotment because Kenneth had a daughter, whose existence Decedent fraudulently concealed from the ALJ who probated Kenneth's trust estate. But those issues fall within the scope of *Kenneth's* probate, and only through reopening Kenneth's estate would it be possible to remove Decedent as Kenneth's heir. The determination of Kenneth's heir is outside the scope of Decedent's probate proceeding, as the IPJ correctly noted.<sup>8</sup>

Appellant's argument regarding ownership of the house is less clear, but apparently she contends that she is entitled to ownership, in whole or in part, of the house, either as an heir to Cecelia or because she contends that Kenneth intended Appellant and her sister to have the house. But again, those issues are outside the scope of Decedent's probate proceeding.<sup>9</sup> And in any event, it is unclear on what basis Appellant believes that AIPRA may be relevant to her claims, especially given the fact that AIPRA became effective after both Cecelia and Kenneth had died.<sup>10</sup> The function of the probate proceeding conducted by the IPJ was to determine Decedent's heirs (a determination that Appellant does not contest) for the distribution of Decedent's trust property (the inventory for which does not include the house).

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<sup>8</sup> We need not address whether Appellant's appointment as administratrix of Kenneth's estate in tribal court proceedings provides her with any authority to seek reopening of Kenneth's trust estate. In addition, as mentioned, Appellant's earlier attempt to reopen Kenneth's estate, based on the same allegations she presented to the IPJ in this case, was denied in 2002, and Appellant did not appeal from that denial.

<sup>9</sup> Appellant's assertion that the IPJ "mentioned that before a decision could be made regarding the home, . . . OHA would have to go back to my mother's probate and proceed forward to determine how this affects ownership of the house," Petition at 1 (AR Tab 19), is not supported by the hearing transcript. The transcript reveals no such statements by the IPJ.

<sup>10</sup> A provision in AIPRA that was enacted after Decedent's death does address the descent of a decedent's interests in permanent improvements that are attached to trust land in which the decedent owned an interest. *See* 25 U.S.C. § 2206(a)[second](2). (Subsection (a) of § 2206 contains two paragraphs that are denominated as "(2)," the second of which follows paragraph (5).) But nothing in that amendment to AIPRA would bring the issues that Appellant seeks to raise within the scope of Decedent's probate proceeding.

Appellant's contentions, whether related to Decedent's inheritance of Kenneth's one-third interest in the Allotment or to issues regarding ownership of the house, are outside the scope of the probate of Decedent's trust estate. Thus, the IPJ properly dismissed Appellant's petition and denied rehearing, and Appellant was not adversely affected by the IPJ's Rehearing Order.

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 IPJ's Rehearing Order dismissing Appellant's petition.

I concur:

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// original signed  
Steven K. Linscheid  
Chief Administrative Judge

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//original signed  
Debora G. Luther  
Administrative Judge