



INTERIOR BOARD OF INDIAN APPEALS

Estate of Lynas Thomas Low Dog

55 IBIA 105 (06/11/2012)



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 LYNAS THOMAS)	Order Affirming Decision
LOW DOG)	
)	Docket No. IBIA 10-106
)	
)	June 11, 2012

The Board of Indian Appeals (Board) affirms the May 18, 2010, Order Denying Rehearing entered by Indian Probate Judge Michael Stancampiano (IPJ) in the estate of Lynas Thomas Low Dog (Decedent).¹ The Order Denying Rehearing left in place the IPJ's Decision in which he found that Decedent died intestate and that he had a daughter, Cristina Jauregui (Jauregui), that the IPJ determined to be Decedent's sole heir. Decedent's brother, Don Lance, appeals to the Board from the Order Denying Rehearing and argues that he believes Decedent died testate and, further, that Jauregui had agreed to DNA testing to prove that she is Decedent's daughter. We affirm the Order Denying Rehearing because Appellant did not meet his burden of showing error in the IPJ's decision.

Background

Decedent, a Cheyenne River Sioux, was born on February 11, 1945, in South Dakota. He died on March 22, 2006, at the Veterans Administration (VA) hospital in Palo Alto, California. He was survived by one biological son, Larry Low Dog (a.k.a. Larry Mennenga), who was adopted out as a small child and does not share in Decedent's trust estate.² The IPJ determined that Decedent also was survived by a second child, Jauregui, which Appellant disputes.

¹ In ProTrac, the docketing system of the Department of the Interior for Indian probates, the docket number assigned to Decedent's probate is P000037091IP.

² The IPJ determined that, under the law applicable to Decedent's probate, adopted out children are not heirs of their biological parents.

During the hearing held on August 24, 2007, before Administrative Law Judge Marcel Greenia (ALJ) to probate Decedent's estate, Jauregui agreed to DNA testing to show that she is Decedent's daughter. According to the record, arrangements were made with a facility near her to perform the testing, but Jauregui did not appear for her appointment and apparently has not since been in contact with Decedent's family. Also during the hearing, the ALJ agreed to obtain Decedent's medical records from the VA.

The ALJ retired before a decision was entered in this probate, and the case was reassigned to the IPJ. The IPJ reviewed the record and entered a Decision on January 28, 2009. In his Decision, the IPJ held that, despite the protestations of Decedent's family members that he had told them he had a will, Decedent died intestate inasmuch as no will had been found and presented. He further held that Jauregui is Decedent's daughter and Decedent's sole heir. Neither the ALJ or the IPJ ordered Decedent's records from the VA.

Another brother to Decedent, Melford Benoist (Benoist), sought rehearing on behalf of unnamed family members. Benoist asserted that the VA requires its patients to prepare wills, and was adamant that the VA would have a will executed by Decedent. He also asserted that the ALJ had told the family that he would obtain the VA records. Finally, Benoist reiterated his belief that Decedent was not Jauregui's father.

The IPJ sent a request to the VA to search Decedent's VA records for a will. The response received from the VA's Palo Alto (California) Health Care System explained that "after an extensive search of our current and archived systems of records[,] no will has been found [for Decedent]." Letter to IPJ from T. Wes Maynard, Chief, Health Information Management Section, Dec. 17, 2009 (PR Tab 8).

On May 18, 2010, the IPJ denied rehearing. He explained that the VA had not located a will and, therefore, there was no basis for rehearing to probate his will. The IPJ also denied rehearing as to Jauregui's paternity, explaining that because she was born during Decedent's marriage to Jauregui's mother, Molly Woods (Molly), she was presumed by law to be Decedent's child and the presumption was not rebutted. Alternatively, the IPJ explained, even assuming that the presumption was rebutted, the preponderance of the evidence—"Decedent's name appears on [Jauregui's] birth certificate [and n]o subsequent efforts by the Decedent to alter this fact . . . were made," Jauregui's "tribal membership is no doubt based on [her birth certificate]," and Decedent was determined to be Jauregui's father by the judge in Decedent's and Molly's divorce proceedings—weighed in favor of finding Jauregui to be Decedent's child. Order Denying Rehearing at 1.

Appellant appealed from the Order Denying Rehearing and asserts in his notice of appeal that there is "new evidence." For the first time, he claims that Decedent was treated not only by the VA but also by the Stanford University Medical Center, also located in Palo

Alto, and states that it is his “understanding” that Stanford may have Decedent’s will or information concerning his will. Appellant also asserts that Jauregui may not have been able to participate in the scheduled DNA testing because Jauregui was and remains incarcerated. He attaches a copy of Decedent’s death certificate and directs the Board’s attention to line 26, which identifies the informant’s name and relationship to Decedent as “Larry Low Dog-Son.” Appellant does not explain why he believes any of this information is relevant to show error in the Order Denying Rehearing.

Discussion

On appeal, Appellant bears the burden of showing error in the IPJ’s Order Denying Rehearing. Because he fails to do so, we affirm.

The regulations governing the Board’s review of probate matters limits its review to those issues that were before the IPJ on rehearing. *See* 43 C.F.R. § 4.318; *Estate of Alfred Chalepah, Sr.*, 51 IBIA 148 (2010). It is Appellant’s burden to show error in the IPJ’s Order Denying Rehearing. *See Estate of Martha Matilda Bordeaux*, 53 IBIA 53, 56 (2011). But rather than finding fault with the IPJ’s Order Denying Rehearing, it appears that Appellant seeks to enlist the Board’s assistance in obtaining Decedent’s will, if one there be, from Stanford University Medical Center and in holding open the record until Jauregui is released from prison and can undergo the promised DNA testing. He does not explain the significance or relevance of Larry Low Dog’s name on Decedent’s death certificate, for which reason we do not address this point further.

Nothing in Appellant’s notice of appeal contests the findings made by the IPJ based on the record before him nor the legal conclusions that he drew. The time for seeking assistance in gathering documents is during the time that this matter is before the probate judge, not when it is on appeal to the Board. *Estate of Chalepah*, 51 IBIA at 148-49. As for Jauregui’s participation in DNA testing, her choice to do so is entirely voluntary: This Board repeatedly has explained that neither it nor the probate judges within the Department of the Interior presently have authority to order DNA testing. *See Estate of Earl Sanford Howe, Jr.*, 53 IBIA 3, 4 n.2 (2011); *Estate of Floyd Lynne Crazy Thunder*, 41 IBIA 118, 118 n.1 (2005).

Because Appellant fails to identify any error in the Order Denying Rehearing, we affirm.³

³ If Appellant discovers new evidence and believes that he can satisfy the standard for reopening the estate, he may seek reopening under 43 C.F.R. § 30.243.

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 May 18, 2010, Order Denying Rehearing.

I concur:

// original signed
Debora G. Luther
Administrative Judge

//original signed
Steven K. Linscheid
Chief Administrative Judge