



INTERIOR BOARD OF INDIAN APPEALS

Estate of John J. Akers

1 IBIA 8 (09/09/1970)

Also published at 77 Interior Decisions 268

Judicial review of this case:

Affirmed, *Akers v. Morton*, 333 F.Supp. 184 (D. Mont. 1971)

Related cases prior to this case:

Consent judgment, *Estate of John Akers, Deceased v. Commissioner of Internal Revenue*, Tax Court Docket No. 61338 (May 25, 1964)

Interior Probate IA-D-18 (1968)

Interior Probate IA-D-18 (Supp.) (1968)

Related Board cases:

1 IBIA 246

Dismissed for failure to prosecute, No. 71-3002 (9th Cir. May 3, 1972)

Reinstated and affirmed, 499 F.2d 44 (9th Cir. 1974)

Certiorari denied, 423 U.S. 831 (1975)

3 IBIA 300

Estate of John J. Akers
Decided September 9, 1970

IBIA 70-4

Dower

Dower: General

Wills

Applicability of State Law

When an Indian dies leaving a will made pursuant to 25 U.S.C. 373, which meets Secretarial approval, State laws pertaining to dower or curtesy rights are not applicable and do not affect the manner in which he devises his trust property.

Appeal

Final decision: Generally

When the Board of Indian Appeals determines that the legal interpretation of a probate case is correct and that the case has been properly conducted, decided and reviewed, its decision is the final decision of the Department.



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
WASHINGTON, D.C. 20240

Estate of John J. Akers : IBIA 70-4
Deceased Fort Peck Indian : Probate No. K-63-66
Allottee No. 1921 : Decision on Request for Modification
: of the Order Determining Heirs

Dolly C. Akers, by and through her attorneys, has appealed five times to the Secretary of the Interior from a decision of a Hearing Examiner, dated March 7, 1966, approving the will of her late husband, John J. Akers. In her last two petitions, the appellant has presented no new issues of law or fact. Ordinarily, this alone would be dispositive of this appeal. Notwithstanding, this brief opinion is being rendered in order to clarify the difference in the law pertaining to rights of dower and curtesy as it applies to the estate of an Indian who dies testate leaving restricted Indian lands and one who dies intestate; and to make plain the authority of the Secretary of the Interior and the Board of Indian Appeals in probate matters.

It is not necessary that we review all the facts at this time as they have been aptly stated in three previous decisions. See Estate of John J. Akers, IA D-18 February 26, 1968, IA D-18 Supp. June 24, 1968, and the Secretary's Opinion of June 1, 1970. In essence,

Mrs. Akers claims she is entitled to a dower interest in her husband's estate even though he clearly chose to exclude her from taking under his will which provides:

"Third: That I hereby give and bequeath unto my wife, Dolly C. Akers, the sum, and only the sum, of One Dollar (\$1.00), it being my intention and desire to hereby limit the inheritance rights of my said wife to the said sum of one Dollar (\$1.00) in the estate of which I die seized or possessed."

As authority for her claim, the appellant erroneously cites a departmental ruling recognizing dower in cases where an Indian dies without a will and his restricted Indian property is passed under the intestate laws of the State. Solicitor's Opinion, 61 I.D. 307 (1954). Dower and curtesy are implied incidents of estates of inheritance and have always been treated by the Department as being part of the interests acquired as the result of the intestate distribution of restricted Indian lands.

On the other hand, when an Indian disposes of trust property by a will made pursuant to 25 U.S.C. 373, State laws which impose dower, curtesy or other limitations on the property which a testator may devise do not apply. The Act of Congress of February 14, 1913, (37 Stat. 678; 25 U.S.C. 373) was designed to give Indians the right to dispose of property by will free of State restrictions. The

Supreme Court ruled that an Oklahoma Statute limiting the disposition of property by will does not apply to restricted Indian lands and held, "that it was the intention of Congress that this class of Indians should have the right to dispose of property by will under this Act of Congress, free from restrictions on the part of the state as to the portions to be conveyed or as to the objects of the testator's bounty." Blanset v. Cardin, 256 U.S. 319 (1921).

Once again, the appellant has requested the Secretary to exercise his discretionary authority and overturn the wish of the decedent, expressed in a duly executed and approved will, that his wife should not share in the distribution of his restricted property. Despite the intent of the Act of 1913, the appellant argues that the Department's ruling is manifestly unjust and works a hardship on her, and that the Secretary, in his discretion may recognize her dower interest under the principles of equity. While the Secretary has wide discretionary powers, he cannot and should not disapprove an Indian's will simply because the Secretary may believe that the disposition of the estate was not "just and equitable." This would be tantamount to holding that the Secretary could substitute his preference for that of an Indian testator. Tooahnippah v. Hickel, 397 U.S. 598 (1970).

The fact that the appellant has made five appeals raises a serious question. Does an appellant have a right to have a case reconsidered after a final decision has been rendered by the Secretary or his delegate? The case in hand was first reviewed by the Secretary in 1968. Since then, the appellant has appealed, by petition for reconsideration or otherwise, on four different occasions. Each time, Mrs. Akers has failed to show any error and her last two petitions have alleged no new facts or issues. Although there is no regulation that provides the Secretary with authority to reconsider his decision approving or disapproving an examiner's decision, he has the inherent right to do so on newly discovered evidence or fraud. Estate of Ute, IA-143 (1955). However, if the petition for reconsideration merely reiterates arguments made on appeal, no consideration shall be given to the petition. Estate of Sarah Bruner, IA-2 (1950).

Under the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, it is determined that this matter has been properly conducted, decided and reviewed and this decision is final for the Department. 35 F.R. 12081.

The Appellant's request for modification of the order determining heirs is denied and the Hearing Examiner's decision of March 7, 1966, is affirmed.

//original signed
James M. Day, Director, Office of
Hearings and Appeals and Member of
the Board of Indian Appeals

Decided: SEP 9, 1970