



INTERIOR BOARD OF INDIAN APPEALS

Estate of Jennie Elsie Eli Johnson Wilson Beavert

2 IBIA 74 (10/09/1973)

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# United States Department of the Interior

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

ESTATE OF JENNIE ELSIE ELI JOHNSON WILSON BEAVERT

(UNALLOTTED YAKIMA NO. 124-U3431)

IBIA 73-6

Decided October 9, 1973

Appeal from an Administrative Law Judge's order denying petition for rehearing.

Reversed and remanded.

Indian Probate: Rehearing: Generally

A rehearing will be granted when the record does not support the Judge's findings.

Indian Probate: Secretary's Authority: Generally

The Secretary of the Interior has by express terms reserved to himself the power to waive and make exceptions to his regulations affecting Indian matters.

APPEARANCES: Cameron K. Hopkins, Esq. (Porter & Hopkins), for appellants, Thomas J. Eli, Edith Eli Watlamatt and Eli Culp, Jr.; and Frederick L. Nolan, Esq. (MacDonald, Hoague & Bayless) for appellee, Columbus Beavert.

OPINION BY MR. WILSON

This matter comes before the Board on appeal from an Administrative Law Judge's denial of appellants' petition for rehearing concerning a claim allowed against the estate for labor and services.

Jennie Elsie Eli Johnson Wilson Beavert, hereinafter referred to as decedent, died intestate April 29, 1971. A hearing to determine heirs was held on January 21, 1972, by Administrative Law Judge Robert C. Snashall. Thereafter, on February 28, 1972, an order determining heirs was duly made and entered by the Judge.

The Judge, among other things, in said order allowed Columbus Beavert, hereinafter referred to as appellee, \$14,600 on a purported claim for labor and services.

On April 17, 1972, Laretta Olney Goudy, a Yakima tribal member but not an attorney at law, filed on behalf of the three heirs a letter with the Judge wherein a request was made for a rehearing on the matter of appellee's claim.

The Judge on May 10, 1972, advised Mrs. Goudy that he could not consider her letter of April 17, 1972, as a petition for rehearing for the reason that it did not meet the requirements of 43 CFR 4.241 (a) (1972) and because she was not authorized by law to act in a representative capacity in the matter. See 43 CFR 1.3 (1972).

In the same letter Mrs. Goudy was further advised that the payment allowed to appellee was more in the nature of a compromise rather than a claim in a strict sense of 43 CFR § 4.250 and that the requirements of that section would not be applicable.

The letter of May 10, 1972, appears to have led to some confusion as to whether or not it was intended as a denial of a petition for rehearing.

In any event, the Judge on May 26, 1972, extended for 30 days the period for filing the petition for rehearing. Pursuant thereto, Laretta Olney Goudy again on behalf of the "legal heirs" on July 6, 1972, filed a petition for rehearing with the Judge.

The petition for rehearing dated July 6, 1972, was denied by the Judge on July 24, 1972, in the following language:

At the outset it should be noted the purported petition wholly fails to meet the substantive requirements of applicable regulations (43 CFR 4.241); fails to identify the "legal heirs" in whose behalf it is purported to

represent; and, the petitioner, Laretta Olney Goudy, does not appear to be either an attorney at law nor a party in interest and therefore has no standing before this forum.

However, be that as it may, the purported petition insofar as I am able to understand its purported substantive provisions is an argument of the facts and appears to contain nothing of material import bearing upon the correctness of the Order Determining Heirs. Most of what petition alleges already is a matter of record in the proceedings either by documentation or as it appears in the transcript of testimony. The remaining allegations could have no bearing on the outcome of the proceedings. Accordingly, there is no indication that the result might be altered by granting a rehearing at this time.

Thereafter, two separate notices of appeal were timely filed; one by Tommy J. Eli and Edith Eli Watlamatt, and one by Eli Culps, Jr., through their counsel, Cameron J. Hopkins.

The appeals are predicated on identical grounds and are as follows:

(1) That the record contains no evidence or testimony which would substantiate charges of money awarded to Columbus Beavert for labor and services. (2) Further, there is no testimony which would establish a contract for services, either expressed or implied. (3) If such a contract were found, the law of the State of Washington (RCW 4.16.080) limits it to three-year claims upon contracts expressed or implied which are not in writing, wherein the claim of Columbus Beavert was for eight (8) years. (4) 43 CFR 4.250(c) recognizes state law barring claims. (5) 43 CFR 4.250(d) requires clear and convincing evidence of promised compensation before claims for care and service will be allowed. (6) The record is clearly lacking sufficient evidence of any nature to substantiate Columbus Beavert's claim.

Notwithstanding the fact that the Judge designates the appellee's claim in his order of February 20, 1972, as a claim for labor and services, it is not possible to determine from the record just what labor was performed and the type of services provided. The transcript makes brief and vague mention of appellee's claim in the following manner:

Q. Do I understand that you intend to make some kind of claim against the estate?

A. Well, yes.

Q. O.K., on the basis of what--some services or something you performed in behalf of Jennie?

A. Yes, it concerned some bills that we have that's not on record here.

Q. Well, in other words, there are claims that could be placed against her estate for bills incurred by the two of you?

A. Yes. (Tr. 3.)

The transcript makes further mention of the claim in question as follows:

Q. Now, one last thing. Are you making any claim whatsoever against this estate on your own behalf other than what you mentioned about the claims? I need to know what contention you are making since I think you are aware that since you are not technically, legally married to her you wouldn't be an heir in the estate under State of Washington law. Now, I understand that you

provided certain services and performed certain things in connection with her property. If that's the case it would be conceivable that you would have a claim against her estate for services. But I have to know what the extent of that was and what the value of it was. Let's go off the record.

RECORD SUSPENDED.

RECORD RESUMED.

A. The way I was advised it would be \$5.00 a day for the 8 years that we spent together?

Q. How much?

A. \$5.00 a day.

Q. \$5.00 a day for services performed on her behalf?

A. Yes.

Q. Now that's each day, every day, for eight years?

A. Yes.

Q. Now, are there any offsets against that such as that did she provide any room and board for you or anything else or is this figure including that?

A. Yes .

Q. In other words, you feel that you have a net claim against her estate for \$5.00 per day?

A. Yes.

Q. Did she ever talk to you about her estate or about whether you had an interest in it?

A. Oh, yes. We never had any secrets from each other. We talked about improvements or land and that and what was hers was mine as far as we were together.

Q. O.K., I have no further questions at this moment. (Tr. 6, 7.)

We note here the testimony elicited from Edith Watlamatt in response to certain questions propounded by the Judge regarding the claim (Tr. 8).

After due consideration, we find the record, as presently constituted, is incomplete and does not substantiate the appellee's claim. In view of the foregoing finding, there appears to be no necessity or compelling reason at this time to consider or discuss the appellants' contentions, referred to supra.

The appellee in his memorandum of points and authorities in answer to appellants' notice of appeal and memorandum, among other things, contends:

The Board should dismiss appellants' appeal as being improperly raised or in the alternative, should sustain the decision of the Administrative Law Judge.

We are not in agreement with either of the appellee's contentions.

In the first instance, the purpose of any administrative tribunal is to secure a just result regardless of procedural technicalities--Estate of Lucille Mathilda Callous Leg Ireland, 1 IBIA 67, 78 I.D. 66 (1971). Moreover, the Secretary has by express terms reserved

to himself the power to waive and make exceptions to his regulations affecting Indian matters. See Estates of William Bigheart, Jr., IA-T-21 (Supp.) (September 4, 1969); Edward Leon Petsemoie, IA-T-10 (Supp.) (May 29, 1968); Estate of Joseph Cannon, IA-T-19 (Supp.) (March 7, 1969).

Secondly, the appellee, in the alternative urges that the decision of the Administrative Law Judge should be sustained.

This contention we find without merit and cannot be sustained in view of the fact that the claim as found by this Board, is clearly not supported or substantiated by the evidence.

In conclusion we find, in the interest of all parties, that the matter, insofar as the appellee's claim is concerned, should be reversed and remanded for further proceedings and for the issuance of appropriate findings and a decision thereon.

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, it is hereby ordered:

1. That the Administrative Law Judge's order of July 24, 1972, denying petition to rehear is REVERSED,

2. That the matter is REMANDED to the Administrative Law Judge for the specific purpose, after the parties in interest have been duly notified, of conducting further proceedings on the validity of appellee's claim and for the issuance of appropriate findings and decision based upon the evidence presented during said proceedings.

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//original signed  
Alexander H. Wilson, Member

I concur:

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//original signed  
Mitchell J. Sabagh, Member