



INTERIOR BOARD OF INDIAN APPEALS

Estate of Martin Spotted Horse, Sr.

2 IBIA 265 (04/25/ 1974)

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# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

ESTATE OF MARTIN SPOTTED HORSE, SR.

(Crow Allottee No. 3536, deceased)

IBIA 72-20

Decided April 25, 1974

Appeal from Judge's denial of appellants' petition for rehearing.

Affirmed.

Indian Probate: Claims Against Estates: Generally

Under the Act of June 25, 1910, as amended, providing for the determination of heirs of deceased Indians who have left trust or restricted estates, the Secretary of the Interior has implied authority to allow all just claims against such estates.

Indian Probate: Claims Against Estates: Generally

Under the Act of November 24, 1942, in providing for the disposition of trust or restricted estates of Indians dying intestate without heirs, the Secretary of the Interior has express authority to allow such just claims against such estates prior to such allotments escheating to the tribe.

Indian Probate: Claims Against Estates: Secured Claim

A secured creditor, to the extent of his security, enjoys a priority over the unsecured claims of general creditors.

Indian Probate: Claims Against Estates: Secured Claim

In the absence of any agreement between the borrower and lender to the contrary, property which is security for a loan which subsequently is conveyed by Gift Deed

should pass to the donee subject to the existing encumbrance.

APPEARANCES: Towe, Neely & Ball, Billings, Montana, by Thomas E. Towe, Esq., for appellants Martin Spotted Horse, Jr., Paul Spotted Horse, Regina Spotted Horse Stewart, and Willard Spotted Horse.

OPINION BY ADMINISTRATIVE JUDGE SABAGH

This matter comes before the Board on appeal from the Administrative Law Judge's denial of appellants' petition for rehearing of their claim against the estate of the decedent.

Martin Spotted Horse, Sr. died intestate on December 4, 1970, at the age of 59 years. In his Order Determining Heirs dated January 11, 1972, Daniel Boos, Administrative Law Judge, Indian Probate, found that the decedent's heirs under the laws of descent of the State of Montana were four children and two grandchildren. Their respective shares in the decedent's estate were found to be as follows:

Martin Spotted Horse, Jr.	son	2/10
Paul Spotted Horse	son	2/10
Regina Spotted Horse Stewart	daughter	2/10
Willard Spotted Horse	son	2/10

## Children of Predeceased son, Stanley Spotted Horse

Angela R. Spotted Horse	granddaughter	1/10
Reuben D. Spotted Horse	grandson	1/10

A claim was allowed in the amount of \$7,642 which represented the unpaid balance on a loan dated April 13, 1964, from the Crow Tribe to the decedent, principal and interest, as of December 8, 1970. The loan was evidenced by a promissory note, and secured by a mortgage on 40 acres of trust land described as the SW 1/4 SW 1/4 sec. 26, T. 7 S., R. 33 E., M.P.M., and a general assignment of trust property and power to lease, all approved on the same date by the Bureau of Indian Affairs. By virtue of the assignment of trust property and power to lease, the decedent assigned as additional security for the loan, all income from trust land in which the decedent had an interest, and any income from any source and funds accruing to his Indian Money Account. By its terms, this assignment of income and power to lease constituted a lien upon the trust funds, and income superior to that of decedent's heirs.

Other claims that were allowed to be paid from funds held or accruing to the credit of the estate were (1) a preferred claim in the amount of \$58 by the Bullis Mortuary, Hardin, Montana, and (2) a general claim for groceries by George T. Cooley, Lodge Grass, Montana, evidenced by an unsecured promissory note for \$405.72 dated February 2, 1957. The trust real property belonging to the estate at decedent's death was valued at \$58,709.97.

A petition for rehearing was filed by all named heirs other than the grandchildren on February 2, 1972. A supplement to the petition was filed on February 11, 1972.

The petitioners sought to include in the decedent's estate a house previously unmentioned, and excluded from the inventory. In the alternative the petitioners prayed that all claims referred to, supra, be disallowed as being contrary to law.

On March 15, 1972, Judge Boos issued an order denying the petition for rehearing, wherein he concluded that the house was "not within the jurisdictional authority of the examiner. Thus it was properly not included in the inventory." The Judge concluded that it was beyond his authority to disallow the creditors' claims "because to do so would involve a determination, express or implied, that the regulations are invalid insofar as they apply to the allowance of claims." He concluded that the "regulations must be regarded as controlling the actions of the examiners until such time as they may be amended or rescinded. Accordingly, the relief sought by the petitioners cannot be granted."

An appeal was filed by the four adult heirs on May 15, 1972, on the same grounds referred to in the petition for rehearing, set forth, supra.

Let us turn first to the question of whether the Administrative Law Judge had the authority to allow creditors' claims referred to supra, to be satisfied from income of trust property belonging to the estate?

The appellants contend that the Judge was foreclosed from so doing because of the General Allotment Act of February 8, 1887 (24 Stat. 388, 389), 25 U.S.C. §§ 348, 349 (1970), and the Crow Indian Allotment Act of June 4, 1920, 41 Stat. 751.

A distinction must be drawn between an unsecured claim which had no approval by the Secretary prior to the decedent's death, and a claim based on a promissory note and mortgage on trust land with an assignment of income, all approved by the Secretary at the time of execution of the documents.

The appellants state that the pertinent parts of these statutes specifically provide that the land is to be held in trust for the sole use and benefit of the Indian allottee, until the expiration of the trust period at which time the United States would convey said property to the Indian allottee or his heirs by patent in fee free of all charges or encumbrances whatsoever, and that the trust land would not be liable to the satisfaction of any debt contracted prior to the issuance of the fee patent.

As a preface to the case before us, we think it appropriate here to briefly look at the position of the Government vis-a-vis the Indian ward.

The Secretary of the Interior and his subordinates were given the responsibility of discharging the obligations of the United States to the Indian wards and have wide discretionary powers in such matters. United States v. Anglin & Stevenson, 145 F.2d 622 (10th Cir. 1944), cert. den. 65 S. Ct. 678, 324 U.S. 844 (1945).

As respects Indian affairs, the United States, acting through the Secretary of the Interior, is the guardian of the Indian wards. In performing such duty, the government acts in a "proprietary capacity," and its discretion, when exercised in respect to an Indian ward, is less limitable than an ordinary congressional delegation of power. Board of Commissioners of Pawnee County, State of Oklahoma v. United States, 139 F.2d 248 (10th Cir. 1943), cert. den. 64 S. Ct. 846, 847, 321 U.S. 795 (1944).

General power is given by 25 U.S.C. § 2 (1970), to the President, acting through the Secretary of the Interior to make regulations for the management of all Indian affairs and of all matters arising out of Indian relations. United States v. Clapox, 35 F. 575 (D.C. Oreg. 1888).

Regulations made under 25 U.S.C. § 9 (1970) for the purpose of carrying into effect the statutes relating to Indian affairs, have the force of statutory enactments. United States v. Thurston County, 143 F. 287 (8th Cir. 1906).

Much has transpired since the enactment of the General Allotment Act of February 8, 1887, which was filled with many gaps and deficiencies, and many revisions thereto were made. One of the revisions to the General Allotment Act was the Act of June 25, 1910, 36 Stat. 855, 25 U.S.C. § 372 (1970), which relates to the administration of estates of deceased allottees. This Act was itself amended and section 1 of the Act confers plenary authority upon the Secretary of the Interior to administer such estates. The pertinent part is as follows:

\* \* \* [W]hen any Indian to whom an allotment of land has been made, or hereafter be made, dies before the expiration of the trust period and before the issuance of a fee simple patent, without having made a will disposing of said allotment as hereinafter provided, the Secretary of the Interior, upon notice and hearing, under such rules as he may prescribe, shall ascertain the legal heirs of such decedent, and his decision thereon shall be final and conclusive. \* \* \*

In order to administer and carry this statute into effect, certain rules and regulations were promulgated by the Secretary of the Interior. See 43 CFR 4.200-4.297.

In particular, 43 CFR 4.251 provides in part:

After allowance of the costs of administration, including the probate fee, claims shall be allowed:

(a) Priority in payment shall be allowed in the following order except as otherwise provided in paragraph (b) of this section:

(1) Claims for expenses for last illness not in excess of \$500, and for funeral expenses not in excess of \$500;

\* \* \* \* \*

(4) Claims of general creditors, including that portion of expenses of last illness not previously authorized in excess of \$500 and that portion of funeral charges not previously authorized in excess of \$500.

43 CFR 4.252 provides in part that:

Claims are payable from income from the lands remaining in trust. \* \* \*

It is conceded that the Act of June 25, 1910, does not expressly authorize or provide for the payment of creditors' claims. But on the other hand, the Act does not expressly provide that payment of such claims is not authorized.

We are of the opinion that this authority to pay creditors' claims is implied in the said Act, and that administration of the estate of the deceased Indian allottee includes therein payment

of such creditors' claims as the Secretary may approve and find proper to be paid.

The allowance and payment of creditors' claims is inherent in the administration and settlement of decedents' estates. Prior to passage of the Act of June 25, 1910, probate of the trust estates of deceased Indians had been completed in the courts of the states where the land was located. Following the Act of June 25, 1910, and its amendment by the Act of February 14, 1913 (37 Stat. 678), which changed section 2 more than it did section 1, the Secretary of the Interior consistently exercised full probate authority including the settlement and payment of the decedent's debts. 1/

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1/ Estate of Way-Zhe-Wah-co-geshig a deceased Chippewa of White Oak Point (Interior Land Sales 91980-1911) November 22, 1911 (in which it is recited that the money to be distributed amounted to \$164.58, "less the funeral expenses and debts of the deceased"); Estate of Thomas Williams a deceased Quinaielt by order entered November 13, 1923, in an estate which had been pending a number of years. (The commissioner stated "Authority is granted you to make payment of the enclosed claim of Peter Williams against the estate of Thomas Williams in the sum of \$273.40."); Estate of Lillie Standing Bear deceased allottee No. 3648 of the Rosebud Sioux Tribe who died April 5, 1916. (The Assistant Secretary stated in his order of January 24, 1918, "The recommendation that \* \* \* mother, be permitted to present a claim for compensation for the latter's care and support, is Approved"); In the Estate of Grace Cox et al., 42 I.D. 493, 501 (1913) (the First Assistant Secretary approved the commissioner's recommendations, "Grace Cox's estate could easily bear the expense of her care and maintenance during her illness. If no bill therefor was submitted and settled during the administration of her estate in 1905 an itemized account covering all legitimate charges for sustenance and nursing should now be submitted. Claims for reasonable expenditures of this nature receive favorable consideration in this Office and are paid out of rentals or other funds remaining to the credit of the estate. The decision of the Department of May 8, 1913, as it appears to me,

The first official publication of probate regulations followed the passage of the Act of June 18, 1934 (48 Stat. 984). In the regulations effective May 31, 1935, published in 55 I.D. 263, provision was made for allowance and payment of decedents' debts. <sup>2/</sup> The assumption of implied authority to allow claims in probate has been a consistent interpretation of the act of Congress by the Secretary since passage of the Act of June 25, 1910.

In keeping with the rationale of this Board, Congress by the Act of November 24, 1942 (56 Stat. 1021, 25 U.S.C. §§ 373a, 373b (1970)), in providing for the disposition of trust or restricted estates of Indians dying intestate without heirs, expressly provided that such allotments shall escheat to the tribe "subject to the payment of such creditors' claims as the Secretary of the Interior may

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fn. 1 (Cont.)

rests entirely on untenable grounds. It is at variance with long-established principles of the Secretary's authority in Indian matters, and in addition to effectuating in this instance, a questionable transaction, a spurious adoption would, if sustained, materially limit the Secretary's powers under the Act of June 25, 1910, and interfere with a consistent and strictly upright administration of Indian estates.

<sup>2/</sup> In sec. 36 it was provided in part:

"Sec. 36. The notice mentioned in section 6 hereof shall also be directed 'To all persons having claims or accounts against decedent', \* \* \*

"Persons having claims against the estates of deceased Indians may file same with the superintendent at any time after death of the decedent and up to the time of hearing by the examiner. \* \* \*

"Claims against the estates of deceased Indians may be allowed (1) if based upon a debt contracted by the decedent and authorized during his lifetime by the superintendent, (2) if for last illness or funeral expenses in reasonable sums, (3) if just, and there is no legal bar thereto, (4) if elsewhere herein authorized and not prohibited. \* \* \*"

find proper to be paid from the cash on hand or income accruing to said estate \* \* \*."

For the Congress to allow for the payment of creditors' claims where the trust or restricted land was to escheat to the tribe but not to allow for the payment of creditors' claims where said property was to go to known heirs is void of all reason and logic. This we cannot nor would we impute to the Congress. Consequently, we find that the Secretary of the Interior has implied authority by virtue of the Act of June 25, 1910, as amended, to pay creditors' claims from the cash on hand or income accruing to said estate held in trust, as he expressly has under the Act of November 24, 1942. We further find that the Administrative Law Judge had the authority to allow the two unsecured claims in question.

We turn now to the secured claim, specifically, to the loan by the Crow Tribe to Martin Spotted Horse, Sr., for the purpose of construction of a new home.

By virtue of the Act of March 29, 1956 (70 Stat. 62, 25 U.S.C. § 483a (1970)) Indians were authorized, with the Secretary's approval, to mortgage their trust or restricted lands.

Under the Act of May 7, 1948 (62 Stat. 211, 25 U.S.C. § 482 (1970)), funds loaned by the United States to a tribe may be reloaned

by it. Regulations issued under this statute have been issued by the Secretary. See 25 CFR 91.13(a) and (b); and 25 CFR 121.61 (1973).

In section 9 of the Application for Loan, the decedent and his spouse agreed among other things that:

\* \* \* As additional security for my loan, I hereby assign to the lender, all income from trust land in which I now have or may in the future acquire an interest, and any income from any source and funds from any source accruing to my Indian Money Account. \* \* \* I understand and agree that in the case of my death, this assignment of income and power to lease shall constitute a claim against trust funds and income superior to that of my heirs. \* \* \*

An Assignment of Trust Property and Power to Lease was also executed by the decedent, his spouse, and the Tribe, and approved by the Bureau of Indian Affairs. The decedent and his spouse agreed to several provisions pertinent among which we consider to be sections 3 and 6 thereof.

Section 3 provides that:

\* \* \* (b) all income from trust land in which I now have or may in the future acquire an interest; (c) any income from any source and any funds from any source accruing to my individual Indian account. \* \* \*

Section 6 provides that:

\* \* \* It is understood that in the case of my death, this assignment and power to lease shall constitute a claim against trust funds, income, or trust property superior to that of my heirs. \* \* \*

From the foregoing it is clearly apparent that the Secretary of the Interior was authorized to make the loan to the tribe and the tribe in turn to the decedent secured among other things by all income from trust lands in which decedent had an interest, present or future. It is equally clear from an examination of the Preliminary Loan Application, the Loan Application, and all related documents, that the decedent and all parties concerned intended that the amount of the loan was to be repaid first from income derived from trust lands through lease or otherwise. We find that this loan was made in compliance with the Act of May 7, 1948 (62 Stat. 211, 25 U.S.C. § 482 (1970)) and the rules and regulations pertaining thereto promulgated by the Secretary of the Interior.

Turning finally to whether the house should be included in the decedent's estate?

The house was built and completed in February 1965 with the

proceeds of the loan on trust land described as SE 1/4 SW 1/4 of Sec. 26, T. 7. S., R. 33 E.,  
Principal Meridian, Montana.

It appears that subsequent to the completion of the house the decedent conveyed by Gift Deed, the SE 1/4 SW 1/4 with the house thereon to his son Martin Spotted Horse, Jr., by mistake on December 17, 1965. On January 24, 1967, Martin Spotted Horse, Jr., conveyed by Gift Deed this same property with the house thereon to his brother Stanley Spotted Horse. Stanley Spotted Horse died on July 15, 1970, and Martin Spotted Horse, Sr., died on December 4, 1970.

The appellants contend that the house on SE 1/4 SW 1/4 is part of the decedent's estate, relying on section 9 of the Application for Loan, the pertinent part of which reads as follows:

\* \* \* Until my indebtedness to the lender is repaid in full, any buildings, fences, or fixtures built wholly or in part with funds obtained under this application shall not be a part of the land. \* \* \*

We cannot agree with this contention. We believe that it is necessary to look to the complete record, including the Preliminary Application for Loan, the Application for Loan, the Promissory Note, and the Assignment of Trust Property and Power to Lease, etc., to determine the true intent of the decedent and the lender.

The decedent conveyed separately by Gift Deeds in 1965 and 1966 subsequent to the granting of the loan and the completion of the house, various tracts of his trust lands to his children including the land on which the house was located. These conveyances were made subject to the Assignment of Trust Property and Power to Lease. We take official notice of these conveyances.

We do not agree with the appellants' contention that either the property pledged as collateral for the loan must be included within the assets of the estate, or the claim should be allowed only for the amount of any deficiency after application of the proceeds from the sale of the pledged collateral.

It is elementary that the management, settlement or administration of the estate of a deceased person relates primarily and fundamentally to personal property alone, but nevertheless debts and charges remain obligatory on the estate as long as property of the deceased may be found for their satisfaction. Hence if the personal assets prove insufficient the deficiency would be satisfied from the collateral. The collateral pledged at the completion of the loan transaction included all of the income from all of the land that he then owned. He conveyed part of this during his lifetime, and in case of need, resort thereto could be had. Lacking any allegation that the income from such lands may be necessary to satisfy the debt evidenced by the

promissory note signed by the decedent, no finding is made here. Nor is any call made to foreclose the mortgage on land subsequently deeded to one of the heirs.

We agree that had there not been sufficient trust property belonging to the decedent's estate at the date of his death from which income could be derived from leases, etc., to satisfy this indebtedness, then we could look to the collateral.

We find that the decedent intended that these conveyances of trust lands, including the house, to be inter vivos gifts to his children and as such are not to be included as part of his estate requiring a probate order of distribution.

To recapitulate, we find that the Administrative Law Judge had the authority both implied and expressed to allow creditors' claims by virtue of the Acts of June 25, 1910, as amended, and November 24, 1942. (See 36 Stat. 855, 25 U.S.C. § 372 (1970)) and (56 Stat. 1021, 1022, 25 U.S.C. §§ 373a and b (1970)).

We further find by virtue of the Act of May 7, 1948 the Secretary of the Interior is authorized to make loans under such rules and regulations as he may prescribe to Indian tribes, bands, groups, and individual Indians for the purpose of promoting the economic development of such tribes and their members and that the tribes may

reloan it to the individual Indian secured by such securities as the Secretary and the approving officer may require (See 62 Stat. 211, 25 U.S.C. § 482 (1970)).

We find no merit to any of the contentions raised against the decision and the order of the Judge denying the petition for rehearing. Furthermore, we find that the case of Running Horse v. Udall, 211 F. Supp. 586 (D.C. D.C. 1962) cited by appellants in support of their contention that the Judge had no authority to allow creditors claims is not applicable here.

NOW THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is DISMISSED, and the ORDER DETERMINING HEIRS of January 11, 1972, stands unchanged.

This decision is final for the Department.

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//original signed  
Mitchell J. Sabagh  
Administrative Judge

We concur:

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//original signed  
David J. McKee  
Chief Administrative Judge

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//original signed  
Alexander H. Wilson  
Administrative Judge