



INTERIOR BOARD OF INDIAN APPEALS

Estate of Maude W. Plume

3 IBIA 192 (12/09/74)



United States Department of the Interior

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

ESTATE OF MAUDE W. PLUME
(Deceased Wind River Arapaho Allottee No. 1434)

IBIA 74-42

Decided December 9, 1974

Petition to reopen.

Denied.

1. Indian Probate: Reopening: Waiver of Time Limitation

It is in the public interest to require Indian Probate proceedings be concluded within some reasonable time in order that property rights of heirs and devisees in Indian allotments be stabilized.

APPEARANCES: James A. Oldman, Esquire, Wind River Legal Services, for petitioners, Winifred (Oldman) Big Road, Lillian (Oldman) Chavez, Isaac J. Chavez, Vera Mae (Chavez) Trooper, Alfred Bruce Chavez and Pauline R. Chavez.

OPINION BY ADMINISTRATIVE JUDGE SABAGH

This matter comes before the Board upon a petition for reopening of probate filed by James A. Oldman, Esq., for and in behalf of the petitioners, pursuant to 43 CFR 4.242.

The estate having been closed for more than 64 years the matter was properly forwarded to the Board by Administrative Law Judge Garry V. Fisher, in accordance with the provisions of 43 CFR 4.242(h).

At the outset it is noted that the petition is being filed some 60 years after the decedent's estate was probated. The decedent, according to the record, died intestate in August 1910, leaving surviving her as her only heirs the following:

Cleofa Pacheco - widower - 1/2
Lucile W. P. Oldman - daughter 1/2

In support of their petition to reopen the petitioners allege there was never a valid marriage license or certificate issued in the State of Wyoming and that the State of Wyoming never recognized common law marriages. Moreover, since Cleofa Pacheco was a non-Indian he could not subject himself to an Indian tribal custom marriage.

There is nothing in the petition or the probate record indicating any effort on the part of the petitioners over these many years to inquire into, or assert any right, or claim they may have had in the estate. Furthermore, there is nothing in the petition or the probate record to indicate the petitioners were under a disability that would have precluded them from inquiring into or asserting any right or claim they may have had in the estate.

The Department of the Interior over the years has consistently adhered to a strict policy of refusing to entertain appeals not timely filed. Estate of Ralyen Rabyea Voorhees, 1 IBIA 62 (1971). The same policy is applicable to a petition for reopening filed beyond the three-year limitation provided in the regulations, Estate of George Minkey, 1 IBIA 1 (1970), affirmed on reconsideration, 1 IBIA 56 (1970).

The Board is cognizant and mindful of the Secretary's power under 25 CFR 1.2 to waive and make exceptions to his regulations in Indian probate matters. However, such authority or power will be exercised only in cases where the most compelling reasons are present. Estate of Charles Ellis, IA-1242 (April 14, 1966); Estate of George Minkey, *supra*. Reopening of estates will be permitted only where it appears that the petitioner has not been dilatory in seeking his remedy. Estate of Alvin Hudson, IA-P-17 (May 29, 1969); Estate of George Squawlie (Squally), IA-1231 (April 5, 1966); Estate of George Minkey, *supra*; Estate of Sophie Iron Beaver Fisherman, 2 IBIA 83, 80 I.D. 665 (1973).

Moreover, the public interest requires Indian probate proceedings be concluded within some reasonable time in order that property rights of legitimate heirs and devisees be stabilized. Estate of Abel Gravelle, IA-75 (April 11, 1952). To hold property rights of heirs to allotted lands forever subject to challenge, would not only constitute an abuse, but would seriously erode the property rights of those whose heirship in lands has already been determined. Estate of Samuel Picknoll (Pickernell), 1 IBIA 168, 78 I.D. 325 (1971).

It is the finding of the Board that the petition for reopening falls short of meeting the requisite standards or criteria set forth in the above-cited cases and consequently, does not justify the exercise of Secretarial discretion to waive the three-year limitation

contained in 43 CFR 4.242(a). Accordingly, the petition must be denied.

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 petition to reopen filed by Winifred (Oldman) Big Road, et al. is DENIED and the order determining heirs entered under date of May 2, 1914 is AFFIRMED.

This decision is final for the Department.

//original signed
Mitchell J. Sabagh
Administrative Judge

I concur:

//original signed
Alexander H. Wilson
Administrative Judge