



INTERIOR BOARD OF INDIAN APPEALS

Estate of Ruth Nahcotaty (Williams or Daukei)

3 IBIA 270 (03/07/1975)

Denying reconsideration of:

3 IBIA 105

Further request for reconsideration:

4 IBIA 51



United States Department of the Interior

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

ESTATE OF RUTH NAHCOTATY (WILLIAMS OR DAUKEI) (Caddo Allottee No. 19)

IBIA 75-6 (Supp.)

Decided March 7, 1975

Petition for reconsideration.

Denied.

1. Indian Probate: Reconsideration: Generally

Indian probate regulations do not contain any provisions for reconsideration of a matter which has been finally determined by the Secretary of the Interior, yet he has the inherent power to reopen and review administrative determinations when some new factors such as newly discovered evidence or fraud are involved.

2. Indian Probate: Reconsideration: Generally

A request for reconsideration of the action of the Department in approving a will which is based upon an allegation of undue influence, or fraud in its procurement, will be denied where no evidence is furnished in support of the allegation.

APPEARANCES: John H. Charloe, Esq., for petitioner, Leroy Irwin Williams; Justus Hefley, Esq., for appellee, Cynthia Ruth Williams.

OPINION BY ADMINISTRATIVE JUDGE SABAGH

The appellant, Leroy Irwin Williams, filed a petition for reconsideration of the decision rendered in the above-entitled matter on September 12, 1974.

Indian probate regulations contain no provisions for reconsideration of a final decision, although the Board of necessity has inherent power to rectify manifest error in any of its decisions. Estate of Julius Benter, IBIA 70-5 (Supp.) (January 12, 1971).

[1] A petition for reconsideration to be granted must contain an adequate basis for reconsideration such as newly discovered evidence or fraud. Estate of Ute, IA-143 (Supp.) (August 25, 1955).

[2] A petition for reconsideration which is based on an allegation of undue influence or fraud in the procurement of the will, will be denied where no evidence is furnished in support of the allegation. Estate of St. Clair Johnson, IA-9 (March 11, 1952).

The petitioner contends among other things that the will in question was procured by fraud.

Pertinent portions of Leroy Irwin Williams' testimony taken from the transcript of the September 17, 1973 hearing are hereinafter set forth:

Q. Now you are familiar with her will dated September 17, 1971, aren't you?

A. Yes, sir.

Q. Now you don't have any objection to that will, do you?

A. No, I do not because after I talked with my mother, why she told me what she would like to have and what she wanted, and at first I was a little hesitant about it, but after I considered that it was her will and her wishes so then I know that she did it.

Q. When she made that will, she knew who her relatives were, didn't she?

A. Yes, sir.

Q. And she knew about what property she owned?

A. Yes, sir. (Tr. 3) * * *

No new evidence was submitted to substantiate petitioner's allegation of fraud in the procurement.

Consequently, it is determined that this matter has been properly conducted, decided, and reviewed.

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 ORDERED that the petition for reconsideration shall be and the same is hereby DENIED and the order of December 28, 1973, is REAFFIRMED.

//original signed
Mitchell J. Sabagh
Administrative Judge

I concur:

//original signed
Alexander H. Wilson
Administrative Judge