



INTERIOR BOARD OF INDIAN APPEALS

Estate of Rose Old Bear Wilson

4 IBIA 62 (06/02/1975)

Judicial review of this case:

Affirmed, *Kindness v. Frizzell*, No. 75-76-BLG (D. Mont. Apr. 9, 1976)



United States Department of the Interior

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

ESTATE OF ROSE OLD BEAR WILSON

IBIA 75-65

Decided June 2, 1975

Petition to Reopen.

Denied and dismissed.

1. Indian Probate: Reopening: Generally

A petition for the reopening of Indian heirship proceedings must be submitted within the period of time prescribed in the departmental regulations.

2. 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: William L. Madden, Jr., for petitioners, James Harold Kindness and Sherman Grant Wilson.

Under date of May 6, 1975, a Petition to Reopen the above-captioned estate was filed with Administrative Law Judge Daniel S. Boos by James Harold Kindness and Sherman Grant Wilson, hereinafter referred to as petitioners, through their attorney, William L. Madden, Jr. Rose Old Bear Wilson will hereinafter be identified and referred to as testatrix.

The petition was properly referred to this Board for consideration and disposition by the Administrative Law Judge pursuant to 43 CFR 4.242(h).

By the petition application is made to Reopen and Redetermine the final Order approving Will and the Decree of Distribution entered in the matter on June 3, 1955. In support thereof the petitioners in short contend:

(1) That undue influence was practiced upon the testatrix specifically in designating the residuary devisees under her will, and

(2) that neither petitioner had actual notice of the original proceedings concerning the will of the testatrix both being minors at that time, and

(3) that manifest injustice will result to petitioners if their petition is denied in that testatrix's interest in the recently probated estate of Martha Longneck, Crow Allottee No. 996, will pass to the residuary devisees who were designated as a result of undue influence exerted on the testatrix.

The petitioners in support of their contention of undue influence present an affidavit of James Wilson, Jr., a devisee under the testatrix's will presently under attack. The credibility of affiant's uncorroborated statement at this late date is highly suspect and questionable. At best the affidavit is merely self-serving and entitled to very little weight.

The contention regarding notice of proceeding is without merit. The record, although bearing out the fact that petitioners were minors at the time of the original proceeding, also indicates that James Wilson, Sr., as guardian ad litem, represented petitioners during the proceedings. Accordingly, petitioners' interests were amply protected.

The contention that manifest injustice will result is likewise without merit. Petitioners fail to set forth in what manner it would be an injustice to them, only that the testatrix's share in the estate of Martha Longneck will pass to the residuary devisees to the exclusion of petitioners.

It should be noted at this point that the original decision in the estate herein was issued June 3, 1955, and has been of record for more than nineteen (19) years.

[1] A petition for the reopening of Indian heirship proceedings must be submitted within the period of time prescribed in the Departmental regulations. Estate of Abel Gravelle, IA-75 (April 11, 1952). A request to reopen a case made fifteen years after the date of the original decision will be denied. Estate of Mary Moses, IA-851 (November 17, 1958). A petition for the reopening of an Indian heirship proceeding filed 12 years after the Department had determined the heirs of the Indian decedent will be denied as untimely. Estate of Annie Red Horse Davis, IA-1517 (March 16, 1966).

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 the instance where the most compelling reasons are present. Estate of Charles Ellis, IA-1242 (April 14, 1966); Estate of George Minkey, 1 IBIA 1 (August 13, 1970), aff'd on reconsideration, 1 IBIA 56 (December 29, 1970).

Of great and grave importance is the fact that the Department has consistently adhered to the policy of leaving undisturbed Indian probate decisions of long standing which might tend to disrupt and create clouds upon titles.

[2] 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. Estate of Hah-Tah-E-Yazza (Navajo Allottee No. 011358, Deceased), 2 IBIA 93, 80 I.D. 709 (1973). To hold property rights of heirs of 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 had already been determined. Estate of Samuel Picknoll (Pickernell), 1 IBIA 168, 78 I.D. 325 (1971).

Considering the petition against the cases hereinabove cited, the Board finds the petition falls short of meeting the standards or criteria set forth therein. Accordingly, the petition does not justify the exercise of Secretarial discretion to waive the three-year limitation contained in 43 CFR 4.242(a). The petition, therefore, 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 James Harold Kindness and Sherman Grant Wilson is hereby DENIED and their petition is hereby DISMISSED.

This decision is final for the Department.

//original signed
Alexander H. Wilson
Administrative Judge

I concur:

//original signed
Mitchell J. Sabagh
Administrative Judge