



INTERIOR BOARD OF INDIAN APPEALS

Estate of Louis Baptist

5 IBIA 48 (03/08/1976)



# United States Department of the Interior

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

## ESTATE OF LOUIS BAPTIST

IBIA 76-7

Decided March 8, 1976

This is an appeal from an order denying petition for rehearing.

Affirmed.

1. Indian Probate: Rehearing: Generally

Petition for rehearing based upon newly discovered evidence shall be accompanied by affidavits of witnesses stating fully what the new testimony is to be. It shall also state justifiable reasons for the failure to discover and present that evidence tendered as new at the hearing held prior to the issuance of the original decision and order.

2. Indian Probate: Wills: Testamentary Capacity

The burden of proof as to testamentary incapacity in Indian probate proceedings is on the one contesting the will, and an aged Indian is not deemed to be incapacitated from making a valid will by being a chronic alcoholic or by being unable to manage his own affairs.

3. Indian Probate: Dower: Generally

Dower may be properly denied a widow disinherited by will since there is no constitutional right to it and the state law providing dower is inoperative upon Indian Trust lands generally.

APPEARANCES: Wilson & Flower by Charles C. Flower, Esq., for appellant; Weeks, Buren, Thorner and Dietzen by David A. Thorner, Esq., for appellees.

OPINION BY ADMINISTRATIVE JUDGE SABAGH

This matter comes before the Board on appeal from the Administrative Law Judge's denying petition for rehearing and affirming his prior decision and order granting probate of the last will and testament of the decedent.

In his reasons for appeal, the appellant herein, nephew of the decedent, contends the Judge's Order approving the will and Decreeing Distribution was erroneous for the following reasons:

- (1) That the decedent was a mentally incompetent, chronic alcoholic, unable to conduct his own affairs at the time of the execution of last will and testament.
- (2) That undue influence was exerted on the deceased in order to influence him to execute the said last will and testament.

These contentions were raised in appellant's petition for rehearing and were duly considered and rejected in the Judge's order and decision for reasons fully set forth therein.

Having reviewed the record and considered the briefs of the appellant and appellees, the Board finds that the appellant has shown no reason why the findings of fact, conclusions of law, and the decision of the Administrative Law Judge should not be affirmed. We hold that there is substantial evidence in the record to support the decision and order of the Judge.

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 and decision of the Administrative Law Judge approving the Will and Decreeing Distribution is hereby AFFIRMED.

This decision is final for the Department.

Done at Arlington, Virginia.

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//original signed  
Mitchell J. Sabagh  
Administrative Judge

I concur:

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//original signed  
Alexander H. Wilson  
Administrative Judge