



INTERIOR BOARD OF INDIAN APPEALS

Estate of John Ignace

5 IBIA 50 (03/19/1976)

Related Board case:
3 IBIA 221



United States Department of the Interior

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

ESTATE OF JOHN IGNACE

IBIA 76-6

Decided March 19, 1976

Appeal from an Administrative Law Judge's order denying petition for rehearing.

Dismissed.

1. Indian Probate: Divorce: Generally

The issue of divorce in this case is not controlled by the laws of the State of Washington. The evidence establishes that the separation between the decedent and appellant commenced in 1958, 5 years before the Act of August 15, 1953, 67 Stat. 589 (Public Law 280) was invoked by Washington in its assumption of civil jurisdiction over Indians.

2. Indian Probate: Divorce: Indian Custom

Assuming that a resolution adopted by the Business Committee of the Kalispel Tribe on May 8, 1975, which disavows the validity of Indian-custom divorces between Kalispel Indians married by the Catholic Church represents a formally approved ordinance or by-law of the tribe, it cannot be given the retroactive effect of invalidating previous divorces which were consummated in accordance with recognized Indian custom.

3. Indian Probate: Divorce: Indian Custom

Since it is well established that an Indian-custom divorce dissolves a ceremonial marriage as well as an Indian-custom marriage, the relevant fact in this case is whether the custom of the tribe permits divorce by a permanent separation of the parties. The church custom of particular members of the tribe, whether Catholic or some other religious order, has no bearing unless it can be shown that the tribe adopted specific laws or customs of the church as its own.

APPEARANCES: Roger Coombs, Spokane Legal Services, Spokane, Washington, for appellant.

OPINION BY BOARD MEMBER HORTON

This case involves the determination of the rightful widow of the decedent, John Ignace, unallotted Kalispel 103-N1007, who died intestate September 15, 1973, possessed of interests in trust lands situated in Washington.

The original probate hearing was conducted by Administrative Law Judge Robert C. Snashall on April 24, 1974. An Order Determining Heirs was entered May 2, 1974, in which Judge Snashall found Mary Andrews Sherwood Ignace, a Flathead Indian, to be the decedent's lawful surviving spouse by virtue of a common-law marriage. Accordingly, the decedent's estate was divided equally between Mary Ignace and Jacqueline Ignace, daughter of the decedent by a prior marriage, in accordance with the heirship laws of the State of Washington.

Josephine Andrews Ignace Harold sought a rehearing in this case on grounds that she should have been declared decedent's widow. It is uncontroverted that she was lawfully married to the decedent in the 1950's, by both civil and Catholic ceremony, and that she gave birth to Jacqueline Ignace in 1957 while married to the decedent. On September 19, 1974, Judge Snashall entered an Order Denying Petition for Rehearing in which he upheld his original finding that an Indian-custom divorce was effected between the decedent and Josephine Ignace Harold according to recognized customs of the Kalispel Tribe.

Josephine Ignace Harold filed a notice of appeal of the above order on November 18, 1974. Prior to any consideration of the appeal by the Board, a written request was received by the Board from the Administrative Law Judge, dated January 3, 1975, in which it was

requested that the case be remanded for a determination at the hearing level of the applicability of the Act of August 15, 1953, 67 Stat. 589, commonly known as "P.L. 280", to the disposition of the John Ignace estate. Remand was ordered on January 20, 1975, and Judge Snashall held a second hearing in this case on March 10, 1975.

The State of Washington assumed civil jurisdiction over Indian affairs pursuant to the Act of August 15, 1953, to the extent permitted by statute, on March 13, 1963. ^{1/} The March 10, 1975, hearing was primarily concerned with pinpointing events occurring before or after 1963 so that the applicability of Washington state law could be conclusively decided. Precedent for this procedure was established by the Board in the Estate of Theodore Shockto, 2 IBIA 224, 81 I.D. 177 (1974), an heirship case in which the original finding of an Indian-custom divorce in the State of Wisconsin was overturned on appeal because the evidence showed that the intent on the part of the Indian decedent to permanently separate from the appellant took place after the Act of August 15, 1953, became effective in Wisconsin. As in the State of Washington, Wisconsin state law does not recognize Indian-custom divorces.

In addition to determining which law to apply to determine the true spouse in this case, the Administrative Law Judge also utilized the hearing on remand to afford the appellant an additional opportunity to present evidence regarding the alleged invalidity of Indian-custom divorce among Kalispel Indians whose marriage vows have been solemnized by the Catholic Church.

On March 27, 1975, Judge Snashall entered a decision following the hearing on remand. It was ruled that the decedent acquired a divorce by Indian custom from the appellant prior to the time that state laws of Washington were made applicable to the Kalispels under the authority of the Act of August 15, 1953. The order states that the appellant failed to sustain her allegation that Indian custom divorces were not recognized by the Kalispels prior to 1963. Lastly, the decision on remand repeated the original finding that the decedent had effected a common-law marriage in the State of Montana with the appellee, Mary Andrews Sherwood, and that she was married to him at the time of his death.

^{1/} Washington enacted a law in 1957 on the basis of the Act of August, 15, 1953, which resulted in state civil jurisdiction over Indian tribes which asked the state to assume such jurisdiction. There is no evidence that the Kalispel Tribe requested state civil jurisdiction over the affairs of tribal members pursuant to the 1957 legislation. See footnote 2, infra.

The appellant filed a petition for rehearing which was denied by Judge Snashall on May 30, 1975. This appeal followed. For the reasons set forth herein the Board concludes that the Order Denying Petition for Rehearing entered May 30, 1975, should be affirmed.

[1] There is first of all no question that the issue of divorce in this case is not controlled by the laws of the State of Washington which do not regard Indian-custom divorces to be valid. The evidence clearly establishes that the separation between the decedent and appellant commenced in 1958, 5 years before the Act of August 15, 1953, was invoked by Washington in its assumption of civil jurisdiction over Indians. 2/

Appellant's primary argument on appeal is that it was erroneously concluded below that the Kalispel Tribe permits Indian-custom divorces between Indians married in the Catholic Church. In support of this claim, the appellant makes reference to a resolution purportedly adopted by the Business Committee of the Kalispel Tribe on May 8, 1975, which briefly summarized, states that Kalispel Indians who are married by the Catholic Church cannot dissolve the marriage by an Indian-custom divorce.

[2] The foregoing resolution was incorporated in appellant's petition for rehearing, dated May 27, 1975. Assuming that the May 8, 1975, resolution of the Kalispel Business Committee represents an official ordinance or by-law of the Kalispel Tribe, it cannot be given the retroactive effect of invalidating previous divorces which were consummated in accordance with recognized Indian custom. An opposite holding would unconscionably penalize innocent acts--a

2/ We held in Shockto, supra, that although the Act of August 15, 1953, does not confer actual jurisdiction upon a state to probate Indian trust estates, it should be construed as requiring the application of state civil laws in the area of domestic relations whenever a state has obligated itself to administer its own law within Indian country pursuant to the Act.

As noted previously, Washington first assumed civil jurisdiction over Indians in 1957 in response to the enactment of the Act of August 15, 1953, but this was only as to tribes which had formally consented to state jurisdiction. The 1957 state law was amended in 1963 whereby Washington made its civil laws applicable to all Indians, with or without tribal consent, in eight specific areas including domestic relations (RCW 37.12.010). See Makah Indian Tribe v. State of Washington, 457 P.2d 590 (1969), for a brief history of state assumption of civil jurisdiction over Indian tribes in Washington.

result contrary to both general law-making standards and those which govern the establishment of Indian tribal law. See 25 CFR 11.28(a) and (b).

The Administrative Law Judge concluded that Indian-custom divorces were recognized by the Kalispel Indians during the time at issue in this case on the basis of prior probate decisions in which such divorces were upheld. Appellant objects to the cases cited by Judge Snashall involving Kalispels primarily because they do not concern Indians married in the Catholic Church. On the other hand, the Board knows of no cases nor does appellant cite any cases which specifically deal with the issue of divorce among Catholic Kalispels one way or the other.

[3] Since it is well established that an Indian-custom divorce dissolves a ceremonial marriage as well as Indian-custom marriage, Estate of Theodore Shockto, supra; Estate of George Bird Eagle, IA-13, 60 I.D. 374 (November 3, 1949), the relevant fact in a case of this nature is whether the custom of the tribe permits divorce by a permanent separation of the parties. The church custom of particular members of the tribe, whether Catholic or some other religious order, would have no bearing unless it could be shown that the tribe officially adopted specific laws or customs of the church as its own. There is no evidence in the record or within the Board's special knowledge that the Kalispel Tribe abandoned recognition of Indian-custom divorce between members of the tribe, however married, for the period of time involved in this case.

The evidence is substantial that as far as the decedent was concerned, he left the appellant permanently in 1958. In addition, the fact that the appellant had two children by another man after the decedent moved (March 10 transcript, p. 18-19), denotes her own belief that the alleged marriage with the decedent had ended. An Indian-custom divorce is accomplished when at least one of the parties to the marriage separates from the other with an intention that it be permanent. Estate of Theodore Shockto, supra.

The remaining issue in this appeal is whether the decedent consummated a valid marriage with Mary Andrews Sherwood which lasted until his death. If not, decedent's sole surviving daughter, Jacqueline Ignace, would be entitled to his full estate.

The Administrative Law Judge found that the decedent and Mary Andrews Sherwood lived together in the State of Montana as husband and wife for a period in excess of 5 years and up to the time of decedent's death. This was deemed sufficient to constitute a valid common-law marriage according to Montana state law. The Board perceives no error in this determination.

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 Order of March 27, 1975, affirming the Order Determining Heirs of May 2, 1974, as amended, is hereby AFFIRMED and the Appeal of Josephine Andrews Ignace Harold, from the Order Denying Petition for Rehearing dated May 30, 1975, be and the same is hereby DISMISSED.

//original signed
Wm. Philip Horton
Member of the Board

I concur:

//original signed
Alexander H. Wilson
Administrative Judge