



INTERIOR BOARD OF INDIAN APPEALS

Estate of Bert Dog Trail

5 IBIA 122 (06/08/1976)



United States Department of the Interior

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

ESTATE OF BERT DOG TRAIL

IBIA 76-35 (Supp. to IBIA 74-16)

Decided June 8, 1976

Petition to reopen.

Granted.

1. Indian Probate: Reopening: Generally

Requests for reopening estates closed more than 3 years face rigid requirements under Departmental regulations and will be granted only in exceptional cases.

APPEARANCES: Stephen L. Pevar, South Dakota Legal Services, for Petitioners Arlene and Elizabeth Dog Trail; Dorothy Bass and Martha Chasing Winter, pro se.

OPINION BY ADMINISTRATIVE JUDGE WILSON

Bert Dog Trail, Rosebud Sioux Allottee No. 6058, hereinafter referred to as decedent, died September 21, 1965. Thereafter, following a hearing, an Order Determining Heirs was entered on February 9, 1967, by a Hearing Examiner (title changed to Administrative Law Judge), wherein Dorothy Bass and Martha Chasing Winter, respondents herein, were declared to be the heirs of the decedent's trust estate.

Arlene and Elizabeth Dog Trail, hereinafter referred to as petitioners, being minors at the time of the hearing held on October 2, 1966, were represented by Dorothy Bass as their guardian ad litem. It was predominantly on the testimony of Dorothy Bass that the petitioners were found by the Examiner not to be the children of the decedent and accordingly excluded from sharing in the decedent's estate.

On, May 10, 1973, the South Dakota Legal Services at the request of one of the petitioners, namely, Arlene, inquired as to the method for reopening the estate to rectify the purported mistake made in

the Order of February 9, 1967, supra. Thereafter, on July 17, 1973, a petition for reopening was filed by the South Dakota Legal Services in behalf of the petitioners alleging, inter alia, that they were the natural daughters of the decedent and entitled to share in his estate.

The petition was forwarded to this Board by Administrative Law Judge Frederick W. Lambrecht pursuant to 43 CFR 4.242(h). Finding sufficient merit in the petition, the Board on September 27, 1973, issued a Preliminary Procedural Order, conditionally reopened the estate and remanded the matter to the Administrative Law Judge for further hearings and for the issuance of a recommended order.

Pursuant to the Board's preliminary order, supra, Judge Lambrecht set the matter for hearing on June 7, 1974, at the Rosebud Indian Agency, Rosebud, South Dakota.

From the evidence adduced at the rehearing the Judge on April 8, 1976, issued a recommended order wherein he found as follows:

(1) that the petitioners were the decedent's children, and

(2) that the petitioners were not guilty of laches or nondiligence in asserting their claim and therefore should not be barred from sharing in the estate.

[1] While requests for reopening estates closed for more than 3 years face rigid requirements under Departmental regulations, exceptional cases arise in which such petitions should be granted. Estate of David Marksman, 5 IBIA 56 (March 29, 1976).

An examination of the record indicates the case at bar to be an exceptional one due to the extenuating circumstances involved which would justify granting the petition.

We are in full agreement with the Judge's findings as hereinabove set forth.

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 Recommended Order of Judge Lambrecht, dated April 8, 1976, be, and the same is hereby, adopted and incorporated herein by reference and the Petition to Reopen is GRANTED.

IT IS FURTHER ORDERED, that the estate is hereby reopened and the Order Determining Heirs, dated February 9, 1967, be and the same is hereby modified to include the petitioners as heirs therein and the shares of the heirs are reapportioned as follows:

