



INTERIOR BOARD OF INDIAN APPEALS

Estate of Phoebe Shanta Wilson

6 IBIA 75 (05/12/1977)

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# United States Department of the Interior

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

## ESTATE OF PHOEBE SHANTA WILSON

IBIA 77-15

Decided May 12, 1977

Appeal from an order denying petition for rehearing.

Reversed and Modified.

1. Indian Probate: Indian Reorganization Act of June 18, 1934:  
Generally

The Indian Reorganization Act, generally, recognizes two classes of persons who may take testator's lands by devise, that is, any member of the tribe having jurisdiction over lands and legal heirs of the testator.

2. Indian Probate: Indian Reorganization Act of June 18, 1934:  
Nonapplicability

Certain provisions of the Indian Reorganization Act, including the section which dictates who may take testator's land by devise, do not apply to certain named Indian tribes in Oklahoma, including the Kiowa, Comanche, and Apache tribes.

APPEARANCES: Virginia Shanta Klinekole, pro se.

OPINION BY ADMINISTRATIVE JUDGE SABAGH

Phoebe Shanta Wilson, a member of the Mescalero Apache Indian Tribe of New Mexico, died testate on July 8, 1975, possessed of a certain interest in trust property situated on the Kiowa-Comanche-Apache Indian Reservation in Oklahoma.

Decedent executed a will on June 18, 1974, the sole devisee being a niece, Virginia Shanta Klinekole, a member of the Mescalero Apache Tribe of New Mexico.

The decedent's sole heir-at-law is an adopted daughter, Rosalie Shanta.

[1] Pursuant to the Indian Reorganization Act generally, two classes of persons may take testator's land by devise. They are, any member of the tribe having jurisdiction over such lands and legal heirs of the testator. (See 25 U.S.C. § 464 (1970)).

Administrative Law Judge Richard B. Denu, found that 25 U.S.C. 464 (1970) of the Indian Reorganization Act applied to this situation and concluded that the devisee under the will did not qualify to take. In keeping with the aforementioned provision of the Indian Reorganization Act, he consequently disapproved the will and found

that the decedent died intestate as to all trust and restricted property on the Kiowa-Comanche-Apache Indian Reservation in Oklahoma and found and adjudged the decedent's sole heir to be Rosalie Shanta, adopted daughter and sole heir-at-law.

[2] However, the Indian Reorganization Act expressly excludes certain Oklahoma Indian Tribes including the Kiowa, Comanche, and Apache Tribes, from section 464 of the Act, inter alia. The exclusory provision states:

\* \* \* sections \* \* \* 464 \* \* \* of this title shall not apply to the following-named Indian tribes, the members of such Indian tribes, together with members of other tribes affiliated with such named tribes located in the State of Oklahoma, as follows: Cheyenne, Arapaho, Apache, Comanche, Kiowa \* \* \*. (See 25 U.S.C. § 473 (1970)).

It is settled that the laws of the place where the land is located determine who should inherit. (See 25 U.S.C. § 348 (1970)).

Since section 464 of Title 25 does not apply to the Kiowa-Comanche-Apache Indian Reservation of Oklahoma, we see no reason why the devisee under the will should not inherit.

We find that section 464, supra, is inapplicable and that Virginia Shanta Klinekole, sole devisee under the will, is in fact and law eligible to take the aforesaid fractional share in the allotment on the Kiowa-Comanche-Apache Indian Reservation in Oklahoma.

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 ORDER DISAPPROVING WILL and DETERMINING HEIRS dated August 6, 1976, be and the same is hereby REVERSED and MODIFIED.

It is further ORDERED that the will of the decedent, Phoebe Shanta Wilson, EXECUTED June 18, 1974, be, and the same hereby is approved as to property exempt from the Indian Reorganization Act and her trust estate shall be distributed in accordance therewith.

This decision is final for the Department.

Done at Arlington, Virginia.

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//original signed  
Mitchell J. Sabagh  
Administrative Judge

We concur:

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//original signed  
Alexander H. Wilson  
Chief Administrative Judge

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//original signed  
Wm. Philip Horton  
Administrative Judge