



INTERIOR BOARD OF INDIAN APPEALS

Estate of Clark Joseph Robinson

7 IBIA 74 (07/26/1978)

Also published at 85 Interior Decisions 294

Judicial review of this case:

Dismissed for lack of subject matter jurisdiction, *Robinson v. Andrus*,
No. CIV-78-5097 (D.S.D. Nov. 26, 1979)



United States Department of the Interior

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

ESTATE OF CLARK JOSEPH ROBINSON

IBIA 78-10

Decided July 26, 1978

Appeal from an administrative law judge's decision denying petition for rehearing.

Reversed and remanded.

I. Indian Probate: Tribal Courts: Generally

Decrees of Tribal courts regarding domestic relations of Indians have generally been recognized by the Department of the Interior, State courts, and Federal courts.

APPEARANCES: Thomas A. Danehey, Esq., of Reddish, Curtiss, and Moravek, for appellant Gretchen Robinson.

OPINION BY CHIEF ADMINISTRATIVE JUDGE WILSON

Clark Joseph Robinson, Oglala Sioux Allottee No. 7488, hereafter referred to as decedent, died intestate January 29, 1974, seized of

certain trust lands situated on the Pine Ridge Reservation in South Dakota.

A hearing was held and concluded by Administrative Law Judge Garry V. Fisher at Pine Ridge, South Dakota, on September 25, 1974. Thereafter, on September 16, 1977, the Judge issued an Order Determining Heirs wherein Trix Lynn Harris and Rene Robinson, decedent's daughters, were found to be the heirs, each entitled to an undivided one-half interest in the decedent's trust estate. In the same order the Judge found that Gretchen Robinson, the appellant herein, was not the decedent's surviving spouse as claimed by the appellant.

The appellant on November 7, 1977, timely filed a petition for rehearing contending that she was the decedent's surviving spouse and therefore entitled to share in his estate in such capacity. The following grounds were given by the appellant in support of her petition:

1. The Administrative Law Judge erred as a matter of law in determining that Gretchen Robinson was not the wife of Clark Joseph Robinson at the time of Clark Joseph Robinson's death on January 29, 1974.
2. The Administrative Law Judge erred as a matter of law in determining that the death of Clark Joseph Robinson precluded Petitioner from challenging the validity of the divorce obtained by Clark Joseph Robinson from Petitioner.
3. The Administrative Law Judge erred in finding that the "marital status at that time" (time of death) was controlling, since it is the question of marital status which is to be determined.

4. The Administrative Law Judge erred in not finding that the divorce obtained by Clark Joseph Robinson from Petitioner in the Oglala Sioux Tribal Court on October 18, 1968, was void because of the lack of jurisdiction over Petitioner at the time the decree was entered.

5. The Administrative Law Judge erred in not recognizing the order entered by the Oglala Sioux Tribal Court on April 24, 1974, setting aside the divorce decree entered by that Court on October 18, 1968.

6. The Administrative Law Judge erred in not recognizing the portions of the Decree of Divorce entered by the Oglala Sioux Tribal Court on October 18, 1968, making provision for Petitioner in the form of annual payments in cash and that the defendant (Petitioner) is to receive her just and equitable share (if trust lands were sold).

The petition was denied by Judge Fisher on January 17, 1978, on the basis that the petition did not cite any factual issues or newly discovered evidence which would require further hearing and that all errors specified therein could be resolved on appeal.

The appellant on March 13, 1978, filed a notice of appeal with this Board based on the identical grounds set forth in the petition for rehearing. In view thereof the grounds are not repeated at this point.

The crux of the appeal as we conclude from review of the record is whether the Judge as a matter of law was required to give recognition to the order entered by the Oglala Sioux Tribal Court on April 24, 1974, setting aside the Divorce Decree entered by that court on October 18, 1968.

At the outset it is noted that none of the parties involved in this appeal questions the authority and jurisdiction of the Oglala Sioux Tribal Court to entertain and hear domestic matters such as are involved in this case.

[1] Decrees of Tribal courts regarding domestic relations have generally been recognized by the Department of the Interior in connection with probate proceedings and other purposes. State courts have likewise recognized Tribal court decrees on domestic relations. Begay v. Miller, 222 P.2d 624 (Sup. Ct. Ariz. 1950). Federal courts have also recognized the validity of decrees issued by Tribal courts concerning domestic relations. See Conroy v. Frizzell et al., 429 F. Supp. 918 (D.S.D. 1977) which addresses the validity of a divorce decree of the Oglala Sioux Tribal Court, aff'd, Conroy v. Conroy, No. 77-1343 (8th Cir., April 20, 1978).

In the instant case the Judge gave recognition to the decedent's two divorces obtained through the Tribal court in determining the decedent's heirs. In view of the foregoing recognition, why then did the Judge not give recognition to the Tribal court order of April 24, 1974, which set aside the Divorce Decree of October 18, 1968? No reason for failing to do so is given by the Judge. Instead he found the intervening death of decedent and his marital status at that time (January 29, 1974) controlling insofar as the determination of heirs was concerned. In effect the Judge gave no recognition to the Tribal court's Vacating Order of April 24, 1974.

We are in agreement with the appellant's contention No. 5 that the Judge was in error in not giving recognition to the Tribal court's order of April 24, 1974, and we so find. We further find it was incumbent on the Judge as a matter of law to give recognition to the order of April 24, 1974, during the hearing of September 25, 1974, on which the order of September 16, 1977, was based. We further find that any and all issues regarding the validity or invalidity of the Tribal order of October 18, 1968, were properly considered and adjudicated by the Oglala Tribal Court, thereby resulting in the order of April 24, 1974.

Under the circumstances it was incumbent upon the Judge to recognize the Tribal order of April 24, 1974, in determining the decedent's heirs and in so doing the appellant should have been found to be entitled to share in the estate as the surviving spouse.

In view of the foregoing, we find it unnecessary to address the other grounds specified by appellant in her appeal.

There remains only the question of Trix Harris' request for reimbursement of funds she advanced to the decedent's estate during the pendency of the appeal herein. The advancements represent mortgage payments on the lands involved, fees for preparation of income tax returns for the estate, and income taxes paid for the estate. There appears to be no reason why Trix Harris should not be reimbursed in

such amounts as determined by the Judge to be due and owing her by the estate for advancements made on behalf of the estate.

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 Denying Petition for Rehearing dated January 17, 1978, be, and the same is hereby REVERSED, and the matter is REMANDED for the purpose of modifying the Order Determining Heirs of September 16, 1977, to reflect the Board's findings set forth herein regarding the decedent's heirs and Trix Harris' request for reimbursement of funds advanced in behalf of the estate.

Done at Arlington, Virginia

//original signed
Alexander H. Wilson
Chief Administrative Judge

We concur:

//original signed
Mitchell J. Sabagh
Administrative Judge

//original signed
Wm. Philip Horton
Administrative Judge