



INTERIOR BOARD OF INDIAN APPEALS

Estate of Gladys Marie Bellmard (Randall, Preston, Harris) Wilson

7 IBIA 111 (12/29/1978)

Also published at 86 Interior Decisions 1



United States Department of the Interior

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

ESTATE OF GLADYS MARIE BELLMARD

(RANDALL, PRESTON, HARRIS) WILSON

IBIA 79-7

Docketed and Decided December 29, 1978

Appeal from an administrative law judge's order dismissing probate.

Affirmed And Dismissed.

1. Indian Probate: Secretary's Authority: Generally

Proceedings for the determination of a deceased Indian's heirs in a case over which the Department had no jurisdiction must be dismissed.

APPEARANCES: Evelyn Allen, appellant, pro se.

OPINION BY CHIEF ADMINISTRATIVE JUDGE WILSON

Evelyn Allen, hereinafter referred to as appellant, has appealed Administrative Law Judge Sam E. Taylor's order of October 6, 1978, dismissing probate proceedings involving the above-captioned estate.

Gladys Marie Bellmard (Randall, Preston, Harris) Wilson, hereinafter referred to as the decedent, died September 22, 1976, at the age of 73.

A hearing was duly held and concluded at Pawnee, Oklahoma, on May 19, 1977. Thereafter, on January 27, 1978, Judge Taylor issued an order disapproving will, determining heirs and decreeing distribution.

Thereafter, by letter dated March 6, 1978, the Acting Superintendent, Pawnee Agency, Oklahoma, submitted the original last will and testament of the decedent dated May 1, 1972, which the agency had overlooked in the preparation of the probate file used in the hearing of May 19, 1977. The letter was accepted as a petition for a rehearing by Judge Taylor. Thereafter, the matter was scheduled for rehearing at the Pawnee Agency on May 15, 1978, with all interested parties, including appellant, being advised thereof.

At the rehearing, with appellant and Theodore Roosevelt Bellmard present, the judge advised them that on May 1, 1978, he had received a memorandum from Acting Rights Protection Officer David E. Harrison, Bureau of Indian Affairs, Washington, D.C., indicating that all of the decedent's property was unrestricted, the restrictions having been removed on April 7, 1950, by the Department at decedent's request. The judge further advised the parties that he would subsequently issue a dismissal order regarding the proceedings.

From the evidence adduced at the rehearing the judge on October 6, 1978, among other things, revoked and canceled the order disapproving will, determining heirs and decreeing distribution dated January 27, 1978, and dismissed the proceedings for lack of jurisdiction. It is from the foregoing order that the appellant has appealed. In support of her appeal the appellant alleges that decedent was never notified of the removal of restrictions on the property in question; that the Bureau of Indian Affairs failed to carry out the Indian-United States Government Trust Responsibility and that the decedent had always considered the property as restricted and tax exempt. Moreover, the appellant, because of the BIA's alleged negligence in failing to advise the decedent of the removal of restrictions, urges the Office of Hearings and Appeals to handle the probate of the decedent's estate.

An examination of the record, including certified Bureau of Indian Affairs' documents regarding the removal of restrictions on the decedent's property, clearly supports the judge's order dismissing probate.

In view of the actual removal of restrictions by the Department at the decedent's request or application, the allegations given in support of appellant's appeal are to no avail.

