



INTERIOR BOARD OF INDIAN APPEALS

Estate of William E. Hicks

7 IBIA 115 (02/14/1979)



United States Department of the Interior

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

ESTATE OF WILLIAM E. HICKS

IBIA 79-14

Docketed and Decided February 14, 1979

Appeal from an administrative law judge's order of dismissal.

Affirmed.

1. Indian Probate: Secretary's Authority: Generally

A proceeding for the determination of the heirs of a deceased Indian instituted in a case over which the Department has no jurisdiction must be dismissed.

APPEARANCES: Clarence C. Hicks, appellant, pro se.

OPINION BY CHIEF ADMINISTRATIVE JUDGE WILSON

This is an appeal from an order of dismissal entered in the above-entitled matter by Administrative Law Judge Sam E. Taylor on December 15, 1978.

William E. Hicks, hereinafter referred to as decedent, died intestate January 21, 1967, possessed of certain property in Oklahoma.

The hearing was held at Oakland, California, on January 30, 1975, by Administrative Law Judge William E. Hammett for the purpose of ascertaining the heirs of the decedent.

On March 20, 1978, the judge from the evidence adduced at the hearing, found the appellant, Clarence C. Hicks, to be the sole heir of the decedent.

At the time of the hearing the property inventory indicated the decedent's property to be in a trust or restricted status under the jurisdiction of the Pawnee Agency, Pawnee, Oklahoma.

Subsequent to March 20, 1978, it was discovered by the Pawnee Agency that the decedent's property was in fact unrestricted, the restrictions against alienation having been removed on the property by virtue of the Act of August 1, 1956 (70 Stat. 893; 25 U.S.C. §§ 791-807). Accordingly, on December 4, 1978, the Superintendent, Pawnee Agency brought the matter to Judge Sam E. Taylor's attention.

Thereafter, on December 15, 1978, Judge Taylor vacated the order determining heirs dated March 20, 1975, and dismissed the matter for lack of jurisdiction.

It is from the foregoing dismissal that this appeal has been filed.

The appellant requests that the dismissal order of December 15, 1978, be reopened and reviewed. As basis for the request, he contends as follows: "According to correspondence received from Superintendent, Pawnee Agency, Pawnee, Oklahoma, they have been carrying me on the records as a restricted Indian. They also state my father, William E. Hicks, had never been changed to unrestricted on their records."

Unfortunately, the contention is without merit. Clearly the restrictions on the decedent's property were removed by virtue of the Act of August 1, 1956, supra, thereby depriving the Department of probate jurisdiction. Probate jurisdiction of the property in question rests with the proper State court.

[1] A proceeding for the determination of the heirs of a deceased Indian instituted in a case over which the Department has no jurisdiction must be dismissed. Estate of Oh-ste-wet-ah, IA-34 (November 7, 1950).

For the reasons hereinabove set forth the order of dismissal of December 15, 1978, must be affirmed and the matter dismissed.

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 dismissal, dated December 15, 1978, entered by Administrative Law Judge Sam E. Taylor is hereby affirmed and the appeal herein dismissed.

This decision is final for the Department.

Done at Arlington, Virginia.

//original signed

Alexander H. Wilson
Chief Administrative Judge

I concur:

//original signed

Wm. Philip Horton
Administrative Judge