



INTERIOR BOARD OF INDIAN APPEALS

Estate of Charles Hall, Sr.

8 IBIA 53 (03/28/1980)

Reconsideration denied:

8 IBIA 73

Judicial review of this case:

Affirmed, *Hall v. Andrus*, No. CV-80-67-GF (D. Mont. Aug. 26, 1981)



United States Department of the Interior

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

ESTATE OF CHARLES HALL, SR.

IBIA 79-35

Decided March 28, 1980

Appeal from order by Administrative Law Judge David J. McKee disapproving will and ordering distribution to heirs.

Reversed and remanded with instructions.

1. Indian Probate: Wills: Execution--Indian Probate: Wills:
Testamentary Capacity: Witnesses' Testimony

Attesting witnesses' testimony that decedent while a patient at Wolf Point Hospital in 1965 executed will prepared by a typist at Hoxall Building was not rebutted by proof that a funded legal services agency did not begin operation in Wolf Point until 1967. The uncontradicted testimony of the attesting witnesses, which was not internally inconsistent or incredible could not, under the circumstances, be disregarded by the Administrative Law Judge.

2. Indian Probate: Wills: Proof of Will--Indian Probate: Wills: Self-proved Wills

Testimony by two attesting witnesses to decedent's will concerning time, place and manner of execution proved will in conformity to Departmental regulations notwithstanding that will was not in the form prescribed by regulations for "self-proved will," where will offered for probate complied with all other technical requirements of Indian wills.

3. Indian Probate: Wills: Undue Influence

Where the direct, uncontradicted, and consistent testimony of the attesting witnesses established that decedent was competent and there was no showing of an attempt by anyone to influence him to make a will, it was error to presume fraud based upon suspicion that one of the subscribing witnesses harbored a personal desire to achieve the result reached by the testamentary plan of the will.

4. Administrative Procedure: Administrative Procedure Act

Approval of decedent's will which omits appellee from inheritance precludes consideration by the Department of appellee's tardy claims that decedent was her father, since 5 U.S.C. § 557(c) (1976) (Administrative Procedure Act) limits findings to those questions necessary to the disposition of the pending matter at issue.

APPEARANCES: Gerard M. Schuster, Esq., for appellants Kermit Smith, Ione Smith Manning, Vera Johnson, and Amber Smith Arndt; Steven L. Bunch, Esq., for appellees Charles Hall, Jr., and Ruby Martin Archdale.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

On June 25, 1977, decedent Charles Hall, Sr., the beneficial owner of interests in Indian trust lands in Montana and Wyoming, died at Wolf Point, Montana, at the age of 90, leaving a will dated November 11, 1965. Probate hearings concerning his trust estate were held at Poplar, Montana, on August 24, 1977, and June 14, 1978, and an order entered disapproving his will on May 10, 1979. The May 10 order also found appellee Archdale to be a surviving child of decedent based upon documentary evidence introduced at the June 14, 1978, hearing. Appellants are the decedent's stepchildren and are also the beneficiaries of the November will. On September 21, 1966, appellee Hall was acknowledged by decedent in writing to be his natural son: Appellee Hall is bequeathed one dollar by the November will. Appellee Archdale, who was found to be decedent's natural daughter by the May 10, 1979, order disapproving will was not mentioned in the November will.

I. The Evidentiary Hearings of August 24, 1977, and June 14, 1978

Appellants were represented at both hearings by their sister, Dolly Akers, who was one of the two attesting witnesses to the November 11, 1965, will, and who testified that she drafted the document at the request of decedent. ^{1/} Both witnesses to the will testified at the hearing on August 24, 1977. Mrs. Akers stated that she was visiting decedent, her stepfather, at the hospital at Wolf Point where he was confined to bed following a car accident, when he asked her to draw a will for him. According to her testimony, she went to a typist at the nearby Hoxall Building which housed a legal aid office, where a woman typed the will according to the dictation as earlier given by decedent. Mrs. Akers then returned to decedent's hospital room where she and the other subscribing witness watched decedent read the will, indicate his approval and date and sign it. Both witnesses then signed, and decedent gave the will to his stepdaughter for safekeeping. The witness, in answer to questions from the Administrative Law Judge, stated that decedent was "sharp mentally" and "knew what he was doing."

Mary Knorr, the other attesting witness, testified that, while a visitor at the hospital, she witnessed a will for decedent at his request. According to her, she waited for a time alone with decedent when his stepdaughter left to prepare the will. During the time they waited together, decedent explained to the witness that he wished to leave his trust property to the Smith children because, "These Smiths are just like my own children." In response to questions by the Administrative Law Judge, the witness stated that in her opinion decedent was competent to make the will she witnessed.

At the second hearing held on June 14, 1978, for the purpose of hearing the announced contest to the November will, appellees appeared by counsel, Gene Theroux, while appellants were again represented by Mrs. Akers. After counsel for appellees reviewed with Mrs. Akers her testimony of the previous August hearing, he then testified himself, both during his direct examination of the witness and afterwards. Counsel's testimony was that on November 11, 1965, the funded legal aid group known as "Legal Services" was not yet organized to do business in Wolf Point. Mr. Theroux also testified that "Legal Services" did not have a model of typewriter like the one used to write the decedent's will. Counsel stated that his testimony was intended to show that "[t]he execution of the will could not have occurred when it

^{1/} A facsimile of the will is attached. (Although appellant's sister is not an attorney, Departmental regulations permit representation by family members in matters involving Indian probate. 43 CFR 1.3(a); Estate of Wahwersee R. Werqueyah, 5 IBIA 169 (1976).)

was testified to [have occurred] * * *." 2/ At the conclusion of her testimony, Mrs. Akers asked for additional time to present evidence concerning the November 11 hospitalization of decedent in answer to counsel's apparent assertion that execution of the will as described by her was impossible, and suggested that the hospital records should be inserted into the probate record to show the dates decedent was admitted and discharged. The Administrative Law Judge refused to allow additional time for the purpose stated, and denied Mrs. Akers' offer to make an informal submission of the hospital documents by mail.

Mrs. Knorr, the other subscribing witness repeated her prior testimony and was briefly cross-examined by counsel concerning the decedent's execution of his will. Her testimony, slightly abbreviated from that offered at the first hearing, remained the same in all material respects.

An employee of "Fort Peck Legal Services" testified he contacted the Wolf Point hospital concerning the dates of decedent's hospitalization. In response to his first inquiry, he stated, he was informed (apparently he was also shown something) that decedent had been discharged "the 9th or 10th of November." His subsequent call to the hospital elicited information that "records" indicated decedent was still in the hospital on November 11, 1965. 3/

Appellee Hall testified that he did not feel the signature on the November 11 will was made by his father, because decedent always signed his name "Charles Hall, Sr.," to avoid confusion in the mails. The will bears the subscription "Charles E. Hall." Appellee Hall's testimony at the second hearing, as at the first, indicated that his

2/ Tr. 34. Appellees' theory of the contest is stated by counsel thus:

"My entire line of questioning to the witnesses in this matter was directed to the execution of the will. I have no proof or no other document in evidence at this time other than what has been submitted as to the signature of Mr. Hall. I am not in any way attempting to say that Mr. Hall did not sign the document, nor am I attempting to say that it was not witnessed by Mrs. Akers and Mrs. Knorr. However, my testimony is directed that the execution I believe was improper. The execution of the will could not have occurred when it was testified to and further, Mrs. Akers testified that she had the document with her when she was in Helena at the time Mr. Hall became deceased."

3/ Certainly hospital records are business entries entitled to admission as an exception to the hearsay rule to establish such facts as discharge dates. 6 Wigmore, Evidence § 1707 (Chadbourn Rev. 1976). Cf. 43 CFR 4.232(b). In this case, however, the hospital records were never produced and do not appear of record.

contacts with his father had been minimal and distant. ("I never was with the old man at all.")

Finally, appellee Archdale testified that she was born on February 4, 1918, and that she knew three pieces of old correspondence were found in Agency files between a farmer from Frazer, Montana, and the Superintendent of the Fort Peck Agency at Poplar, Montana, together with a letter addressed from the superintendent to the county attorney at Glasgow, Montana. These documents were introduced by her into evidence to support her claim to be decedent's daughter. Appellee testified that decedent had always denied that she was his child, and behaved accordingly, although appellee's mother had always maintained decedent was in fact appellee's father. ^{4/}

Testifying in rebuttal to the paternity issue, Mrs. Akers volunteered that when, some time earlier, she learned of Mrs. Archdale's claim to be decedent's child, Mrs. Akers had asked him to acknowledge his natural daughter so that she could be enrolled in the Assiniboine Tribe, pointing out to decedent that since his last wife was dead, such a disclosure could cause no jealousy. ^{5/} Decedent refused, according to the witness, stating for his reason that appellee was the daughter of another man, whom he named.

II. The Findings, Conclusion, and Order of May 10, 1979

Based entirely upon the documentary evidence offered at the second hearing, the Administrative Law Judge found that appellee Archdale was decedent's natural daughter. He then found the November 11, 1965, will invalid, based upon the rebuttal evidence offered by counsel and the legal services clerk in opposition to the

^{4/} Appellee testified there were also other records in the agency files relevant to her claim. Another piece of correspondence addressed to Mr. Charles Hall, dated "July 30th, 1918," appears in the appellate file. It is not clear whether this unexplained letter is the missing document referred to as a "letter" by appellee's testimony. It is an unsigned letter which speaks of "the \$10 per month which was agreed upon for the support of the child of Louise Martin." It is not marked as an exhibit, although the other old correspondence is so marked. (It is, however, date stamped received July 18, 1977.)

^{5/} An application dated May 20, 1971, from appellee Archdale to be enrolled in the Assiniboine Tribe (which apparently was supported by an attached affidavit concerning paternity dated June 22, 1971, from Louis Martin Tucker) appears in the appellate file, together with an Agency response dated September 22, 1972, reciting that "you are more Assiniboine than Sioux * * *." The weight to be accorded such records is stated in Hegler v. Faulkner, 153 U.S. 109 (1894). (Their evidentiary value is slight, in matters other than enrollment determinations.)

testimony of the two attesting witnesses. The holding invalidating the will is explained at length at page 5 of the May 10 order:

No serious attack was made upon the genuineness of the signatures on the will by Mr. Theroux, although Charles, Jr. did state he did not believe it was his father's signature. The main thrust of the contestants' position was that there could not have been "due execution" of the will. There is no arguing that the testimony of the witnesses regarding the preparation, the date or the execution of the will can in any way be reconciled with the documentary and other evidence presented by the contestants. Dolly Akers could not have talked to a man who had not yet arrived there. The will could not have been written in a nonexistent office on a nonexistent typewriter, or signed in a hospital where the testator was not a patient. All of these actions must have occurred at a different place and time, but no offer or suggestion of mistake or other excuse for the discrepancies was tendered. No other date or place was suggested for the drafting and execution of the will.

Lacking any specific date of reference, no testimony concerning the mental condition of the testator, his health or the influence or the duress he could have been exposed to at the actual signing of the will could be elected [sic] from the will witnesses or anyone else.

In the Estate of John Akers the condition of the testator, a confirmed alcoholic, at the date of execution of his wills became a critical issue. His last will dated December 10, 1958, was disapproved by the Secretary, but an earlier will dated December 5, 1958, was approved by the Secretary as having been executed during a lucid interval. The Secretary's action was affirmed by the Court in Akers v. Morton, 499 F.2d 44 (9th Cir. 1974). (Cert. den. 46 L. Ed.2d, 1975).

There is no evidence that the mental condition of this testator was not generally basically sound until the time of his death, but he in turn could have had an illucid interval at the time of execution of the will. He could have been subjected to extreme and undue influence. But we do not know because we do not have a valid date for the will. [All emphases appear in original.]

The order refers to testimony by Mrs. Akers that the beneficiaries of decedent's will are her brothers and sisters, and concludes:

The will as drawn would have restored her mother's lands to Dolly's brothers and sister, keeping it in the family. As indicated in her statement, she felt she could have acquired the interests by deed, "* * * a long time ago if I wanted him to, but I didn't want him to."

An inference is drawn that she sought to accomplish by will that which she did not choose to accomplish by deeds.

Upon this inference a finding is made that the decedent's purported will dated November 11, 1965, was not duly executed and may well be tainted with undue influence.

III. Contentions of the Parties

Appellants make four contentions on appeal: (1) the finding that appellee Archdale was the natural daughter of decedent is not proved by the evidence of record; (2) the finding that decedent was not a patient at Wolf Point Hospital on November 11, 1965, is contrary to the evidence gathered at both probate hearings; (3) the finding concerning decedent's mental condition is not based upon facts in evidence received at the hearings; and (4) the finding that Mrs. Akers successfully imposed her will upon decedent to obtain by fraud a desired result is not supported by any evidence offered at either hearing. To bolster their second contention, appellants seek to offer the same hospital admissions records offered by Mrs. Akers at the last probate hearing. In support of their other contentions, appellants argue that the record on the paternity issue is inadequate to support a finding of any sort, and that it was error for the Administrative Law Judge to fail to pursue and obtain relevant hospital records shown to exist which could have established the dates of decedent's stay at the hospital. The offered evidence is refused, for reasons later to be stated in the opinion.

Appellees answer that the Administrative Law Judge had no responsibility to probe further into the paternity question since the documentary evidence of record is adequate to prove decedent was appellee Archdale's father. Concerning the issue of the validity of the will, appellees argue it is invalid as a matter of law, because it was not approved as required by 25 U.S.C. § 373 (1976) and also because the weight of evidence indicates the will was not executed in the manner described by the attesting witnesses. Finally, they urge the testimony given by Mrs. Akers should be totally disregarded owing to "Mrs. Akers litigious [sic] propensities in BIA estate cases." 6/

6/ Appellees cite Akers v. Morton, 499 F.2d 44 (9th Cir. 1974), in support of this stated contention. The case is reported in its

The issues raised in the will contest are first discussed.

IV. Discussion and Decision

Although there was some testimony by appellee Hall concerning the signature appearing on the will, the contention that it was not decedent's signature was never seriously urged, as the May 10 order correctly observes. Examples of decedent's signature appearing in the record indicate the name was differently written at different times, but that the general appearance of the writing did not change. The thrust of this testimony, like testimony concerning the funded legal aid operation, appears to be offered to show that the circumstances surrounding the signing were suspicious and may have been other than described by the witnesses to the will.

[1] The testimony by counsel and the other employees of the legal aid group is, however, irrelevant to the will's preparation, and disproves nothing concerning the execution of the will. While this testimony was clearly admissible as foundation for a showing that the Hoxall Building was never occupied by another tenant, or that some other circumstance surrounding the funded legal program prevented typists from performing services there for the general public in 1965, such testimony was not forthcoming. ^{7/} Standing alone as it does, counsel's testimony proves only that an organized legal aid effort obtained funding for operations in northeastern Montana in late 1967. It does not prove, as counsel argues, that there was nobody in the building with a typewriter to type decedent's will on November 11,

fn. 6 (continued)

progression through the Agency and the courts as: Estate of John J. Akers, IA-D-18 (Supp. (September 23, 1968)); Estate of John J. Akers, 1 IBIA 8, 77 I.D. 268 (1970); Estate of John J. Akers, 1 IBIA 246, 79 I.D. 404 (1972); Akers v. Morton, 333 F. Supp. 184 (D. Mont. 1971), aff'd in Akers v. Morton, 499 F.2d 44 (9th Cir. 1974), cert. denied, 423 U.S. 831 (1975), Estate of John J. Akers, 3 IBIA 300, 82 I.D. 108 (1975). (In Akers examiner McKee held valid a husband's will disinheriting his wife and ruled that the wife had no dower interests in trust lands purchased with the wife's funds. The Federal courts upheld the 1967 hearing examiner's decision observing however that, in addition to providing the purchase money, the wife had managed the trust lands without her husband's help during the last several years of his life, since the husband was a chronic alcoholic. The court of appeals' opinion noted that the case was the result of a coincidence of two prior cases which created a legal condition where "an Indian's devise of restricted lands is less restricted than an Indian's (or a non-Indian's) devise of any other realty. He or she can will that property free from any state law designed to protect a surviving spouse, and there is no Federal law that fills the state law gap." (This remains a correct statement of the law.)

^{7/} See Rhodes v. Weigand, 402 P.2d 588 (Mont. 1965).

1965. Mrs. Akers' testimony is that, although she was mistaken about the dates the funded program started in Wolf Point, there was someone in the Hoxall Building on November 11, 1965, performing a somewhat similar service, and that she used the clerical service available there to type decedent's will. Her testimony on this point is not merely unrefuted--it is uncontradicted by any showing of record. 8/

The finding in the May 10 order that the will was not executed on November 11, 1965, since it relies upon the circumstantial evidence concerning the legal services program, is in error. Although voluminous, the evidence concerning the legal services program is incomplete and does not prove the point for which it was offered. The same defect appears in the testimony concerning the typewriter--since there was no showing that legal services had exclusive control of the Hoxall Building, it is irrelevant whether they had machines of the type used to prepare decedent's will. Similarly, the confused testimony by the clerk concerning the hospital discharge date does not tend to show decedent had gone elsewhere by November 11, 1965. Were it not for the uncontradicted direct proof by the attesting witnesses, it would indicate merely that the hospital records should have been obtained.

The suggestion in the order that the will was not shown to have been executed by a competent testator is also without factual basis. The consistent and uncontradicted testimony of both attesting witnesses establishes that the decedent was competent. The technical requirements concerning Indian wills were minimally proven, so far as concerns execution.

The complete failure of the rebuttal testimony removes the factual basis for the May 10 order disapproving will. Judge McKee erroneously cites Akers v. Morton 9/ for the proposition that a presumption of incompetence may be made in this case although the decedent's mental acuity is unquestioned. The conclusion of law drawn in the order is contrary to the rule in Indian probate that competence is presumed and incompetence to make a will must be proved. 10/

8/ See Wigmore on Evidence, 3d Edition §§ 25-36 (1940), for a discussion of the use of circumstantial evidence as rebuttal to direct evidence or to disprove fact. The problem with circumstantial evidence is not that it is not as highly regarded as direct evidence (contrary to popular belief) but that it is likely to be irrelevant to the issue sought to be addressed. This case illustrates the difficulty inherent in the use of circumstantial evidence for rebuttal purposes. The testimony concerning the legal services agency failed to join the issues addressed--the preparation and execution of the will at Wolf Point on November 11, 1965.

9/ See n.4 for complete citation to reported Federal cases.

10/ Estate of John S. Ramsey, 2 IBIA 237, 81 I.D. 197 (1974); Estate of Habah, 2 IBIA 88 (1973).

[2] Apparently a matter of some concern to the parties during the second hearing, and the primary contention by appellees on appeal, is the fact that the will, once executed, was given by decedent to his stepdaughter and kept by her. This apparent deviation from customary practice (described by appellees to be a "filing" with the local agency of the Bureau of Indian Affairs) is explained by Mrs. Akers in terms of convenience and personal preference based upon past experience with agency employees. The issue has not been directly decided before in reported cases of the Department.

Mrs. Akers' testimony concerning the custody of the will after execution is unquestioned. She put it in her purse, and later deposited it in a bank for safekeeping. When some time later, she went to Helena for medical treatment, she took the will with her, because she felt it was safer with her. She offered the will for probate after decedent's death in 1977. From these circumstances appellees argue a legal conclusion follows that the will cannot be approved.

The probate authority of the Secretary derives from the Act of June 25, 1910, 36 Stat. 856 (25 U.S.C. § 373 (1976)), which provides that trust property may be disposed of by will in accordance with regulations adopted by the Secretary, and that the Secretary may approve Indian wills "either before or after the death of the testator." Regulations to implement the Act have been adopted and amended by the Department since 1910; the current regulations which were in effect at the time of decedent's death are published at 43 CFR Subpart D.

43 CFR 4.202 provides that Administrative Law Judges shall exercise the authority of the Secretary to approve or disapprove Indian wills. 43 CFR 4.211 provides a hearings mechanism as a vehicle for handling wills offered for probate. 43 CFR 4.232 adopts the rules of evidence of the state where the hearings are held, but permits a relaxed procedure. 43 CFR 4.233 provides the framework for conducting trials of contested wills, outlines the general requirements for proof of wills, and permits an abbreviated form of proof in certain uncontested cases involving "self-proved wills."

The provisions of 43 CFR 4.260(b), which allow the procedure appellees contend is required, are, however, permissive. No penalty is attached by the regulation for failure to obtain the permitted review, nor is failure to use the Department's recommended "self-proved" form fatal to a will otherwise in conformity to the regulatory requirements which appear at 43 CFR 4.260(b). So long as the necessary testamentary intent is proved, free from coercion by others and unclouded by incompetence, any form of will may be used. 11/

11/ Tooahnippah v. Hickel, 397 U.S. 598 (1970): Akers v. Morton, cited in n.4. Technical conformity to regulation is, however,

No provision can be found either in the Act of June 25, 1910, nor in implementing regulations which requires an Indian testator to seek prior approval of his will from an agency superintendent in order to guard against invalidation of the will. Decedent was free to refuse to submit his will for prior advice concerning form if he so chose. ^{12/} That by doing so he might have avoided a will contest is beside the point: a formal prior submission was not required. More to the point, however, is whether the circumstance surrounding the custody of decedent's will indicates such bad faith on the part of the attesting witness as was found to exist in the order of May 10 where it recites "inference is drawn that she sought to accomplish by will that which she did not choose to accomplish by deeds." This is the other issue raised by the circumstances surrounding the manner the will was kept--the inference that fraud operated to void the will.

[3] The record is silent concerning acts indicating anyone attempted to influence decedent to do anything; the only testimony on this issue indicates that decedent declared a need to make a will partly in order to insure that a pending lawsuit was carried to completion, and that Mrs. Akers suggested to him the provision designed to foster continuation of the lawsuit might be better left out. It was not. No evidence was offered to show that any other suggestion of any kind was made to decedent. The testimony of the two attesting witnesses is uncontradicted that there was no influence of any kind apparent which affected decedent's testamentary act.

Circumstances can sometimes be such that undisputed direct testimony must be discounted entirely; were that the case here, however, those circumstances must be based upon the record and made to appear in the findings and conclusions incorporated into the order of May 10, 1979. ^{13/} That order erroneously presumes undue influence or fraud based upon motives imputed to Mrs. Akers from her relationship to the beneficiaries of the will and the fact that she kept custody of the

fn. 11 (continued)

required: the testimony of two attesting witnesses must be produced at contested will probates (43 CFR 4.233(c)); the witnesses must be adults who are disinterested in the will (43 CFR 4.260(a) merely in the sense they obtain no direct monetary value from it (Estate of Maggie Abbott, 4 IBIA 12, 82 I.D. 169 (1975)). Relation to beneficiaries named in a will does not disqualify an attesting witness who is otherwise competent. Estate of Ida Horsehead, IA-P-6 (Jan. 12, 1968).

^{12/} For a recent example of such a will and the problems related to its execution see Estate of Joseph Caddo, 7 IBIA 286 (1979).

^{13/} The Department has consistently followed the rule that circumstances considered suspicious by disappointed heirs are alone inadequate to constitute proof that the suspected overreaching occurred in fact. Estate of Asmakt Yumpquitat, 8 IBIA 1 (1980); Estate of Noctusie Whiz, 3 IBIA 161, 81 I.D. 657 (1974).

will until decedent died. 14/ While it may be that the result of the testamentary disposition made by decedent was pleasing to Mrs. Akers, it affirmatively appears that it was the independent desire of decedent which dictated the disposition made by him of his trust property. The order disapproving will must be vacated, and the will approved. 15/

[4] Since the ultimate issue on appeal is resolved by the decision decedent's will must be approved, the question of appellee Archdale's paternity claim is mooted. 16/ Appellee is not named in the will, which disposes of decedent's entire estate. Findings concerning whether appellee is an heir at law will have no effect on the distribution of decedent's trust estate, which is the only subject of these proceedings. Such findings therefore are neither required nor allowed by provisions of the Administrative Procedure Act. 17/ The findings of the May 10, 1979, order concerning the paternity of appellee Archdale are set aside, and no findings concerning her parentage will be entered in the order of distribution for the November 11, 1965, will of decedent approved by this decision. 18/

14/ See Estate of Hank Cluette, 6 IBIA 47 (1977). On the facts here stated, it is not possible to reach an inference of undue influence. Such a finding requires a substantial factual basis which is lacking in the record developed by the trier of fact.

15/ The Administrative Procedure Act, 5 U.S.C. § 556(e) (1976), requires decisions by agency employees in proceedings governed by the Act to be based upon the record developed by the employee. Departmental practice has established that speculation concerning motive or opportunity to improperly influence a testator is not a reason to hold a will invalid. Estate of William Cecil Roubedeaux, 1 IBIA 106, 78 I.D. 234 (1971). Roubedeaux outlines at 78 I.D. 244 a technical test composed of four elements against which facts are to be measured in cases where undue influence is claimed to have been exerted successfully against a testator. The test, often referred to by later decisions, virtually eliminates the use of permissible inferences or evidentiary presumptions as devices to bootstrap a contestant's proof that undue influence was practiced upon an Indian testator such as decedent.

16/ Estate of Rena Marie Edge, 7 IBIA 53 (1978).

17/ Id. at 7 IBIA 56; 5 U.S.C. § 557(c) (1976).

18/ Despite the relaxation of the Montana rules of evidence permitted by 43 CFR 4.232(b), the documentary proof offered by appellee and received into evidence was inconclusive of the issue of paternity. The old documents relied upon even if taken at face value, merely show that a Montana farmer was offended in 1917 because decedent refused to acknowledge paternity of a child about to be born in 1918. An agency superintendent (to whom the farmer's dissatisfaction was made known) undertook to collect support money from decedent who refused to recognize the child as his. The effect of the correspondence, when considered with the consistent denial of paternity for 50 years by decedent,

V. Order

The order disapproving will and determining heirs dated May 10, 1979, is vacated: the will dated November 11, 1965, is approved. Distribution is ordered to be made according to the terms of the will to the named devisees and legatees in the amounts and manner shown in the will, and in conformity to this decision. This estate is remanded to Administrative Law Judge Alexander H. Wilson, successor to Judge McKee, who is instructed to prepare an order of distribution in conformity to this opinion.

This decision is final for the Department.

//original signed

Franklin Arness
Administrative Judge

We concur:

//original signed

Wm. Philip Horton
Chief Administrative Judge

//original signed

Mitchell J. Sabagh
Administrative Judge

fn. 18 (continued)

his apparent willingness to admit paternity in the case of appellee Hall, and his stated belief that a certain man was appellee's father, further weaken appellee's case. The only evidence on the paternity question directly dealing with the issue was in affidavit form; apparently it was secured for, and submitted to, the tribal enrollment authorities to support appellee's application for membership in the tribe in 1971. Given the tenuous nature of the evidence relevant to the paternity claim by appellee, there is no real alternative but to leave determination of the matter to the tribal agencies which customarily deal with enrollment matters.

Attachment

November 11, 1965

TO WHOM IT MAY CONCERN:

I, Charles Hall being of sound mind now declare this to be my last will.

I herewith bequeath to my only natural son, Charles Hall, Jr. one dollar (\$1.00) and to my step-daughter, Lone Smith West Manning all my undivided interests in and to lands now held in trust by the Fort Peck jurisdiction.

To my step-son, Kermit Smith, I give all of my inherited interests in and to lands and minerals located on the Fort Washakie, Wyoming reservation.

I want my step-children named above to carry on my legal fight for the estate of my deceased brother, Melvin Davis.

The residue of my estate I give to my step children, Vera Johnson, Lone Manning, Kermit Smith and Reuben Smith.

[signed] _____ [Charles E. Hall]

Witness: _____ [Mrs. Mary Knorr]

_____ [Dolly Akers]

Nov 11, 1965

[stamped] RECEIVED
AUG 15 1977
ADMINISTRATIVE LAW JUDGE
BILLINGS, MONTANA