



INTERIOR BOARD OF INDIAN APPEALS

Estate of Malena B. Long

8 IBIA 115 (07/10/1980)



# United States Department of the Interior

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

## ESTATE OF MALENA B. LONG

IBIA 80-5

Decided July 10, 1980

Appeal from order by Administrative Law Judge Daniel S. Boss determining intestate succession in probate of Indian trust estate.

Affirmed.

1. Indian Probate: State Law: Applicability to Indian Probate, Intestate Estates

The Administrative Law Judge correctly chose to apply North Dakota law to determine intestate succession in Indian probate of trust lands pursuant to 25 U.S.C. § 348 (1976) where Indian decedent left non-Indian spouse and seven surviving children as heirs of her estate consisting of real property located on a reservation within North Dakota.

APPEARANCES: Appellant Fred A. Motschman, pro se; Joel K. Baldwin, Esq., for appellee Arthur F. Long, Sr.

### OPINION BY ADMINISTRATIVE JUDGE ARNESS

On February 16, 1979, Malena B. Long, the beneficial owner of trust property on the Fort Berthold Indian Reservation died at Minot, North Dakota, at the age of 65. She was survived by appellee, her non-Indian husband, by six children of her marriage to appellee, and by appellant, her son by a prior marriage.

Following a probate hearing concerning decedent's trust estate at New Town, North Dakota, an order issued on June 15, 1979, determining heirs made in accordance with the North Dakota probate law governing succession. Appellant seeks a reversal of that part of the order finding State law to apply to the determination of the identity of the

heirs of the estate. The single issue on appeal is raised by appellant's contention that tribal probate law should be applied to defeat appellee's claim to share equally in the distribution of his Indian wife's estate together with her children.

State laws of descent and distribution apply to determine succession in intestate Indian probate cases. 25 U.S.C. §§ 348, 372-373 (1976); Estate of Minnie Riordan, 2 IBIA 98, 80 I.D. 728 (1973); Guyatt v. Kautz, 83 P. 9 (Wash. 1905). The Administrative Law Judge thus correctly chose to apply the North Dakota law of descent and distribution to determine the heirs of decedent, since her trust property is enclosed entirely within the State of North Dakota. Appellant's contention is without basis in law; his appeal must be denied.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the order determining heirs is affirmed.

This decision is final for the Department.

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Franklin Arness  
Administrative Judge

We concur:

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//original signed  
Wm. Philip Horton  
Chief Administrative Judge

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//original signed  
Mitchell J. Sabagh  
Administrative Judge