



INTERIOR BOARD OF INDIAN APPEALS

Estate of Rebecca B. Coe

8 IBIA 164 (03/04/1980)



United States Department of the Interior

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

ESTATE OF REBECCA B. COE

IBIA 80-18

Decided October 22, 1980

Appeal from order by Administrative Law Judge Robert C. Snashall denying petition to reopen estate.

Affirmed.

1. Indian Probate: Reopening: Generally

A petition to reopen estate closed nearly 30 years ago was properly denied under authority of 43 CFR 4.242(h) where petitioner had actual notice of the hearing to probate will now alleged to be invalid and improperly construed.

APPEARANCES: Gosta E. Dagg, Esq., Everett, Washington, for appellant.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HORTON

Eleanor Heriquez Wheeler Kaikaki, through counsel, appeals from an order rendered by Administrative Law Judge Robert C. Snashall on November 20, 1979, denying appellant's petition to reopen the estate of Rebecca B. Coe, appellant's adoptive mother (deceased), whose last will and testament was approved by the Department on October 25, 1950. In accordance with the terms of the foregoing will, decedent's estate was distributed to two children of appellant (grandchildren of the testatrix).

[1] Departmental rules permit the reopening of an estate closed for more than 3 years, but strict standards govern whether such a reopening is allowable. The controlling procedural regulation is 43 CFR 4.242(h) which provides in pertinent part as follows:

(h) If a petition for reopening is filed more than 3 years after the entry of a final decision in a probate, it shall be allowed only upon a showing that a manifest injustice will occur; that a reasonable possibility exists for correction of the error; that the petitioner had no

actual notice of the original proceedings; and that petitioner was not on the reservation or otherwise in the vicinity at any time while the public notices were posted.

The administrative record shows that appellant not only had actual notice of the hearing to probate her mother's will, but she was, in fact, present at the hearing and gave testimony. She was of adult age at the time. Appellant made no objection to the will at the hearing. Subsequent to the order approving will, interested parties were allowed 60 days to contest the order by filing a petition for rehearing. No objections were filed. Now, almost 30 years after distribution of her mother's estate in accordance with her will, appellant claims that her mother's true intent was to include her as a devisee. She also alleges that her children who were included in the will were ineligible to receive the interests devised because of limitations imposed by section 4 of the Indian Reorganization Act of 1934 (25 U.S.C. § 464 (1976)).

The Administrative Law Judge denied appellant's petition for reopening on grounds that it was untimely. While it is true that appellant has given no justification for the long lapse of time before seeking reopening, the petition is not allowable for the reason that appellant had actual notice of the hearing to probate will and, therefore, lacks standing to challenge it now. In light of the foregoing, it is unnecessary for the Board to consider the merits of appellant's allegations regarding decedent's will.

By virtue of the authority delegated to the Board under 43 CFR 4.1, the order denying petition to reopen issued by Administrative Law Judge Robert C. Snashall on November 20, 1979, is affirmed. This decision is final for the Department.

//original signed
Wm. Philip Horton
Chief Administrative Judge

I concur:

//original signed
Franklin Arness
Administrative Judge