



INTERIOR BOARD OF INDIAN APPEALS

Estate of Mark Turtle, Sr.

8 IBIA 272 (04/15/1981)



United States Department of the Interior

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

ESTATE OF MARK TURTLE, SR.

IBIA 80-36

Decided April 15, 1981

Appeal from order denying petition for rehearing entered by Administrative Law Judge Sam E. Taylor.

Affirmed.

1. Indian Probate: Divorce: Indian Custom--Indian Probate: Marriage: Generally--Indian Tribes: Sovereign Powers--Indians: Domestic Relations

The Cheyenne-Arapaho Indian Tribe of Oklahoma discontinued recognizing Indian custom marriages and divorces by adoption of an ordinance approved by the Secretary of the Interior on February 1, 1940. The right to designate the customs that are to be given recognition in regulating matters that affect tribal internal and social relations rests with each tribe as an incident of its sovereignty, and tribal ordinances or decrees regarding such customs are honored by the Department in its probate of Indian estates.

APPEARANCES: Mark Lea "Beau" Cantrell, Esq., for appellant; Charlotte Lumpmouth Patterson for appellees.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HORTON

Roberta Sagebark Lumpmouth (a.k.a. Roberta Sage Turtle or Roberta Sagebark), through counsel, has appealed from an order denying petition for rehearing entered April 8, 1980, by Administrative Law Judge Sam E. Taylor. Appellant claims she was erroneously declared to be the surviving spouse of Mark Turtle, Sr., deceased Cheyenne-Arapaho (unallotted). Instead, appellant claims to be the surviving spouse of Thomas Elward Lumpmouth, a deceased Cheyenne-Arapaho (unallotted) whose estate is also before the Board for a final probate decision.

The Board has jointly considered the administrative records in the estate of Mark Turtle, Sr., and the estate of Thomas Elward Lumpmouth because of the common issues involved. Final decisions are rendered this date in both cases.

The Board has undertaken a de novo review of all matters of record in this case and the companion estate of Thomas Elward Lumpmouth. Based on this review and our study of the applicable law, we are satisfied that the Administrative Law Judge's order determining heirs dated January 13, 1980, as amended February 7, 1980, and his order denying petition for rehearing, dated April 8, 1980, are correct and should not be disturbed.

The evidence is overwhelming in this case that appellant and Mark Turtle, Sr., were married by common law in the State of Oklahoma. Beginning in 1955, appellant and the decedent cohabited for more than 10 years and had six children, four of whom are on the Cheyenne-Arapaho Tribal roll with the surname, "Turtle." Appellant also appears on the Cheyenne-Arapaho roll with this surname. The record reflects that appellant signed criminal charges against the decedent for failing to provide for his minor children. She signed the charges under the name "Roberta Turtle." One such complaint (No. 14446, County Court, Canadian County, State of Oklahoma) was dismissed January 10, 1964, upon a motion filed and signed by "Roberta Turtle" on grounds that she and the defendant "have resumed marital relations and are now living in Calumet, Oklahoma." The record also contains an affidavit signed by the decedent on November 7, 1973, which states:

Mark Turtle being first duly sworn upon oath deposes and states: That in February, 1955 he entered into a common law marriage with Roberta Sage Bark. They lived together for thirteen years and had six children, two of whom are now deceased.

We held ourselves out to the public as man and wife. Roberta is shown on the rolls of the Cheyenne-Arapaha [sic] Tribe as my wife. We were never divorced. She is still my wife although we are not now living together.

Appellant submits that while Mark Turtle, Sr., may have believed he was married to her, she never consented to being his common law wife. Under Oklahoma law, mutual consent is required for a common law marriage to be established. Quinten v. Webb, 207 Okl. 133, 248 P.2d 586 (1952). Appellant's own witnesses, however, testified that they regarded her as having been married to the decedent. See Tr. of September 27, 1979, hearing in estate of Thomas Elward Lumpmouth at 26 (testimony of Nelson Sage, Jr.) and at 29 (testimony of Violet Berniece Franklin).

Appellant contends she is the surviving spouse of Thomas Elward Lumpmouth with whom she lived for a period of years subsequent to living with Mark Turtle, Sr. It is clear that appellant and Thomas Elward

