



INTERIOR BOARD OF INDIAN APPEALS

Estates of Walter George and Minnie Racehorse George Snipe

9 IBIA 20 (06/12/1981)

Judicial review of this case:

Dismissed, *Hughes v. Watt*, No. 81-671-HB (D.N.M. Mar. 8, 1982)

Affirmed, No. 82-1583 (10th Cir.)



# United States Department of the Interior

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

## ESTATE OF WALTER GEORGE AND MINNIE RACEHORSE GEORGE SNIPE

IBIA 80-40

Decided June 12, 1981

Appeal from order of Administrative Law Judge Keith L. Burrowes reopening probate of estate and changing heirship determination.

Affirmed.

1. Indian Probate: Reopening: Standing to Petition for Reopening: Waiver of Time Limitation

Where agency superintendent charged with administration of Indian trust estate petitioned to reopen estate to correct erroneous heirship determination 4 years after a final order of distribution had been made, reopening was properly ordered pursuant to 43 CFR 4.242 where the record affirmatively showed the initial heirship determination was erroneous, the 4-year delay in discovery of the error was explained, and correction of the error was administratively feasible.

APPEARANCES: Henry S. Howe, Esq., for appellants Charlene Hughes and Charlotte Hughes.

### OPINION BY ADMINISTRATIVE JUDGE ARNESS

On February 28, 1975, an order was entered determining appellants to be heirs of decedents whose interests in Indian trust property were subject to probate by the Department. On June 7, 1979, the agency superintendent charged with administration of the estates petitioned to reopen, based upon a showing that appellants had been erroneously determined to be heirs of the decedents since they were barred from inheritance by an adoption occurring in 1963. The record of the proceedings on rehearing establishes on appeal that appellants were ineligible to take from decedents' estates under Idaho probate statutes

effective at the time of the deaths of decedents. The petition to reopen alleges and the appellate record establishes that appellants, who were minor children, were removed from the vicinity of the Fort Hall Reservation where the trust property is situated, and that their whereabouts were unknown from 1958 to 1979. It is apparent that all contacts between appellant and the Fort Hall Reservation were terminated when appellants left the reservation vicinity in 1958. In June 1979 agency realty employees were able to ascertain that appellants were in New Mexico, and further, that they had been adopted under circumstances that barred inheritance from both decedents. In his petition to reopen dated June 4, 1979, the superintendent summarizes the agency findings thus:

At the time of the probate hearings for subject decedents it was determined, by state law, that Charlene, Charlotte and Karen Fernandez, grandchildren, would inherit.

An effort was made at that time to find the three girls, but they and their father disappeared years ago.

Recently some people have been interested in buying some land that they have an interest in so the search was stepped up and the girls were found in Farmington, New Mexico and had been adopted out since August 8, 1963. This fact makes them ineligible to inherit from natural relatives and the estates are going to have to be reopened. See attached copy of Idaho's Uniform Probate Code regarding adoptions.

On appeal, the sole issue concerns whether Departmental regulations at 43 CFR 4.242 permit reopening upon petition by the superintendent 4 years after a final order of distribution to correct an erroneous heirship determination. Appellants contend that the agency is barred from petitioning to reopen by the provisions of 43 CFR 4.242(h), citing Estate of Leonard Cooper, 7 IBIA 5 (1978), 1/ in support of the arguments advanced in their brief on appeal.

The regulation to be construed, 43 CFR 4.242, provides in pertinent part:

(d) To prevent manifest error an Administrative Law Judge may reopen a case within a period of 3 years from the date of the final decision, after due notice on his own motion, or on petition of an officer of the Bureau of Indian Affairs. \* \* \*

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1/ In Cooper the petitioner was not an agency official, but an individual who claimed to be an heir of decedent whose trust estate had been closed for over 21 years. The Board allowed reopening in that case upon a showing by petitioner that she had "only recently discovered the alleged relationship to the decedent through an examination of her birth certificate."

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(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. A denial of such petition may be made by the Administrative Law Judge on the basis of the petition and available Bureau records. No such petition shall be granted, however, unless the Administrative Law Judge has caused copies of the petition and all other papers filed by the petitioner to be served on those persons whose interest in the estate might be adversely affected by the granting of the petition, and after allowing such persons an opportunity to resist such petition by filing answers, cross petitions or briefs as provided in (c) of this rule.

[36 FR 7186, Apr. 15, 1971, as amended at 36 FR 24813, Dec. 23, 1971; 43 FR 5514, Feb. 9, 1978.]

The agency superintendent is thus made a party who may petition of right to reopen. Appellants analyze the regulatory provision to determine, no doubt correctly, that the superintendent's position as the agent of the United States primarily responsible for administration of Indian trust property, makes his participation in these proceedings necessary. <sup>2/</sup> They go on to argue, however, that section 4.242(h) precludes a petition by a superintendent where more than 3 years have passed following a final heirship determination unless a probability of "manifest injustice" can be shown. Appellants contend that such a showing was not made by the superintendent's petition and that reopening was allowed in error. <sup>3/</sup>

The term "manifest injustice" is nowhere defined, neither in the regulation nor in Departmental decisions construing the regulation. The use of the expression "manifest error," however, as it appears in section 4.242(d), where the proper parties to petition are defined, indicates the drafter meant the word "manifest" to have its usual meaning of "obvious."

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<sup>2/</sup> See Estate of Rena Marie Edge, 7 IBIA 53 (1978).

<sup>3/</sup> Implicit in appellants' arguments concerning reopening is their concession that the original order determining heirs was erroneous. Curiously, appellants argue that despite their apparent total lack of contact with the Fort Hall Reservation and their lack of a substantive legal claim to inherit, they nonetheless have an equitable claim to part of decedents' estates.

If the word "manifest" is given its usual dictionary meaning, the language of the regulation, though archaic, is readily decipherable. Section 4.242(d) adds agency officials to the class of persons who may petition to reopen of right within 3 years following an heirship determination based upon a claim of error. <sup>4/</sup> Section 4.242(h) enumerates conditions upon which a petition will be entertained more than 3 years after a final determination: There must be a correctable error--that is, the petition must not be moot; <sup>5/</sup> persons who have rested on their rights having knowledge of the probate proceedings and the existence of enforceable rights in the proceedings are bound by the prior proceedings to which they were parties; <sup>6/</sup> and petitions may be entertained and granted in the discretion of the probate Administrative Law Judge based upon circumstances shown to merit such consideration (the "manifest injustice" provision). <sup>7/</sup> The Administrative Law Judge may deny petitions to reopen 3-year old estates without a hearing, based upon his review of the petition and the probate record. He may not grant a petition to reopen after the lapse of more than 3 years, however, without giving all the parties concerned in the probate an opportunity to be heard.

Stated otherwise, to support a petition to reopen, one must show: (1) an error, (2) an error which is correctable; and (3) that the petitioner is not guilty of laches. <sup>8/</sup> Applying that standard to this case, the petition by the agency superintendent is sufficient to support the order to reopen. He alleges an error in the heirship determination by the inclusion of two ineligible heirs; he explains the reason for the delay in discovery of the error by describing the absence of the two from the reservation and the circumstances of their disappearance; and he establishes that distribution of the estate has not been completed, so that correction of the error shown is within the ability of the agency. Under the circumstances, the Indian probate Administrative Law Judge correctly reopened the estate to correct the inheritance determination by the deletion of appellants as heirs of decedents.

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<sup>4/</sup> Estate of Thomas Elward Lumpmouth, 8 IBIA 275 (1980); Estate of Joan Horsechief, 5 IBIA 182, 83 I.D. 561 (1976).

<sup>5/</sup> Estate of San Pierre Kilkakhan, 7 IBIA 240 (1979) (but see Estate of Oscar Bubuna Deloria, 5 IBIA 34 (1976), where circumstances were found to justify reopening an estate after distribution to add an omitted heir).

<sup>6/</sup> Estate of Rebecca B. Coe, 8 IBIA 164 (1980); Estate of Josephine Bright Fowler, 8 IBIA 201 (1980).

<sup>7/</sup> Estate of Tennyson B. Saupitty, 6 IBIA 140 (1977); Estate of Peter Feather Earring Cleveland, 6 IBIA 44 (1977).

<sup>8/</sup> Estate of David Marksman, 5 IBIA 56 (1976). The clear intent of the rule, as construed by prior Departmental decisions, is to promote administrative finality while permitting some latitude to the agency to correct errors and to permit persons affected by heirship determinations a reasonable opportunity to do likewise.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the order reopening the estates of decedents is affirmed. The inheritance determination made by the reopening which deletes appellants from the list of heirs of the estate is approved. Distribution may be ordered in accordance with the order determining heirs.

This decision is final for the Department.

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Franklin D. Arness  
Administrative Judge

I concur:

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//original signed  
Wm. Philip Horton  
Chief Administrative Judge