INTERIOR BOARD OF INDIAN APPEALS

Estate of Robert R. Monroe

9 IBIA 67 (09/03/1981)

United States Department of the Interior

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

ESTATE OF ROBERT R. MONROE

IBIA 80-53 Decided September 3, 1981

Appeal from order reopening estate and redetermining heirs entered by Administrative Law Judge Garry V. Fisher.

Affirmed.

1. Indian Probate: Children, Illegitimate: Right to Inherit: Child from Father

   Under 25 U.S.C. § 371 (1976), an otherwise illegitimate child can inherit from the person shown to be her father.

APPEARANCES: Robert E. Monroe, appellant, pro se; David C. Marion, Esq., for appellee Maxine Louise (Monroe) Sitting Eagle Dewey.

OPINION BY ADMINISTRATIVE JERRY MUSKRAT

Robert E. Monroe has appealed from an order entered on July 14, 1980, by Administrative Law Judge Garry V. Fisher that reopened the estate of Robert R. Monroe and redetermined the heirs. The initial order determining heirs, entered by Judge Fisher on April 16, 1975, had found that appellant was the son of Robert R. Monroe and his only heir. On November 1, 1979, appellee Maxine Louise (Monroe) Sitting Eagle Dewey petitioned to reopen the estate on the grounds that she was the daughter of Robert R. Monroe. Following a hearing on the petition, Judge Fisher found that appellee was the daughter of the decedent and was entitled to a share in the intestate estate.

Background

Robert Richard Monroe, Wind River Arapahoe U-6793, was born January 17, 1921, and died intestate at Arapahoe, Wyoming, on September 3, 1974. A hearing on his estate was held at Fort Washakie, Wyoming, on January 21, 1975. The testimony presented at that hearing showed that decedent was married once to Laura Potter, who predeceased him. There were two children of this marriage, Robert Everett Monroe, born June 12, 1950, and Alberta Ann Monroe, born August 29, 1951. Alberta died on March 29, 1953. Judge Fisher entered an order on April 16, 1975, determining that decedent's sole heir was his son, Robert Everett Monroe.

On November 1, 1979, Maxine Louise (Monroe) Sitting Eagle Dewey, alleging that she was decedent's daughter, petitioned to reopen the estate. Judge Fisher held a hearing on the petition on May 20, 1980. Testimony presented at the second hearing indicated that Maxine was born on January 4, 1943, to Edith Sitting Eagle and Robert Monroe. Although her parents never married, they lived together during the period from 1940 to approximately 1943. The testimony further indicated that during his lifetime decedent treated Maxine as a daughter. On June 1, 1953, Maxine was adopted by her maternal grandmother, Winifred Emily (Lodge) S. Eagle, by order of the Wind River Court of Indian Offenses. This adoption was registered with the State on August 21, 1953.

After the conclusion of this hearing, Judge Fisher entered an order on July 14, 1980, reopening the estate and redetermining heirs. That order found that Maxine was decedent's daughter and was entitled to a 50 percent share of decedent's trust estate by virtue of 25 U.S.C. § 371 (1976). Appellant has sought review of this determination.

Discussion and Conclusions

Appellant argues that this estate should not have been reopened because it had been closed for more than 3 years. Under 43 CFR 4.242(h) an estate closed for more than 3 years can be reopened

> 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 Law Judge found these prerequisites present and, upon review of the record, we agree. A manifest injustice might occur if the estate were not reopened in that a rightful heir might be omitted and, if, in fact, the petitioner were such an omitted heir, this error could be administratively corrected. Furthermore, the appellee had no actual or constructive notice of the original proceedings. 1/ Therefore, the estate was properly reopened even though it had been closed for more than 3 years. See Estate of Walter George and Minnie Racehorse George Snipe, 9 IBIA 20 (1981).

[1] Appellant's substantive argument is that appellee failed to show that the decedent had lived with appellee's mother in an Indian

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1/ Appellee did have notice of decedent's death, but was living off the reservation in Sheridan, Wyoming, at the time and did not receive actual notice of the first probate hearing. It does not appear that the appellee was on the reservation or otherwise in the vicinity during the time public notices were posted (May 20, 1980 Tr. 2-3, 16-17). Finally, there is no evidence that appellee was guilty of laches, because, upon discovery of her eligibility for inheritance, she immediately filed a petition to reopen the estate (May 20, 1980 Tr. 7-9, 17).

custom marriage as required under 25 U.S.C. § 371 (1976). This argument fails to recognize that section 371 contains two legitimating provisions. The first, upon which appellant relies, relates to the offspring of Indian custom marriages. The second provision, however, states that "every Indian child, otherwise illegitimate, shall for [the purpose of determining the descent of land] be taken and deemed to be the legitimate issue of the father of such child." 25 U.S.C. § 371 (1976). Thus, the only question under this provision of section 371 is whether or not the decedent can be shown to be the father of the appellee. 2/ See, e.g., Estate of Crawford J. Reed (Unallotted Crow No. 6412), 1 IBIA 326, 79 I.D. 621 (1972). We agree with the Administrative Law Judge that sufficient evidence supported a finding that decedent was appellee's natural father. Thus, appellee was properly found to be an heir of decedent. 3/

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 estate of decedent is affirmed. The determination made by the reopening that adds appellee to the list of heirs is approved. Distribution may be ordered in accordance with the order determining heirs.

This decision is final for the Department.

//original signed
Jerry Muskrat
Administrative Judge

We concur:

//original signed
Wm. Philip Horton
Chief Administrative Judge

//original signed
Franklin D. Arness
Administrative Judge

2/ Because this is the only question to be determined, no purpose would be served by granting appellant's request for a "continuance" of the hearing so that he could present evidence on Tribal Codes relating to Indian custom marriages. Also, 43 CFR 4.242(c) provides that following the filing of a meritorious petition for reopening, "[t]he Administrative Law Judge shall then reconsider, with or without hearing as he may determine, prior actions taken in the case and may either adhere to, modify, or vacate the original decision." Thus there is no requirement that a hearing be held on the petition. The request for a continuance is, therefore, denied.

3/ Under current Wyoming law appellee is an heir of both her adoptive and natural parents. Wyo. Stat. § 2-4-107(a)(i) (1977). Appellant did not raise the adoption as a bar to inheritance and we have no evidence that the Wyoming law was different at the time of decedent's death in 1974. See 25 U.S.C. § 348 (1976).