



INTERIOR BOARD OF INDIAN APPEALS

Estate of Grace Akeen, a.k.a. Grace Akins

10 IBIA 14 (06/23/1982)



United States Department of the Interior

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

ESTATE OF GRACE AKEEN,
a.k.a. GRACE AKINS

IBIA 81-39

Decided June 23, 1982

Appeal from a denial of a petition for rehearing (Indian Probate No. IP TU 110P 79).

Affirmed.

1. Indian Probate: Witnesses: Observation by Administrative Law Judge

Where testimony is conflicting, the factual findings of the Administrative Law Judge will not be disturbed on appeal because he had the opportunity to observe and hear the witnesses.

APPEARANCES: Amos E. Black III, Esq., and Justus Hefley, Esq., Anadarko, Oklahoma, and James H. Ivy, Esq., Waurika, Oklahoma, for appellants; Houston Bus Hill, Esq., Oklahoma City, Oklahoma, for appellee. Counsel to the Board: Kathryn A. Lynn.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HORTON

On July 6, 1981, Reathia Wolf Cussen and Laura Katherine Wolf Proctor (appellants) filed a notice of appeal from a June 2, 1981, order denying petition for rehearing in the estate of Grace Akeen, a.k.a. Grace Akins (testatrix), issued by Administrative Law Judge Daniel S. Boos. The denial of rehearing affirmed Judge Boos' April 2, 1981, order approving will and decree of distribution under which Madeline Wolf Hamilton (appellee) and Laura Proctor were found to be the devisees under testatrix's will.

Background

Testatrix, an unallotted Wichita-Caddo of Oklahoma, was born on December 22, 1901, and died on August 28, 1978. She married Paul Wolf, a.k.a. Paul Frank, in 1916. Before testatrix and Paul Wolf were divorced in 1925, three children were born: Reathia Wolf Cussen, born August 1, 1917; Laura Katherine Wolf Proctor, born October 16, 1919; and Madeline Wolf Hamilton, born August 13, 1923. Testatrix later married Jack Sorles, from whom she was divorced about 1932.

Testatrix executed three wills, the last of which, dated August 24, 1978, was admitted to probate by the Administrative Law Judge. Under that will, testatrix devised the north half of Caddo Allotment No. 811, including her house and its contents, to appellee. The south half of that allotment was left to Laura Proctor. The remaining property was devised in undivided one-half interests to appellee and Laura Proctor. Clause 5 of the will stated: "I leave nothing to my daughter, Reathia Wolf, not from the lack of love or affection."

Hearings were held by Administrative Law Judges Boos and Vernon J. Rausch on June 19, 1979, April 24, 1980, and November 4, 1980. ^{1/} The testimony established that testatrix was physically very ill, bedridden, and near death when she executed the third will. The remainder of the testimony was conflicting as to her mental state and testamentary capacity. Appellee and her witnesses, including four employees of the Bureau of Indian Affairs in Anadarko who participated in the preparation and execution of the will, testified that testatrix was mentally alert. ^{2/} Appellants attempted to show that testatrix was under the influence of demerol when the will was executed and that the will was procured through undue influence exerted on testatrix by appellee.

In his April 2 decision, Judge Boos clearly set forth the conflicting evidence before him. Based on his weighing of the evidence and observation of the witnesses, he upheld the will.

Discussion and Conclusions

[1] The Administrative Law Judge was faced with conflicting testimony in this case. He therefore based his decision on his observation of the witnesses and his determination of their credibility. Where testimony is conflicting, the factual findings of the Administrative Law Judge will not be disturbed on appeal because he had the opportunity to observe and hear the witnesses. Estate of Hiemstennie (Maggie) Whiz Abbott, 4 IBIA 12, 82 I.D. 169 (1975).

The decision here is supported by credible evidence. The conflicting evidence tended to show, but was insufficient to prove, that the will was procured by undue influence or that testatrix lacked testamentary capacity when the will was executed. Thus, there is an irreconcilable conflict in the testimony. The decision by the Administrative Law Judge to accept one of two

^{1/} Judge Rausch, who had been temporarily detailed to assist with the relief of a backlog of probate cases, held the June 19, 1979, hearing. The only evidence taken at that hearing concerned family history. Judge Rausch stated that he would not be able to complete the case considering the time that would be required to hear a will protest, and declined to hear evidence against the will so that the Administrative Law Judge who decided the case could conduct those hearings. See June 19, 1979, Tr. at 2-3, 12.

^{2/} See Estate of Catalina Clifford, 9 IBIA 165 (1982), for a similar case involving the testimony of BIA witnesses to a will who were acquainted with the testator as to the testamentary capacity of a physically incapacitated individual.

