



INTERIOR BOARD OF INDIAN APPEALS

Estate of Alice Mae Sasse

12 IBIA 281 (06/25/1984)



United States Department of the Interior

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

ESTATE OF ALICE MAE SASSE

IBIA 84-8

Decided June 25, 1984

Appeal from an order denying rehearing issued by Administrative Law Judge Elmer T. Nitzschke in IP RC 4Z 83.

Affirmed.

1. Indian Probate: Rehearing: Generally

Rehearings in Indian probate proceedings are intended to allow consideration of alleged errors made by the Administrative Law Judge and to permit the introduction of evidence that could not, with diligent effort, have been discovered prior to the original hearing. They are not a means for presenting evidence and arguments that were known at the time of the original hearing but simply not introduced.

2. Indian Lands: Restricted Allotment--Indians: Fiscal and Financial Affairs

Land interests held in Indian trust status by the Department of the Interior are not subject to setoff, levy, and/or execution on the basis of a state court decision.

3. Board of Indian Appeals: Jurisdiction--Indian Tribes: Jurisdiction--State Courts

Neither the Board of Indian Appeals nor the Department of the Interior has review authority over matters entrusted to state, Federal, or tribal courts.

4. Board of Indian Appeals: Jurisdiction--Indian Tribes: Jurisdiction--Indians: Nonrestricted Property--State Courts

Neither the Board of Indian Appeals nor the Department of the Interior is the proper forum for consideration of questions relating to non-trust property held by Indians.

APPEARANCES: Wm. Jason Groves, Esq., Rapid City, South Dakota, for appellant; Ronald Clabaugh, Esq., Rapid City, South Dakota, for appellee. Counsel to the Board: Kathryn A. Lynn.

OPINION BY CHIEF ADMINISTRATIVE JUDGE PARRETTE

On December 9, 1983, the Board of Indian Appeals (Board) received a notice of appeal from Carl W. Sasse (appellant). Appellant sought review of a November 16, 1983, order denying rehearing issued by Administrative Law Judge Elmer T. Nitzschke in the estate of Alice Mae Sasse (decendent). The denial of rehearing let stand a September 15, 1983, order approving decendent's will and ordering distribution of her estate in accordance with the terms of the will as modified by the antilapse provisions of 43 CFR 4.261. For the reasons discussed below, we affirm this decision.

Background

Decendent, unallotted Oglala Sioux 409 of the Pine Ridge Indian Reservation in South Dakota, was born October 2, 1893, and died of natural causes on February 24, 1983, at the age of 89. She died possessed of the full beneficial interests in 29 tracts of Indian trust land on the Pine Ridge Reservation. 1/ These tracts had all been purchased from the original allottees or their successors-in-interest.

A hearing to probate decendent's trust estate was held before Judge Nitzschke on July 25, 1983. Testimony at the hearing revealed that decendent had had eight children. One son died when only a few days old; a daughter died at age 53, leaving two children of her own. Decendent's remaining two daughters and four sons, including appellant and Lynn E. Sasse (a.k.a. Earnest Lynn Sasse, appellee), were alive at the time of her death.

Decendent executed a will on August 23, 1973, in which she devised all of her property equally to her seven then living children. There was no

1/ By motion dated Jan. 23, 1984, appellant alleged that decendent's estate should have included an additional tract of trust land, specifically, SE 1/4 sec. 21, T. 39 N., R. 40 W., sixth principal meridian, Shannon County, South Dakota, containing 160 acres, more or less. On Feb. 2, 1984, the Board requested information on the ownership status of the tract from the Pine Ridge Agency Superintendent, Bureau of Indian Affairs. The Superintendent informed the Board that the tract at issue had been held in joint tenancy with right of survivorship by decendent and Earnest Lynn Sasse. Upon decendent's death, ownership of the tract had vested in Earnest Lynn Sasse.

On Apr. 3, 1984, after reviewing further filings on this topic made by both parties, the Board held that appellant had failed to prove his allegation that this tract should have been included in decendent's trust estate. The Board noted that no defect in the transaction or in title had been found by either the Pine Ridge Superintendent, who must approve acquisitions of land in Indian trust status, 25 CFR 151.3; or by the Manager of the Aberdeen Land Titles and Records office, who has "the Federal responsibility to record, provide custody, and maintain records that affect titles to Indian land, to examine titles, and to provide title status reports." 25 CFR 150.3.

provision for distribution should any of these children predecease her. 2/ No objections to decedent's testamentary capacity, the will, or its dispositive scheme were raised at the hearing. Consequently, Judge Nitzschke approved the will. Because one of decedent's daughters had died after the execution of the will, but before decedent's death, the Judge applied the antilapse provisions of 43 CFR 4.261 3/ in finding that the share of the estate devised to decedent's predeceased daughter should pass to that daughter's two children.

Appellant filed a timely petition for rehearing based upon allegations concerning appellee's performance as decedent's guardian. Appellant states that appellee was appointed decedent's guardian on September 13, 1976, by order of a South Dakota State court. Appellee served as decedent's guardian until December 11, 1981. In an order dated January 31, 1983, the State court found that appellee violated his fiduciary duties to decedent in the amount of \$77,074.95, by, for example, failing to make an initial inventory of the guardianship estate, making false and inaccurate reports concerning the guardianship's cattle herd, commingling guardianship funds with his personal funds, improperly increasing the salaries paid to himself and family members in connection with the guardianship, and benefiting through personal business transactions with guardianship assets. 4/ In his petition for rehearing, appellant sought to have appellee's distributive share of decedent's trust estate reduced by the amount of the State court's order, plus interest from January 31, 1983.

On November 16, 1983, Judge Nitzschke denied rehearing on three grounds:

1. The mismanagement giving rise to the judgment in question did not involve assets held in trust by the United States and therefore the judgment is not subject to offset by the United States.

2. Land interests held in trust by the United States in this instance are not subject to levy and/or execution based on a state court judgment. 25 USCA 354. Mullen v. Simmons, * * * 234 U.S. 192 * * * (1914).

2/ Decedent had executed a prior will on Dec. 29, 1967. In that will she stated: "If any of my children should die before me, then their share is to go to my surviving children."

3/ Section 4.261 provides: "When an Indian testator devises or bequeaths trust property to any of his lineal descendants, mother or father, brothers or sisters, either of the whole or half-blood or their issue, and the devisee or legatee dies before the testator leaving lineal descendants, such descendants shall take the right, title, or interest so given by the will per stirpes. Relationship by adoption shall be equivalent to relationship by blood."

4/ On Jan. 27, 1984, the court dismissed the entire guardianship proceeding after considering appellee's motion asserting that it did not have jurisdiction because all of the guardianship assets were located on the Pine Ridge Indian Reservation.

3. The action requested by the petitioner is beyond the authority of the undersigned or the Secretary of the Interior. 25 USCA 372. Running Horse v. Udall, 211 F. Supp. 586 (D.C.D.C. 1962).

(Order at 1.)

Appellant filed the present appeal with the Board in an attempt to reverse this decision. Both appellant and appellee have filed briefs on appeal.

Discussion and Conclusions

Appellant argues on appeal that appellee is indebted to decedent's estate in the amount he benefited from his mismanagement of the guardianship estate. He alleges that he is not seeking to enforce the State court judgment, but rather cites Tooahnippah v. Hickel, 397 U.S. 598 (1970), in support of an argument that the Board should use the State court judgment as evidence in construing decedent's will. Appellant argues that Tooahnippah requires the Department to ascertain and give effect to decedent's testamentary scheme, and that decedent's will shows her intent that her estate be equally divided among her children. Allowing appellee to receive his full share of decedent's estate when he is indebted to the estate would, according to appellant, violate the Department's trust responsibility to decedent by failing to carry out her testamentary plan of equal division. Appellant thus urges the Board to setoff appellee's debt to the estate against his distributive share of the estate. ^{5/}

[1] Appellant's argument must be rejected for several reasons, both procedural and substantive. First, although appellant was represented by counsel at the original probate hearing and although the State court decision on which appellant's argument is based predated that hearing, appellant did not raise either the decision or his present argument at the hearing. Rehearings are governed by 43 CFR 4.241, which states in pertinent part:

Such a petition [for rehearing] must be under oath and must state specifically and concisely the grounds upon which it is based. If the petition is based upon newly-discovered evidence, it shall be accompanied by affidavits of witnesses stating fully what the new testimony is to be. It shall also state justifiable reasons for the failure to discover and present that evidence, tendered as new, at the hearings held prior to the issuance of the decision.

Rehearings are intended to allow consideration of alleged errors made by the Administrative Law Judge and to permit the introduction of evidence that could not, with diligent effort, have been discovered prior to the original hearing. They are not a means for presenting evidence and arguments that

^{5/} The Board agrees with appellant's statement of the requirement established in Tooahnippah. See Estate of Verena Gean Kitchell, 12 IBIA 258, 261 n.2 (1984).

were known at the time of the original hearing but simply not introduced. Appellant makes no attempt to show why the arguments he now raises could not have been raised at the original hearing. He has, therefore, not shown adequate grounds for rehearing. Cf. Estate of John Bear Shield, 9 IBIA 1 (1981) (rehearing denied when petitioner received notice of rehearing, but failed to appear or to otherwise present arguments in the initial proceeding).

[2] Substantively, despite appellant's characterization of his arguments, he seeks, in essence, to enforce what is now a vacated State court judgment concerning the mismanagement of decedent's non-trust personal property by her guardian through a reduction of that guardian's distributive share of trust property from decedent's estate. There are several problems with this legal theory. First, appellant seeks to subject Indian trust land that was devised to appellee and that will be held by the Department of the Interior (Department) in trust for him^{6/} to a setoff on the basis of evidence incorporated into a state court judgment. As Judge Nitzschke noted, land interests held in Indian trust status by the Department are not subject to levy and/or execution based on a state court decision. 25 U.S.C. § 354 (1982); ^{7/} Mullen, supra. ^{8/} If a valid state court decision is not enforceable against trust land, neither is a decision that has been vacated by the court that issued it on the grounds that the court lacked jurisdiction.

[3] Even if appellee's distributive share of decedent's trust land could be reduced as urged by appellant, the Board could not treat the vacated state court decision as evidence of wrongdoing by appellee. Because the decision has been vacated, it is not evidence.^{9/} The Board would have to retry the facts upon which the decision was based. The Department has no jurisdiction to try an individual for breach of guardianship duties imposed by a state court. The Department has been given jurisdiction to probate the trust property of deceased Indians and to make certain other decisions in Indian affairs. See 25 U.S.C. §§ 372-373 (1982) and 25 CFR and statutes cited therein. This Board has review jurisdiction over decisions of Administrative

^{6/} Under 25 U.S.C. § 373 (1982), Departmental "approval of [an Indian] will and the death of the testator shall not operate to terminate the trust or restrictive period."

^{7/} Section 354 reads: "No lands acquired under the provisions of this Act shall, in any event, become liable to the satisfaction of any debt contracted prior to the issuing of the final patent in fee therefor."

^{8/} Cf. 25 U.S.C. § 410 (1982):

"No money accruing from any lease or sale of lands held in trust by the United States for any Indian shall become liable for the payment of any debt of, or claim against, such Indian contracted or arising during such trust period, or, in case of a minor, during his minority, except with the approval and consent of the Secretary of the Interior."

Cf. also United States v. Acting Aberdeen Area Director, 9 IBIA 151 (1982), which refused to order a setoff against trust funds accruing to the Individual Indian Money accounts of two restricted Indians on the basis of judgment claims entered by a United States district court in favor of the United States.

^{9/} See, e.g., McCormick's Handbook of the Law of Evidence, § 318 (E. Cleary 2d ed. 1972), for a discussion of the use of prior judgments in subsequent cases.

Law Judges hearing Indian probate cases, and of officials of the Bureau of Indian Affairs to whom the Secretary's duties with respect to Indians have been delegated. See 43 CFR 4.1. Neither the Board nor the Department has review authority over matters entrusted to state, Federal, or tribal courts.

[4] Finally, there is no allegation here that appellee mismanaged trust property within the control of the Department. All alleged mismanagement concerned decedent's non-trust personal property. The Department does not have general jurisdiction in Indian matters, or even general probate jurisdiction; it has jurisdiction over only those matters specifically delegated to it by Congress, including probate jurisdiction over Indian trust property. Under the circumstances here, the Department is not the proper forum for consideration of the alleged mismanagement of decedent's non-trust property. These arguments are properly raised to the State or tribal court that had or has jurisdiction over the person and assets of decedent. Based upon the statements of the parties in this case, it appears that such court would be the Oglala Sioux Tribal Court, which is presently considering the probate of decedent's non-trust property.

Appellant urges the Board to construe decedent's will as intending to pass her property equally to her children. The Department has so construed decedent's will, and has ordered distribution of her trust estate under those terms. In order to allow the setoff sought by appellant against appellee's distributive share of decedent's estate, the Board would have to violate its own regulations, Federal statutes and a Supreme Court decision directly on point. In addition, it would have to arrogate to itself jurisdiction to review actions taken under a state court order, and to probate non-trust property. These are all actions that the Board declines to take.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the September 15 and December 17, 1983, decisions in this case are affirmed. 10/

 //original signed
 Bernard V. Parrette
 Chief Administrative Judge

We concur:

 //original signed
 Jerry Muskrat
 Administrative Judge

 //original signed
 Anne Poindexter Lewis
 Administrative Judge

10/ The Board's decision in this case should not be construed as condoning the alleged actions of appellee upon which the State court based its conclusion that he had breached his guardianship responsibilities, or as failing to recognize the inequities that will result if appellee has, in fact, profited through improper management of the guardianship estate. The Board holds only that it has no jurisdiction over these issues in this case.