



INTERIOR BOARD OF INDIAN APPEALS

Estate of Max Door

14 IBIA 128 (05/30/1986)

Related Board case:
13 IBIA 180



United States Department of the Interior

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

ESTATE OF MAX DOOR

IBIA 84-21

Decided May 30, 1986

Appeal from an order denying rehearing issued by Administrative Law Judge Daniel S. Boos in Indian probate case Nos. IP BI 66B-84, IP BI 196B-83.

Affirmed.

1. Indian Probate: Inventory: Property Erroneously Excluded or Included--Indians: Lands: Generally

The inventory of a deceased Indian's trust or restricted property prepared by the Bureau of Indian Affairs for use in probating the decedent's Indian trust estate properly does not include lands that were deeded to another person during the decedent's lifetime.

APPEARANCES: K. D. Peterson, Esq., Billings, Montana, for appellant; Richard D. Hoffman, Esq., Billings, Montana, for appellee Thomas Whiteman, Sr. Counsel to the Board: Kathryn A. Lynn.

OPINION BY ADMINISTRATIVE JUDGE MUSKRAT

On February 17, 1984, the Board of Indian Appeals (Board) received a notice of appeal from Philip Plenty Hawk (appellant). Appellant sought review of a December 15, 1983, order denying rehearing issued by Administrative Law Judge Daniel S. Boos in the estate of Max Door (decedent). For the reasons discussed below, the Board affirms that order.

Background

Decedent, Allottee No. 3182 of the Crow Indian Reservation in the State of Montana, was born on August 7, 1917, and died intestate on July 4, 1982. Because decedent died possessed of certain Indian trust or restricted property, a hearing to probate his trust estate was held before Judge Boos on April 28, 1983. On July 11, 1983, Judge Boos issued an order determining decedent's sole heir to be appellant, his adopted son.

Appellant did not dispute Judge Boos' determination of heirs, but instead questioned the completeness of the inventory of decedent's trust

assets prepared by the Bureau of Indian Affairs (BIA) for use in probating the estate. Appellant alleged that certain deeds executed by decedent in favor of his sister, Maude Door Whiteman, and approved by BIA in 1978 were invalid as having been procured through undue influence or other coercion. Alternatively, appellant argued that decedent rescinded the deeds in 1981. If either of appellant's contentions were upheld, the affected property should have been included in decedent's estate.

In addition to filing the present administrative appeal, appellant filed suit in the Federal District Court for the District of Montana, Billings Division, on April 30, 1984. Philip Plenty Hawk v. United States, Civ. No. 84-95-BLG (D. Mont. Filed Apr. 30, 1984). The Board has not been informed by the Department, the United States Attorney handling the case, or the court that it should not proceed with administrative resolution of this matter.

By order dated October 2, 1984, the Board requested BIA to review its records concerning the execution of the 1978 deeds and any subsequent documents purporting to rescind them. BIA was to determine whether the deeds were properly approved and, if properly approved, whether they were later rescinded. On February 5, 1985, the Board received BIA's response, which stated the deeds were properly approved and were not rescinded.

Appellant replied to BIA's submission on March 15, 1985. The response was essentially an offer of proof disputing BIA's determination.

By order dated June 10, 1985, the Board referred this case to the Hearings Division of the Office of Hearings and Appeals for an evidentiary hearing and recommended decision by an Administrative Law Judge (Departmental). Estate of Max Door, 13 IBIA 180 (1985). In that order the Board held: "The only questions for resolution in this matter are whether undue influence or other coercion was exercised upon decedent in the execution of the 1978 deeds, and, if those deeds were proper, whether decedent could legally rescind them." 13 IBIA at 180.

[1] The case was assigned to Administrative Law Judge Robert W. Mesch, who held a hearing on November 13, 1985. Judge Mesch issued a decision on April 4, 1986, in which he recommended that the 1978 deeds were properly executed and there were no grounds for finding that the deeds were rescinded in 1981. Although the decision informed the parties that under 43 CFR 4.338 and 4.339 they had 30 days in which to file exceptions to the recommended decision, no exceptions were filed.

The Board has reviewed the record created before Judge Mesch and his recommended decision. The recommended decision, which is attached to this opinion and incorporated by this reference, is adopted in total as the Board's opinion.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the December 15, 1983 order of Judge Boos denying rehearing is affirmed. The inventory of dece-

dent's Indian trust estate provided by the Bureau of Indian Affairs is held to properly not include that property deeded to Maude Door Whiteman in 1978.

//original signed

Jerry Muskrat
Administrative Judge

I concur:

//original signed

Wm. Philip Horton
Acting Chief Administrative Judge

Attachment



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
HEARINGS DIVISION
6432 FEDERAL BUILDING
SALT LAKE CITY, UT 84138-1194

April 4, 1986

ESTATE OF MAX DOOR

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Docket No. IBIA 84-21

RECOMMENDED DECISION

Appearances: K. D. Peterson, Esq., Peterson, Schofield and Leckie, Billings, Montana, for Philip Plenty Hawk;

Richard D. Hoffman, Esq., Wilson & Hoffman, Billings, Montana, for Thomas Whiteman, Sr.;

Roger Thomas, Esq., Office of the Solicitor, Department of the Interior, Billings, Montana, for the Bureau of Indian Affairs.

Before: Administrative Law Judge Mesch

By an order dated June 10, 1985, the Interior Board of Indian Appeals referred this matter for a hearing and recommended decision on the questions of (1) whether undue influence or other coercion was exercised upon Max Door in the execution of deeds in 1978; and (2) if the deeds were proper, whether Max Door could legally rescind them in 1981.

A hearing was held on November 13, 1985, in Billings, Montana. Posthearing briefs have been filed by Philip Plenty Hawk and Thomas Whiteman, Sr.

The background necessary for an understanding of this proceeding is as follows.

1. On October 16, 1978, Max Door executed eight deeds conveying his interests in restricted Indian lands and minerals to his sister, Maude Door Whiteman. The deeds reserved a life estate to Max. The Bureau of Indian Affairs (BIA)

approved the deeds on October 19, 1978. When the deeds were executed Max was 61 years of age and Maude was his closest living relative.

2. On April 8, 1981, the Crow Tribal Court entered an order approving and adjudging the adoption of Philip Plenty Hawk by Max and providing that Philip would be entitled to inherit real and personal property from and through Max. At that time Philip was 49 years of age. His mother, who was deceased, was a sister of Max and Maude.

3. On April 27, 1981, Max executed and purportedly delivered to the BIA a document in which he rescinded, nullified, and withdrew any decisions made with respect to the conveyances to Maude and requested the BIA to "expunge from your files the said document, which covers the LIFE ESTATE transaction, and take any and all steps necessary to insure that my interest and desires are protected". Apparently the BIA took no action with respect to this document, and Max did not pursue the matter further.

4. Max died intestate on July 4, 1982, and on July 11, 1983, following a hearing, an Administrative Law Judge (Indian Probate) issued an order finding that Philip, as an adopted son, was entitled to all of Max's estate. An inventory and appraisal of trust real property belonging to the estate was attached to and made a part of the order.

5. Maude died in 1983. Apparently her son, Thomas Whiteman, Sr., and his children inherited the interests that Max had conveyed to Maude in 1978.

6. On September 9, 1983, Philip filed a petition for a rehearing in the probate proceeding in which he asserted that the inventory should have listed the properties conveyed to Maude in 1978 because (i) Max had revoked the conveyances prior to his death, and (ii) if the revocation was not sufficient, the conveyances should be set aside as having been made under undue influence and contrary to Max's will and desires.

7. By an order dated December 15, 1983, the Administrative Law Judge (Indian Probate) denied the petition for rehearing on the grounds that the relief sought, i.e., the rescission or revocation of deeds approved by the BIA, was not within the scope of his jurisdiction.

8. Philip filed an appeal with the Interior Board of Indian Appeals. By an order dated April 30, 1984, the Board, in establishing a briefing schedule, noted that (i) the

authority of the Board was broader than the authority of Administrative Law Judges (Indian Probate); (ii) in addition to probate jurisdiction, the Board had general review authority over legal interpretations made in decisions rendered by BIA officials; and (iii) the Board could review the legal aspects of determinations regarding the approval of deeds by the BIA and could remand a case to the BIA for review of the discretionary aspects of such decisions.

9. Following the receipt of briefs from Philip and the heirs of Maude, a referral of the matter by the Board to the BIA for a consideration of Philip's allegations and a determination as to whether the deeds were properly approved and whether they were rescinded, the receipt of the requested determination by the BIA, and the receipt of a response by Philip to the BIA determination, the Board referred the matter for a hearing and recommended decision.

At the hearing, Philip presented the following, among other less relevant, evidence in support of his positions that (1) undue influence or other coercion was exercised upon Max in the execution of the 1978 deeds; and (2) if the deeds were proper, Max legally rescinded them in 1981.

Philip testified that Max understood a little bit of English, but he couldn't read very much English (Tr. 19); during the last 5 years of his life, Max was competent--"he was alright the way he thought" (Tr. 27); Max lived with Maude off and on and then they put him in a nursing home in Broadus, Montana (Tr. 22); Max was in the nursing home when he went to a hospital in Miles City, Montana (Tr. 26); Max was in the nursing home about a year (Tr. 26); he visited Max once while he was in the nursing home and he did not visit Max while he was in the Miles City hospital (Tr. 27); Max told him he signed the deeds while he was in the hospital in Miles City in 1978 (Tr. 20); Max told him that he didn't remember too much of what he signed in the hospital, but he thought he was signing lease papers (Tr. 20, 21, 25, 30), several months after Max left the hospital some unknown person told Max that he hadn't signed leases, and Max was mad that the deeds had been signed without his knowledge (Tr. 36-37); during the last 2 years of Max's life, he lived with Philip (Tr. 35, 48); Max said he wanted to adopt Philip and leave his belongings to Philip because he didn't have a place to live (Tr. 36, 39, 40); after the adoption, Philip and Max took the recission document and gave it to the BIA Superintendent's secretary, and Max thought that everything was taken care of with respect to the deeds (Tr. 43, 44).

Philip's wife testified that she has been married to Philip for 19 years (Tr. 74); she first met Max when he came to live with them in 1979 (Tr. 73); Max conversed with her and her children in English (Tr. 75); she does not know whether Max was able to read English, but he did look at the Billings newspaper (Tr. 75); she never heard Max complain about the gift conveyances to his sister Maude, and "we didn't know about that until in August about three months after the probate hearing" (Tr. 76); when Max wasn't drinking, he seemed to have a clear and rational mind (Tr. 80); she expected that Philip would inherit Max's lands because of the adoption, and it was a surprise to her that Max had previously given the land to Maude (Tr. 80).

Philip's cousin, a niece of Max and Maude, testified that in 1980 Maude told her that she didn't know why Max had given her the land, that she had never taken care of her brother, and they had never had a close relationship (Tr. 84); Maude and Max did not talk with each other as brothers and sisters do, they did not like each other, and they held grudges from an early childhood incident (Tr. 92, 96); Maude "didn't have any influence over Max" (Tr. 97); Max was mentally clear and rational when he was not drinking (Tr. 114); Max could not read English and he did not speak English fluently (Tr. 89); while he was in the hospital, Max told her that "mostly, everyone came in and wanted something from me, land, saying why don't you give me this or that" (Tr. 88); Max told her that Tommy, Maude's son, brought a lease and he signed the lease (Tr. 87); a couple of months or longer after Max left the Miles City hospital, he received a letter from the BIA informing him that he had turned everything over to Maude, and Max was really upset and said that "I can't recall doing this", the papers "I signed were leases" (Tr. 90-92).

An employee of the BIA who is responsible for the probate and realty records testified that the official records contained a copy of the 1981 rescission document, but not the original of the document; she did not know where the original of the document might be found; the document in the BIA files did not contain a date stamp showing when it was received by the BIA; she had no basis for making any assumptions as to whether the original of the document was filed with the BIA, or when the copy of the document was filed with the BIA, or, presumably how the copy of the document found its way into the BIA files. (Tr. 123, 124).

The BIA employee presented documents dated October 2, 1978, which were signed by Max and filed with the BIA on October 10, 1978. (Tr. 125, 128, 182). The documents were applications seeking the approval of the BIA for gift conveyances

from Max to his sister Maude with a reservation of a life estate to Max. (Tr. 171). Max's signature appears on the documents three times. The first signature was on the documents at the time of filing with the BIA. (Tr. 164, 172). The second signature was placed on the documents after the BIA placed an estimated value on the land and constituted an acknowledgement by Max that he was advised of the estimated value and still wished to make the conveyances to his sister. (Tr. 187). The third signature, a notarized signature was placed on the documents on October 16, 1978, following preliminary approval of the conveyances by the BIA. (Tr. 168). The application documents were approved by the BIA Superintendent on October 19, 1978, with the certification that the applications were explained to and fully understood by Max.

The heirs of Maude presented the following, among other less relevant, evidence in opposition to the positions asserted by Philip.

A retired employee of the BIA, who previously worked in the Branch of Social Services, testified that in her position as a social worker she knew Max for a number of years prior to his death (Tr. 158); they always conversed in English and they understood each other very well (Tr. 159); Max surely knew how to read because he was able to fill out applications for general assistance that she gave him (Tr. 175); she visited Max in the hospital in Miles City in October of 1978 because the land transfer applications had come to her desk and they had to be approved by the Branch of Social Services (Tr. 162); Max appeared to be in good health and was not incompetent (Tr. 163, 168); she talked to Max and "again and again asked him if that's what he wanted", and he told her "he wanted to keep his money and lease income [from leases on some of the land] coming into him for the rest of his life, but to give his land to his sister" (Tr. 166, 167); after talking with Max, she approved the gift conveyances from Max to Maude on October 12, 1978, as shown by her notations on the application documents (Tr. 167, 173).

Another retired employee of the BIA, who worked in the Realty Department at the Crow Indian Agency, testified that she had known Max and Maude since she was a small child (Tr. 177); it was town knowledge that Maude always looked after Max and he was always welcome at her home (Tr. 180); after the approval of land transfer applications by the Branch of Social Services, she would review the applications and if everything was proper the Realty Department would prepare the deeds (Tr. 181, 182); the social worker suggested that the two of them interview Max in the hospital to

see if the conveyances to his sister were really what he wanted (Tr. 181, 184); they visited Max in the hospital and he appeared to be in good health, he was rational, and he was happy to see them (Tr. 185, 186); they talked to Max about the gift conveyance applications and he said that was what he wanted to do (Tr. 185); he said he was tired of his relatives harassing him for his land, and he wanted to give his sister his land (Tr. 185); she was convinced that Max knew what he was doing and that he intended to give his land to his sister with a reservation of a life estate for himself (Tr. 200).

The BIA prepared the deeds from Max to Maude and they were executed by Max before a notary public on October 16, 1978. The deeds are dated October 19, 1978, and recite that Max executed them on that date. The October 19 date was apparently placed on the deeds because that was the date that the BIA Superintendent approved the deeds. (Tr. 195). No conclusions of illegality in favor of Philip can be drawn from the fact that Max executed undated deeds on October 16. One of the deeds contained an error in the description, and on November 7, 1978, a corrected deed was executed by Max before a notary public and approved on the same date by the BIA.

In his opening posthearing brief, Philip asserts that "it is clear that Max Door was induced to execute applications and deeds for almost everything he owned while he was in critical condition in the Miles City hospital and it is clear that there were many family members applying duress to him and undue influence" and "even if all of the elements may not be clearly stated in the testimony, there was a mistake made by Max Door as evidenced by his attitude and actions subsequent thereto". (p.8).

The short answers to these assertions are (1) there is absolutely no evidence that Maude, or anyone acting in her behalf, applied any duress or undue influence in inducing Max to execute the land transfer applications and the deeds; (2) there is absolutely no evidence that Max was in critical condition in the Miles City hospital, or that he was even in the hospital, from October 2, 1978, when he signed the land transfer applications to November 7, 1978, when he executed the correction deed; and (3) Max's subsequent attitude and actions, i.e., the adoption of Philip and the execution of the rescission document almost 31 months after the execution of the deeds, do not establish that Max was under any mistaken belief when he executed the deeds, but only that he later, for unknown reasons, decided that he had made a mistake in the execution of the deeds.

It is difficult to believe the testimony of Philip and his cousin that Max was under the impression that he had only signed leases and not deeds. I say this because:

1. The evidence indicates that at the time at least some of the land was under lease and Max was receiving income from the leases. (Tr. 166). There is no rational explanation as to why Max would think that he could lease land to his sister that was already under lease.
2. Philip and his cousin testified that a couple of months or so after leaving the hospital Max was advised that he had signed deeds and not leases, and Max really became upset upon learning of the mistake. If there was a mistake, there is no rational explanation as to why Max would wait for a period in excess of 2 years before taking any action to attempt to correct the mistake.

I find that there was no undue influence or other coercion exercised upon Max in the execution of the deeds in 1978; that Max was not under any mistaken belief as to what he was doing when he executed the deeds in 1978; that Max freely and voluntarily executed the deeds with full knowledge that he was making gift conveyances to his sister, his closest living relative, with the reservation of a life estate to himself; that the 1978 conveyances were proper in all respects; and that the BIA acted properly in ascertaining Max's true intentions, in respecting his wishes, and in protecting his interests.

With respect to the second issue, i.e., if the deeds were proper, could Max legally rescind them in 1981, Philip, in his opening posthearing brief, asserts that "it is a common concept of law that a deed may be set aside for mistake"; and the "government had the duty through its agents to confer with Max Door [upon the receipt of the rescission document] and to bring an action, if necessary to set aside the deeds, which he by duress, undue influence or mistake, executed in favor of his sister". (p. 9, 10).

Philip does not address the question of whether, if the deeds were proper, i.e., executed without any duress, undue influence or mistake, they could legally be rescinded at a later date. I am convinced that the deeds were executed without any duress, undue influence or mistake and that Max, for unknown reasons, changed his mind almost 31 months after the execution of the deeds and decided that he wanted to retract the conveyances to his sister and make provisions so

that Philip could inherit the previously conveyed interests. Philip does not cite any legal authority that would permit Max to annul the deeds under such circumstances, and it seems too fundamental to require the citation of any authority that the security of land titles cannot be destroyed at the whim of a grantor who later changes his mind.

I find that the deeds were proper and that Max could not legally rescind them in 1981.

As provided in the referral order of the Board of Indian Appeals, any party may file exceptions or other comments with the Board within 30 days from the receipt of this recommended decision.

//original signed
Robert W. Mesch
Administrative Law Judge