



INTERIOR BOARD OF INDIAN APPEALS

Estates of Charles Ernest Farron, Jr., Sarah Ero Jones, and Marian St. Germaine Hanlon

15 IBIA 55 (11/24/1986)



United States Department of the Interior

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

ESTATE OF CHARLES ERNEST FARRON, JR., : Docket Nos. IBIA 87-6
ESTATE OF SARAH ERO JONES, and : IBIA 87-7
ESTATE OF MARIAN ST. GERMAINE HANLON : IBIA 87-8
: :
: Order Staying Distribution in
: Part and Remanding Cases
: :
: November 24, 1986

On November 12, 1986, the Board of Indian Appeals (Board) received a notice of appeal and motion for stay of proceedings from the Quinault Indian Nation (appellant) through counsel Richard Reich, Esq., Taholah, Washington, in the Estates of Charles Ernest Farron, Jr., IP PO 76L 86-84; Sarah Ero Jones, IP PO 104L 86-120; and Marian St. Germaine Hanlon, IP PO 159L 86-186. Appellant requests the Board to direct that proceedings be stayed in connection with all portions of the three estates (and any similarly situated estates containing interests in land located within the Quinault Indian Reservation) subject to section 207 of the Indian Land Consolidation Act (ILCA), 25 U.S.C. §2206, pending disposition of the appeals now pending before the Board in the Estate of Katie DeLaCruz and the Estate of James Herbert Scarborough, IBIA Nos. 86-33 and 86-34, and a decision by the Supreme Court in Hodel v. Irving, No. 85-637. Appellant also requests that the Board disqualify Administrative Law Judge Robert C. Snashall from hearing any further matters relating to appellant or to the Quinault Indian Reservation.

The appeals are hereby docketed under the respective above case names and numbers, which should be cited in all future inquiries or correspondence concerning the matters. The cases are consolidated for purposes of this order.

Appellant appeals from an October 27, 1986, oral order entered by Judge Snashall in which he denied appellant's motion for disqualification or in the alternative a stay of proceedings. Appellant argues that the Board has jurisdiction over the appeal under 43 CFR 4.27(c), concerning disqualification of judges, or 43 CFR 4.28, concerning interlocutory appeals. 43 CFR 4.27(c) provides:

An administrative law judge or Board member shall withdraw from a case if he deems himself disqualified under the recognized canons of judicial ethics. If, prior to a decision of an administrative law judge or an Appeals Board, there is filed in good faith by a party an affidavit of personal bias or disqualification with substantiating facts, and the administrative law judge or Board member concerned does not withdraw, the Board or Director, as appropriate, shall determine the matter of disqualification.

43 CFR 4.28 provides in relevant part:

There shall be no interlocutory appeal from a ruling of an administrative law judge unless permission is first obtained from an Appeals Board and an administrative law judge has certified the interlocutory ruling or abused his discretion in refusing a request to so certify. Permission will not be granted except upon a showing that the ruling complained of involves a controlling question of law and that an immediate appeal therefrom may materially advance the final decision.

The Board concludes that it has jurisdiction over these appeals pursuant to 43 CFR 4.27(c). However, upon review of the allegations of appellant and the documents which it has submitted, the Board finds that appellant has not shown facts requiring the disqualification of Judge Snashall from these cases. Appellant's objection to Judge Snashall concerns his legal interpretation of ILCA as it affects escheats of interests in land on the Quinault Indian Reservation. 43 CFR 4.27(c) does not provide for disqualification of a judge because a party to a case before him disagrees with his interpretation of law. Its purpose, rather, is to provide for enforcement of the canons of judicial ethics by requiring the disqualification of judges from cases which, for ethical reasons, they should not hear. Disagreements on matters of law are appropriately handled through the normal appeal process.

Appellant has also requested a stay of proceedings in connection with the portions of the estates subject to ILCA pending decisions in the cases cited above. Because the Board has jurisdiction over these appeals pursuant to 43 CFR 4.27(c), it will consider this aspect of the appeal, even though appellant may not have met the technical requirements for an interlocutory appeal under 43 CFR 4.28. (Appellant has not shown that the Judge has ruled in these cases on a controlling question of law or that resolution by the Board would materially advance the final decision.) Under the unusual circumstances of these cases, however, the Board will consider appellant's request pursuant to its authority under 43 CFR 4.320 to exercise the inherent authority of the Secretary to correct a manifest injustice or error.

A stay of all proceedings in those estates containing interests subject to escheat under ILCA would unnecessarily delay probate of the estates and distribution to the heirs. However, the Board considers it appropriate to stay distribution of those portions of estates on the Quinault Reservation that are subject to escheat until it has ruled in DeLaCruz and Scarborough and the Supreme Court has ruled in Irving. Judge Snashall should proceed with the probate of these estates, including a decision on escheat. Should his final decisions in the estates precede the Board's decision in DeLaCruz and Scarborough, appellant may appeal to the Board any estate in which it disagrees with the escheat determination, and request consolidation with those cases.

Because the primary legal issues raised in these cases are the same, this normal appellate procedure does not unduly inconvenience either the Board or appellant. Should the Board rule prior to Judge Snashall, he will clearly be required to follow the Board's ruling. In any event, the Judge and the Bureau of Indian Affairs are hereby advised that no escheat under ILCA shall be finalized on the Quinault Reservation prior to decisions in DeLaCruz, Scarborough, and Irving.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, these cases are remanded to Judge Snashall for further proceedings, subject to the stay discussed above.

//original signed
Anita Vogt
Acting Chief Administrative Judge

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Kathryn A. Lynn
Administrative Judge