



INTERIOR BOARD OF INDIAN APPEALS

Estates of Sam A. Simeon and Stephen (Steven) Aloysius Simeon

15 IBIA 135 (03/20/1987)

Reconsideration denied:

15 IBIA 171



# United States Department of the Interior

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

ESTATE OF SAM A. SIMEON  
ESTATE OF STEPHEN (STEVEN ALOYSIUS) SIMEON

IBIA 86-43

Decided March 20, 1987

Appeal from an order denying reopening issued by Administrative Law Judge William E. Hammett in Indian Probate Nos. IP SA 158N 77 and IP SA 76N 83.

Affirmed.

1. Indian Probate: State Law: Applicability to Indian Probate, Intestate Estates

When an individual owning land in Indian trust or restricted status dies without a will, the trust property passes to his or her heirs as determined with reference to state laws of intestate succession.

APPEARANCES: Agnes Simeon Lovell, pro se.

## OPINION BY ADMINISTRATIVE JUDGE LYNN

On June 9, 1986, the Board of Indian Appeals (Board) received a notice of appeal from Agnes Simeon Lovell (appellant). Appellant sought review of an April 14, 1986, order denying reopening entered in the estates of Sam A. Simeon and Stephen (Steven Aloysius) Simeon by Administrative Law Judge William E. Hammett. For the reasons discussed below, the Board affirms that order.

### Background

Sam A. Simeon, an Eskimo of Alaska, was born on September 7, 1886, and died on June 5, 1971. A hearing to probate Sam's Indian trust or restricted estate was held before Judge Hammett on September 21, 1977. On August 8, 1977, the Bethel Agency, Bureau of Indian Affairs (BIA), prepared an inventory and appraisal of Sam's trust or restricted estate, which was submitted to Judge Hammett. This inventory showed that, at the time of his death, Sam owned 160 acres on Discovery Creek. This land was described as "Administratively Approved Native Allotment #210, Aniak, Beginning at a point on the West or left bank of Discovery Creek at Approx. Latitude 71 28' N and Longitude 159 42' W thence West 1/2 mile; thence North 1/2 mile; thence East 1/2 mile more or less, to the West or left [bank] of Discovery Creek; thence Southerly following the west or left bank meanders of Discovery Creek to the

point of beginning." The inventory further showed that a log cabin on the Discovery Creek allotment had burned down, Sam had no Alaska Townsite lot, and a non-trust house in Aniak had already been probated through state court.

Only Gerald Simeon, one of Sam's grandchildren, and Mary Nicolai attended the hearing. As a result of testimony and information furnished by BIA, Judge Hammett made the following findings concerning Sam's family relationships. Sam had 6 children, 3 of whom, Margaret Mary Simeon, Nancy Simeon, and Phillip Simeon, predeceased him. Two of the 3 children surviving Sam, Joseph Leo Simeon and Stephen (Steven Aloysius) Simeon, died before Sam's probate hearing. Of Sam's 6 children, only appellant is still living. The 3 children who predeceased Sam were all survived by children. Margaret Mary Simeon was survived by 1 daughter, Angela Simeon. Nancy Simeon was survived by 2 sons, Gerald Simeon and Leo Anthony. Phillip Simeon was survived by 6 children, Arnold Simeon, Phillip Simeon, Jr., Allen C. Simeon, Arthur Simeon, Kenneth E. Simeon, and Agatha Simeon Savage.

Although Sam left a will, dated August 21, 1954, Judge Hammett found that document was not valid to devise his Indian trust or restricted estate. Accordingly, in an order dated March 15, 1978, Judge Hammett found that for Departmental probate purposes, Sam had died intestate. In accordance with the Alaska statutes concerning intestate succession, the Judge ordered Sam's trust or restricted estate distributed in undivided interests to the above-named family members. Because these people were related to Sam in different ways, the inherited interests ranged from 1/36 to 6/36. <sup>1/</sup>

BIA informed Sam's heirs, including appellant, that the Judge's order determining heirs had been properly recorded on their behalf. From the record it appears that appellant's interest has been recorded in the Bethel Recording District, Book 34, page 898, and in the Kuskokwim Recording District, Book 10, page 901. Appellant was sent copies of the recorded orders, and was informed that the copies would be her only evidence of ownership.

Stephen (Steven Alcysius) Simeon, also an Alaskan Eskimo, was born January 9, 1923, and died intestate on May 28, 1976. Judge Hammett held a hearing to probate Stephen's Indian trust or restricted estate on August 8, 1983, after receipt of the notice of death.

Evidence adduced at the hearing showed that Stephen's heirs were: appellant; Susan Simeon Rogers, Axenia Simeon Crisco, and Margaret Simeon Wassilie, the children of his predeceased brother Joseph Leo Simeon; Angela (Alexia) Simeon, the daughter of his predeceased sister Margaret Mary Simeon; Gerald Simeon, the son of his predeceased sister Nancy Simeon; and Agatha Simeon Savage, Arnold Simeon, Phillip Simeon, Jr., Allen C. Simeon, Arthur Simeon, and Kenneth E. Simeon, the children of his predeceased brother

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<sup>1/</sup> Confusion over whether Gerald Simeon and Leo Anthony were the sons of Nancy Irene Tobar or Nancy Simeon caused Judge Hammett to issue an order on March 15, 1983, deleting these two individuals as heirs of Sam. Upon clarification of the identity of their mother, Judge Hammett reinstated them as heirs by order dated May 12, 1983.

Phillip Simeon. Each of these individuals received interests ranging from 1/30 to 6/30 in Stephen's estate.

According to the August 2, 1983, inventory and appraisal prepared by BIA, Stephen's entire trust or restricted estate consisted of a 6/30 interest in Sam's Discovery Creek property, as determined by Judge Hammett in the probate of Sam's estate. 2/

No appeal was taken from Judge Hammett's order in either Sam or Stephen's estate. However, on January 8 and February 13 and 24, 1986, appellant filed documents with Judge Hammett which he treated as a petition for reopening both estates, with supporting documentation. Judge Hammett believed appellant's petition alleged that she alone was entitled to Sam's trust or restricted estate, BIA and the Bureau of Land Management (BLM) mismanaged the application for and approval of Sam's allotment, and there was fraud in the procurement of some land interest involved in these estates.

The Judge concluded that the Alaska statutes on intestate succession were properly followed in determining the heirs in both estates; he had no authority or responsibility for reviewing administrative actions or decisions of BIA and/or BLM; and, although there was no evidence of fraud in the procurement of the allotment, he had no authority to try the question of fraud. Accordingly, he denied reopening in an order dated April 14, 1986.

Appellant appealed to the Board. Only appellant filed a brief on appeal. By order dated November 17, 1986, the Board requested additional information concerning the status of the Discovery Creek allotment. The additional information was received on January 13, 1987. This information was supplemented and clarified through a telephone conversation with the probate specialist for the Association of Village Council Presidents (AVCP), Bethel, Alaska, 3/ on February 19, 1987.

#### Discussion and Conclusions

Appellant's arguments on appeal are far-ranging, but generally rather vague. As was Judge Hammett, the Board is forced to attempt to discern appellant's concerns.

[1] It thus appears appellant initially believes that, as Sam's sole surviving child, she is entitled to his entire estate. The laws of intestate

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2/ It appears possible that BIA's statement that Stephen owned a 6/30 interest in the Discovery Creek property was based on Judge Hammett's March 15, 1983, order deleting Gerald Simeon and Leo Anthony from the list of Sam's heirs. As stated in note 1, supra, Judge Hammett's original order was reaffirmed on May 12, 1983. Under the original and May 12, 1983, orders, Stephen inherited a 6/36 interest. Because the inventory of Stephen's trust or restricted estate was prepared on Aug. 2, 1983, it is possible that BIA records had not been updated to reflect the slightly smaller interest found to be Stephen's inherited share.

3/ AVCP provides realty services for BIA.

succession do not work this way. The law assumes a parent dying without a will would wish each of his children to share equally in his estate. When one or more of those children predecease the parent, the law generally assumes the children of that predeceased child should receive part of the estate. The law does not set up a "survivor-takes-all" situation such as appellant expounds. Therefore, appellant is entitled only to the undivided fractional interests in both Sam and Stephen's estates, as determined by Judge Hammett. 4/

Appellant questions why some people were listed as Sam's heirs when they were dead. Probate operates as of the date of the decedent's death. When Sam died, Joseph Leo Simeon and Stephen (Steven Aloysius) Simeon were still living. These individuals or their estates were entitled to an intestate share of Sam's estate. Because they died before Judge Hammett's order was issued, their shares went into their own estates and passed to their heirs through probate of those estates. Judge Hammett thus properly listed these individuals as Sam's heirs.

Appellant next questions why Judge Hammett's order determining heirs was given to BIA rather than to her. Judge Hammett's order is an official document of the United States government. BIA is responsible for ensuring the preservation of records affecting title to Indian trust or restricted land. The original order was properly retained under Federal custody.

Appellant also alleges that Lot 5, Block 7, Aniak, Alaska, should have been included in Sam's estate. This lot, which contains a house, was not held in Indian trust or restricted status. Accordingly, the property passed through state court probate. The state court admitted Sam's will to probate. In accordance with the terms of that will, the lot passed to Sam's grandson, Jerry Simeon, apparently Gerald Simeon. The lot was properly not included in Judge Hammett's order.

Much of the rest of appellant's brief is apparently concerned with the present status of the Discovery Creek allotment. It appears possible that appellant misunderstood the inventory of Stephen's estate, and believes that, somehow, Stephen acquired the entire interest in the allotment. This is not the case. The inventory states Stephen owned only a 6/30 interest in the allotment. This is the interest Judge Hammett determined passed to Stephen under intestate succession from Sam's estate.

Appellant also suggests that another individual and either or both the Calista Corporation and Kuskokwim Corporation, set up under the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. §§ 1601-1629a (1982), have claimed the Discovery Creek allotment. AVCP's response to these allegations is that their records show the allotment is owned by Sam's heirs as determined by Judge Hammett, and there is no record of any claims filed for this property under ANCSA, either by an individual or by a regional corporation.

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4/ The Board notes that if Sam's will had been admitted to probate for Departmental purposes, appellant would have received, at most, \$1.

The Board thus finds that appellant owns an interest in the Discovery Creek allotment with her nieces and nephews as determined by Judge Hammett in the probate of the estates of Sam A. Simeon and Stephen (Steven Alcysius) Simeon. She is entitled to use and possess this interest in accordance with the law of joint ownership. She is not, however, entitled to the whole interest in the allotment.

Finally, appellant asks that the Indian Health Service provide her with a complete medical examination and find a physical cause for certain pains she is experiencing. The Board, which is part of the Department of the Interior, lacks any kind of authority over the Indian Health Service, which is part of the Department of Health and Human Services.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, Judge Hammett's April 14, 1986, order denying reopening in these estates is affirmed.

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//original signed

Kathryn A. Lynn  
Administrative Judge

I concur:

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//original signed

Anita Vogt  
Acting Chief Administrative Judge