



INTERIOR BOARD OF INDIAN APPEALS

Estate of Louella Bertha Williams Johnk

15 IBIA 174 (04/16/1987)



United States Department of the Interior

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

ESTATE OF LOUELLA BERTHA WILLIAMS JOHNK

IBIA 87-1

Decided April 16, 1987

Appeal from an order denying rehearing issued by Administrative Law Judge Keith L. Burrowes in Indian Probate IP BI 487B 85.

Modified in part, affirmed in part.

1. Indian Probate: Generally

The Catholic Church is an eligible devisee of Indian trust or restricted property located on the Crow Indian Reservation, Montana.

APPEARANCES: Owen B. Williams, Jr., pro se; Ralph L. Herriott, Esq., Billings, Montana, for appellee.

OPINION BY ADMINISTRATIVE JUDGE LYNN

On October 6, 1986, the Board of Indian Appeals (Board) received a notice of appeal from Owen B. Williams, Jr. (appellant). Appellant sought review of an order nunc pro tunc and order denying petition for rehearing entered in the estate of Louella Bertha Williams Johnk (decendent) by Administrative Law Judge Keith L. Burrowes on July 29, 1986. Judge Burrowes' order corrected in minor detail, but essentially let stand, an April 11, 1986, order approving decendent's last will and testament and ordering distribution of her Indian trust or restricted estate to The Most Reverend Thomas J. Murphy, The Roman Catholic Bishop of Great Falls, Montana (appellee). For the reasons discussed below, the Board modifies the Judge's order in part, and affirms it in part.

Background

Decendent, allottee 3629 of the Crow Indian Reservation, Montana, was born on February 6, 1906, and died on August 15, 1984. A hearing was held before Judge Burrowes on March 13, 1986, to determine decendent's heirs and inquire into the facts and circumstances surrounding the execution of a document purported to be her last will and testament. The will was dated November 14, 1963, with a codicil dated August 20, 1973. Clause 4 of the will, the major dispositive provision, states:

I give, devise and bequeath my entire estate, whether real, personal or mixed property and wheresoever located, including any property to which I might be entitled at the time of my death,

to the Roman Catholic Bishop of Great Falls, Montana, a sole corporation, of Great Falls, Montana, for use at St. Francis Xavier's Mission, Big Horn County, Montana, on the Crow Indian Reservation, in educating Crow Indian children in the basic fundamentals of farming and ranching through F.F.A. and 4H Club programs.

Only appellant 1/ and an attorney for appellee attended the hearing. No evidence was presented at the hearing indicating decedent lacked testamentary capacity or was acting under undue influence in the execution of the will or codicil. 2/

By order dated April 11, 1986, Judge Burrowes approved decedent's will and made findings of fact concerning the persons who would have been her heirs if she had died intestate. He further found decedent owned interests in six allotments on the Crow Reservation that were subject to escheat to the Crow Indian Tribe under the provisions of the Indian Land Consolidation Act, 25 U.S.C. § 2206 (1982). He ordered the remainder of decedent's trust or restricted estate distributed to appellee in accordance with decedent's will.

On June 10, 1986, appellant filed an objection to Judge Burrowes' order. Part of appellant's concern dealt with minor errors in the findings relating to those persons who would have been decedent's heirs. His major objection, however, concerned the devise to appellee, which he stated "in effect grants a land subsidy to the Roman Catholic Church in violation of the first amendment clause of the Constitution of the United States and conflicts with the trust responsibilities of the U.S. Government to the Crow Tribe and administered by the Department of [the] Interior" (Objection at 2).

By order dated July 29, 1986, Judge Burrowes made minor corrections in the original findings of heirs and denied rehearing on the devise to appellee. Judge Burrowes found appellee was eligible to take a devise of land on the Crow Indian Reservation, and that appellant's disagreement with decedent over such a devise did not invalidate it.

Appellant's notice of appeal was filed in the office of Judge Burrowes on September 29, 1986. The Judge forwarded the appeal to the Board, where it was received on October 6, 1986. On October 14, 1986, appellee objected to the notice of appeal on the grounds that it was untimely, presented no justiciable issue, and sought relief on constitutional grounds not within the jurisdiction of the Board.

By order dated November 18, 1986, the Board held the notice of appeal was timely filed and appellee's remaining arguments should be addressed after briefing. Although the parties were given an opportunity to submit briefs, no briefs have been filed.

1/ Appellant was decedent's brother and would have received a portion of her estate if she had died intestate or the will had been disapproved.

2/ The codicil merely changed the bank nominated as executor of decedent's estate.

Discussion and Conclusions

Appellant first objects that the date of decedent's death listed in Judge Burrowes' order is incorrect. The order shows the year of death as 1983. It appears decedent died in 1984 as appellant states. Accordingly, the date of decedent's death is hereby corrected to read August 15, 1984.

[1] The remainder of appellant's objections appear to continue his opposition to a devise to the Catholic Church. Although it is clear appellant does not believe decedent should have devised her property to the church, it is equally clear she had every legal right to do so. There is no evidence the devise was not her own wish. Furthermore, a devise to the church does not constitute a violation of either the First Amendment to the United States Constitution or the Federal trust responsibility. The First Amendment prohibits the Federal government from interfering with an individual's freedom of religious beliefs and practices. Carrying out a decedent's wishes by conveying property to her devisee does not interfere with her freedom of religious beliefs and practices. The trust responsibility also requires the Federal government to carry out the decedent's testamentary wishes. The fact that appellant's wishes differ from decedent's does not alter the government's responsibility to decedent.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, Judge Burrowes' April 11 and July 29, 1986, orders in this estate are modified in part and affirmed in part as indicated in this opinion.

//original signed
Kathryn A. Lynn
Administrative Judge

I concur:

//original signed
Anita Vogt
Acting Chief Administrative Judge