



INTERIOR BOARD OF INDIAN APPEALS

Estate of Mary Lenna Whiteshirt Littlebird Ross

16 IBIA 4 (11/16/1987)



United States Department of the Interior

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

ESTATE OF MARY LENNA WHITESHIRT LITTLEBIRD ROSS

IBIA 87-37

Decided November 16, 1987

Appeal from an order denying rehearing issued by Administrative Law Judge Sam E. Taylor in Indian probate No. IP OK 124 P 85-1.

Affirmed.

1. Indian Probate: Settlement

An agreement by the heir or heirs in an Indian probate proceeding to share trust or restricted property with certain named individuals who are not heirs does not create a right for other non-named individuals to also share in the property, even if the non-named individuals stand in the same relationship to the decedent as the named individuals.

APPEARANCES: Virgie Rose Whiteshirt Jones, Salome Whiteshirt Matanane, pro sese; Mary Elizabeth Horn Hawk, pro se; Arthur Stevener, Jr., Esq., El Reno, Oklahoma, for Robert Littlebird.

OPINION BY ACTING CHIEF ADMINISTRATIVE JUDGE LYNN

On May 19, 1987, the Board of Indian Appeals (Board) received a notice of appeal from Virgie Rose Whiteshirt Jones and Salome Whiteshirt Matanane (appellants), appearing pro sese. Appellants sought review of a March 20, 1987, order denying rehearing issued in the estate of Mary Lenna Whiteshirt Littlebird Ross (decedent) by Administrative Law Judge Sam E. Taylor. Denial of rehearing let stand a January 14, 1987, order determining decedent's heirs and approving a compromise settlement. For the reasons discussed below, the Board affirms the orders.

Background

Decedent, an Arapaho Unallottee, died intestate on July 22, 1984. Because she died possessed of property in trust or restricted status, a hearing to probate that property was held before Judge Taylor on June 25

and October 22, 1985. Evidence introduced at the hearing indicated decedent had no natural children, but had adopted Robert Neely Littlebird (appellee) pursuant to the provisions of 25 U.S.C. § 372a(1)(c) (1982). 1/ Further evidence identified numerous collateral relatives, including many nieces and nephews. 2/

In his order of January 14, 1987, Judge Taylor found that under the laws of intestate succession in both Oklahoma and South Dakota, the States in which decedent's trust or restricted property was located, appellee was decedent's sole heir for the purpose of inheriting that trust or restricted property.

The Judge also considered whether a settlement agreement entered into by appellee and decedent's nieces and nephews should be approved. Recognizing that the validity of appellee's adoption might be questioned in state court probate proceedings concerning decedent's non-trust property, the agreement provided for a division of both decedent's trust or restricted property and her non-trust property between appellee and the other signators. Judge Taylor found the agreement was fair and in the interest of all parties to it. Therefore, he approved the agreement and ordered distribution of decedent's trust or restricted property in accordance with its terms.

By separate letters dated March 10, 1987, appellants sought rehearing of Judge Taylor's approval of the agreement. Appellants contended they and their brother, Guy Whiteshirt, were also nieces and a nephew of decedent and had not been included in the agreement. By order dated March 20, 1987, Judge Taylor denied rehearing, stating petitioners were "not heirs and therefore even if the Agreement had not been approved, they would not share in the estate. This office cannot make compromise agreements for the parties, it can, as was done herein, review and approve compromise agreements otherwise made by the parties."

The Board received appellants' notice of appeal from this order on May 19, 1987. Appellants made no further filing to the Board beyond their notice of appeal. Mary Elizabeth Horn Hawk, one of the signators on the agreement, filed a letter on her own behalf.

1/ As relevant to this case, section 372a provides:

"In probate matters under the exclusive jurisdiction of the Secretary of the Interior, no person shall be recognized as an heir of a deceased Indian by virtue of an adoption --

"(1) Unless such adoption shall have been * * *

"(c) by a written adoption approved by the superintendent of the agency having jurisdiction over the tribe of which either the adopted child or the adoptive parent is a member, and duly recorded in a book kept by the superintendent for that purpose * * *."

All further citations to the United States Code are to the 1982 edition.

2/ It was alleged that decedent had also adopted John D. Whiteshirt and Marvin Lee Whiteshirt. Judge Taylor found these alleged adoptions were not cognizable under 25 U.S.C. § 372a. No appeal was taken from this finding.

Discussion and Conclusions

Appellee has requested expedited consideration of this case on the grounds that there is an approved claim against the estate by the Internal Revenue Service, U.S. Department of the Treasury. The claim involves accumulating interest. Appellee's motion for expedited consideration is granted.

There is only one question before the Board in this appeal: Did Judge Taylor improperly approve the settlement agreement presented to him in this estate because it did not include appellants and Guy Whiteshirt? The Department is authorized to approve settlement agreements in probate cases by 43 CFR 4.207, which states in pertinent part:

(a) If during the course of the probate of an estate it shall develop that an issue between contending parties is of such nature as to be substantial, and it further appears that such issue may be settled by agreement preferably in writing by the parties in interest to their advantage and to the advantage of the United States, such an agreement may be approved by the administrative law judge upon findings that:

(1) All parties to the compromise are fully advised as to all material facts;

(2) All parties to the compromise are fully cognizant of the effect of the compromise upon their rights; and

(3) It is in the best interest of the parties to settle rather than to continue litigation.

In the present case, there is no question that appellee was entitled to receive decedent's entire trust or restricted estate as decedent's adopted son. The evidence showed all requirements of 25 U.S.C. § 372a had been met and the adoption was proper. See also Estate of Victor Young Bear, 8 IBIA 254, 88 I.D. 410 (1981). Therefore, absent the agreement, all of decedent's trust or restricted property would have passed to appellee.

The validity of appellee's adoption was not so obvious for state court probate purposes. An adoption under 25 U.S.C. § 372a(1)(c) might not have met state law adoption requirements. The agreement was entered into in an attempt to avoid the protracted litigation that would have resulted if this question were fully considered in state court.

[1] There is no dispute that appellants and their brother were not parties to the agreement. Mary Hawk states they were not included because the other nieces and nephews questioned whether appellants' father was in fact decedent's brother. ^{3/} Regardless of the motivation for not including appellants and their brother in the agreement, appellee was under no obligation to agree to relinquish a portion of decedent's trust or restricted

^{3/} The Board makes no finding in regard to this allegation.

estate to any other person or persons. The estate was rightfully his. His agreement to share the trust or restricted property with certain named individuals who were not heirs to that property does not create a right for other, non-named individuals to also share in the property, even if they stood in the same relationship to the decedent as the named individuals. 4/

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, Judge Taylor's March 20, 1987, order denying rehearing is affirmed.

//original signed
Kathryn A. Lynn
Acting Chief Administrative Judge

I concur:

//original signed
Anita Vogt
Administrative Judge

4/ This decision in no way restricts whatever rights appellants may have relative to decedent's non-trust property.