



INTERIOR BOARD OF INDIAN APPEALS

Estate of Mary A. Justine Garrick

16 IBIA 13 (11/25/1987)



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 A. JUSTINE GARRICK

IBIA 87-39

Decided November 25, 1987

Appeal from an April 6, 1987 order after rehearing issued by Administrative Law Judge Robert C. Snashall in Indian probate Nos. IP PO 207L 86-253, IP PO 96L 86-109.

Affirmed as modified.

1. Indian Probate: Claim Against Estate: Care and Support

A general promise of compensation given by an Indian decedent for care and support is not invalid or unenforceable in a Departmental probate proceeding merely because specific sums or terms of compensation are not recited in the promise.

APPEARANCES: Alberta Garrick Stensgar and Roberta L. Garrick Nomee Juneau, pro sese; Dennis O. McMullen, Esq., Veradale, Washington, for appellee.

OPINION BY ACTING CHIEF ADMINISTRATIVE JUDGE LYNN

On June 4, 1987, the Board of Indian Appeals (Board) received a notice of appeal from Alberta Garrick Stensgar and Roberta L. Garrick Nomee Juneau (appellants). Appellants sought review of an order after rehearing issued on April 6, 1987, in the estate of Mary A. Justine Garrick (decedent) by Administrative Law Judge Robert C. Snashall. For the reasons discussed below, the Board affirms that order as modified in this opinion.

Background

Decedent, Coeur d'Alene Allottee 181-214 of the Northern Idaho Indian Agency, was born on August 8, 1900, and died on April 20, 1985. A hearing to probate her trust or restricted property was held before Judge Snashall on June 16, 1986. Evidence presented at the hearing showed decedent had no children or surviving spouse, but had numerous collateral relatives, many of whom she had raised. A will dated July 15, 1983, was presented at the hearing. Although Bertha Roullier, decedent's step-daughter (appellee), questioned whether or not decedent might have executed another will subsequent to 1983, no one disputed her competency to make the July 1983 will. Appellee also filed a claim against decedent's estate for \$9,600, for care provided to decedent.

Because of the possibility that a later will might have been executed, Judge Snashall ruled that a continuance would be necessary. 1/ In order to expedite final resolution of the case, the Judge gave appellee 60 days in which to obtain any evidence as to the existence of a later will. Appellee also asked to have that additional time to present further evidence in regard to her claim against the estate. Judge Snashall decided to take testimony concerning the claim from the people at the hearing.

Appellee was unable to prove the existence of a later will. Therefore, on August 19, 1986, Judge Snashall entered an order approving decedent's July 15, 1983, will and denying appellee's claim as not having been substantiated in accordance with 43 CFR 4.250(d). 2/

Appellee sought rehearing on the denial of her claim. By order dated September 9, 1986, Judge Snashall granted rehearing on the limited question of the disallowed claim. Appellants filed a motion seeking, alternatively, dismissal of the claim or summary judgment. By order dated December 9, 1986, the Judge denied the motions, holding that appellee was entitled to a full and fair hearing on her claim. In the same order, he allowed distribution of the undisputed portion of decedent's estate.

A hearing on rehearing was held on February 11, 1987. Conflicting evidence was presented at the hearing. The only totally undisputed fact was that decedent needed assistance in daily living due to failing eyesight and complications from a broken hip that caused her to use a walker or wheelchair. Appellee testified that, after decedent left a rest home, she promised to pay appellee minimum wage for moving in with her full-time and caring for her. Appellee stated she lived with decedent for 6 months in 1981 and 2 months in 1985, but decedent only paid her small amounts from time to time. Appellants countered with testimony indicating decedent was receiving home care services from the Coeur d'Alene Tribe during 1981, was in the rest home from late 1981 through early 1982, other family members had not been aware appellee was living with decedent full-time and were themselves providing various types of assistance to decedent, friends of decedent were not aware appellee was living with her, and other family members believed appellee had asked decedent to allow appellee to move in with her.

Based on the evidence presented, appellee conceded she might have been mistaken about the year, and she might have lived with decedent during 1982 rather than 1981. She also stated that there was no further discussion of compensation for her assistance when she moved in with decedent in 1985. She continued to assert, however, that she had lived with decedent for an extended period and had provided services to decedent upon a promise of compensation.

1/ The continuance was granted in part because appellee had trouble obtaining an attorney and had employed the attorney who represented her at the hearing only the week before.

2/ Section 4.250(d) states: "Claims for care may not be allowed except upon clear and convincing evidence that the care was given on a promise of compensation and that compensation was expected."

By order dated April 6, 1987, Judge Snashall found decedent had promised to pay appellee for services rendered to her and the evidence presented by opponents of the claim failed to overcome appellee's showing. This decision was based in part on the Board's opinion in Estate of Lucille Mathilda Callous Leg Ireland, 6 IBIA 120 (1977). He further found that appellee had waived compensation for 1985; the amount of her claim, based on the minimum wage, could have been almost double what she was asking; and payment of \$9,600 was reasonable based upon the evidence as a whole. Accordingly, he approved her claim in the full amount of \$9,600.

Appellants appealed this order. The Board received their notice of appeal on June 4, 1987. Both appellants and appellee have filed briefs on appeal. 3/

Discussion and Conclusions

The Board's most detailed examination of the requirements for proof of a promise to pay for care was in Ireland, supra, cited by Judge Snashall. Although in Ireland, the care was given to the decedent's daughter rather than to the decedent personally, the Board applied the same standard in determining whether there had been an actual promise to pay for the care given.

As noted by Judge Snashall, the Board there held that the specific terms of the agreement to pay, such as the amount of compensation, did not need to be explicit in order to uphold the agreement. The essential fact was whether or not there was proof the decedent had actually promised to pay. The Board found sufficient proof in Ireland in the testimony of the decedent's uncle that the decedent had asked him to help her sell some property in order to obtain money to pay the claimant. The decedent died before the sale could be completed. In determining the amount of the payment to which the claimant was entitled, the Board considered the reasonableness of the itemized claim presented.

[1] The Board here reiterates that a general promise of compensation given by a decedent for care and support is not invalid or unenforceable merely because specific sums or terms of compensation are not recited in the promise. The question to be determined is whether or not there was an actual promise to pay.

In the present case, the evidence presented was conflicting. The Judge found that although appellee was confused about the year during which she provided care for decedent, she did provide such care. 4/ He further found that

3/ On appeal appellants have submitted evidence not presented to Judge Snashall. To the extent that new evidence was presented for the first time on appeal, it was not considered in this opinion. See Estate of Ella Dautobi, 15 IBIA 111 (1987), and cases cited therein.

4/ The Board takes official notice that uncertainty about specific dates is extremely common. Occurrences are frequently related to a particular event in memory. Here, appellee testified she stayed with decedent after decedent

evidence against the claim did not relate to the time in which care was given, or related to issues not directly relevant. He found no evidence directly refuting the claim of a promise to compensate appellee.

Judge Snashall's findings are not clearly against the weight of the evidence. Accordingly, they are affirmed.

As to the issue of the amount of compensation, Judge Snashall found appellee waived compensation for 1985, and for 24-hour services in 1982. He further found \$9,600 was reasonable compensation under the circumstances, and awarded appellee the full amount she claimed.

Appellee's written claim requests \$7,200 for 1982 and \$2,400 for 1985. Total compensation of \$9,600 for the six months claimed in 1982 represents an hourly wage of approximately \$2.22, based on a 24-hour day, or \$4.44, based on a 12-hour day. Such compensation would clearly be reasonable. However, based upon the Judge's finding that appellee waived compensation for 1985, it was improper to award her more than she claimed for 1982. Therefore, the amount awarded to appellee must be reduced to the \$7,200 claimed for 1982.

Appellants raise several other issues in their appeal brief which should be addressed. First, they argue appellee's claim should have been barred because she did not submit it to them in response to their advertisement to creditors in the local newspaper following decedent's death. Submission of claims against the trust or restricted property of an Indian decedent is governed by Federal regulations in 43 CFR 4.250. Relevant provisions of that regulation are:

(a) All claims against the estate of a deceased Indian held by creditors chargeable with notice of the hearing under § 4.211(c) shall be filed with either the Superintendent or the administrative law judge prior to the conclusion of the first hearing, and if they are not so filed, they shall be forever barred.

* * * * *

(c) Claims of individual Indians against the estate of a deceased Indian may be presented in the manner set forth in paragraph (b) of this section [in writing in triplicate, supplemented with an affidavit] or by oral evidence at the hearing where the claimant shall be subject to examination under oath relative thereto.

Based on this regulation, appellee's claim was properly submitted to the Judge.

fn. 4 (continued)

left the rest home. Appellee believed that was 1981. Appellants showed decedent left the rest home in 1982. The evidence is sufficient to allow appellee to seek compensation for services rendered in 1982.

Appellants apparently object that appellee did not notify the Judge and other parties timely of her employment of an attorney. Judge Snashall mentioned and the record shows that several attorneys made inquiries on appellee's behalf. Although she was not able to employ an attorney until the week before the initial hearing, her notification of that employment was sufficient.

Appellants also object that an itemized claim was not presented. It appears they expect an accounting type statement in which appellee entered due dates for payment, amount of payment due, and payment, if any. Under the circumstances here, the Board does not require such a payment schedule.

Finally, contrary to appellants' contentions, statements made in decedent's will concerning payment of funeral and last illness expenses, payment of \$1 to any individual shown to have a right to share in her estate, and non-intervention by courts are not relevant to this case. The trust or restricted property of an Indian decedent, with the exception of members of the Five Tribes, cannot, by Federal law, pass without some form of proceeding in the Department of the Interior. In view of decedent's tribal affiliation and the size of her estate, that proceeding must be a hearing before an Administrative Law Judge of the Office of Hearings and Appeals. Furthermore, appellee has been found entitled to part of decedent's estate as a claimant, not as an heir. Accordingly, the \$1 provision does not apply.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, Judge Snashall's April 6, 1987, order after rehearing is affirmed as modified in this opinion.

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

I concur:

//original signed
Anita Vogt
Administrative Judge