



INTERIOR BOARD OF INDIAN APPEALS

Estate of Leon Levi Harney

16 IBIA 18 (12/02/1987)



United States Department of the Interior

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

ESTATE OF LEON LEVI HARNEY

IBIA 87-26

Decided December 1, 1987

Appeal from an order denying petition for rehearing issued by Administrative Law Judge William E. Hammett in Indian Probate IP SA 360N-85.

Affirmed.

1. Indian Probate: Appeal: Matters Considered on Appeal

The Board of Indian Appeals is not required to consider arguments and evidence raised for the first time on appeal.

2. Indian Probate: Wills: Testamentary Capacity--Indian Probate: Wills: Undue Influence

The burden of proof as to testamentary incapacity or undue influence in Indian probate proceedings is on those contesting the will.

3. Indian Probate: Wills: Testamentary Capacity: Generally

To invalidate an Indian will for lack of testamentary capacity, the evidence must show that the decedent did not know the natural objects of his bounty, the extent of his property, or the desired distribution of that property.

4. Indian Probate: Wills: Undue Influence

To invalidate an Indian will because of undue influence upon a testator, it must be shown: (1) That he was susceptible of being dominated by another; (2) that the person allegedly influencing him in the execution of the will was capable of controlling his mind and actions; (3) that such person did exert influence upon the decedent of a nature calculated to induce or coerce him to make a will contrary to his own desires; and (4) that the will is contrary to the decedent's own desires.

APPEARANCES: Florine A. Maine, pro se.

OPINION BY ADMINISTRATIVE JUDGE VOGT

Appellant Florine A. Maine seeks review of a December 29, 1986, order issued by Administrative Law Judge William E. Hammett denying rehearing in the estate of Leon Levi Harney (decedent). For the reasons discussed below, the Board affirms that order.

Background

Decedent, an unallotted Shoshone-Paiute Indian of the Duck Valley Reservation, Nevada, was born on August 14, 1913, and died on April 17, 1985, in Portland, Oregon. He left a will, executed on September 6, 1984, in which he devised all his interests in trust land to John R. Beck, the nephew of his wife, Lucy Harney, and left the residue of his estate to his wife.

Judge Hammett held a hearing to probate decedent's trust estate on July 9, 1986, at Elko, Nevada. Appellant was unable to attend the hearing because of illness. However, on September 9, 1986, she wrote to the Superintendent, Eastern Nevada Agency, Bureau of Indian Affairs, stating that she wanted to contest decedent's will because she was decedent's daughter and therefore she, rather than John R. Beck, was entitled to receive decedent's trust property.

The Judge issued an order approving decedent's will on October 10, 1986. The order concluded in relevant part:

That in sworn testimony given at the hearing, Lucy Harney testified that [decedent] did not acknowledge [appellant] as his daughter; that this testimony as opposed to the unsworn statement of [appellant] constituted a preponderance of the credible evidence which establishes that [appellant] would not have been entitled to share in this estate even in the absence of a valid will;

That notwithstanding whether she is or is not an heir at law, [appellant] has not made a valid contest of the will, as the language of her September 9, 1986, letter indicates the basis of her contest of the will is that of defeated expectations and not that [decedent] lacked testamentary capacity, or was unduly influenced, or that execution of the will was procured by fraud.

Appellant petitioned for rehearing, again claiming that she was decedent's daughter. She included with the petition a copy of her birth certificate, which identifies decedent as her father.

Judge Hammett denied appellant's petition for rehearing on December 29, 1986, upon finding that it did not state any grounds which were not considered at the time the original order was entered.

The Board received appellant's notice of appeal from Judge Hammett's order on March 3, 1987. Only appellant filed a brief on appeal.

Discussion and Conclusions

On appeal to the Board, appellant contends that (1) her mother and decedent were married by Indian custom, making appellant the legitimate issue of decedent; (2) she is the legal heir of decedent; (3) decedent lacked testamentary capacity when he executed his will; and (4) the will scrivener, Verona M. Beck, is related to John R. Beck, the devisee of decedent's interests in trust land.

If decedent's will is valid, it does not matter whether appellant is decedent's daughter and/or his heir. An Indian testator has the right to dispose of his property as he sees fit, Tooahnippah v. Hickel, 397 U.S. 598 (1970), and thus decedent was entitled to omit any or all of his children or heirs from his will.

[1] Only appellant's third and fourth contentions concern decedent's will. Appellant raised neither of these arguments in the initial proceedings or in her petition for rehearing. The Board has held on many occasions that it is not required to consider arguments and evidence raised for the first time on appeal, although it may do so in extraordinary circumstances, through exercise of the inherent authority of the Secretary to correct a manifest error or injustice. E.g., Estate of Ella Dautobi, 15 IBIA 111, 120 (1987), and cases cited therein. Therefore, the Board is not required to consider appellant's third and fourth contentions, and will not consider them unless appellant has shown that such extraordinary circumstances exist.

[2] If the Board were to consider appellant's newly raised arguments, however, it would find that appellant failed to meet the burden of proof imposed upon a will contestant who alleges lack of testamentary capacity or undue influence. Estate of Thomas Longtail, Jr., 13 IBIA 136 (1985).

[3] Appellant's only support for her allegation that decedent lacked testamentary capacity is that decedent made certain statements in his will which she describes as confused and contradictory: (1) decedent stated on the first page of his will that he was omitting his wife, Lucy, from the will but on the second page left her the residue of his estate; and (2) decedent stated that he was without issue when in fact he was the father of appellant.

There are plausible explanations for decedent's statements, ^{1/} and those statements fall far short of the proof necessary to demonstrate lack of testamentary capacity. "To invalidate a will for lack of testamentary capacity, the evidence must show that the testator did not know the natural objects of his bounty, the extent of his property, or the desired distribution." Estate of Samuel Tsoodle, 11 IBIA 163, 166 (1983). Appellant has not shown that decedent lacked testamentary capacity.

^{1/} Decedent's statement that he was omitting his wife from his will appears in the will paragraph concerning specific devises and may have been intended to apply only to that paragraph. His statement that he was without issue is entirely consistent with testimony at decedent's probate hearing that he did not acknowledge appellant as his daughter.

[4] Appellant also seeks to invalidate the will on the grounds that the will scrivener is related to the devisee of decedent's trust land. However, a will is not invalid simply because the will scrivener is related to a beneficiary under the will. Appellant may be attempting to make a claim of undue influence. To invalidate an Indian will on the grounds of undue influence, it must be shown:

- (1) That the decedent was susceptible of being dominated by another;
- (2) that the person allegedly influencing the decedent in the execution of the will was capable of controlling his mind and actions; (3) that such a person did exert influence upon the decedent of a nature calculated to induce or coerce him to make a will contrary to his own desires; and (4) that the will is contrary to the decedent's own desires.

Longtail, 13 IBIA at 138. Appellant has not shown that decedent was subject to undue influence when he made his will.

Appellant has made no showing that a manifest error has been committed or that grounds exist upon which decedent's will may be invalidated.

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 December 29, 1986, order denying rehearing is affirmed.

//original signed
Anita Vogt
Administrative Judge

I concur:

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