



INTERIOR BOARD OF INDIAN APPEALS

Estate of Pauline Muchene Gilbert

17 IBIA 15 (11/03/1988)



United States Department of the Interior

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

ESTATE OF PAULINE MUCHENE GILBERT

IBIA 88-35

Decided November 3, 1988

Appeal from a June 20, 1988, order denying claim on rehearing issued by Administrative Law Judge Sam E. Taylor in Indian Probate IP OK 75 P 88-1.

Affirmed.

1. Indian Probate: Appeal: Generally--Indian Probate: Claim Against Estate: Timely Filing: Generally

The appellant bears the burden of proving the error of the decision from which the appeal is taken.

APPEARANCES: Oscar L. Jenkins, Esq., Assistant General Counsel, Oklahoma Department of Human Services, Oklahoma City, Oklahoma, for appellant.

OPINION BY CHIEF ADMINISTRATIVE JUDGE LYNN

On August 1, 1988, the Board of Indian Appeals (Board) received a notice of appeal from the State of Oklahoma Department of Human Services (appellant) seeking review of a June 20, 1988, order denying claim on rehearing issued by Administrative Law Judge Sam E. Taylor in the estate of Pauline Muchene Gilbert (decendent). For the reasons discussed below, the Board affirms that decision.

Background

Decendent, an unallotted Kickapoo of Oklahoma, died testate on April 19, 1987, at the age of 78 years. A hearing to probate her trust or restricted estate was held before Judge Taylor on January 27, 1988. Based on the evidence and testimony presented at the hearing, Judge Taylor issued an order approving decendent's will on January 29, 1988. In that order, Judge Taylor also approved a claim filed by the Wilson-Smith Funeral Home, Harrah, Oklahoma, relating to decendent's funeral and burial expenses. The order concludes: "No other claims were filed against this estate."

On March 28, 1988, Judge Taylor received a claim against decendent's estate in the amount of \$2,642 for alleged overpayments to decendent from appellant. The claim gave no explanation for the fact that it was filed after conclusion of the probate of decendent's estate.

By order dated June 20, 1988, Judge Taylor denied appellant's claim, stating that it was not timely filed under 43 CFR 4.211(a) and (c) 1/ and 4.250(a). 2/ Appellant appealed from this order to the Board. Although a briefing schedule was established by Board order of August 24, 1988, no briefs were filed on appeal.

Discussion and Conclusions

[1] On appeal, appellant bears the burden of showing the error in the decision from which it is appealing. See Estate of George Neconie, 16 IBIA 120 (1988), and cases cited therein. Appellant's notice of appeal merely notes the fact of its appeal, and says that a statement of reasons will follow. Appellant submitted nothing further. Because appellant has presented no arguments in support of its position, it has failed to show the error in Judge Taylor's decision. Accordingly, that decision must be affirmed.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the June 20, 1988, decision of Judge Taylor is affirmed.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

I concur:

//original signed
Anita Vogt
Administrative Judge

1/ 43 CFR 4.211(a) provides that an Indian probate hearing shall not be held until "after [the Administrative Law Judge] has caused notice of the time and place of the hearing to be posted at least 20 days in five or more conspicuous places in the vicinity of the designated place of hearing."

Section 4.211(c) states that "[a]ll parties in interest, known and unknown, including creditors, shall be bound by the decision based on such hearing if they lived within the vicinity of any place of posting during the posting period, whether they had actual notice of the hearing or not."

2/ 43 CFR 4.250(a) states:

"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."