



INTERIOR BOARD OF INDIAN APPEALS

Estate of Milton Smith

17 IBIA 29 (12/14/1988)



## United States Department of the Interior

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

ESTATE OF MILTON SMITH : Order Docketing and Dismissing  
: Appeal  
:  
: Docket No. IBIA 89-5  
:  
: December 14, 1988

On November 29, 1988, the Board of Indian Appeals (Board) received a notice of appeal from Lewis O. Smith (appellant), appearing pro se. Appellant raises questions concerning the appointment of an administratrix for the estate of Milton Smith (decedent), a member of the Eastern Band of Cherokee Indians. Appointment of the administratrix was apparently made in accordance with the terms of decedent's will by the Court of Indian Offenses for the Eastern Band of Cherokee Indians (CFR court).

The appeal is docketed under the above case name and number which should be cited in all future correspondence or inquiries regarding the matter. The Board finds, however, that the circumstances of this case require that the appeal be dismissed because the Board lacks jurisdiction to hear this matter.

The Department of the Interior has jurisdiction to probate the estates of Indians who die owning property held either in trust status or under a restriction against alienation without the consent of the Secretary of the Interior. It does not have jurisdiction to probate the estate of an Indian who did not own property either in trust or restricted status. See, e.g., 25 U.S.C. §§ 372-373 (1982); Estate of Pansy Jeanette (Sparkman) Oyler, 16 IBIA 45, 47 (1988), and cases cited therein.

In general, probate jurisdiction for the Eastern Band of Cherokee rests with the CFR court. 25 CFR 11.1(a)(21) and 11.31-.32. The Board does not have jurisdiction to review probate decisions entered by the Court of Indian Offenses for the Eastern Band of Cherokee.

Appellant merely disputes the appointment of an administratrix for decedent's estate and makes no allegation that decedent owned property in trust or restricted status. Appellant's filings do not show any Board jurisdiction over the estate of Milton Smith. Accordingly, appellant's remedies lie with the CFR court.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal is dismissed for lack of jurisdiction.

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Kathryn A. Lynn  
Chief Administrative Judge

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//original signed  
Anita Vogt  
Administrative Judge