



INTERIOR BOARD OF INDIAN APPEALS

Scott W. Bradshaw, et al. v. Acting Muskogee Area Director,
Bureau of Indian Affairs

18 IBIA 339 (07/03/1990)

Related Board case:
17 IBIA 116



United States Department of the Interior

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

SCOTT W. BRADSHAW, ET AL.

v.

ACTING MUSKOGEE AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 90-20-A

Decided July 3, 1990

Appeal from a decision concerning the distribution of an Osage headright.

Affirmed.

1. Estoppel--Indians: Generally

In order to estop the Government, the party seeking estoppel must show, at least, that the traditional elements of estoppel are present. Thus, the party seeking estoppel must show that: (1) the party to be estopped knew the facts; (2) he intended that his conduct should be acted on or so acted that the party asserting the estoppel had a right to believe it was so intended; (3) the latter was ignorant of the true facts; and (4) he relied on the former's conduct to his injury. Additionally, the party seeking estoppel must show that the overnment engaged in affirmative misconduct and that the allegedly estopping statements were made in writing by an official at a policy-making level.

2. Indians: Generally--State Courts

The Federal Government is not bound by a State court decision to which the Federal Government was not a party.

3. Indian Probate: Wills: Construction of--Indians: Osage Headrights

The Secretary of the Interior, as trustee under a testamentary trust including an Osage headright interest, is bound to carry out the testamentary restrictions imposed by the testator.

APPEARANCES: Scott W. Bradshaw, Esq., Tulsa, Oklahoma, pro se; Donald T. Ubben, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for appellee.

OPINION BY CHIEF ADMINISTRATIVE JUDGE LYNN

Appellants Scott W. Bradshaw, Billie Louise Webster, Alice Ann Bradshaw Allen, William Kenneth Anquoe, John Williams Tiger, Nicki Louise Webster Thomas, and Nicholas Garrett Webster seek review of a September 25, 1989, decision of the Acting Muskogee Area Director, Bureau of Indian Affairs (BIA; appellee), concerning the distribution of the Osage headright of Mary Thompson Williams, deceased. For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

Background

Mary Thompson Williams, Osage Allottee No. 727 (decedent), died testate on February 2, 1962. Under the terms of her last will and testament, the bulk of decedent's estate was transferred to two testamentary trusts to be administered jointly by her non-Indian husband, Estol N. Williams, and the First National Bank and Trust Company of Tulsa (bank). Testamentary Trust A provided for decedent's husband during his lifetime. Upon decedent's husband's death, all principal and undistributed income from Trust A was to be added to Trust B. Trust B provided for decedent's two daughters and six grandchildren. Upon the death of the last named trust beneficiary, the trust was to terminate and all trust assets were to be distributed, per stirpes, to decedent's lineal descendants. Relevant provisions of decedent's will establishing and governing these trusts are set forth in Appendix A.

Decedent's husband died in 1974. Her daughter Mary Helen Anquoe died in 1981. Appellants are decedent's remaining daughter and six grandchildren named in the will. Appellants state that no additional grandchildren have been born since decedent's death. None of the appellants hold certificates of competency.

At the time of her death, part of decedent's estate which was to be transferred to the testamentary trusts was a 1.00000 Osage headright. Probate of decedent's will through the Oklahoma court system became final in 1965. Following some questions concerning whether the headright could be transferred to the bank as part of the trust res, BIA acknowledged in 1967 that legal title to the headright was held by the bank as the trust administrator. Pursuant to the terms of decedent's Will, appellants received monthly payments from the trust.

On April 29, 1980, appellants wrote to the Superintendent, Osage Agency, BIA (Superintendent), requesting a legal opinion regarding the status of decedent's headright from the Department's Pawhuska Field Solicitor. Appellants raised two issues arising from the fact that legal title to decedent's headright was in the bank: (1) what were their tribal voting privileges in view of the fact that Osage voting rights are dependent upon legal ownership of a headright interest and (2) as legally incompetent Osage Indians, income from the headright should be exempt from tax, but was not because the bank was the legal owner of the headright.

During the course of extended discussions among appellants, BIA, and the bank, Congress passed the Act of October 30, 1984, P.L. 98-605, 98 Stat. 3163. As relevant to this appeal, that Act provides in section 3(b)(6):

In the case of any property or interest in property (including any headright) which was held by any Osage Indian decedent at the time of death of such Indian and is subject to any restriction against alienation, or which was held by the United States in trust for the benefit of any Osage Indian decedent, and which is property, or an interest in property, included in a testamentary trust created by a Will of such decedent--

(1) Only the Secretary of the Interior may be appointed as, or may serve as, trustee with respect to any share of such trust property relating to a beneficiary of such trust who is an Indian with respect to whom--

(A) A certificate of competency has never been issued, or

(B) A certificate of competency has been revoked by the Secretary of the Interior.

On July 11, 1986, the Superintendent informed the bank that he interpreted P.L. 98-605 to apply retroactively so that the bank could not serve as trustee of decedent's headright. Accordingly, the Superintendent requested that the bank procure an order from the District Court of Tulsa, Oklahoma, appointing the Secretary of the Interior as trustee of the headright.

The bank opposed this request, arguing that the act could not be applied retroactively. Following more protracted discussions and litigation, including an appeal to this Board, ^{1/} an order was entered on February 13, 1989, by the Tulsa District Court under which the court found: "[T]he Secretary of the Interior should be the trustee of the Osage Indian headright now included in the corpus of the Mary Thompson Williams Trust." This order was entered with the agreement and upon the request of appellants and the bank.

Transfer of the headright to the Secretary had the immediate beneficial effect that income was no longer subject to taxation. Questions remained, however, concerning appellants' Osage voting rights. Appellants sought disbursement of all accumulated income and distribution of the headright as follows: A .3333333 headright interest to Billie Louise Webster, decedent's surviving daughter, and a .1111111 headright interest to each of the six remaining appellants, decedent's grandchildren. Appellants further agreed that, upon the death of Billie Louise Webster, her headright interest would be distributed equally to the six grandchildren,

^{1/} See First National Bank & Trust Co. v. Muskogee Area Director, 17 IBIA 116 (1989).

or their Osage heirs per stirpes. This distribution would give each grandchild, or his or her Osage heirs, a .1666666 headright interest. If implemented, this plan would result in the total distribution of decedent's headright to appellants.

It appears that the Superintendent initially agreed with appellants that such a distribution could be made. However, on March 21, 1989, he denied the requested distribution. Pursuant to an objection filed by appellants, the Superintendent reaffirmed this decision on April 28, 1989, and informed appellants of their appeal rights.

Appellants appealed the decision to appellee and filed an extensive brief. On September 25, 1989, appellee affirmed the Superintendent's decision.

The Board received appellants' appeal from this decision on October 26, 1989. Both appellants and appellee filed briefs on appeal. 2/

Discussion and Conclusions

Appellants argue: (1) the denial of their request for distribution of decedent's headright and disbursement of the accumulated interest should

2/ As an exhibit to their opening brief, appellants submitted a Jan. 4, 1990, order nunc pro tunc of the Tulsa District Court. The order states that it was entered on the application of the trust beneficiaries, present appellants. The order further states:

“3. So long as title to the Headright remained vested in the [bank] and subject to the trust provisions * * *, none of the trust beneficiaries would be permitted to participate as citizens in the Osage Nation of Indians * * *.

“4. The beneficiaries sought through this action, and the [bank] agreed that it was advisable and in the best interests of the trust beneficiaries that action be taken to assist the beneficiaries to obtain a transfer of the Headright to the Secretary of the Interior of the United States thereby placing that interest under federal trusteeship so as to enable the beneficiaries to obtain all of the rights and privileges of citizenship as members of the Osage Nation.

* * * * *

“6. On February 13, 1989, with the approval of this Court, the [bank], as trustee, transferred and conveyed all of its right, title and interest in and to the 1.00000 Osage Indian Headright, free and clear of private trust restrictions of the Mary Thompson Williams Testamentary Trust, to the Secretary of the Interior of the United States for the benefit of the persons named as beneficiaries of the Mary Thompson Williams Testamentary Trust, on the condition that the same be held under federal trusteeship as governed by federal Indian law and on the condition that the rights and benefits which are inherent therein be distributed to the beneficiaries pursuant to federal Indian law for the purpose of effecting the Osage Indian civil rights objectives hereinabove stated.”

be estopped as an abuse of discretion, (2) section 3(b)(6) of P.L. 98-605 is remedial legislation intended to restrict an Osage testator's right to impose testamentary restrictions on restricted property, (3) the headright was severed from the corpus of the trust and is no longer subject to any testamentary restrictions, and (4) the terms of the testamentary trust do not prevent distribution of the headright or disbursement of the IIM account.

Appellants' estoppel argument is based upon their allegation that, but for the agreement of the Superintendent in 1984 to distribute the Osage headright to them, they would not have engaged in a prolonged and costly attempt to have legal title to the headright changed from the bank to the Secretary. They contend that the Superintendent's reversal of his 1984 position is an abuse of discretion and he should be estopped from changing his position because they relied to their detriment on that position. ^{3/}

[1] The law of estoppel as it relates to the Federal Government is well developed. As the Board stated in Falcon Lake Properties v. Assistant Secretary - Indian Affairs, 15 IBIA 286, 298 (1987):

Although it has not been definitively settled whether there are any circumstances in which the Government may be estopped, it is clear that one who seeks to estop the Government must at least demonstrate that the traditional elements of estoppel are present. It is also clear that such a person bears a heavier burden than one who seeks to estop a private party. Heckler v. Community Health Services, 467 U.S. 51, 60-61 (1984); id. at 68 (Rehnquist, J., concurring).

The traditional elements of estoppel are:

(1) The party to be estopped must know the facts; (2) he must intend that his conduct shall be acted on or must so act that the party asserting the estoppel has a right to believe it is so intended; (3) the latter must be ignorant of the true facts; and (4) he must rely on the former's conduct to his injury.

Morris v. Andrus, 593 F.2d 851, 854 (9th Cir. 1978), cert. denied, 444 U.S. 863 (1979).

As also discussed in Falcon Lake, the courts have developed additional elements that must be satisfied when a party seeks to estop the Government. Thus, the party seeking to invoke estoppel must show that the Government

^{3/} The Board notes that although appellants suggest they have not benefitted from the transfer of title to the Secretary, they have received at least one of their stated objectives; i.e., income is no longer subject to taxation. This is not an insubstantial benefit.

engaged in “affirmative misconduct,” Immigration and Naturalization Service v. Miranda, 459 U.S. 14 (1982); and that the allegedly estopping statements were made in writing by an official at a policy-making level, United States v. Huebner, 752 F.2d 1235 (7th Cir. 1985). Appellants have failed to make either of these showings.

In this case, the traditional elements of estoppel are not present. No facts were concealed or known by the Superintendent that were unknown to appellants. The “facts” here involve an interpretation of law. To the extent appellants relied on the Superintendent's opinion that a distribution could be made to them as a matter of law, they assumed the risk that the Superintendent's opinion was in error. Heckler, 467 U.S. at 63 n.17; Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947). Further, there is nothing in the record to indicate that the Superintendent's agreement to distribute the headright was made in writing or that he was an official authorized to make an interpretation of law for the Department. Accordingly, the Board rejects appellants' estoppel argument.

Appellants' second and third arguments are related in that both rely on the theory that once the headright was removed from the trust administered by the bank, it was removed from the testamentary restrictions imposed by decedent's will. These arguments are based both on section 3(b)(6) of P.L. 98-605 and the January 4, 1990, order nunc pro tunc issued by the Tulsa District Court.

As to P.L. 98-605, appellants contend that this legislation was intended to remove all testamentary restrictions as to Osage headrights. Appellants thus argue that the legislation prohibits a testator from placing any testamentary restrictions on the distribution of a headright.

Appellants' argument is unpersuasive. P.L. 98-605 is clear on its face that the evil it sought to cure was the placing of legal title to Osage headrights in a private trustee. To cure this evil, the legislation required that any testamentary trust that included a headright was restricted so that only the Secretary could serve as trustee of that portion of the trust which included the headright interest. The legislation limits only the choice of trustee; it in no way limits any other testamentary restrictions that a testator might choose to impose.

Appellants also contend that the January 4, 1990, order nunc pro tunc requires a reversal of appellee's decision because it clearly states that the headright was removed from the trust res. They argue that this determination is binding upon the Secretary because it was issued by the court with original jurisdiction over decedent's will and the administration of her testamentary trust.

[2] Initially, it is clear from the papers signed by the court that the only parties before it on January 4, 1990, were appellants and the bank, even though the headright had been transferred to the Secretary's trusteeship before that date. In Drummond v. United States, 324 U.S. 316, 318 (1945), a case also involving restricted Osage property and an Oklahoma State court decision, the Supreme Court stated:

If the United States in fact employs counsel to represent its interest in a litigation or otherwise actively aids in its conduct, it is properly enough deemed to be a party and not a stranger to the litigation and bound by its results * * * But to bind the United States when it is not formally a party, it must have a laboring oar in a controversy. [Citations omitted.]

The United States did not have "a laboring oar" in this controversy before the Oklahoma State court, and so is not bound by that court's determination.

[3] The Board thus holds that the transfer of legal title to decedent's headright from the bank to the Secretary did not remove any restrictions placed upon the headright under the terms of decedent's testamentary trust. The Secretary is bound, as was the bank, to carry out decedent's intent as set forth in her will.

Finally, appellants argue that the trust was clearly designed to be administered in a flexible manner to meet the needs of the trust beneficiaries. They contend they "need and request the Secretary of the Interior to order the Superintendent to provide them with 'citizenship,' and quarterly disbursements" from the headright (July 15, 1989, Brief at 16; emphasis in original).

Appellants are correct that the trust is very liberal in providing for their economic needs from the income generated by the trust and through sale of the trust res should income alone prove insufficient. The trust also, however, includes a spendthrift clause in Article VIII, which provides:

None of the beneficiaries shall have any power to give, grant, sell, convey, mortgage, pledge or otherwise dispose of, incumber or anticipate the income or corpus of this estate, or any installments thereunder, or any share in the principal thereof, it being my will that no right of disposition of any such property shall vest in any beneficiary until the expiration of the Trusts, the division of the properties and actual delivery thereof to my heirs as designated herein.

It thus appears that decedent's testamentary intent was to provide income for her named beneficiaries and to restrict their right to dispose of any portion of the trust res that might remain after providing for their economic needs. 4/

4/ Appellants contend that decedent was an active participant in Osage tribal politics. She can, therefore, be presumed to have had knowledge of the effect placing her headright in this form of trust would have. Decedent appears to have been much more concerned with the economic condition of her beneficiaries than with their Osage political condition.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Acting Muskogee Area Director's September 25, 1989, decision is affirmed.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

I concur:

//original signed
Anita Vogt
Administrative Judge

APPENDIX A

ARTICLE I.

1. It is my intention to contribute after my death to the care, upkeep, support and maintenance of my children and grandchildren and to make suitable provision for my husband during his lifetime, and to establish proper trust arrangements for such purposes.

* * * * *

ARTICLE V.

Provisions Relating to Distribution
of Income and Principal.

The income and principal of the Trust estates herein created shall be administered and distributed as follows:

* * * * *

3. The net income from TRUST B shall be paid as follows:

a. To my daughters, Mary Helen Anquoe and Billie Louise Webster, shall be paid the sum of \$300.00 each per month, said monthly payments to begin on the first day of each month thereafter for the remainder of their natural lives; and my Executor, hereinafter appointed, shall have the same power of distribution for this purpose out of the corpus of my estate as is herein specified for the Trustee; provided that should my daughters or either of them receive any funds derived from gifts of monies from relatives or other persons, of which the Trustee shall have and receive written notice, such sums shall be deducted from the monthly payments of \$300.00 each, so that the said monthly payments shall not exceed the sum of \$300.00 each. Upon the death of either or both of my daughters, the payments specified for the daughter so deceased shall immediately lapse. The Trustee in its discretion may make such further payments to either of said children as may be deemed necessary for the health, happiness, maintenance, welfare or comfort of said child.

b. To each of my following grandchildren, hereinafter listed, living at the time of my death:

- Scott W. Bradshaw,
- Alice Ann Bradshaw,
- William Kenneth Anquoe,
- John W. Tiger,
- Nicki Louise Webster, and
- Nicholas G. Webster,

the sum of \$100.00 per month shall be paid, to continue for the lifetime of each, and to begin the first day of the month following my death, and to be paid the first day of each month thereafter, for and on behalf of said grandchildren, for their use and benefit; and my Executors hereinafter appointed shall have the same power of distribution for this purpose out of the corpus of my estate as is herein specified for the Trustee; and if any of said grandchildren hereinabove listed be minors, payment to the mother of each minor child or children and her receipt therefor shall be sufficient evidence of said payment or payments; and upon the death of any such grandchild or grandchildren hereinabove listed without issue, said payments so specified for each grandchild so deceased shall immediately lapse. If any of said grandchildren leave issue, said payment shall be made to or divided among said issue per stirpes and not per capita. If further funds are necessary for educational purposes, the Trustees are instructed to pay all expense of said grandchildren, hereinabove listed, for primary school and high school education, or the equivalent thereof, in addition to the monthly sums herein provided.

c. In addition to the bequests hereinabove to said grandchildren if any of said grandchildren enroll and are in good standing in an accredited college or university, the Trustee herein may pay such additional allowance as within the discretion of the Trustee may be deemed necessary to continue the education of said grandchild.

d. In the event the net income from TRUST B is not sufficient to pay all of the sums herein mentioned, the Trustee is authorized and directed to use so much of the corpus of the estate as is necessary for this purpose.

e. TRUST B shall continue until the deaths of my husband, Estol N. Williams, of both of my daughters, Mary Helen Anquoe and Billie Louise Webster, hereinabove mentioned, and the deaths of all of my grandchildren, hereinabove listed, and shall then terminate; or shall terminate when all the corpus of my estate has been paid out and distributed as herein provided. Any funds, property or assets remaining shall be distributed among any and all of my lineal descendants then living, per stirpes and not per capita, in accordance with the laws of descent and distribution of the State of Oklahoma then existing. * * *

f. If at any time during the continuance of TRUST B, it is necessary or advisable to use some additional portion of the principal or income of such trust for the health, happiness, welfare, maintenance or comfort of the beneficiaries, or any of them, the corporate Trustee only is hereby authorized to use so much of the principal or interest as in its discretion is necessary or advisable to be used therefor.

g. Trustee herein is authorized and directed to continue in force and effect all educational insurance policies which are in existence at the time of my death, for the use and benefit of my grandchildren, hereinabove listed, and shall meet all current and future payments as provided, until said policies mature or are paid out.

h. If my daughters, Mary Helen Anquoe or Billie Louise Webster, or either of them, at the time of my death have homes established at the addresses hereinabove set out, it is my desire that they continue to occupy said premises as long as they wish free of all rents and charges except that each shall bear all expense of maintenance, upkeep, repair and taxes. Should either quit or abandon the use of said premises as a home, possession shall thereupon be relinquished to Trustee and rentals thereafter shall become a part of the corpus of the Trust.

* * * * *

ARTICLE VIII.
Spendthrift Clause.

The Trusts shall be administered and the funds derived therefrom received and paid in such manner that neither the income or the corpus thereof shall be at any time liable for the debts, present or future, of the beneficiaries hereunder, and shall not be subject to the right on the part of any creditor to seize or reach the same under any writ or by any proceeding at law, or in equity. None of the beneficiaries shall have any power to give, grant, sell, convey, mortgage, pledge or otherwise dispose of, incumber or anticipate the income or corpus of this estate, or any installments thereunder, or any share in the principal thereof, it being my will that no right of disposition of any such property shall vest in any beneficiary until the expiration of the Trusts, the division [sic] of the properties and actual delivery thereof to my heirs as designated herein.