



INTERIOR BOARD OF INDIAN APPEALS

Estate of Alvina Black Reed

18 IBIA 391 (07/25/1990)



United States Department of the Interior

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

ESTATE OF ALVINA BLACK REED : Order Docketing and Denying Petition
: for Correction of Order
: Determining Heirs in Indian
: Probate No. IP PO 16K 72
:
: Docket No. IBIA 90-125
:
: July 25, 1990

On July 23, 1990, the Board of Indian Appeals (Board) received a petition for correction of an order determining heirs in the estate of Alvina Black Reed (decedent), an Unallotted Quileute Indian. The petition, which is dated July 12, 1990, was filed with the Secretary of the Interior, who transmitted it to the Board. The petition states that it was filed on behalf of Laura Lee Read and Brenda Gail Reed (petitioners) by Robert R. Comenout, Sr. A special power of attorney from Laura Lee Reed to Mr. Comenout appears in the materials submitted with the petition. 1/

The petition 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 petition be denied.

Decedent died intestate on June 15, 1971. On September 3, 1971, Hearing Examiner R. J. Montgomery entered an order determining decedent's heirs to be her husband, Gerald L. Reed, and their two daughters, petitioners here. The order lists Gerald L. Reed as being a Cowlitz Indian.

Petitioners allege that Gerald L. Reed is a white man who has remarried and was not entitled to inherit decedent's estate. They note that they were minors at the time of the probate of decedent's estate (Laura was born on December 4, 1959, and Brenda was born on August 28, 1961), and indicate that they have "just now become knowledgeable as to the proper procedure to request correction of records." They request that the order determining heirs be corrected by a finding "that Gerald L. Reed is not an heir at law in this matter, and apportioning that share equally to petitioners," and "that all monies accruing from said estate be held in abeyance, and not disbursed until this matter is settled, and more particularly the monies from the case Mitchell Vs. United States." 2/

1/ It is not clear that Mr. Comenout is a person authorized to practice before the Department of the Interior under 43 CFR Part 1. Because of the disposition of the petition, however, it is not necessary to address this question.

2/ Petitioners are probably referring to United States v. Mitchell, 445 U.S. 535 (1980); on remand, 229 Ct.Cl. 1, 664 F.2d 265 (1981); aff'd, 463 U.S. 206 (1983).

As the Board stated in Estate of George Dragswolf, Jr., 17 IBIA 10, 11-12 (1988):

Reopening of Indian probate estates that have been closed for more than 3 years is governed by 43 CFR 4.242(h), which provides in relevant part:

If a petition for reopening is filed more than 3 years after the entry of a final decision in a probate, it shall be allowed only upon a showing that a manifest injustice will occur; that a reasonable possibility exists for correction of the error; that the petitioner had no actual notice of the original proceedings; and that petitioner was not on the reservation or otherwise in the vicinity at any time while the public notices were posted.

* * * In addition, the petitioner must show that he or she has diligently pursued the claim. As discussed in detail in Estate of Woody Albert, 14 IBIA 223, 226-28 (1986), the requirement that a petitioner show due diligence is well established. The Board has frequently held that petitions to reopen closed estates require "compelling proof that delays in requesting relief have not been occasioned by lack of diligence on the part of the petitioning parties." Estate of Annie Bear, 5 IBIA 149, 151 (1976). See also, e.g., Estate of Enoch Abraham, 5 IBIA 89, 90 (1976); Estate of George Minkey, 1 IBIA 1, 7 (1970). In interpreting the due diligence requirement, the Board takes into consideration the specific circumstances of the case before it. In cases where the petitioner had knowledge necessary to question the initial decision for many years prior to actually filing the petition, reopening has been denied. Estate of Katie Crossguns, 10 IBIA 141 (1982); Estate of Josephine Bright Fowler, 8 IBIA 201 (1980); Estate of Samuel Picknoll (Pickernell), 1 IBIA 168, 78 I.D. 325 (1971).

Petitioners reached their majority, and were thereafter able to pursue legal claims in their own names, in 1977 and 1979. They had knowledge at that time that their father, Gerald L. Reed, had been determined to be an heir of their mother. No explanation is offered for the passage of at least 10 years between the time petitioners reached majority and the date they filed their petition. Accordingly, the Board holds that petitioners have failed to pursue whatever claim they may have with due diligence. 3/

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this petition for correction of Examiner Montgomery's September 3, 1971, order determining heirs is denied.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge

3/ The Board makes no finding concerning the merits of petitioners' substantive allegations.