



INTERIOR BOARD OF INDIAN APPEALS

Estate of Warren Lewis Lincoln

19 IBIA 118 (12/20/1990)



United States Department of the Interior

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

ESTATE OF WARREN LEWIS LINCOLN

IBIA 90-67

Decided December 20, 1990

Appeal from an order denying rehearing issued by Administrative Law Judge William E. Hammett in Indian Probate IP PH 70I 89.

Affirmed.

1. Indian Probate: Appeals: Generally

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

2. Indian Probate: Appeals: Matters Considered on Appeal

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

APPEARANCES: Thomas F. Johnson, Esq., Ukiah, California, for appellant; Wanda Bigpond, Shirley Lincoln, and Lewis Lincoln, pro sese.

OPINION BY CHIEF ADMINISTRATIVE JUDGE LYNN

Appellant James Emmett Lincoln seeks review of a January 25, 1990, order denying rehearing issued by Administrative law Judge William E. Hammett in the estate of Warren Lewis Lincoln (decendent). For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

Background

Decendent, a Pomo/Wailaki/Concow Indian of California, ID #540U00196, died intestate on July 8, 1987. Judge Hammett held a hearing to probate his trust estate on February 22, 1989. Following the taking of an additional deposition, Judge Hammett issued an order determining decendent's heirs on November 16, 1989. Those heirs were found to be decendent's wife and his six children by a previous Indian custom marriage to Marie Arnold Lincoln. 1/

1/ Decendent's children are Sharon L. Gonzales, Lewis Lincoln, Ronald Lincoln, Wanda L. Bigpond, Shirley Lincoln, and Michael C. Lincoln. Lewis, Wanda, and Shirley filed a statement with the Board.

Judge Hammett discussed appellant's claim to be decedent's son, stating at page 2 of his order determining heirs:

[T]he decedent's children testified that the decedent had never admitted orally or in writing that he was the father of [appellant]. This was corroborated by the testimony of [appellant] and Margaret Lorene Mitchell [appellant's mother]. In fact, Margaret testified that shortly after [appellant's] birth, she sought to have the decedent sign a document admitting paternity so that she could get public assistance but he refused to do so. Other than the testimony of [appellant] and Margaret Lorene Mitchell, the only additional proof offered that [appellant] is the decedent's son is a birth certificate on which the decedent is designated as the father of [appellant]. However, since Margaret Lorene Mitchell is the informant shown on the birth certificate, such statement is self-serving. I find that [appellant] has failed to establish that he is the decedent's son.

Appellant filed a petition for rehearing with Judge Hammett. Appellant alleged that the Judge had incorrectly found that the testimony of his mother was self-serving, her testimony as to paternity was uncontradicted, her testimony was not inadmissible even if it could properly be considered self-serving, and the testimony of decedent's other children was even more self-serving. In support of the petition, appellant submitted his birth certificate, baptism certificate, and affidavit to amend record. Appellant asserts that a further search of the records was made after the issuance of Judge Hammett's initial order when it became evident that the birth certificate and his mother's testimony were not sufficient proof that decedent was his father. 2/

By order dated January 25, 1990, Judge Hammett denied appellant's petition for rehearing, stating:

[T]here is no evidence of record to establish that [appellant's] mother ever confronted the decedent with the fact that she had named the decedent as [appellant's] father on [appellant's] birth certificate; or that she had had [appellant] named as the decedent's son at [appellant's] christening; and no evidence was introduced showing that [appellant's] mother had ever named the decedent as [appellant's] father on any record of the Bureau of Indian Affairs or any other official record besides his birth record.

2/ Rehearing was also sought by Wanda Bigpond and Lewis Lincoln on the grounds that their mother, Marie Arnold Lincoln, should have been found to be decedent's surviving spouse. Marie also sought rehearing. In a separate order dated Jan. 25, 1990, Judge Hammett found that Marie's petition was not timely and that Lewis and Wanda lacked standing to petition for rehearing on behalf of their mother. This order was not appealed.

In fact, the thrust of her testimony is that she advised the decedent of [appellant's] alleged relationship to the decedent on only two occasions but, apparently, the only time she sought to have the decedent admit to the paternity of [appellant] was for the purpose of acquiring financial aid for [appellant], and that the decedent did not sign any documents in which [he] admitted paternity of [appellant].

The above evidence coupled with the testimony of the decedent's children that he never admitted to them that he was [appellant's] father, compels me to reaffirm my previous findings and conclusion that a preponderance of the credible evidence establishes that the decedent is not [appellant's] father, and, therefore, that [appellant] is not entitled to inherit in this estate.

Appellant appealed this order to the Board. Briefs were filed on appeal by appellant and by Wanda Bigpond, Lewis Lincoln, and Shirley Lincoln.

Discussion and Conclusions

[1] On appeal, appellant bears the burden of showing the error in the decision from which he is appealing. Estate of Pauline Muchene Gilbert, 17 IBIA 15, 16 (1988), and cases cited therein. In this case, therefore, appellant must show that Judge Hammett erred in finding that he had failed to prove that decedent was his father.

In a June 26, 1989, deposition before Judge Hammett, appellant and his mother, Margaret Mitchell, testified that decedent was appellant's father. Margaret stated that she had informed decedent of appellant's birth in the presence of one of decedent's brothers, who predeceased decedent. Both Margaret and appellant stated that decedent did not acknowledge that he was appellant's father. Decedent's children testified that he had not told them that he was appellant's father. Documentary evidence supporting appellant's position included his birth certificate, 3/ which was completed by Margaret, and what appears to be his application for certificate of degree of Indian blood, both of which list decedent as his father.

In his petition for rehearing, appellant contends that Margaret informed decedent that appellant was his son and that, in addition to the birth certificate, she had also listed decedent as appellant's father when appellant was baptized. Appellant indicated that Margaret's mother had also sworn that decedent was his father at the time he obtained an amended birth certificate.

3/ Appellant obtained an amended birth certificate, changing his first name. Appellant stated that he changed his name because of a mix-up at school that resulted in his being registered as James Emmett Lincoln, rather than Warren Emmett Lincoln. The application for amended birth certificate continues to name decedent as appellant's father.

When Judge Hammett denied rehearing, appellant submitted additional evidence to the Board. The new evidence consists of affidavits stating that decedent and Margaret were living together at the time when appellant would have been conceived; a school registration card; an approved application for a grant under the Housing Improvement Program in which appellant had listed decedent as his father; and certificates from the Northern California Agency, Bureau of Indian Affairs, showing degree of Indian blood for two of appellant's children.

[2] The regulations governing Indian probate proceedings require a claimant to present all information available to him at the earliest possible stage in the proceeding. This is the reason why rehearing to consider new evidence will only be granted to those persons who either were not aware of the initial proceeding or who can show that they could not, with the exercise of due diligence, have obtained the information earlier. See 43 CFR 4.241; Estate of Joseph Kicking Woman, 15 IBIA 83, 85 (1987). Because of this rule, the Board has consistently held that it is not required to consider evidence that is presented for the first time on appeal. Estate of Alice Jackson (Johns), 17 IBIA 162, 165 (1989), and cases cited therein. Here, appellant presented a minimum of information at the hearing, and then supplemented that evidence with additional evidence at the rehearing and appeal stages. Appellant's explanation is that he thought he had submitted sufficient evidence. Because appellant makes no attempt to show that the evidence he seeks to present on appeal could not have been obtained prior to the conclusion of the original proceeding before Judge Hammett, the Board is not required to consider the new evidence.

Even if the Board were to consider appellant's new evidence, it would still find that he has failed to show that decedent was his father. Appellant has shown that Margaret believes and has consistently stated in official documents that decedent was his father. As far as the Board can determine, however, all of the evidence, both documentary and oral, concerning the identity of appellant's father ultimately comes from Margaret. ^{4/}

Margaret alleges she confronted decedent with her allegation that he was appellant's father and that decedent took no action either to acknowledge or deny paternity. Other than listing decedent as appellant's father

^{4/} One of the affidavits in support of appellant's position was submitted by Doran Lincoln, a brother of decedent. In his initial affidavit, Doran stated that decedent had acknowledged paternity of appellant and the family treated appellant as decedent's son. Doran later retracted this affidavit in a second affidavit in which he indicated that the first affidavit was made because of appellant's representations to him that decedent had signed appellant's birth certificate and that appellant was not interested in title to any of decedent's property. One or the other of these affidavits is obviously untrue. Because of this conflict, neither affidavit can be credited.

and once making a brief attempt to get child support, Margaret took no further actions during decedent's lifetime to force an acknowledgment. It appears that all agencies which required the identification of appellant's father merely took Margaret's statement without further inquiry. There is no credible evidence that decedent ever acknowledged paternity to any other family member or friend. Decedent's actions simply are not consistent with even an implicit acknowledgment of paternity. Under these circumstances, the Board cannot hold that Judge Hammett erred in finding that appellant failed to prove that decedent was his father.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the January 25, 1990, decision of Judge Hammett is affirmed.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

I concur:

//original signed
Anita Vogt
Administrative Judge