



INTERIOR BOARD OF INDIAN APPEALS

Estate of Henry Houle

19 IBIA 222 (02/12/1991)



United States Department of the Interior

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

ESTATE OF HENRY HOULE

IBIA 91-36

Decided February 12, 1991

Appeal from an order reopening and modifying estate issued by Administrative Law Judge Frederick W. Lambrecht in Indian Probate IP TC 201S-86.

Docketed and dismissed.

1. Administrative Procedure: Administrative law Judges--Appeals: Generally--Indian Probate: Administrative law Judges: Authority--Indian Probate: Appeals: Generally

Duly promulgated Departmental regulations provide parties to an Indian probate proceeding with a right to appeal to the Board of Indian Appeals. An Indian probate administrative law judge lacks authority to restrict or cut off that right of appeal by saying that his or her orders are final.

APPEARANCES: Sharon Haffie, pro se.

OPINION BY CHIEF ADMINISTRATIVE JUDGE LYNN

Appellant Sharon Haffie apparently seeks review of a February 13, 1990, order to reopen and modify estate issued by Administrative Law Judge Frederick W. Lambrecht in the estate of Henry Houle (decedent). This case is hereby docketed under the above case name and number. However, for the reasons discussed below, the Board of Indian Appeals (Board) dismisses the appeal.

Background

Decedent, Fond du Lac No. 405-U004386, died intestate on October 8, 1985. ^{1/} On February 11, 1987, Judge Lambrecht determined decedent's heirs to be Donald Louis Houle Savage, an adopted son; and Michael Allen Mathison, Ardis Jean Mathison, Jo Ann Mathison, and appellant, all of

^{1/} This discussion is based on a portion of the probate record received from the office of the administrative law judge. Because of the Board's disposition of this matter, the complete probate record was not deemed necessary.

whom are children of decedent's previously deceased daughter. The Judge further found that certain interests held by decedent at the time of his death were subject to escheat to the Fond du Lac Band of Lake Superior Chippewa Indians (band) under the provisions of the Indian Land Consolidation Act, as amended, 25 U.S.C. § 2206 (1988). ^{2/} Because of a judicial challenge to the constitutionality of the original version of this section, Judge Lambrecht held in abeyance the distribution of those portions of decedent's estate which were subject to escheat. No further review of this order was sought.

Subsequent to the entry of the February 11, 1987, order and pursuant to the authority of 43 CFR 4.272(a) and 25 CFR 150.7(b)(3), ^{3/} two administrative modifications were made to the inventory of decedent's trust estate by the manager of the Aberdeen Land Titles and Records Office. On July 14, 1988, after the resolution of the constitutional challenge to the original version of 25 U.S.C. § 2206, ^{4/} Judge Lambrecht entered a supplemental order in this estate, escheating to the band the interests which had been held in abeyance.

^{2/} As amended in 1984, section 2206(a) provided:

"No undivided interest in any tract of trust or restricted land within a tribe's reservation or otherwise subject to a tribe's jurisdiction shall descend by intestacy or devise but shall escheat to that tribe if such interest represents 2 per centum or less of the total acreage in such tract and is incapable of earning \$100 in any one of the five years from the date of the decedent's death. Where the fractional interest has earned to its owner less than \$100 in any one of the five years before the decedent's death, there shall be a rebuttable presumption that such interest is incapable of earning \$100 in any one of the five years following the death of the decedent."

This section was recently amended again. See section 301 of the Act of Nov. 29, 1990, P.L. 101-644, 104 Stat. 4662. The amendment is not relevant to this case.

^{3/} 43 CFR 4.272(a) provides:

"When, subsequent to the issuance of a decision under § 4.240 or § 4.296, it is found that trust property or interest therein belonging to a decedent has not been included in the inventory [of the decedent's estate], the inventory can be modified either administratively by the Commissioner of the Bureau of Indian Affairs or by a modification order prepared by him for the administrative law judge's approval and signature to include such omitted property for distribution pursuant to the original decision. Copies of such modifications shall be furnished to the Superintendent and to all those persons who share in the estate."

25 CFR 150.7(b)(3) provides:

"Land Titles and Records Offices shall issue administrative corrections to correct probate errors which are clerical in nature and which do not affect vested property rights or involve questions of due process. Copies of administrative corrections are distributed to the appropriate Administrative Law Judge and Agency."

^{4/} See Hodel v. Irving, 481 U.S. 704 (1987).

On November 6, 1989, the Superintendent of the Minnesota Agency, Bureau of Indian Affairs, through the Minneapolis Field Solicitor, filed a petition to reopen decedent's estate on the grounds that one of decedent's interests that escheated to the band was capable of earning more than \$100 because of income produced from a natural gas pipeline right-of-way across the allotment. The Superintendent requested that Judge Lambrecht's supplemental order of July 14, 1988, be vacated as it applied to that interest and that another supplemental order be entered distributing the interest in accordance with the February 11, 1987, order determining heirs.

By order dated December 20, 1989, Judge Lambrecht gave interested parties an opportunity to show cause why he should not grant the Superintendent's petition. When no objections to the petition were filed, on February 13, 1990, the petition was granted.

On January 28, 1991, the Board received a letter from appellant in which she states: "I'm a relative, granddaughter to Henry Houle, past resident of Duluth, Mn., heir to some of his property, which is still in the judicial system. I would like to settle his estate, which is a concern because I'm the only relative left to be found. Please inform me of what to do next."

Discussion and Conclusions

Normally the Board would treat appellant's letter as a notice of appeal; assign the appeal a docket number; and dismiss it as being untimely filed, with any discussion necessary to explain the action and the present status of this matter. Under 43 CFR 4.320(a), an appellant has 60 days from the date of the decision being appealed to file a notice of appeal with the Board. See, e.g., Estate of Mary May LaRose Murray, 18 IBIA 49 (1989). The Indian probate administrative law judges routinely inform parties to probate proceedings of this right of appeal and the time limitation on filing an appeal.

Here, however, the Judge concluded his February 13, 1990, order by stating: "This order is final and distribution can be made immediately." ^{5/} Because a manifest error was evident on the face of this order, the Board believed it was necessary to address this case more fully. 43 CFR 4.318 provides in pertinent part: "[E]xcept as specifically limited in this part or in Title 25 of the Code of Federal Regulations, the Board shall not be limited in its scope of review and may exercise the inherent authority of the Secretary to correct a manifest injustice or error where appropriate."

[1] Duly promulgated Departmental regulations provide that "[a] party in interest shall have a right to appeal to the Board of Indian Appeals from an order of an administrative law judge on a petition for rehearing, a petition for reopening, or regarding tribal purchase of interests in a deceased Indian's trust estate." 43 CFR 4.320. The Board is aware that there are occasions on which an Indian probate administrative

^{5/} The Judge's July 14, 1988, order concluded with the same sentence.

law judge might properly issue an order making a clerical or administrative correction to a decision without providing a new right to appeal. The authority provided in 43 CFR 4.272(a) and 25 CFR 150.7(b)(3) to add property to the estate inventory without affecting the finality of the decision was used twice in this case. Other types of clerical corrections, such as the correction of the spelling of a person's name or of a mathematical error, are within the inherent authority of any judge to ensure that the decisions he or she issues are technically correct to the best of the judge's ability, and are actually in the nature of errata. It would be inappropriate to give an additional right of appeal because of such nonsubstantive changes.

However, the Board knows of no authority for an Indian probate administrative law judge to make his or her decisions on reopening final for the Department. Although there may be cases in which it appears that no appeal is likely to be filed, an appeal would not be sustained, distribution of the estate assets would be delayed by an appeal period, or notification of a right to appeal would give the parties a "second bite at the apple," the right to file an appeal is mandated by regulation. ^{6/}

Furthermore, the right to appeal is not premised upon the title given to the order by the administrative law judge, but rather upon the substance of the order. Even if an administrative law judge calls an order something other than "order on reopening," it is the Board's responsibility to determine whether the order is, in fact, an order on reopening. Cf., e.g., Walch Logging Co., Inc. v. Assistant Portland Area Director (Economic Development), 11 IBIA 85, 91 n.5 (1983) (the Board will consider decisions of the Bureau of Indian Affairs in terms of what they either substantively or procedurally accomplish rather than of what they may be called by the official). It would appear likely that any order making a legal determination in an estate after the time for requesting rehearing of the original decision has run very probably falls into the category of an order on reopening.

The circumstances of this case, however, do not require that a decision be reached on whether or not this appeal is timely filed because other factors dictate that the appeal be dismissed even if it were timely. It appears that appellant believes the probate of her grandfather's estate is still pending within the Department's judicial system. This is incorrect. The determination of decedent's heirs was completed when no further review was sought of Judge Lambrecht's February 11, 1987, order. Despite the

^{6/} Regulations of the Bureau of Indian Affairs concerning administrative decisions now explicitly provide that a party's right to appeal does not begin to run until the parties have been properly informed of their appeal rights. See 25 CFR 2.7; La Jolla Band of Mission Indians v. Acting Sacramento Area Director, 18 IBIA 263, 264 n.1 (1990); Washoe Tribe of Nevada and California v. Phoenix Area Director, 18 IBIA 192, 193 n.1 (1990). Although it seems incongruous to impose a higher standard on the non-attorneys in the Bureau than on the administrative law judges in the Office of Hearings and Appeals, there is no similar regulation tolling the appeal period in probate cases when incorrect appeal information is provided.

improper indication that no right to appeal existed from the February 13, 1990, order, the order was legally correct. Although the Board does not know exactly what appellant means in saying that she is "the only relative left to be found," she has only the right to the proportional share of decedent's estate determined by Judge Lambrecht to pass to her. 7/

Based upon an inquiry directed to the Aberdeen Land Titles and Records Office, however, it appears that all of the paperwork to transfer title to decedent's heirs may not yet be completed. If appellant is concerned about this actual transfer of title and/or the distribution of any funds which may have accumulated in the estate Individual Indian Money account since decedent's death, she should contact the Realty Office at the Minnesota Agency, Bureau of Indian Affairs, Cass Lake, Minnesota.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal from the February 13, 1990, order issued by Judge Lambrecht is dismissed.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

I concur:

//original signed
Anita Vogt
Administrative Judge

7/ If appellant is alleging that the other persons determined to be decedent's heirs are either missing or now deceased, neither of those facts would result in new proceedings in decedent's estate. If the other heirs are missing, there are certain procedures for determining whether they should be presumed dead. See 43 CFR 4.204. If they are now deceased, the interests they received from decedent's estate, if still owned by them at the time of their deaths, will be distributed through probate of their own estates. See Estate of Sam A. Simeon, 15 IBIA 135, 137-38, recon. denied, 15 IBIA 171 (1987).