



INTERIOR BOARD OF INDIAN APPEALS

Estate of Baza Vincent Whistocken

19 IBIA 294 (04/17/1991)

Reconsideration denied:
19 IBIA 322



United States Department of the Interior

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

ESTATE OF BAZA VINCENT
WHISTOCKEN : Order Docketing and Dismissing
: Appeal
:
: Docket No. IBIA 91-64
:
: April 17, 1991

On April 3, 1991, the Board of Indian Appeals (Board) received a letter from Seraphin Cherrapkin (appellant) concerning the estate of Baza Vincent Whistocken, deceased Coeur d'Alene 181-A00149 (decedent). Appellant's letter states in its entirety:

I Seraphin Whistocken Cherrapkin attended a retirement at Wellpinit Wash[ington] Sunday. I sat by Susan Paul Matt. While we were talking she said my sister Marion Paul Coventon, my brother Joe Paul, and my brother John Whistocken all passed away. So how can Baza Vincent Whistocken's estate go on this way as it has been. Baza is a son of Joseph Whistocken. Baza is my uncle. Brother to Anasta Whistocken. My niece Judy Wilson heard it too.

A copy of a February 15, 1991, order nunc pro tunc issued by Administrative law Judge Keith L. Burrowes in decedent's estate, Probate No. IP BI 195A 90, was included with appellant's letter. Because there appeared to be several problems with the appeal, the Board requested additional information from Judge Burrowes' office.

The requested information was received on April 8, 1991, and was supplemented through telephone conversations on April 8 and 12, 1991. By order dated October 24, 1990, Judge Burrowes approved decedent's October 9, 1984, last will and testament. Under that will, decedent left all of his interests in Coeur d'Alene Allotment Nos. 94, 96, and 428 to his nephew, Everett (Avery) Ignace Whistocken, Sr., and left Everett an undivided 1/2 interest in the rest and residue of his estate. Judge Burrowes found that Everett had survived decedent, but had died before the estate was probated. He further found that if decedent had not executed a will, appellant would have been one of his heirs.

In the February 15, 1991, order nunc pro tunc, Judge Burrowes stated that the finding that Everett had survived decedent was in error. Because Everett had actually pre-deceased decedent, Judge Burrowes applied 43 CFR 4.261 1/ to find that the interests that had been devised to Everett should

1/ Section 4.261 provides:

"When an Indian testator devises or bequeaths trust property to any of his grandparents or to the lineal descendant of a grandparent, and the devisee or legatee dies before the testator leaving lineal descendants, such

pass to Everett's two children, William John Whistocken and Angeline W. Wardlow. 2/

The names Marion Paul Coventon and Joe Paul appear nowhere in the family history prepared for decedent by the Bureau of Indian Affairs and submitted to Judge Burrowes. 3/ John Whistocken appears as decedent's brother, with a date of death of June 2, 1938. Joseph Whistocken is shown as decedent's father, and Anasta Whistocken as another brother. Everett was a son of decedent's brother, John; while appellant is a daughter of decedent's brother, Anasta. Appellant's siblings are listed on the family history, which indicates she has a living sister, Mary C. Praticavage, and a deceased sister, Mary Rosalie Schleufer.

Appellant was informed of her right to seek further review of Judge Burrowes' October 24, 1990, order approving decedent's will. The time for seeking review of the approval of decedent's will has passed. The order nunc pro tunc deals only with the proper distribution of the interests devised to Everett in light of the fact that Everett pre-deceased decedent. Because appellant could receive an interest in this estate only if the will had been overturned, she lacks standing to contest the distribution determination made in the order nunc pro tunc.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal from Judge Burrowes' February 15, 1991, order nunc pro tunc is docketed under the above case name and number, and is dismissed with prejudice.

//original signed

Kathryn A. Lynn
Chief Administrative Judge

//original signed

Anita Vogt
Administrative Judge

footnote 1, continued:

descendants shall take the right, title, or interest so given by the will per stirpes. Relationship by adoption shall be equivalent to relationship by blood."

2/ Everett had two additional children. A son, Everett, Jr., died without issue in 1981. A daughter, Theresa Standing Elk McNeal, was adopted out. See Estate of Everett Ignace Whistocken, Sr., Probate No. IP BI 185A 90, Oct. 25, 1990.

3/ It appears likely that these two individuals were siblings of Ms. Matt, rather than of appellant.