



INTERIOR BOARD OF INDIAN APPEALS

Estate of Gus Four Eyes, Jr., a.k.a. Gilford Fireshaker

20 IBIA 22 (05/06/1991)



# United States Department of the Interior

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

ESTATE OF GUS FOUR EYES, JR.,  
a.k.a. GILFORD FIRESHAKER

IBIA 90-64

Decided May 6, 1991

Appeal from an order denying rehearing issued by Administrative Law Judge Sam E. Taylor in IP OK 195 P 88.

Affirmed.

1. Indian Probate: Renunciation

Under 43 CFR 4.208, a devisee or heir cannot renounce an interest in trust or restricted property in favor of a particular person or persons. Rather, the interest renounced passes as if the person renouncing predeceased the decedent.

2. Attorneys--Indian Probate: Representation

An individual participating in a Departmental Indian probate proceeding without an attorney is still required to raise all issues and arguments at the hearing.

APPEARANCES: Ross O. Swimmer, Esq., and Barbara L. Woltz, Esq., Tulsa, Oklahoma, for appellant; Barry Benefield, Esq., Oklahoma City, Oklahoma, for appellees.

## OPINION BY CHIEF ADMINISTRATIVE JUDGE LYNN

Appellant Billy Gene Williams seeks review of a January 31, 1990, decision issued by Administrative Law Judge Sam E. Taylor in the estate of Gus Four Eyes, Jr., a.k.a. Gilford Fireshaker (decedent). The January order let stand a September 12, 1989, order determining decedent's heirs. For the reasons discussed below, the Board of Indian Appeals (Board) affirms that order.

### Background

Decedent died intestate on September 23, 1987. He owned trust or restricted property under the jurisdiction of the Concho Agency, Concho, Oklahoma, and the Wind River Agency, Fort Washakie, Wyoming. Judge Taylor held a probate hearing in decedent's estate on April 4, 1989. Based upon evidence presented at the hearing, Judge Taylor determined decedent's heirs

to be nine nieces and nephews. 1/ Judge Taylor also approved \$16,754.73 in medical, funeral, and attorney claims, subject to the limitations set forth in 43 CFR 4.251(d). 2/

Appellant, a nephew of decedent's predeceased wife, Jewell (Julitha) Magpie Fireshaker, filed a claim in the amount of \$1,500 for transportation and care of decedent. 3/ Judge Taylor denied appellant's claim on the grounds that there had been no promise to compensate appellant for the services performed, as is required by 43 CFR 4.250(d), which provides: "Claims for care may not be allowed except upon clear and convincing evidence that the care was given on a promise of compensation and that compensation was expected."

Appellant sought rehearing, alleging that he believed decedent had deeded certain properties to him, but he had not been able to locate a copy of the deed before the original hearing. Appellant presented a document and contended that the property covered by the document should have been awarded to him rather than being distributed with decedent's other property. Alternatively, appellant argued that he did not have an agreement for compensation because he believed the property had previously been given to him. Appellees opposed the petition for rehearing.

On January 31, 1990, Judge Taylor denied rehearing, finding that the document presented by appellant was actually an unapproved application for gift deed of trust property which appellant had known about before the hearing, and should have presented at that time.

The Board received appellant's notice of appeal on April 2, 1990. Briefs were filed by appellant and appellees.

#### Discussion and Conclusions

On appeal, appellant has presented three documents: (1) a February 7, 1984, disclaimer of three-fourths of the interests decedent inherited from

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1/ Three of the individuals determined to be decedent's heirs opposed appellant's petition for rehearing and appeal. They are Donald R. Littlehawk, Alberta Addison Two Babies, and Wallace Williams, Jr. (appellees).

2/ Section 4.251(d) provides:

"If the income of the estate is not sufficient to permit the payment of allowed claims of general creditors within 3 years from the date of allowance; or to permit payment of the allowed claims of preferred creditors, except the United States, within 7 years from the date of allowance, then the unpaid balance of such claims shall not be enforceable against the estate or any of its assets."

3/ A claim for \$31,141.50 was filed by Daniel Magpie, Jr., another nephew of Jewell. Although Daniel Magpie joined in appellant's petition for rehearing, he has not appealed from Judge Taylor's denial of rehearing.

the estate of Jewell Magpie Fireshaker; (2) an August 7, 1984, application for gift of Indian land; and (3) a May 2, 1985, power of attorney from decedent to appellant.

Appellant contends (1) the application for gift deed and disclaimer prove that decedent intended to compensate him for the care he gave decedent; (2) he showed Judge Taylor an unexecuted copy of the application, along with the disclaimer and power of attorney, but Judge Taylor returned them without consideration; and (3) Judge Taylor failed in his responsibility to develop the record by not asking appropriate and adequate questions concerning a promise of compensation.

Appellant did not allege in the petition for rehearing that he had previously presented these documents to Judge Taylor, or that Judge Taylor erred in his handling of the hearing. The Board will consider appellant's arguments because the allegations raise due process concerns. Normally, the Board does not consider issues and arguments raised for the first time on appeal. See Estate of Blanche Russell (Hosay), 18 IBIA 40, 45 (1989).

The first document, the disclaimer of interest, was presented to and considered by Judge Taylor in the Estate of Jewell (Julitha) Magpie-Fireshaker, IP OK 46 P 84. Judge Taylor stated on page 1 of his May 31, 1984, order determining Jewell's heirs:

The decedent's husband Gus Four Eyes, Jr. submitted a Disclaimer, purporting to assign three-fourths of his interest in decedent's estate to two of decedent's nephews. The decedent left surviving her twelve nieces and nephews who would be her heirs had her husband not survived her. Accordingly, the Disclaimer being only a purported assignment to a portion of her surviving nieces and nephews, it is not accepted.

In 1984, there was no regulatory authority for an administrative law judge to accept a disclaimer of interest in a decedent's estate. Although it is possible, under appropriate circumstances, that a disclaimer could have been accepted as a compromise settlement under 43 CFR 4.207, the particular disclaimer here could not be treated in that manner. The disclaimer, therefore, had no force or effect in Jewell's estate.

[1] A new regulation, 43 CFR 4.208, was added on October 2, 1986 (51 FR 35220). Section 4.208 provides in pertinent part:

Any person 21 years or older, whether of Indian descent or not, may renounce intestate succession or devise of trust or restricted property, wholly or partially (including the retention of a life estate), by filing a signed and acknowledged declaration of such renunciation with the administrative law judge prior to the entry of the administrative law judge's final order. \* \* \* [T]he property so renounced passes as if the person renouncing the interest has predeceased the decedent. A renunciation filed in

accordance herewith shall be considered accepted when implemented in an order by an administrative law judge \* \* \*.

Under this regulation, a devisee or heir cannot renounce in favor of a particular person or persons, but rather the interest renounced passes as if the person renouncing had predeceased the decedent.

Assuming for the purposes of this discussion that the disclaimer could be considered under the 1986 regulation in the present proceeding despite the fact that it was invalid when it was introduced into the 1984 proceeding, the disclaimer is also invalid under the 1986 regulation because decedent attempted to renounce his interest in favor of particular individuals.

Furthermore, even if the disclaimer were considered only as evidence of decedent's intent, it is totally silent as to the reason why decedent executed it. There is no evidence whatsoever that decedent executed the disclaimer for the reason now advanced by appellant, i.e., that it was compensation for care given to decedent.

The second document, the application for gift deed, states:

I want to give my interest, which is three-fourths of my right and interest to the inheritance and estate of Julitha Magpie-Fireshaker, a/k/a Julitha Four Eyes, Allottee No. 80 IN5451, which is described above to Billy Gene Williams Sr., and Daniel Magpie, Jr., who are my nephews by marriage, because I feel like that since I was for many years not loved by or cared for by Julitha Magpie-Fireshaker, that this property should go to her said relatives instead of to me, and because Billy Gene Williams, Sr. and Daniel Magpie, Jr. took care of Julitha Magpie-Fireshaker. [Emphasis added.]

This document, signed by decedent on August 7, 1984, sets forth the same attempted division of property as the disclaimer. To the extent that the application for gift deed was intended to compensate appellant for care given, the application explicitly states that it was care given to Jewell, not to decedent. Furthermore, the application for gift deed, which is a Bureau of Indian Affairs (BIA) form, has space for the approval of the BIA Superintendent. The application was not approved by the Superintendent, and appellant makes no allegation that the application was ever presented to BIA for approval, as is required by 25 CFR 152.17. 4/ Appellant has no reasonable basis for assuming that the unapproved document conveyed any interest to him, whether or not the document was recorded with the county clerk.

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4/ Section 152.17 provides in pertinent part: “[T]rust or restricted lands acquired by \* \* \* inheritance \* \* \* may be \* \* \* conveyed by the Indian owner with the approval of the Secretary \* \* \*.” Regulations setting forth the procedures for conveying trust or restricted lands are set forth in sections 152.18 through 152.32.

