



INTERIOR BOARD OF INDIAN APPEALS

Estate of Grace American Horse Tallbird

26 IBIA 87 (07/06/1994)



United States Department of the Interior

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

ESTATE OF GRACE AMERICAN HORSE TALLBIRD : Order Affirming Decision As
: Modified by the Addition of
: Further Trust Property
:
: Docket No. IBIA 94-54
:
: July 6, 1994

Alfred Tallbird seeks review of a December 8, 1993, order denying rehearing issued by Administrative Law Judge Richard L. Reeh in the estate of Grace American Horse Tallbird (decedent), IP OK 73 P 93-1. For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision, as modified by the addition of an interest in trust property located on the Northern Cheyenne Reservation, Montana, and owned by decedent at the time of her death, which property was discovered during the pendency of this appeal.

Decedent, an unallotted Cheyenne, died on November 17, 1992. Several hearings were held to probate her trust estate. Evidence presented at those hearings showed that she was survived by her husband, William Tallbird, Jr., who passed away on December 13, 1993; her son, Alfred; and two daughters, Geneva Tallbird and Carrie Tallbird. A document purported to be decedent's last will and testament, dated November 1, 1991, was presented for probate. Under this will, decedent left her entire trust estate equally to Alfred, Geneva, and Carrie, subject to a life estate in William.

Testimony at the hearings revealed that decedent had several health problems which confined her either to bed or a wheelchair; that Carrie had decedent's power-of-attorney; and that Carrie and Geneva lived with their parents and provided care for them. Conflicting testimony was offered concerning the quality of the care decedent received, and her mental condition. It was undisputed that the will was prepared at decedent's home by employees of the Bureau of Indian Affairs, and that Carrie and Geneva were present in the home, but not in the room, when the will was discussed by decedent and the will scrivener.

On August 16, 1993, Judge Reeh entered an order approving decedent's will. Shortly thereafter, another will, executed on February 16, 1982, was located. Under the 1982 will, decedent devised specific interests to Adam Tallbird, Alfred's son; Carrie; a granddaughter, Ida Ray (Shoun) Tallbird; and a son, William Tallbird III, who died on November 28, 1982, without issue. The rest and residue of decedent's estate was left to Alfred. Despite the residuary bequest, decedent specifically stated that she was not leaving anything to William, Alfred, or Geneva. Judge Reeh gave the parties an opportunity to address this will.

Alfred again objected to approval of the 1991 will.

By order dated September 29, 1993, Judge Reeh reaffirmed his August 16, 1993, approval of decedent's 1991 will. In so doing, the Judge addressed an argument raised by Alfred that the existence of a confidential relationship between decedent and Carrie gave rise to a presumption of undue influence. Judge Reeh stated that the import of the existence of a confidential relationship was governed by Federal law. Citing Estate of Jesse Pawnee, 15 IBIA 64 (1986), he concluded that the presumption of undue influence did not arise because Carrie did not actively participate in the preparation of decedent's will. He further held that there was no other evidence that decedent had been unduly influenced in the execution of the 1991 will.

Alfred sought rehearing of this decision. In the December 8, 1993, order now under review, Judge Reeh determined that the petition for rehearing was not timely filed, because it had been filed in the wrong office. He further indicated that even if the petition had been timely, the arguments raised had been fully addressed in the decision.

Alfred appealed from the denial of rehearing. The notice of appeal repeats the arguments Alfred raised to Judge Reeh concerning the August decision. No further briefs were filed.

Judge Reeh denied rehearing on the grounds that Alfred's petition for rehearing was not timely filed. Alfred has not disputed this conclusion on appeal. An appellant bears the burden of proving the error in the decision under review. See, e.g., Estate of Thomas Sun Goes Slow, 23 IBIA 99, 100 (1992), and cases cited therein. By failing to even allege error in the determination that his petition was untimely, Alfred has not carried his burden of proving error in the denial of rehearing.

Judge Reeh also mentioned that the petition for rehearing did not present any arguments not previously considered. Although the Board finds that this statement was not the basis on which rehearing was denied, it agrees that no new arguments were raised. As dicta in this case, the Board notes that in order for a presumption of undue influence to arise from the existence of a confidential relationship, three things must be shown: (1) a confidential relationship existed; (2) the person in the confidential relationship actively participated in the preparation of the will; and (3) the person in the confidential relationship was the principal beneficiary under the will. Judge Reeh noted that although Carrie was in a confidential relationship with decedent, she did not actively participate in the preparation of the will. The Board notes that neither was Carrie the principal beneficiary under decedent's will. Decedent's three surviving children shared equally in her trust estate, subject to William's now-expired life estate. An equal 1/3 interest with her siblings does not make Carrie the principal beneficiary under decedent's will.

During the pendency of this appeal, BIA submitted a supplemental estate inventory to Judge Reeh, showing that decedent owned a beneficial interest in certain trust property in the State of Montana, under the jurisdiction of the Northern Cheyenne Agency, BIA. Judge Reeh informed the Board and the

parties of the existence of this additional property on April 19, 1994. The Board has received no objections or other comments concerning this property from any party. Therefore, pursuant to Judge Reeh's recommendation, the following language is hereby incorporated into the September 29, 1993, order approving will and decree of distribution:

6A. Montana Trust Interests. That the decedent also owned beneficial interests in trust property situated in the state of Montana. If there had been no will, Montana Code Annotated § 72-2-202 et seq., would govern the distribution of trust property located in that State. The Montana statutory pattern would have required the following distribution:

| <u>Name</u> | <u>R'ship</u> | <u>DOB</u> | <u>Tribe</u> | <u>Share</u> |
|----------------------------|---------------|------------|--------------|--------------|
| William Tallbird, Jr. | Spouse | 6/26/18 | C&A | 1/1 |
| Alfred Dewey Tallbird, III | Child | 5/30/42 | C&A | -0- |
| Geneva Esther Tallbird | Child | 5/31/49 | C&A | -0- |
| Carrie AnnTallbird | Child | 12/13/54 | C&A | -0- |

Finally, on June 27, 1994, the Board received a request from Carrie and Geneva to draw \$4,200 from decedent's estate. Because administrative review of this matter is concluded with this decision, and distribution may be made in accordance with 43 CFR 4.312, the request for a drawdown is denied.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the December 8, 1993, decision of Judge Reeh is affirmed as modified by the addition of decedent's Northern Cheyenne trust property.

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 Kathryn A. Lynn
 Chief Administrative Judge

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 Anita Vogt
 Administrative Judge