



INTERIOR BOARD OF INDIAN APPEALS

WELSA Heirship Determination of Bert F. (Albert) Bunker

28 IBIA 118 (07/20/1995)



United States Department of the Interior

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

W ELSA HEIRSHIP DETERMINATION : Order Vacating Decision and Remanding
OF BERT F. (ALBERT) BUNKER : Case for Further Investigation
:
: Docket No. IBIA 95-40-W
:
: July 20, 1995

Appellant Gladys Shirley Nicholson seeks review of an October 12, 1994, final order determining heirs issued by Administrative Judge Sandra L. Massetto in the WELSA Heirship Determination of Bert F. (Albert) Bunker (decedent), No. WC 94-0250. For the reasons discussed below, the Board of Indian Appeals (Board) vacates that order, and remands this case to Judge Massetto for further investigation.

Decedent's heirship determination, which arises under the White Earth Reservation Land Settlement Act of 1985, 25 U.S.C. § 331 note (1988), was begun on June 23, 1994, when the White Earth Project Director, Bureau of Indian Affairs, sent information concerning decedent's family history to his potential heirs. On July 12, 1994, Judge Massetto issued an order making a preliminary determination of decedent's heirs, and giving interested parties an opportunity to object to the preliminary determination and to request a hearing.

Appellant, who is decedent's natural granddaughter, objected to the preliminary determination, stating:

I went to live with my Grandparents, Bert and Susan Bunker in 1941 at the age of 4 yrs. old. I lived with them continuously until I went to cosmology [sic] school at the age of 19, with the help of my Grandparents.

Bert and Susan were in everyway my parents and I was a daughter to them. I therefore ask to be considered as a daughter in determining the heirs to Bert Bunker.

Appellant requested a hearing.

Other family members disputed appellant's claim. Responding to the disagreements, appellant stated in an undated letter to Judge Massetto, which the Judge received on October 4, 1994:

[E]veryone who I grew up with knows I was raised by my Grandparents. I've never said Wilmer & Leona weren't my natural parents. I've not said I was adopted by Bert & Sue Bunker. What I'm saying is that I went to live with them, when I was a small child and was raised by them and that is a honest fact. * * *

I'm sure that you are aware the Indian people did not go to court to adopt anyone in the 1940's & 50's but that didn't make it any less binding.

Appellant stated that the people who had disputed her claim did not know her childhood situation or were not blood relatives, and that other letters were forgeries.

On October 12, 1994, Judge Massetto issued an order disallowing appellant's objections to the preliminary determination. As relevant to this appeal, Judge Massetto concluded that appellant had admitted in her October letter that she was not adopted by decedent. At page 3 of her order, Judge Massetto stated:

[T]he only basis upon which [appellant] could be considered as an heir of the decedent is if she were the natural child of [decedent] or was adopted by him either under state or Indian custom law. But [appellant] acknowledges that she was not the child of the decedent and his wife but rather the natural child of Wilmer and Leona Bunker. Furthermore, notwithstanding her statement that she continuously lived with the decedent and his wife until she was nineteen years of age, she still admits that she was never adopted by the decedent.

In her appeal to the Board, appellant repeats that she went to live with her grandparents as a child and never had any other home while she was growing up. She argues that “[t]his is the custom on the White Earth Reservation, this is what is now called an Indian custom adoption. I have talked to some Elders of our Nation and they all agree that my situation constitutes an adoption under the customs we have lived by all our lives.” Appellant further contends that her statement that she was not adopted by decedent was taken out of context, and that she was saying only that she had no adoption papers because she was not adopted through state court. Appellant repeats her contention that some of the letters objecting to her claim were forged.

Various family members continued to object to appellant's claim. Appellant's oldest natural sister contended:

In regards to Shirley and her Indian Custom Adoption, there never has been and still no such thing on the Reservation. I talked with tribal officials about this, and there has never been anything documented on the Indian Custom Adoption. Adoption through the Reservation did not take place until the late 1960's or early 1970's. * * * As far as I am concerned our grandparents were Christian people do not live by Indian Customs.

Another family member stated:

I feel that since this case came about, that any person on the Heirship List could make the claim that he or she was adopted by Burt and Susie Bunker under Indian custom law. I

know from being in the family that, besides myself there were other family members that lived with Burt and Susie Bunker at times of their lives.

Although appellant did not initially use the term "Indian custom adoption," her description of her childhood situation has been consistent. The best information available to the Board concerning Indian custom adoptions on the White Earth Reservation are two documents written by Sister M. Inez Hilger, concerning life on that reservation. The first document, A Social Study of One Hundred Fifty Chippewa Indian Families of the White Earth Reservation of Minnesota, was written as Sister Inez's Ph.D. dissertation for The Catholic University of America, Washington, D.C., and was published as a monograph by the University in 1939. Sister Inez's second work, Chippewa Child Life and Its Cultural Background, was completed in 1942 and was published in 1951 by the Smithsonian Institution Bureau of American Ethnology as Bulletin 146. Chippewa Child Life was republished with new material in 1992.

The Introduction to Chippewa Child Life, states at page xvii that Sister Inez "consciously focus[ed] upon 'traditional' culture, especially through selecting for interviews older Chippewas and those raised in 'traditional' ways, [but she] nonetheless provided a snapshot of a society in transition." The Introduction also reports that Sister Inez was alleged to have encouraged individuals to talk with her by telling them that without their memories, knowledge of their traditions might be lost.

Sister Inez discusses adoption in both books:

It was unusual for grandparents not to have adopted one or two children, one of these customarily being a girl. Children were merely declared adopted by the grandparents and were considered so by the group, if the parents raised no objections. There were no adoption ceremonials nor were there legal adoptions. Grandparents reared these children and in turn expected to be, and usually were, cared for by them in their old age.

The Chippewa family of today has changed little from the traditional one. Adult persons are taken in as [family] members, and so are children.

Social Study at page 95.

Other old people, following their traditions, adopt, not legally, but in "Chippewa way," one or two of their grandchildren. Grandchildren so adopted live their lives entirely under the influence of the grandparents.

Ibid. at page 78.

Adoption of persons, however, was very prevalent in the old days, and is so today: nearly all homes visited while making this study housed nonmembers of families. Small children were, and are,

adopted not only by relatives, but also by friends. Older children and adult persons either chose a home and asked to be adopted or they were invited to do so.

There were no adoption ceremonials. All that was necessary was a clear understanding by the parties concerned. In the case of small children, the parents' consent was required. One informant said she was present when her dying mother arranged for the placing and adoption of her children; she was old enough to remember the occasion well:

“Today, people have to arrange with the Agency [local U.S. Indian Service] if they wish to adopt a child. Before my mother died, she selected the relatives with whom she wanted all of us children to stay; she might have selected friends or anyone else instead of relatives.” [Bracketed material in original.]

Chippewa Child Life at page 33.

A 50-year-old woman told of her plans to adopt a grandchild whose parents were still living:

"When my son's wife goes to the hospital, he will bring their 2-year-old girl to us to keep. My son himself will probably bring her, and she will stay here all the time. And I am willing to take her! I can't wait until she comes! My husband plans on it, too, and is more than anxious to rear her. He and I had discussed taking her before her father ever spoke about it. That's just the way it happens that you find these children in Indian homes!"

Ibid. at page 34. See also page 166.

Appellant's description of her childhood situation does not show a child spending even an extended period of time with its grandparents, but rather shows a child being reared solely by those grandparents. This description parallels both in time and in nature the Indian custom adoptions discussed in Sister Inez's books. Because it concludes that there is at least a possibility that decedent adopted appellant by Indian custom, the Board finds that appellant's allegations require further investigation.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, Administrative Judge Massetto's order of October 12, 1994, is vacated, and this matter is remanded to her for further investigation.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge