



INTERIOR BOARD OF INDIAN APPEALS

Estate of Rufus Ricker, Jr.

29 IBIA 56 (02/05/1996)

Reconsideration denied:
29 IBIA 139



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 RUFUS RICKER, JR. : Order Docketing Appeal and
: Affirming Decision
:
: Docket No. IBIA 96-34
:
: February 5, 1996

On January 29, 1996, the Board of Indian Appeals received a notice of appeal from Clara Ann McArdle, through counsel, Sam S. Painter, Esq., Great Falls, Montana. Appellant seeks review of a November 28, 1995, order issued by Administrative Law Judge Vernon J. Rausch in the Estate of Rufus Ricker, Jr., Fort Peck Sioux 206-AO2045 (decedent), IP TC 206R-90-1. In that order, Judge Rausch reopened the estate and redetermined decedent's heirs.

The original order in this estate was issued by Administrative Law Judge Ramon M. Child on March 12, 1993. Judge Child approved a will executed by decedent in 1966; found that the sole beneficiary under the will, Mervin M. Ricker, had predeceased decedent; and held that decedent's estate therefore passed, pursuant to the anti-lapse provision in 43 CFR 4.261, to decedent's grandson, Clinton Marc Ricker, and great-grandsons, Jonathan Jacob Ish and Isaiah Nathan Ish. Judge Child also found that these same individuals were decedent's heirs at law and would have inherited decedent's estate had he died intestate.

On August 28, 1995, appellant filed a petition for reopening with Judge Rausch. She alleged that she was decedent's daughter but did not have notice of the original proceeding and was not in the vicinity of the Fort Peck Reservation when public notice of the probate proceedings were posted. She submitted copies of, inter alia, her birth certificate; a marriage certificate, showing a marriage between her mother and decedent; and a decree annulling the marriage.

On October 12, 1995, Judge Rausch issued a Notice to Show Cause, stating in part:

[T]o prevent a manifest injustice, it is the intention of the undersigned Administrative Law judge to reopen this matter and, unless there are received valid written objections, to also redetermine the heirs of the decedent to include a daughter, [appellant]. Because the decedent had a Last Will and Testament and left all of his estate to his only son, Mervin M. Ricker, [appellant] is not eligible or entitled to any portion of the decedent's trust property. Therefore, the shares acquired by Clinton (1/2) and Jonathan (1/4) and Isaiah Ish (1/4) will not be changed by this reopening.

The only response to this order was an untimely objection from Clinton Ricker, which the Judge also found substantively unpersuasive. Accordingly, on November 28, 1995, he issued an order amending Judge Child's original order by adding appellant as an heir at law of decedent.

On appeal to the Board, appellant alleges that Judge Rausch erred in failing to fully reopen decedent's estate in order to allow her to contest the validity of decedent's will. Appellant contends that she was not aware that a will existed when she filed her petition for reopening and did not become aware of it until she received Judge Rausch's Notice to Show Cause. She states further:

[Appellant] reasonably assumed that she would inherit her share of her father's estate under the Intestacy Laws of Montana until the Administrative Law Judge's Order of November 28, 1995. [Appellant] failed to understand that the existence of the Will influenced her case in any manner. [Appellant] reasonably believed that she would be able to contest the validity of the Will after the Administrative Law Judge reopened the case. [Appellant] was simply wrong. [Appellant's] lack of understanding of the intricacies of the law have foreclosed her from a right she was entitled to but was wrongly deprived of by the original lack of notice. * * *
If [appellant] were represented by an attorney, the issue surely would have been before the Administrative Law Judge for his determination.

(Notice of Appeal at 3). Appellant also states that she wishes to contest the will on grounds that decedent lacked testamentary capacity.

43 CFR 4.242(a) provides that "[a]ll grounds for the reopening must be set forth fully" in a petition for reopening. Appellant quoted this provision in her petition for reopening so was clearly aware of it. Further, despite her present statement to the contrary, appellant was aware of decedent's will when she filed her petition for reopening. The petition states: "I was not even acknowledged by my father in his will, which was filed in Fort Peck, Montana, on October 26, 1966" (Petition for Reopening at 2).

If appellant was somehow unaware of the fact that the existence of the will meant that she would not share in decedent's estate, Judge Rausch's Notice to Show Cause clearly informed her of that fact. Yet she still did not raise her challenge to decedent's will. Her only present explanation for her failure to raise the issue before Judge Rausch is that she was not represented by counsel at that time.

However, "[t]he fact that a person appears in a probate proceeding without counsel does not mean that any decision rendered in that proceeding will not be binding upon that person, or that the person need not raise all of his or her issues or arguments at that time." Estate of Thomas Sun Goes Slow, 23 IBIA 99, 100 (1992), quoting from Estate of Henry Beavert, 18 IBIA 73, 75 (1989). Accordingly, the fact that appellant was not represented by counsel when she filed her petition for reopening did not relieve her of her obligation to present all her grounds for reopening to Judge Rausch.

Even at this late date, appellant has not "set forth fully" her grounds for challenging decedent's will. In her notice of appeal to the Board, she makes only a bare allegation that decedent lacked testamentary capacity and states that she has been unable to gain access to decedent's medical records, in which she hopes to find support for her allegation. However, she fails to give any reason whatsoever for her belief that decedent lacked testamentary capacity when he executed his will in 1966. 1/

Appellant failed to raise her challenge to decedent's will in her petition for reopening as required by 43 CFR 4.242(a). Further, she failed to raise it at any point while the matter was pending before Judge Rausch, despite being informed by Judge Rausch of the significance of the will. It is now too late. The Board has a well-established practice of declining to consider issues raised for the first time on appeal. E.g., Estate of Glenn Begay, 16 IBIA 115 (1988), and cases cited therein. In accord with this practice, the Board declines to consider appellant's challenge to decedent's will.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal is docketed, and Judge Rausch's November 28, 1995, order is affirmed.

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge

1/ In her petition for reopening, appellant stated that she had never met decedent and had not been on the Fort Peck Reservation since 1946 when, at the age of two weeks, she was taken there by her mother to meet her parents-in-law. Appellant now lives in St. Paul, Minnesota, where she was born.

In these circumstances, appellant could not have first-hand knowledge of decedent's testamentary capacity in 1966. Thus, there was a particular and obvious need for her to explain how she came to believe that he lacked such capacity.