



INTERIOR BOARD OF INDIAN APPEALS

Estate of Anthony Aripa, Jr.

31 IBIA 90 (07/28/1997)



United States Department of the Interior

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

ESTATE OF ANTHONY ARIPA, JR. : Order Accepting Recommended
: Decision as Modified and Approving
: Settlement Agreement in Part and
: Disapproving It in Part
:
: Docket No. IBIA 90-61
:
: July 28, 1997

On November 28, 1989, Administrative Law Judge Keith L. Burrowes issued an order determining the heirs of decedent Anthony Aripa, Jr., an enrolled member of the Coeur d'Alene Tribe. IP BI 206A 89. Judge Burrowes found that decedent's heirs were his wife, Annabelle Leona Night Aripa, and children, Randy Neil Francis Night Aripa and Valynn Sharona Night Aripa (collectively, heirs). Judge Burrowes also disallowed a claim filed against the estate by Lois Ford. Ford sought rehearing. Judge Burrowes denied rehearing on January 30, 1990.

Ford appealed to the Board. The Board stayed its consideration of the appeal pending settlement negotiations between Ford and decedent's heirs. On April 30, 1991, the Board received a settlement agreement dated April 22, 1991, which, inter alia, provided for a payment of \$30,000 to Ford.

On May 7, 1991, the Board took the settlement agreement under advisement and, while retaining jurisdiction, remanded the case to Judge Burrowes for further consideration. A major part of the Board's concern was that the November 28, 1989, order determining decedent's heirs did not address the problems arising from the fact that the heirs resided in Canada, were members of a Canadian tribe, and appeared to be Canadian citizens. The Board questioned whether the heirs were persons for whom the United States could hold land in trust. Furthermore, Randy and Valynn were minors, and the settlement agreement provided that their shares of the estate should "be paid to the Public Trustee of the Province of Saskatchewan, Canada." The Board noted that "[a]ny heir determined not to be a person for whom the United States can hold property in trust status, would inherit his or her interest in the estate in fee status. * * * It appears * * * that a large portion of the estate consists of interests in land. It is not clear from the settlement how title to such interests should be conveyed."

In response to the Board's concern about whether the heirs were persons for whom the United States could hold land in trust, Annabelle sought to enroll her children in the Coeur d'Alene Tribe. Apparently during the enrollment process, it was learned that decedent and Annabelle actually had three children: Randy, Valynn, and Antionette Laverne Night. By tribal resolution dated April 11, 1996, the three children were enrolled in the Coeur d'Alene Tribe.

Additional information on Canadian domestic relations law was provided by decedent's heirs in response to another concern expressed by the Board, namely, whether Annabelle was legally decedent's surviving spouse.

Judge Burrowes retired from Federal service in September 1996, and this matter was transferred to Administrative Law Judge Harvey C. Sweitzer. On January 9, 1997, Judge Sweitzer determined decedent's heirs to be Annabelle, Antionette, Randy, and Valynn. He further found:

[T]he trust property which passes to decedent's heirs shall remain in trust. Annabelle * * * is Saulteaux Indian [a Canadian tribe] and a citizen of the United States, as she was born in the United States. [Antionette, Randy, and Valynn] are all enrolled members of the Coeur d'Alene Tribe and citizens of the United States, despite the fact that they were born in Canada, because their parents are U.S. citizens who resided in the United States prior to the birth of the children. Consequently, they are persons for whom the United States can hold property in trust status.

Recommended Decision at 2.

Judge Sweitzer did not cite any authority for his conclusions that decedent's heirs were all United States citizens. It appears possible that he based his decision as to Annabelle on 8 U.S.C. § 1401 (a) and/or (b) (1994). Subsection 1401 (a) provides that a person is a United States citizen at birth if that "person [is] born in the United States, and subject to the jurisdiction thereof," while subsection 1401 (b) provides that a person is a United States citizen at birth if that "person [is] born in the United States to a member of an Indian, Eskimo, Aleutian, or other aboriginal tribe: Provided, That the granting of citizenship under this subsection shall not in any manner impair or otherwise affect the right of such person to tribal or other property." It appears that the decision as to Antionette, Randy, and Valynn may have been based on 8 U.S.C. § 1401 (c) (1994) which provides that a person is a United States citizen at birth if that "person [is] born outside of the United States and its outlying possessions of parents both of whom are citizens of the United States and one of whom has had a residence in the United States or one of its outlying possessions, prior to the birth of such person."

Judge Sweitzer again disallowed Ford's claim against the estate.

By Order dated January 27, 1997, the Board allowed the parties to file objections to the Recommended Decision. Ford objected to the disallowance of her claim. No other objections were filed. In a later filing, Ford stated that if the April 22, 1991, settlement agreement was given effect, she would withdraw her objection.

On May 9, 1997, the Board gave decedent's heirs an opportunity to reply to Ford's statement. The Order stated: "Failure of any party to respond to this order will be deemed acceptance of the conditions set forth in Ford's filing and agreement that the April 22, 1991, Stipulation and Agreement for

Settlement should be ratified." (Emphasis omitted.) Responses were due on or before June 30, 1997.

No responses have been received.

The Board hereby accepts Judge Sweitzer's Recommended Decision as to the determination of decedent's heirs. It further accepts the recommendation that those heirs are all persons for whom the United States can hold property in trust status, as modified by adding references to 8 U.S.C. § 1401 (1994) concerning United States citizenship. The Board notes that its conclusion that decedent's heirs are United States citizens is made for the express and limited purpose of determining whether these individuals are persons for whom the United States can hold property in trust status.

Based on the determination that decedent's heirs are persons for whom the United States can hold property in trust status, the trust property in decedent's estate will be administered on behalf of his heirs by the Bureau of Indian Affairs of the United States Department of the Interior. For this reason, the Board disapproves that part of the settlement agreement which would have required the property inherited by Randy and Valynn--and now presumably Antionette--to be paid to the Public Trustee for the Province of Saskatchewan, Canada. The Board notes that, based on the dates of birth given in the Recommended Decision, all three children are still minors.

However, the Board approves that part of the settlement agreement which would pay Ford \$30,000 in settlement of her claim against decedent's estate. Based upon information provided by BIA, the Board believes that decedent's estate Individual Indian Money account contains funds sufficient to cover this settlement payment.

The Board expresses no opinion on that part of the settlement agreement which relates to probate of decedent's non-trust estate by the Coeur d'Alene Tribal Court.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, Judge Sweitzer's Recommended Decision determining the heirs of decedent Anthony Aripa, Jr., is accepted as modified above and subject to the payment of \$30,000 to Lois Ford in settlement of her claim against decedent's estate.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge