



INTERIOR BOARD OF INDIAN APPEALS

Estate of Albert William Cobe

32 IBIA 13 (01/16/1998)

Related Board case:
28 IBIA 282



United States Department of the Interior

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

ESTATE OF ALBERT WILLIAM COBE : Order Affirming Decision
:
: Docket No. IBIA 96-67
:
: January 16, 1998

Appellants Shannon M. Cobe, Karen Cobe Watson, Craig A. Cobe, Cheea Cobe Marshall, and Lorna D. Cobe 1/ seek review of an April 5, 1996, Order Denying Rehearing entered in the estate of Decedent Albert William Cobe by Administrative Law Judge Frederick W. Lambrecht. IP TC 244S-91. For the reasons discussed below, the Board of Indian Appeals (Board) affirms that Order.

On September 20, 1995, Judge Lambrecht approved a will which Decedent executed on March 29, 1990. Under that will, Decedent left his entire estate to his son Nachi A. Cobe. In a notice attached to the order, Judge Lambrecht correctly informed interested parties that the order would be final unless, within 60 days from the date of mailing, a petition for rehearing was filed with the Superintendent, Great Lakes Agency, Bureau of Indian Affairs, under the provisions of 43 C.F.R. § 4.241.

On November 20, 1995, the Board received a Notice of Appeal from Appellants. On November 21, 1995, the Board dismissed that appeal as premature, because Appellants had failed to seek rehearing from Judge Lambrecht as is required by 43 C.F.R. § 4.241(a) and the instructions given with the Judge's September 20, 1995, order. 28 IBIA 282.

Appellants subsequently filed a Petition for Rehearing and a Petition for Reopening, both dated December 11, 1995. Judge Lambrecht states that he received these documents on December 12, 1995.

On April 5, 1996, Judge Lambrecht denied rehearing and reopening, stating at page 1 of his Order:

On July 12, 1991, the Board * * * rendered its decision in the Estate of Peter Joseph Chalwain, 20 IBIA 128 (1991). Therein the Board made it emphatically clear that a petition for rehearing is to be properly and timely filed. * * * The Board indicated in its decision that denial of a petition for rehearing that is not properly and timely filed is not discretionary, but is mandatory * * *.

1/ Appellant Shannon M. Cobe is an attorney who is representing herself and the other Appellants.

Judge Lambrecht also considered whether the Notice of Appeal filed with the Board should be considered a petition for rehearing filed with him, and held that it should not.

Appellants appealed to the Board. They filed an Opening Brief, and Nachi A. Cobe filed an Answer Brief.

Appellants bear the burden of proving the error in the decision being appealed. The Board has frequently held that an appellant who fails to make any allegation concerning how an Administrative Law Judge's decision is in error, let alone any argument in support of such an allegation, has not carried this burden of proof. See, e.g., Estate of Richard G. Kihega, Sr., 28 IBIA 195 (1995), and cases cited therein. In this appeal, Appellants do not address the reasons Judge Lambrecht gave for denying their Petition for Rehearing, i.e., the untimeliness of the Petition; but instead address only the merits of the case, i.e., whether Decedent had testamentary capacity at the time he executed his will. Appellants have failed to carry the burden of proving error in the decision that their Petition for Rehearing was not timely filed. 2/

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, Administrative Law Judge Frederick W. Lambrecht's April 5, 1996, Order Denying Rehearing is affirmed.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge

2/ Although Judge Lambrecht also denied Appellants' Petition for Reopening as being untimely, he did not address whether Appellants had standing to petition for reopening under 43 C.F.R. § 4.242. The Board finds that Appellants lacked standing because the record shows that all Appellants had notice of the original probate proceedings and that Appellant Sharron M. Cobe actively participated in each hearing held in this estate.

Judge Lambrecht alternatively denied rehearing on the merits. If the Board had reached the merits of this appeal, it would have upheld the Judge's decision, which the Board finds adequately and appropriately addresses the difficult legal and factual issues raised in this case, which involves the question of the testamentary capacity of a person whose mental condition is deteriorating.