



INTERIOR BOARD OF INDIAN APPEALS

In the Matter of the Will and Codicils of Alva F. Bowline, a.k.a. Elva F. Bowline

33 IBIA 321 (05/25/1999)

Judicial review of this case:

Affirmed, *Bowline v. United States*, No. 99-CV-0487-H (M) (N.D. Okla. Apr. 20, 2000)



## United States Department of the Interior

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

IN THE MATTER OF THE WILL AND : Order Affirming Superintendent's Order  
CODICILS OF ALVA F. BOWLINE, :  
a.k.a. ELVA F. BOWLINE : Docket No. IBIA 98-4  
: :  
: May 25, 1999

This is an appeal from a September 4, 1997, Order Approving Will issued by the Superintendent, Osage Agency, Bureau of Indian Affairs. The order approved a will dated April 21, 1971; a codicil dated February 5, 1980; and a codicil dated June 22, 1982, all executed by Alva F. Bowline, a.k.a. Elva F. Bowline (Decedent), an Osage allottee. The will and codicils disposed of, inter alia, Decedent's Osage headright interest.

Appellant Kenneth Bowline is one of Decedent's two sons. He makes three arguments on appeal: (1) The evidence presented at the hearings in this matter was accepted in violation of subsec. 5(a) of the Act of Oct. 21, 1978, 92 Stat. 1660, 1661 (1978 Act); (2) the will and codicils were not properly executed; and (3) Appellant's brother, Cecil Bowline (Cecil), exerted undue influence upon Decedent.

In his first argument, Appellant alleges lack of compliance with the part of subsec. 5(a) of the 1978 Act which provides:

All evidence relative to the validity of the will of an Osage Indian shall be submitted to the Secretary within one hundred and twenty days after the date of [sic] the petition for approval of such will is filed with the Secretary, unless for good cause shown the Secretary extends the time; Provided, That such time shall not be extended beyond six months from the date of the first hearing.

Appellant contends that none of the evidence taken at the several hearings in this case should have been considered because the hearings were held more than six months after the date (i.e., January 25, 1996) for which the first hearing was originally scheduled.

It is not clear what Appellant hopes to gain by making this argument. Indeed, it appears that it would be to Appellant's disadvantage if the Board were to accept his contention because, if all the hearing evidence must be disregarded, the only evidence that could be considered would be the will and the codicils. The will and the 1982 codicil are self-proved. In the absence of other evidence, those documents would, under Appellant's theory, require approval.

In any event, as was pointed out in an August 27, 1997, memorandum from the Special Attorney to the Superintendent, all of the hearings were held within six months of August 30, 1996, the date on which the first hearing was held. 1/

The Board finds that all of the evidence presented at the four hearings in this matter was submitted within six months from the date of the first hearing. Accordingly, the Board rejects Appellant's first argument.

Appellant voices several objections to the execution of the will and codicils. He contends, inter alia, that some of the witnesses could not remember the execution of the will or codicil, although they testified to their own signatures; one of the witnesses to the will and the 1982 codicil was the attorney who drafted the documents and who was in partnership with the attorney who presented the will for approval; the witnesses to the 1980 codicil could not explain why a date on the codicil was altered; no attorney was present at the execution of the 1980 codicil; one of the witnesses to the 1980 codicil did not know Decedent; and none of the witnesses except the attorney/scrivener testified that Decedent understood what property she owned or that she had declared to the witnesses that the document she was signing was her will.

Under subsec. 5(a) of the 1978 Act, an Osage will disposing of an Osage headright or other restricted property must be "executed in accordance with the laws of the State of Oklahoma." The Oklahoma requirements for execution of wills appear in 84 Okla. Stat. § 55. The Oklahoma courts have adopted a "substantial compliance doctrine," under which literal compliance with the provisions of 84 Okla. Stat. § 55 is not required. E.g., Hobbs v. Mahoney, 478 P.2d 956, 958 (Okla. 1971). Further, those courts have stated that an attestation clause creates a prima facie case of due execution, which can be overcome only by clear and convincing evidence. E.g., Estate of Christ Weber, 471 P.2d 919, 923 (Okla. 1970). In both Hobbs and Weber, the Oklahoma Supreme Court found wills to have been duly executed despite the fact that witnesses could not remember the execution of the will.

In this case, the will and codicils all included attestation clauses, attesting to the fact that the documents were duly executed. The fact that some of the witnesses could not remember the circumstances surrounding execution of the documents does not make the documents invalid.

It is true, as Appellant contends, that neither of the witnesses to the 1980 codicil could explain why a change was made in the date of execution. The reason, however, is apparent from the record. The attorney who drafted the codicil sent it to Decedent in September 1979. As prepared by the attorney, the codicil had the year "1979" typed in. See Ex. 9, Letter dated Sept. 26, 1979, and accompanying unsigned codicil. Decedent did not execute the codicil until February 6, 1980. Thus, "80" was written in by hand over the typed "79." Although written over the typed numbers, the handwritten numbers are clear. Appellant has not contended, let alone shown, that the codicil was not executed on February 6, 1980.

---

1/ The other hearings were held on Sept. 27, 1996, Dec. 19, 1996, and Jan. 30, 1997.

Appellant cites no authority to support his contention that Decedent's will and codicils are made invalid by any of the circumstances he recites. The Board finds that he has failed to show that the will and codicils are invalid by reason of improper execution.

Appellant next argues that Cecil exerted undue influence upon Decedent. With regard to the elements necessary to establish undue influence, Appellant quotes from a 1979 Departmental decision concerning the approval of an Osage will. As stated in that decision, the elements are:

- (1) That the decedent was susceptible to the domination of another;
- (2) That the person allegedly exerting the influence was capable of controlling the mind and action of the decedent;
- (3) That the nature of the influence was calculated to induce or coerce the decedent to make a will contrary to his or her own desires; and
- (4) That the will is contrary to such desires.

Estate of Marion Couper, IA-T-33 (Jan. 22, 1979), at 3. Proof of these same elements has been consistently required by the Board. See, e.g., Estate of Leona Ketcheshawno Ely, 20 IBIA 205 (1991), and cases cited therein.

Appellant has correctly identified the elements necessary to establish undue influence. However, as the Special Attorney found (Special Attorney's Aug. 27, 1997, Memorandum at 7), there is no evidence in the record that any of these elements has been satisfied. Appellant also fails in this appeal to identify any such evidence.

Appellant contends that a presumption of undue influence arose because Cecil was in a confidential relationship with Decedent. He cites Estate of Anna L. Seegers, 733 P.2d 418 (Okla. Ct. App. 1986), and Estate of Evelyn Afton Maheras, 897 P.2d 268 (Okla. 1995), concerning this presumption. The Board has addressed the presumption on several occasions, most recently in Estate of Ernestine Lois Ray, 33 IBIA 92, 96 (1998). Under the Board's cases, three elements must be established in order to give rise to the presumption: (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. Under Oklahoma law, only the first two of these elements must be established. See Maheras, 897 P.2d at 273-74.

Nothing in the record supports the notion that Cecil was in a confidential relationship with Decedent at the time she executed her will or either of the two codicils. Further, there is absolutely no evidence that Cecil participated in the preparation of the will or either of the codicils. Finally, Cecil is not the principal beneficiary under Decedent's will.

Appellant has failed to establish any of the elements required to give rise to a presumption of undue influence, under either Departmental or Oklahoma law.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Superintendent's September 4, 1997, order is affirmed.

\_\_\_\_\_  
//original signed  
Anita Vogt  
Administrative Judge

\_\_\_\_\_  
//original signed  
Kathryn A. Lynn  
Chief Administrative Judge