



INTERIOR BOARD OF INDIAN APPEALS

Estate of Mary Dorcas Gooday

35 IBIA 79 (06/13/2000)



United States Department of the Interior

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

ESTATE OF MARY DORCAS GOODAY : Order Accepting Recommended
: Decision concerning Gift Deed,
: Directing Approval of Gift Deed,
: and Affirming Approval of Will
: Revocation
:
:
: Docket Nos. IBIA 99-70
: IBIA 99-77
:
: June 13, 2000

These are appeals from two orders issued by Administrative Law Judge Richard L. Reeh in the estate of Mary Dorcas Gooday (Decedent). The orders appealed are (1) a March 30, 1999, Order Recommending Gift Deed Approval, Approving Revocation [of Wills], and Determining Heirs; and (2) a June 1, 1999, Order Denying Petition for Rehearing. The March 30, 1999, order was appealed by Inez Gooday Motah, Henry Gooday, Inman C. Gooday, Robert Gooday, Jr., Flora Gooday Weryackwe, and Lupe A. Gooday (Motah Appellants), insofar as it recommended approval of a gift deed to Wendell Gooday. The June 1, 1999, order was appealed by Wendell Gooday, Theodora Martinez, and Talbert Gooday (Gooday Appellants) insofar as it let stand Judge Reeh's approval of Decedent's will revocation. The Motah Appellants' appeal was assigned the docket number IBIA 99-70. The Gooday Appellants' appeal was assigned the docket number IBIA 99-77. The two appeals have been consolidated.

Decedent, Comanche Allottee No. 808A0841, was born prior to 1900 and died on December 12, 1994, owning her original allotment and no other interests in trust or restricted land. She was survived by nine children, who are the nine Appellants here. Decedent executed at least six wills during her lifetime. However, on October 29, 1990, she revoked all her wills.

The first hearing in this estate was held on July 9, 1996. At that hearing, it became apparent that there were facts in dispute and that further hearings would be required. At a second hearing held on August 19, 1996, Wendell Gooday testified that Decedent intended to convey her allotment to him by gift deed and, for that purpose, had filed an Application for Gift Deed with the Bureau of Indian Affairs (BIA) on October 25, 1990. Wendell also submitted a copy of the Application, which showed that the gift conveyance was to be "subject to life use" by Decedent.

On August 22, 1996, Judge Reeh issued a Notice of Challenge to Inventory. Following the procedure established in Estate of Douglas Leonard Ducheneaux, 13 IBIA 169, 92 I.D. 247 (1985), he informed BIA officials of Wendell's challenge to the estate inventory and asked them to consider whether Decedent's Application for Gift Deed should be approved retroactively. 1/ He also gave interested parties an opportunity to submit arguments on the matter.

Following this notice, three more hearings were held. Because of difficulties in locating a former Anadarko Area Realty Officer, who had handled Decedent's Application for Gift Deed, the last two hearings did not take place until September and November 1998.

Judge Reeh issued a decision on March 30, 1999. With respect to the gift deed, he stated:

Although the [Anadarko] Agency Superintendent wrote a memorandum discussing the issue, no BIA official responded directly to the question of whether the Application should be retroactively considered and approved. The Superintendent's memorandum, dated September 13, 1996 states, "No transaction would have been completed due to [Decedent's] 'Supervised' status." Although it does not appear to be a final decision, this statement implies that the Agency would not favorably consider retroactive approval of the Application.

[Decedent's] Application for Gift Deed of her own original allotment is dated October 25, 1990. On October 29, 1990, she executed a Power of Attorney in favor of the Anadarko Agency Superintendent, and she requested that her IIM account be supervised through the Superintendent's office. On November 6, 1990, she revoked this Power of Attorney and executed a new Power in favor of her youngest son, Wendell Gooday.

Evidence establishes that the Application for Gift Deed was received by Pat Wilkerson, former Agency Realty Officer, 2/ on October 25, 1990. It was never acted upon, and no record of its existence was found in any Agency file. Although

1/ In Ducheneaux, the Board established a procedure under which alleged errors in BIA's estate inventory are to be considered during a probate proceeding. Because BIA is an interested party in a dispute concerning an estate inventory, the procedure requires that the Administrative Law Judge (ALJ) notify BIA when such a dispute arises and invite participation by BIA. As a part of the order concluding the probate proceedings, the ALJ is to issue a recommended decision concerning the disputed inventory, following which any interested party (including BIA) may file objections with the Board. See 13 IBIA at 177-78, 92 I.D. at 252.

2/ It is possible that the last name of the former Realty Officer is "Wilkinson" rather than "Wilkerson." Both versions appear in the record.

evidence showed that old documents in tract records were purged in 1995, the disappearance of records issue is complicated by the fact that some family members worked at the Agency and may have had access to original realty documents. No Agency record demonstrated that the decedent was ever notified of a denial decision. Only because [Decedent] saved a copy of the Application was Wendell able to present documentary evidence of its existence.

Testimony of Pat Wilkerson * * * established her recollection of having received [Decedent's] Application for Gift Deed. Ms. Wilkerson actually remembered the event. She recalled the decedent having told her that she wanted to make the gift in order to avoid a protracted will contest. Ms. Wilkerson also remembered having given assurances to the decedent that the Application would be approved.

Steve York testified that he was Acting Superintendent of [the] Anadarko Agency at the time of these transactions, that he personally met with [Decedent on] November 6, 1990, and that he advised her regarding revocation of the October 25 Power of Attorney as well as creation of a new Power of Attorney. He believed she was thinking clearly at the time of this meeting. He also stated that he was unaware of any rule, regulation, or policy which precluded a landowner from making gift conveyances because either her IIM account was supervised or she had executed a Power of Attorney in favor of the Superintendent. Mr. York also stated that prospective grantors are notified if their applications for gift deed are disapproved, and copies of the Notification are maintained.

The decision of whether to approve a conveyance of trust property is discretionary with the BIA. Estate of Aaron Francis Walter, 16 IBIA 192, 199 n.9, [95 I.D. 138, 142 n.9] (1988). Estate of George Levi, [26 IBIA 50 (1994)]. Pursuant to the Ducheneaux standing order, however, however, ALJs are required to receive evidence and make recommended decisions regarding disputed issues involved in inventory challenges.

The evidence persuades me that - at all times subsequent to the making of her March 28, 1980 Will and prior to her death - [Decedent] intended to either convey or devise her own allotment to her youngest child, Wendell. [Decedent's] November 7, 1988 Will devised this interest to Wendell. She revoked these wills only upon making the Application for Gift Deed. When making that application, she told the Agency Realty Officer that she wanted to convey this interest to Wendell because she believed this action would avoid a protracted will contest. She protected [her] own interests by reserving Life Use. She signed the revocation only after having been assured by the Agency's former Realty Officer that her Application for Gift Deed would be approved. Although she did not sign a deed, no Agency record shows [Decedent] was ever notified that her Application had

been denied. The fact she executed a Power of Attorney in favor of Wendell on November 6, 1990, demonstrates the fact Wendell continued to enjoy her care and confidence. Moreover, the Affidavit she signed on the same day in reference to Guardianship proceedings clearly demonstrates why she felt this way. It also furnishes inferences of her intent relating to conveyance or distribution of Comanche [Allotment] #841.

* * * The facts of this case establish that although the November 1990 Acting Superintendent would probably have approved [Decedent's] Application, it never reached his desk. Thus, Steve York did not even have an opportunity to consider it. After this case was submitted, a successor Superintendent stated that "... No transaction would have been completed due to the 'Supervised' status," that is, because - after making the Application but before its approval - [Decedent] had requested her IIM account be supervised. This was not the understanding of either the 1990 Realty Officer or the Acting Superintendent. Evidence suggests it was also not [Decedent's] understanding. Rather, this evidence shows that [Decedent's] dispositive intent has - to this day - been thwarted.

These facts lead me to recommend that [Decedent's] Application for Gift Deed be retroactively approved.

March 30, 1999, Order at 1-2.

The Motah Appellants challenge this recommendation. They contend, in essence, that Decedent changed her mind about conveying her property to Wendell. They argue:

[I]f [Decedent] truly wished to leave the only substantial asset of her estate, that being her land, and disenfranchising her other children, she would have completed the Gift Deed process by actually signing a Gift Deed to Wendell Gooday. The fact that she never did especially in view of the fact she had three more good years of competent living is evidence she did not want Wendell to receive her property.

Motah Appellants' Opening Brief in Docket No. IBIA 99-70 at 13.

The Motah Appellants only speculate as to the reason Decedent did not follow up on her Application for Gift Deed. In fact, Decedent's failure to take further action is explained in the testimony of Pat Wilkerson, who stated unequivocally that she had assured Decedent that the gift deed transaction would be completed, Tr. of Sept. 11, 1998, Hearing at 38, 43, and that Decedent believed she did not need to take any further action to complete the transaction. Id. at 21-22. The Motah Appellants produce no evidence whatsoever which contradicts Wilkerson's testimony or which otherwise supports their theory that Decedent changed her mind.

The Motah Appellants also contend that Wendell exercised undue influence over Decedent in connection with the Application for Gift Deed. Again, their contention is in conflict with the testimony of Pat Wilkerson, who testified that she was certain no pressure had been exerted upon Decedent. Id. at 42. And again they produce no evidence in support of their contention.

The Board finds that the Motah Appellants have failed to make any persuasive arguments against the retroactive approval of the gift deed to Wendell.

The Board will return to the gift deed issue below. First, however, it turns to the issue of Decedent's revocation of her wills. On that issue, Judge Reeh found that "[t]he evidence in this case preponderates in favor of finding that [Decedent] had testamentary capacity at the time she signed the Revocation." March 30, 1999, Order at 3. He therefore held that Decedent's revocation of her wills was valid. He reaffirmed his holding in his June 1, 1999, Order Denying Petition for Rehearing.

The Gooday Appellants challenge this holding. They contend that Decedent lacked testamentary capacity on October 29, 1990, when she revoked her wills, although they also argue that, four days earlier, on October 25, 1990, she was competent to execute the gift deed to Wendell. The Gooday Appellants produce no evidence in support of their contention that Decedent lacked testamentary capacity on October 29, 1990. Further, they do not even attempt to explain how Decedent would have been competent to execute a gift deed application on October 25, 1990, and incompetent to execute a will revocation on October 29, 1990.

The Gooday Appellants have failed to show error in Judge Reeh's approval of Decedent's will revocation. Accordingly, Judge Reeh's March 30, 1999, and June 1, 1999, orders are affirmed insofar as they approved Decedent's will revocation.

The Board now returns to the question of whether the gift deed to Wendell should be approved retroactively.

As Judge Reeh noted, decisions to approve or disapprove gift deeds of Indian trust land are normally made by BIA officials in the exercise of their discretionary authority, although, in a case like this, they are also subject to the special Ducheneaux procedures. Judge Reeh specifically requested that BIA officials consider whether the gift deed should be approved retroactively. However, he received no direct response to this request. Further, although BIA officials testified as to whether the gift deed would have been approved under the circumstances that existed at the time it was executed, their testimony on that question was conflicting.

Judge Reeh concluded that Decedent intended that Wendell receive her allotment, either by devise or by conveyance. He further concluded that Decedent revoked her wills in the belief

that the gift deed for which she had applied would be completed. After a thorough review of the extensive record in this case, the Board agrees with Judge Reeh.

Decedent's last two wills, executed on March 28, 1980, and November 7, 1988, both devised her entire estate to Wendell. There is no evidence that, at any time after 1980, she ever changed her mind about giving her property to Wendell. To the contrary, her statements to Pat Wilkerson reflect her concern that Wendell receive the allotment and her hope that, by making a gift deed, she could protect him from challenges by his siblings. See Tr. of Sept. 11, 1998, Hearing at 6, 22.

Unless the gift deed is approved, Decedent's estate will pass by intestacy, and each of her nine children will receive equal shares. Prior to October 29, 1990, Decedent had had wills in place for nearly 30 years. In each of her six wills, the first of which was executed in 1962, Decedent chose to include only some of her children. Wendell was included in all of the wills, and Lupe and Talbert were included in some of them. However, the remaining six children were consistently excluded. 3/ Decedent's wills show that, over a period of many years, she had consistently exercised her right to direct the distribution of her estate and had consistently chosen a distribution quite different from an intestate distribution. It is apparent that an intestate distribution would be contrary to Decedent's long-held wishes.

For all these reasons, and because BIA has not objected to Judge Reeh's recommended decision, the Board finds that Decedent's gift deed should be approved. Therefore, the Board accepts Judge Reeh's recommended decision and directs the Southern Plains Regional Director, BIA, to approve, or have the appropriate official approve, a gift deed to Wendell in accordance with Decedent's October 25, 1990, Application for Gift Deed. 4/

3/ The 1962 will is the only one which gives a reason for the omission. In that will, after naming the six omitted children, Decedent stated that she was omitting them "for the reason that all of them have the ability to get along without my help and I have no fears of any lack of self-sufficiency on their parts."

4/ Under other circumstances, the Board might refer the gift deed to the Assistant Secretary - Indian Affairs under 43 C.F.R. § 4.337(b) for exercise of discretionary authority. See, e.g., Estate of Aaron Francis Walter, 16 IBIA at 199 n.9, 95 I.D. at 142 n.9. However, the gift deed in this case is inextricably intertwined with Decedent's testamentary acts. Therefore, the gift deed must be approved in order to give effect to Decedent's testamentary intent.

The Board's affirmance of Judge Reeh's June 1, 1999, Order Denying Petition for Rehearing and its order directing approval of Decedent's gift deed are issued under authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1.5/

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge

5/ Much of the responsibility for the difficulties of this case must be taken by BIA, specifically the Anadarko Agency. Decedent should have been notified promptly of the approval or disapproval of her Application for Gift Deed. Had she been notified that her Application had been disapproved or that it would not be acted upon, Decedent would have had an opportunity to make a new will to provide for the disposition of her property. Given her prior actions, there seems little doubt that she would have done so. Although a will contest might have developed, such a contest would have been less complex, and thus less burdensome to the parties, than the present protracted proceedings.

Further, as Judge Reeh's decision reflects, there was no information at all in Agency files concerning Decedent's Application for Gift Deed. Whether this lack was due to lax security or some other cause is not clear, despite the extended testimony given by various BIA officials. It is abundantly clear, however, that the lack of relevant records greatly increased the complexity of these proceedings and the burden on all concerned.

The Southern Plains Regional Director is requested to review the Agency's gift deed and records maintenance procedures and provide guidance to the Agency where necessary.