



INTERIOR BOARD OF INDIAN APPEALS

Estate of Clayton Harry

37 IBIA 244 (05/14/2002)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ESTATE OF CLAYTON HARRY : Order Docketing Appeal, Vacating Order,
: and Remanding Estate and
: Order Instructing Administrative Law
: Judge to Reopen Closed Probate
:
: Docket No. IBIA 02-86
:
: May 14, 2002

Appellant Vanessa (Vance) Robles seeks review of a February 7, 2002, order on rehearing issued in the estate of Clayton Harry by Administrative Law Judge Richard L. Reeh. IP OK 168 P 99-1 and 999-807-045L. For the reasons discussed below, the Board of Indian Appeals (Board) exercises the authority delegated to it by the Secretary of the Interior in 43 C.F.R. § 4.318 to correct a manifest injustice or error. 1/

Appellant is Clayton's niece. In her notice of appeal, Appellant objects only to the finding that Kaye (Pohocsucut) Vance, Gloria Adena Torralba, and David Thompson Vance are also Clayton's nieces and nephew. In his February 7, 2002, order, Judge Reeh stated that this finding was based on the probate of the estate of Inez Lola May Vance, Appellant's mother. IP OK 043 P 95. In a February 27, 1996, order approving Inez's will, Judge Reeh listed Appellant, Kaye, Gloria, and David as Inez's children and heirs. Later in the decision, Judge Reeh indicated that Kaye, Gloria, and David were adopted. In his February 7, 2002, order in Clayton's estate, Judge Reeh stated: "If there was a legitimate issue regarding the relationship of Inez * * * with [Kaye, Gloria, and David], it should have been brought up during [the] 1995 hearings [apparently in Inez's estate]. [Appellant] participated in those proceedings, and she did not appeal the decision." Feb. 7, 2002, Order at 1.

1/ Section 4.318 provides in pertinent part:

"An appeal shall be limited to those issues which were before the administrative law judge upon the petition for rehearing * * *. However, except as specifically limited in this part * * *, the Board shall not be limited in its scope of review and may exercise the inherent authority of the Secretary [of the Interior] to correct a manifest injustice or error where appropriate."

Judge Reeh is technically correct that any dispute as to whether Inez had adopted Kaye, Gloria, and David should have been raised in Inez's probate. ^{2/} However, upon review of the February 27, 1996, order in Inez's estate and the February 7, 2002, order in Clayton's estate, the Board finds that there are problems with the decisions in these two estates that supersede the failure to appeal the decision in Inez's estate because, taken together, those problems constitute manifest error on the part of the Departmental deciding official.

The major problem is that, in his decision in Inez's estate, Judge Reeh failed to discuss the basis for his determination that Inez had adopted Kaye, Gloria, and David. The Board recognizes that the approval of Inez's will essentially rendered moot the question of whether or not these individuals had been properly adopted for purposes of Inez's probate proceeding. However, both the regulations and Board precedent require that every probate decision contain a determination of the decedent's heirs. See 43 C.F.R. § 4.240(a)(1); Estate of Ella Sarah Case Barnes, 17 IBIA 72, 74-5 (1989). This requirement is not "make-work." The determination of heirs is often, as here, used in subsequent estates or for other tribal or Departmental purposes unrelated to the original probate. These determinations are, therefore, to be treated as being as important as any other determination made in a probate case, even when they are not essential to the ultimate decision in that particular probate, such as when a will is approved. See also discussion in Barnes, 17 IBIA at 75.

Exercising the inherent authority of the Secretary of the Interior to correct a manifest injustice or error, the Board vacates Judge Reeh's February 7, 2002, order on rehearing in Clayton's estate. It instructs Judge Reeh to reopen Inez's estate in order to make a proper determination as to whether or not Inez adopted Kaye, Gloria, and David. Both cases are remanded to the Judge for further action consistent with this decision.

The Board finds that there is another matter in regard to Inez's estate that must also be addressed on reopening. Even though this matter was not raised by any party, the Board reaches it under its authority under 43 C.F.R. § 4.318. Despite approving Inez's will, Judge Reeh nevertheless disapproved her bequests of \$1.00 each to Kaye, Gloria, and David. In regard to these bequests, he stated: "Token Devises. Although recognized as important to

^{2/} As dicta in regard to Appellant's failure to appeal the decision in Inez's estate, the Board questions whether Appellant and other interested parties in Inez's estate were informed that the findings there could be used to their disadvantage in other probates, or even in unrelated non-probate proceedings. Without such information, no interested party would have had reason to understand the potential consequences of failing to appeal from a finding that was irrelevant to the outcome in Inez's estate because of the approval of her will. The fact that the administrative law judge may be the only person who will recognize the importance of such earlier findings when they are raised in a later case is among the reasons why the judges are charged with the responsibility to reopen closed probates on their own motion in order to prevent manifest injustice. See 43 C.F.R. § 4.242(d).

[Inez], gifts of \$1.00 to Kay Vance, Gloria Wills [sic] and David Vance, adopted children, fails [sic] because the costs of administration of this gift [sic] would far exceed the value of the gift.” Feb. 27, 1996, Order at 2.

There is no statutory, regulatory, or decisional authority for a Departmental deciding official to disapprove (or otherwise fail to effectuate) a bequest or devise in an Indian will on the grounds that the Department’s cost of administering the bequest or devise would exceed the value of the bequest or devise. In the absence of such authority, failing to effectuate an otherwise valid bequest or devise based on the Department’s cost of administration is a violation of the Department’s trust responsibility to the Indian people. Accordingly, on reopening of Inez’s estate, Judge Reeh is instructed to approve the bequests Inez made to Kaye, Gloria, and David. If there are no trust funds remaining in Inez’s estate, the Judge shall find a legally available source of revenue to pay these bequests.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. §§ 4.1 and 4.318, Judge Reeh’s February 7, 2002, order in the estate of Clayton Harry is vacated. Judge Reeh is instructed to reopen the estate of Inez Lola May Vance and to enter a proper determination as to whether or not Inez adopted Kaye (Pohocsucut) Vance, Gloria Adena Torralba, and David Thompson. Based on that determination, he shall issue a new decision in the estate of Clayton Harry. The Judge shall also take whatever additional actions are necessary to fully implement this decision.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge