



INTERIOR BOARD OF INDIAN APPEALS

Estate of Ruby Ruth Maldonado

38 IBIA 196 (11/05/2002)

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United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

ESTATE OF RUBY RUTH
MALDONADO

: Order Affirming Decision
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: Docket No. IBIA 01-146
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:
: November 5, 2002

This is an interlocutory appeal in the estate of Ruby Ruth Maldonado (Decedent), IP SA 237N 98. It concerns a May 14, 2001, order in which Administrative Law Judge William E. Hammett held that the Confederated Tribes of the Warm Springs Reservation (Warm Springs Tribe) has authority to purchase certain land interests in Decedent's estate. For the reasons discussed below, the Board affirms the Judge's order.

On December 9, 1998, Judge Hammett issued an order determining Decedent's heirs. In that order, he held that, because the heirs were not members of the Warm Springs Tribe, the Tribe was entitled to purchase any interests they might inherit from Decedent which were subject to the Act of Aug. 10, 1972, Pub. L. No. 92-377, 86 Stat. 530. On January 9, 1999, the Warm Springs Tribe filed a notice of election to purchase Decedent's interests in The Dalles Public Domain Allotments 22, 23, and 2264. Following further proceedings, in which the Confederated Tribes and Bands of the Yakama Indian Nation (Yakama Nation) disputed the right of the Warm Springs Tribe to purchase the interests, Judge Hammett issued an interim order holding that he lacked authority to determine issues of tribal jurisdiction raised between two Indian tribes. He referred the matter to the Board for interlocutory review. The Board returned the case to him on January 25, 2001, holding that, in connection with the Department's responsibility to probate Decedent's estate, he had the authority to interpret the 1972 statute in order to determine whether the Warm Springs Tribe is entitled to purchase interests in the estate. 36 IBIA 8. Judge Hammett then issued his May 14, 2001, order, in which he affirmed the holding originally made in his December 9, 1998, order. Noting that valuation matters remained to be addressed should his decision be affirmed, the Judge found that the decision involved a "controlling question of law" within the meaning of 43 C.F.R. § 4.28 and certified the decision for interlocutory appeal. The Yakama Nation filed an appeal with the Board. On August 13, 2001, the Board accepted the appeal for interlocutory review.

The issue and arguments are well set out in Judge Hammett's May 14, 2001, order, which also includes a comprehensive analysis of the matter:

The essential facts are not in dispute. Ruby Maldonado's heirs are enrolled members of the Yakama Tribes, and are not enrolled members of the Warm Springs Tribes. The allotments are within the area ceded by the treaty of June 25, 1855 (12 Stat. Treaties, 37) (hereinafter, the ceded area).

What is in dispute is the interpretation of relevant statutory law. Section 1. (a) of Public Law 92-377 (86 Stat. 530) (hereinafter, the Warm Springs Inheritance Act or WSIA) provides in part:

A person who is not an enrolled member of the Confederated Tribes of the Warm Springs Reservation of Oregon shall not be entitled to receive by devise or inheritance any interest in trust or restricted lands within the Warm Springs Reservation or within the area ceded by the treaty of June 25, 1855 (12 Stat. Treaties, 37), if, while the decedent's estate is pending . . . the Confederated Tribes of the Warm Springs Reservation of Oregon pay to the Secretary of the Interior, on behalf of such person, the fair market value of such interest as determined by the Secretary of the Interior after appraisal.

Under this provision, Warm Springs has an option to purchase interests in trust properties which would otherwise pass to persons who are not enrolled members of the Warm Springs Tribes.

At issue is the question of which trust properties are encompassed by the provision quoted above. Yakama argues that even though the plain language of the statute would include all trust properties within the ceded area, Congress actually intended a much narrower application. According to Yakama, what Congress really intended was that Warm Springs would have an option to purchase interests in trust properties in the estates of Warm Springs decedents, so that Warm Springs would have an opportunity to maintain, but not expand, its land base. Warm Springs, on the other hand, argues that the plain language of the WSIA authorizes it to purchase any interest in trust property within the ceded area, and that Congress did not intend a contrary result.

The plain language of a statute is the starting point for any interpretation of the statute. See Ardestani v. INS, 502 U.S. 129, 135 (1991). "The 'strong presumption' that the plain language of the statute expresses congressional intent is rebutted only in 'rare and exceptional circumstances,' Rubin v. U.S., 449 U.S.

424, 430 (1981), when a contrary legislative intent is clearly expressed.” *Id.*, at 135-36 (citations omitted). For example, the Supreme Court has held that the term “pollutants” in the Clean Water Act does not include radioactive materials regulated under the Atomic Energy Act, because the legislative history for the Clean Water Act plainly states that the definition of “pollutants” does not include those materials. *Train v. Colorado Pub. Interest Research Group*, 426 U.S. 1, 11 (1976).

Here, the plain language of the statute, which is unambiguous, authorizes the Warm Springs Tribes to purchase “any interest in trust or restricted lands . . . within the area ceded by the treaty of June 25, 1855,” if the person who would otherwise inherit that interest is not an enrolled member of the Warm Springs tribes. The statute contains no language which would limit Warm Springs’s option to purchase solely to those interests in the estates of Warm Springs decedents. As Warm Springs points out, the term “any” is quite broad. See Warm Springs Reply Brief, p 4, *quoting* *United States v. Gonzales*, 520 U.S. 1, 5 (1997). Yakama appears to agree that the plain language of the WSIA does not itself restrict Warm Springs’s option to purchase to those allotments in the estates of Warm Springs decedents. See Yakama Memorandum, p 2 (“By such language it certainly appears that Congress plainly intended to authorize tribal purchase of all non-member heirs’ allotment interests . . .” (emphasis in original)).

Furthermore, as Warm Springs points out, the Interior Board of Indian Appeals (hereinafter, the Board), in a case which is on point, interpreted the WSIA to apply to allotments in the estate of a Yakama decedent. *Estate of Caroline J. Charles (Brendale)*, 3 IBIA 91 (1974). In *Charles*, after finding that the Yakama Tribes should have an opportunity to purchase a 1/8 interest in an allotment in Yakima County, Washington, the Board turned its attention to interests in land on the Warm Springs Reservation which were part of the decedent’s estate. Although the Board recognized the decedent as an enrolled member of the Yakama Tribes, the Board found that, because the sole devisee was an enrolled member of the Cowlitz Tribe of Indians, the Warm Springs Tribes had an option to purchase the interests on the Warm Springs Reservation. *Id.*, at 93, 97-98. The Board did not interpret the WSIA to mean that Warm Springs was limited to purchasing interests in the estates of Warm Springs decedents.

The question then becomes whether Congress otherwise clearly expressed its intent that Warm Springs’s option to purchase should be limited to those interests in the estates of Warm Springs members. Yakama argues that Congress did express such intent. However, although Yakama’s arguments are creative,

they are ultimately unpersuasive. Yakama has not shown that this case involves the type of “rare and exceptional” circumstance in which Congressional intent is found somewhere beyond the plain and unambiguous language of the statute.

Yakama points out that the WSIA was intended to be a parallel of Public Law 91-627 (84 Stat. 1874) (hereinafter, the Yakama Inheritance Act or the YIA). See S. Rep. No. 92-998, p 1 (1972). The YIA, which uses language nearly identical to that in the WSIA, enables the Yakama Tribes to purchase interests in allotments which would otherwise pass to non-members. Yakama argues that according to legislative history for the YIA, the YIA was enacted to remedy problems caused by Public Law 706 (60 Stat. 968) (hereinafter, P.L. 706). P.L. 706 provided that only enrolled members of the Yakama Tribes could inherit interests in trust properties from deceased members of the Yakama Tribes. As Yakama points out, the legislative history for the YIA discusses the injustice which resulted from this prohibition on inheritance:

Many Yakima Indians have intermarried with neighboring tribal Indians. Some of the families live on the Yakima reservation and some of them live on the neighboring reservations. These are Indian families, but the husband and wife belong to different tribes. Their children frequently can be enrolled in either tribe. A single family may enroll part of its children in one tribe and part of its children in the other tribe. When a parent dies owning an interest in a Yakima Reservation allotment, the children enrolled at Yakima may inherit, but their brothers and sisters who are enrolled in neighboring tribes may not inherit.

S. Rep. No. 91-1384 (1970), *reprinted in* 1970 U.S.C.C.A.N. 5783, 5783-84. Yakama argues that this language shows that the YIA was focused on interests in the estates of Yakama decedents, not on those in the estates of other Tribes. Therefore, Yakama argues, the YIA should be interpreted as only applying to interests in the estates of Yakama decedents, and should not be interpreted as applying to interests in the estates of decedents from other tribes. Because the WSIA is a parallel of the YIA, Yakama argues, the WSIA should be interpreted in a similar manner, and should only apply to interests in the estates of Warm Springs decedents.

The language quoted in the prior paragraph provides a compelling example of how P.L. 706 “work[ed] unfairly.” S. Rep. No. 91-1384 (1970), *reprinted in* 1970 U.S.C.C.A.N. 5783, 5783. However, it does not clearly express Congressional intent that the YIA, much less the WSIA, should be interpreted in a manner contrary to its plain meaning. Reading the YIA to

allow Yakama to purchase interests in the estates of non-Yakama decedents, as the plain language would indicate, still protects the children of exogamous families who are enrolled in non-Yakama tribes. Those children would still be able to inherit interests in trust or restricted properties if Yakama decided not to purchase those interests, and Yakama would still have to pay those children fair market value if Yakama did decide to purchase those interests.

Yakama also focuses on the words “maintain” and “keep,” found in the legislative history for the YIA and the WSIA. The Senate Report for the YIA states in part that the YIA would “let the tribe maintain its land base.” S. Rep. No. 91-1384 (1970), *reprinted in* 1970 U.S.C.C.A.N. 5783, 5784. The Senate Report for the WSIA, referring to the YIA and the WSIA, states in part: “The purpose in both cases is to keep as much of the reservation as possible in the ownership of tribal members, and to preclude the transfer of reservation lands by devise or descent to nonmembers of the tribe.” S. Rep. No. 92-998, p 1 (1972). Yakama argues that the words “maintain” and “keep” show that Congress intended “that both the Yakama and Warm Springs tribes be able to avoid having ownership of allotments on their reservations and ceded areas pass from members to non-members.” Yakama Memorandum, p 3.

Once again, however, the language relied upon by Yakama does not clearly express Congressional intent that the statute should be interpreted in a manner which is contrary to its plain language. The language shows that a primary goal of the YIA and the WSIA was to allow the tribes to “keep” or “maintain” their respective land bases. Allowing Warm Springs to purchase interests in the estates of decedents who are not Warm Springs members is not contrary to this goal – it is not a result which would allow the tribal land base to be eroded.

Yakama also argues that the legislative history does not contain any evidence that Congress intended to allow Warm Springs to “take” land from other tribes. Yakama Reply, p 5. However, that is not the test. The plain language of a statute need not be expressly supported in a statute’s legislative history before it can be given effect. All that is required is that the plain language not be clearly contradicted in the legislative history. Yakama has not cited, and this forum has not found, language in the legislative history which clearly contradicts the plain language of the WSIA.

Furthermore, this forum agrees with the following argument presented by Warm Springs:

WSIA, by its own terms, allows the purchase option only where heirs are not Warm Springs members. Because there is a tribal affiliation requirement as to one group of persons (heirs), but not as to another (decedents), the logical conclusion is that Congress did not intend for tribal affiliation to be a critical factor for both groups. See Russello v. United States, 464 U.S. 16, 23, 104 S. Ct. 296 (1983) (“Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion”) (internal citation omitted).

Warm Springs Reply, p 4 (emphasis in original).

In a similar vein, this forum notes that P.L. 706 did apply only to interests in the estates of members of the Yakama Tribes. See P.L. 706, Sec. 7 (60 Stat. 968, 969) (“any interest in that part of the restricted or trust estate of a deceased member of such tribes”). It would have been easy enough for Congress to leave this language in the YIA and thereby restrict the types of interests the Yakama Tribes could purchase. However, Congress used different, more expansive language for the YIA, and did not limit the types of interests at issue to those in the estates of “deceased member[s] of such tribes.” That P.L. 706 contained a restriction which the YIA itself did not is a clear indication that Congress consciously abandoned that restriction.

For the above reasons, this forum hereby affirms its December 9, 1998 ruling that Warm Springs has a right to purchase Dalles Public Domain Allotments 22, 23, and 2264.

Judge Hammett’s May 14, 2001, Order at 2-5.

On appeal to the Board, the Yakama Nation continues to argue that, despite the plain language of the WSIA, Congress meant the statute to apply only to interests in the estates of members of the Warm Springs Tribe. Like Judge Hammett, the Board finds the Yakama Nation’s arguments unpersuasive.

Judge Hammett’s decision is thorough and well-reasoned. The Board sees no need to analyze the matter further.

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 Hammett's May 14, 2001, order is affirmed.

//original signed

Anita Vogt
Administrative Judge

//original signed

Kathryn A. Lynn
Chief Administrative Judge