



INTERIOR BOARD OF INDIAN APPEALS

Estate of Marcella Jean Wicks, a.k.a. Gayton

39 IBIA 211 (12/11/2003)

Related Board case:
15 IBIA 78



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ESTATE OF MARCELLA JEAN WICKS, : Order Docketing Appeal and
a.k.a. GAYTON : Affirming Decision
: :
: Docket No. IBIA 04-15
: :
: December 11, 2003

Appellant Barbara Gail Wicks seeks review of an October 2, 2003, order denying reopening issued in the estate of Decedent Marcella Jean Wicks, a.k.a. Gayton, by Indian Probate Judge George Tah-bone. IP BI 740C 82. The Board of Indian Appeals (Board) addresses this appeal in an expedited manner because it finds that there are no circumstances under which Appellant can prevail. The appeal is docketed and the denial of reopening is affirmed.

The original decision in Decedent's estate was entered on December 5, 1984, by Administrative Law Judge Elmer T. Nitzschke. The parties in the probate proceeding were Decedent's sons, Chaske (Charles) Frederick Wicks and Joseph James Wicks. Judge Nitzschke's original order and subsequent order after rehearing were appealed to the Board. On appeal, Chaske and Joseph entered into a settlement agreement. The Board approved the settlement on January 5, 1987. 15 IBIA 78.

Appellant is Chaske's surviving spouse. She seeks to reopen this probate, despite the fact that her husband voluntarily settled it almost fourteen years ago.

Appellant is not a party to the probate of Decedent's estate. At the time of the original probate proceeding, she was married to Chaske. She was not, however, Decedent's presumptive heir and was not named in Decedent's will. Therefore, she had no standing to participate in the probate proceeding independent of her husband.

The facts that Chaske is now deceased and, presumably, Appellant is his heir, do not give Appellant rights she did not have when Decedent's estate was originally probated. The Board finds that Appellant lacks standing to petition to reopen Decedent's estate.

Even if Appellant had standing, she does not meet the requirements for reopening an estate closed for more than three years. The rules for reopening under these circumstances are

set out in 43 C.F.R. § 4.242(h), which provides in pertinent part that a person seeking reopening must show

that a manifest injustice will occur; that a reasonable possibility exists for correction of the error; that the petitioner had no actual notice of the original proceedings; and that petitioner was not on the reservation or otherwise in the vicinity at any time while the public notices [of the probate proceeding] were posted.

No manifest injustice will occur if this estate is not reopened. Chaske voluntarily entered into a settlement agreement with Joseph. The Board approved that agreement. The fact that Appellant, a stranger to the agreement and a non-party in the original probate proceeding, has decided after her husband's death that she is not happy with the settlement he reached does not constitute a manifest injustice. Furthermore, it does not give Appellant the right to contest the probate of Decedent's estate when, as discussed above, she had no such right during the initial probate proceedings.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal is docketed and Judge Tah-bone's October 2, 2003, order denying reopening is affirmed.

// original signed
Kathryn A. Lynn
Administrative Judge

// original signed
Kathleen R. Supernaw
Acting Administrative Judge