



INTERIOR BOARD OF INDIAN APPEALS

Estate of Joe Benally

41 IBIA 270 (09/30/2005)



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 JOE BENALLY : Order Affirming Decision
:
: Docket No. IBIA 04-7
:
: September 30, 2005

This is an appeal from a September 12, 2003, order by Indian Probate Judge P. Diane Johnson (Probate Judge) denying rehearing in the estate of Joe Benally (Decedent), deceased Navajo Indian, Probate No. IP AL 235L 94; 000-780-163J. The petition was denied as untimely filed. The denial of the petition let stand a September 30, 1999, order by Administrative Law Judge Patricia McDonald (ALJ) directing the distribution of Decedent's entire Indian trust estate to one of his daughters, Louise Benally. For the reasons stated below, the Board of Indian Appeals (Board) affirms the ALJ's denial of rehearing.

Background

Decedent died on October 17, 1993, at Blanding, New Mexico. Decedent's will named one of his children, Louise Benally, as the sole beneficiary of his Indian trust estate. The ALJ held a probate hearing on July 21, 1994, at Shiprock, Arizona, which was attended by a number of individuals, including some of the Appellants.

On September 30, 1999, the ALJ issued an Order Approving Will and Decree of Distribution. The ALJ noted that, at the probate hearing, the will scrivener testified that Decedent had been concerned that his shares of trust property were highly fractionated and that he decided to leave his trust property to one child, Louise Benally, with another daughter, Ethel Benally, as the alternate beneficiary. The ALJ found that the testimony showed that Louise had provided some, although not all, of the care and assistance needed by Decedent in his later years and was one of two children whom he had entrusted to assist with his financial affairs. The ALJ noted that there was some testimony that Decedent was at times forgetful or confused, but found that the testimony of the will scrivener and interpreter who assisted the scrivener made it quite clear that Decedent was fully cognizant at the time of making his will and reached a reasoned decision about the disposition of his trust property. The order thus named Louise Benally as the sole beneficiary of the estate, entitled to all of Decedent's Indian trust property.

On November 30, 1999, the Albuquerque Office of Hearings and Appeals received a petition for rehearing from Irene T. Thomas, Nancy Begay, Amelia Begay (Nakai), and Cecelia Begay Padilla (Petitioners), children and grandchildren of Decedent. The petition was dated November 22, 1999. The petition argued that the ALJ had failed to appreciate how forgetful and confused Decedent had been due to various medical conditions, questioned the accuracy of the interpreter in conveying the will instructions, questioned the ability of the non-medically trained scrivener to detect the mental capacity of Decedent, said that they did not believe that Decedent intended to name only one child as beneficiary, and asked the judge to make a home visit to their physically disabled sister, Carolyn Benally, whom they said they hoped to benefit by a reallocation of the estate.

On September 12, 2003, the Probate Judge issued an Order Denying Petition for Rehearing. The order noted that federal regulations in effect in 1999 required petitions for rehearing to be filed within 60 days after the date on which the decision and notice of decision are mailed to the interested parties. The petition was received at the Office of Hearings and Appeals 61 days after the date the decision was mailed and thus was untimely filed. The Probate Judge explained that the 60-day filing requirement was a jurisdictional requirement that could not be altered or waived, and dismissed the petition. ^{1/}

An appeal to the board was filed by Irene Thomas, David Benally, Cecelia Padilla, Elva Ann Begay, Evaline Begay, Nancy Begay, and Amelia Nakai (Appellants). The appeal was timely filed. Appellants rely on argument set forth in their notice of appeal. No other parties have submitted filings to the Board.

Discussion

In the notice of appeal, Appellants do not address the question whether their petition for rehearing was timely filed. Rather, they reargue that Decedent was not competent to make his will and ask the Board for a comprehensive assessment of Decedent's medical records by licensed doctors and other qualified individuals to determine whether he was likely confused at the time of making his will. Appellants attached to their notice of appeal portions of Decedent's medical records.

The only question before the Board is whether the Probate Judge erred in ruling that the petition for rehearing was filed out of time. Appellants bear the burden of proving that the

^{1/} Prior to issuing the order, on April 24, 2003, the Probate Judge held a hearing in which she explained in person to petitioners that the petition would have to be dismissed as untimely filed, but that the petition was deficient in any event because it merely restated points previously made in the probate hearing and failed to provide newly discovered evidence as required for rehearing.

