



INTERIOR BOARD OF INDIAN APPEALS

Estate of Helen Hesuse

41 IBIA 324 (10/31/2005)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ESTATE OF HELEN HESUSE : Order Affirming Decision
:
: Docket No. IBIA 04-51
:
: October 31, 2005

This is an appeal from a December 15, 2003 order by Administrative Law Judge Patricia McDonald (ALJ) denying rehearing in the estate of Helen Hesuse (Decedent), deceased Navajo Indian, Probate No. NA-780-0220. ^{1/} The decision let stand a September 23, 2003 order approving Decedent's will and decreeing distribution. This appeal is by one of Decedent's nieces, Emma Begay (Appellant), who was not named as a beneficiary in the will. For the reasons stated below, the Board of Indian Appeals (Board) affirms the order denying rehearing.

Background

Decedent died on October 2, 1998, at Huerfano, New Mexico. Decedent executed a will on November 19, 1992. Decedent was an unmarried woman without children. The will bequeathed a one-half interest in Decedent's trust property as specified to a niece, Roselyn (Rosalyn) Leonard, and a one-half interest to a nephew, Henry P. Hesuse. The will left any residual portion of her estate to Ms. Leonard. The will was accompanied by an affidavit, in the form required to make the will self-proving, which was signed, witnessed, and notarized.

A probate hearing was held on August 27, 2003, at Farmington, New Mexico. Numerous members of Decedent's extended family testified, expressing dissatisfaction with Decedent's will and providing general information about the personal relationships of various family members with Decedent.

^{1/} This is the probate number that was used in the initial notices and the order approving the will. The order denying rehearing references NV-780-0220 as well as 004-780-H001; and the BIA original probate file references NV-780-0020 and 004-780-H001.

On September 23, 2003, the ALJ issued an Order Approving Will and Decree of Distribution. The ALJ noted that while lengthy testimony was presented at the hearing about the circumstances of Decedent's life and death, there was no evidence presented that showed she lacked testamentary capacity or that the will was a product of undue influence. The order approved the will and ordered distribution of Decedent's trust property as specified therein.

A timely petition for rehearing was filed. The petition was signed under oath by Decedent's two surviving sisters, Alice H. Chavez and Blanche H. Juan. Attached to the petition was a list of 15 additional signatures of individuals, including Appellant, who signed "in support of the petition."

On September 23, 2003, the ALJ issued an Order on Petition for Rehearing. As a threshold matter, the ALJ determined that the 15 parties whose signatures were attached to the petition had not provided verified signatures and had submitted no new evidence under oath, and thus had not perfected their petition in accordance with BIA regulations. Although Alice and Blanche provided verified signatures, the ALJ held that they lacked standing to petition for rehearing because they had participated in the probate hearing. The ALJ also examined the standing of the 15 additional signers and concluded that 12 lacked standing to petition for rehearing because they had received notice of the hearing and had an opportunity to submit evidence at that time. The ALJ found that one signer was not an interested party and thus lacked standing. As to the final two signers, the ALJ found that they may have had no actual or constructive notice of the hearing and thus might have standing but noted that they had not complied with 25 C.F.R. § 4.241.

The ALJ nevertheless addressed the merits of the petition. The ALJ rejected a suggestion by petitioners that the will was not self-proving, finding that the will met regulatory requirements and that it was irrelevant that the BIA employees who prepared the will and signed the self-proving affidavit no longer worked at the Crownpoint Agency. The ALJ found that an allegation by petitioners that Decedent showed some forgetfulness at unspecified times prior to her death did not overcome the fact that there was no evidence of significant impairment.

The ALJ rejected petitioners' argument that family members had not known of the will in advance of the hearing because the will was attached to the notice of hearing sent to the family members. The ALJ also concluded that suggestions that Decedent had previously prepared a different will were immaterial because any prior wills that may have existed were revoked by the November 19, 1992 will. The ALJ declined to consider allegations that Decedent's thumbprint on a home site lease did not match her thumbprint signature on the will, allegedly providing evidence of undue influence. The ALJ ruled that any such evidence was required to be provided at the initial hearing and that no evidence or theory was offered as

to how or why the BIA employees who prepared the will for Decedent would have conspired to force her to make a will that was contrary to her wishes.

The ALJ thus denied the petition. Appellant filed a timely notice of appeal with the Board, which included a statement of reasons. No other filings are before the Board in this appeal.

Discussion

Appellant provides three reasons for appealing the denial of the petition for rehearing. Appellant contends that the family members lacked knowledge about procedures for contesting the will, that they are seeking evidence to support the case for undue influence or lack of testamentary exception, and that there are numerous unanswered questions regarding the preparation and signing of the will. As part of the discussion of allegedly unanswered questions, Appellant questions the ALJ's ruling regarding standing.

First we address the ALJ's determination that petitioners lacked standing and/or failed to properly file their petition.

With respect to standing, the ALJ mistakenly applied the law pertaining to standing to reopen a final probate decision rather than the law pertaining to standing to file a petition for rehearing. Under the regulations, a person has standing to seek reopening of a final decision only if the person had "no actual notice of the original proceedings and * * * was not on the reservation or otherwise in the vicinity at any time while the public notices of the hearing were posted." 43 C.F.R. § 4.242(a) (2003). Apparently applying this regulation, the ALJ held that those parties who had received notice of the proceedings lacked standing.

That regulation, however, does not apply to the filing of petitions for rehearing. Rather, a petition for rehearing may be filed by "[a]ny person aggrieved by the decision of the OHA deciding official." 43 C.F.R. § 4.241(a) (2003). The Board has repeatedly interpreted this provision to allow the filing of petitions for rehearing by a "party in interest" as defined in 43 C.F.R. § 4.201. See, e.g., Estate of Joseph Noel Simpson, 36 IBIA 67, 67-68 (2001); Estate of Gilbert Yellowwolf, 36 IBIA 65, 65 (2001). A "party in interest" includes "any presumptive or actual heir, any beneficiary under a will, [or] any party asserting a claim against a deceased Indian's estate." 43 C.F.R. § 4.201 (2003).

Alice and Blanche are the Decedent's sisters and, according to BIA records, 14 of the 15 additional individuals who signed the petition are the children of deceased brothers or sisters of Decedent. Thus, each of these individuals is a presumptive heir of Decedent and has standing under the regulations.

The Board also concludes that the primary petitioners, Alice and Blanche, properly perfected their petition by filing it under oath in compliance with 43 C.F.R. § 4.241(a). The ALJ is correct that the 15 additional signatories, including Appellant, did not sign the petition under oath and thus were not valid petitioners. ^{2/} Nevertheless, compliance with the regulatory requirements by Alice and Blanche, who had standing to seek rehearing of the probate decision, was sufficient to bring the petition within the jurisdiction of the ALJ.

Turning to the merits, the Board concludes that the ALJ correctly denied the petition. The Board agrees that, to the extent that the petition was based on newly discovered evidence, it did not comply with the requirement of 25 C.F.R. § 4.241(a) to include affidavits or declarations of witnesses providing justifiable reasons for the failure to discover and present the evidence at the hearing. Even if the evidence had been properly presented, the ALJ correctly concluded that the evidence did not meet the burden of demonstrating that Decedent lacked testamentary capacity or was unduly influenced. Finally, with respect to the one legal argument raised by petitioners on rehearing — that the will was not self-proving — the ALJ correctly ruled that the will and accompanying affidavit complied with the applicable regulations.

On appeal, Appellant raises a new argument — that at the time of the hearing she and other family members were unaware of the procedures for challenging the will. The Board generally will not consider arguments presented for the first time on appeal, and Appellant provides no reason for making an exception here. See Estate of Jesse Jay Kirn, 41 IBIA 113, 116 n.3 (2005). In any event, the notice given to Appellant of the probate hearing stated that testimony would be taken and evidence received for the purpose of probating the will, notified interested parties to be present at the hearing and present such evidence as they desired, and explained that “failure to appear may result in loss of rights claimed.” The notice specifically identified the regulations at 43 C.F.R. Part 4 that govern probate hearings. It was Appellant’s responsibility to familiarize herself with those regulations. See Estate of John Martin Red Bear, 41 IBIA 273, 275 (2005); Estate of Jeanette Little Light Adams, 39 IBIA, 32, 39 (2003). Thus, it is immaterial whether Appellant or other interested parties in fact did not understand the proper steps to take to challenge the will.

Appellant’s other arguments on appeal — that she is seeking evidence to show undue influence and that there are unanswered question regarding the preparation and signing of the will — are based on the assumption that Appellant should have an opportunity to address matters that she could and should have addressed at the hearing, an argument we have already rejected. Thus, these arguments likewise fail.

^{2/} It is immaterial for this appeal that Appellant was not a valid participant in the filing of the petition. Any “party in interest” has a right to appeal to the Board regarding a decision on a petition for rehearing. See 43 C.F.R. § 4.320(a) (2003).

Conclusion

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board affirms the December 15, 2003 order denying rehearing.

I concur:

// original signed
Katherine J. Barton
Acting Administrative Judge

// original signed
Steven K. Linscheid
Chief Administrative Judge