



INTERIOR BOARD OF INDIAN APPEALS

Estate of Richard Crawford

42 IBIA 64 (12/02/2005)



## 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 RICHARD CRAWFORD : Order Affirming Decision  
:  
: Docket No. IBIA 04-32  
:  
: December 2, 2005

This is an appeal from the Second Order Granting Reopening and Redetermination of Heirs entered on November 5, 2003, by Indian Probate Judge George D. Tah-bone in the estate of Richard Crawford (Decedent), deceased Spirit Lake Sioux Indian, Probate No. 01-303-237H. The order determined that Appellant, Patricia L. Withorne, formerly known as LaDonna Lee White, was not entitled to inherit any interests in Decedent's trust or restricted property. Appellant is Decedent's great-niece. For the reasons explained below, the Board affirms Judge Tah-bone's decision.

### Background

Decedent was born on May 6, 1927 and died intestate on July 7, 1999 at St. Paul, Minnesota. At the time of his death, Decedent owned interests in trust or restricted property on the Fort Totten Reservation in North Dakota, the Standing Rock Sioux Reservation in North Dakota, the Lake Traverse (Sisseton-Wahpeton) Reservation in South Dakota, the Yankton Reservation in South Dakota, the Rosebud Reservation in South Dakota, the Crow Creek Reservation in South Dakota, and the Fort Berthold Reservation in North Dakota. Decedent did not marry, father any children, or adopt any children. Decedent's parents preceded him in death. On October 29, 2001, Judge Tah-Bone held a hearing to determine the heirs and settle Decedent's estate.

On April 16, 2002, Judge Tah-bone issued an Order Determining Heirs and Decree of Distribution. The order found that Decedent had six half-siblings: two were still living; two predeceased Decedent without issue and two predeceased Decedent leaving issue, including Appellant.

Judge Tah-bone found that Appellant is a surviving great-niece of Decedent. Her grandmother, Vera Crawford, was a half-sister to Decedent and predeceased him.

Appellant's natural mother, Myrna White, a daughter of Vera Crawford, also predeceased Decedent.

In his April 16, 2002 order, Judge Tah-Bone determined that Appellant would take a 1/96th interest in Decedent's trust property on the Yankton, Rosebud, Crow Creek, Fort Berthold, and Fort Totten reservations in North and South Dakota. He found that because several of the heirs, including Appellant, were not members of the Spirit Lake Sioux Indian Tribe, under Title I, § 108(a)(1) of the Act of January 12, 1983, Pub. L. No. 97-549, 96 Stat. 2515, they would take their share in the Fort Totten Reservation subject to the right of purchase of the Tribe. He determined that Appellant was not eligible to take interests in trust or restricted property on the Standing Rock Sioux Reservation or on the Sisseton-Wahpeton Reservation, because nieces and nephews are not able to inherit under subsection 3(a)(6) of the Standing Rock Act of June 17, 1980, Pub. L. 96-274, 94 Stat. 537, 1/ and under subsection 3(a)(6) the Sisseton-Wahpeton Sioux Act of October 19, 1984, Pub. L. No. 98-513, 98 Stat. 2411 (Sisseton-Wahpeton Act). 2/

On May 14, 2003, the Fort Totten Agency forwarded information to Judge Tah-Bone that Appellant had been adopted out. The Agency included as an attachment the findings of the Administrative Law Judge (ALJ) in the Estate of Myrna Patricia Owen White, 347-U03010, IP TC 227 R 91 (1992), Appellant's mother. The ALJ in that case had found that "Parental rights of \*\*\* LaDonna were terminated on 01-27-75 in Tribal Court. \*\*\* Ladonna was adopted and is known as Patricia LaDonna Withorne. Her adoptive parents wish her whereabouts to remain confidential (information from Enrollment Office, Sisseton-Wahpeton Sioux Tribe)." However, the ALJ determined that Appellant was eligible to inherit her biological mother's interests in property on the

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1/ That provision provides, "if there is no surviving spouse, no surviving children or issue of any child, no surviving parent, and no surviving brothers or sisters, the interest shall escheat to the tribe."

2/ That provision provides, "if there is no surviving spouse, and no surviving children or issue of any child, no surviving parent, and no surviving brothers or sisters, the interest shall escheat to the tribe and title to such escheated interest shall be taken in the name of the United States in trust for the tribe."

Judge Tah-bone issued two modification orders, on May 6, 2002 and Aug. 2, 2002. Judge Tah-bone issued an Order Granting Reopening and Redetermination of Heirs on Feb. 26, 2003. Following the modification orders and Order Granting Reopening, Appellant's interest in trust or restricted property in the Yankton, Rosebud, Crow Creek, Fort Berthold, and Fort Totten reservations in North and South Dakota was 1/40th.

Sisseton-Wahpeton Reservation, and awarded her a 1/4 interest in her mother's property on that Reservation where her mother's share was the equivalent of 2.5 acres or more. 3/

Upon receipt of this information, Judge Tah-bone, on his own motion, found cause to reopen Decedent's estate and on June 9, 2003, issued a notice of petition for reopening and order to show cause. He gave the parties 30 days to submit answers, legal briefs, or further evidence in opposition to or in support of the petition for reopening. Appellant contacted Judge Tah-bone on August 25, 2003, and stated that she had been adopted out prior to her mother's death. Judge Tah-bone did not hold a hearing.

On November 5, 2003, Judge Tah-bone issued the Second Order Granting Reopening and Redetermination of Heirs. Judge Tah-bone referred to the ALJ's decision in the Estate of Myrna Patricia Owen White, which had found that Appellant had been adopted out. Judge Tah-bone explained that:

In finding that \*\*\* Patricia LaDonna Withorne [was] adopted out of the family prior to [her] mother, Myrna Patricia Owen White's death, the adoption statutes in conjunction with the probate statutes of the States of Minnesota [Minn. Stat. Ann. § 524.2-114(1)(1994)], North Dakota (N.D.C.C. §§ 14-15-14(1)(b)(1996) and 30.1-04-09(1)(1996)] and South Dakota [S.D.C.L. § 29A-2-114(a)(1995)] preclude [her] inheritance of trust property under the jurisdiction of those applicable laws.

Nov. 5, 2003 Order at 5. Judge Tah-bone thus determined that Appellant was not eligible to inherit any interests in trust or restricted property on the Yankton, Rosebud, Crow Creek, Fort Totten, and Fort Berthold Reservations.

However, Judge Tah-bone stated that Appellant "remain[ed] eligible," id. at 5, to inherit trust land on the Sisseton-Wahpeton Reservation because the Sisseton-Wahpeton Act "allows for passage of Sisseton trust property to heirs who have been adopted out," id. at 1. However, he found that Appellant, as a great-niece, could not inherit any interests on

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3/ Appellant filed a petition for reopening in Myrna White's Estate before the Board on Jan. 5, 2004. The Board dismissed the appeal and referred the petition for reopening to the Hearings Division. Estate of Myrna Patricia Owen White, 39 IBIA 227 (2004). Appellant's petition for reopening was denied by the ALJ on May 26, 2005, and no appeal was filed.

the Sisseton-Wahpeton Reservation, under subsection 3(a) (6) of the Sisseton-Wahpeton Act. 4/

Appellant filed a Notice of Appeal with the Board on January 5, 2004. The parties did not file any briefs with the Board.

### Discussion

Appellant's principal argument on appeal is that Judge Tah-bone applied the wrong law when determining the heirs of Decedent's estate. Appellant asserts that she was entitled to inherit under 25 U.S.C. § 372a. 5/ That section, entitled "Heirs by adoption", provides, in pertinent part:

In probate matters under the exclusive jurisdiction of the Secretary of the Interior, no person shall be recognized as an heir of a deceased Indian by virtue of an adoption —

- (1) Unless such adoption shall have been —
  - (a) by a judgment or decree of a State court;
  - (b) by a judgment or decree of an Indian court;
  - (c) by a written adoption approved by the superintendent of the agency having jurisdiction over the tribe of which either the adopted child or the adoptive parent is a member, and duly recorded in a book kept by the superintendent for that purpose;
  - or
  - (d) by an adoption in accordance with a procedure established by the tribal authority, recognized by the Department of the Interior, of the tribe either of the adopted child or the adoptive parent, and duly recorded in a book kept by the tribe for that purpose \* \* \*.

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4/ Judge Tah-bone made a number of additional findings related to the Sisseton-Wahpeton Act. He noted that the United States District Court, in Dumarce v. Norton, 277 F. Supp. 2d 1046 (D.S.D. 2003), had declared section 5 of the Act unconstitutional. He also found, however, that the Act contained a savings clause, which provided that if any provision of the Act were found invalid, the remainder of the Act would not be affected. Nov. 5, 2003 Order, at 7. Section 5 of the Act is not relevant to the issues in this appeal.

5/ Appellant cites to the 2002 version of the U.S. Code. Section 372a has not been amended since it was enacted by the Act of July 8, 1940, ch. 555, 54 Stat. 746.

Appellant submitted a copy of an Order of Adoption, from the Probate Court for the County of Washtenaw, Michigan, dated December 11, 1978. The order states that an order terminating parental rights and making the adoptee a ward of the Washtenaw Probate Court was entered on December 5, 1977. It further provides that Harold Lloyd Withorne and Aloise Ann Withorne adopted Appellant. Appellant contends that because this document shows she “was adopted in a State court,” under section 372a, she is allowed to inherit.

Appellant also contends that, “the law at the time of the adoptions should take place, rather than at the time of Richard Crawford’s death, or vice-versa depending on which applies.” Appellant does not state which laws she is referring to or how the laws may have changed, although she asks, “[w]hat law applies? Is it the law that was changed in 1995? Previous to 1995?” To support her claim, Appellant asserts that, because she inherited land from her biological mother, she should also be eligible to inherit land from Decedent. 6/

Appellant’s argument concerning 25 U.S.C. § 372a reflects a misunderstanding about the application of this provision. Section 372a establishes the proof necessary for determining the validity of an adoption when an individual seeks to inherit from an Indian decedent based on having been adopted into the decedent’s family. In the present case, however, Appellant was adopted out of Decedent’s family, and Appellant does not dispute the validity of that adoption. Section 372a simply does not apply here, and in any case does not provide substantive law for determining the inheritance rights of adopted children.

The Board has repeatedly recognized that, under 25 U.S.C. § 348, inheritance rights, including those of an adopted child, are determined by the law of the state in which the trust or restricted real property is located. See, e.g., Estate of Victor Blackeagle, 16 IBIA 100, 101-02, recon. denied, 17 IBIA 5 (1988) (applying the laws governing intestate succession in Idaho and Oregon to determine whether the appellant, who was adopted out, could inherit from his natural father, who held lands in Idaho and Oregon); Estate of

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6/ Appellant also argues that she received an Indian trust inventory report from the Bureau of Indian Affairs showing that she received “properties” from Decedent. She did not attach a copy of this report or state when she received it. Although the Board is unable to address this argument without a dated copy of the report, the Board observes that, prior to Judge Tah-bone’s Nov. 5, 2003 order of modification, the earlier probate orders had determined that she inherited property interests from Decedent. It is entirely possible that Appellant received a report reflecting the distribution outlined in the earlier — now superseded — orders.

Reuben Mesteth, 16 IBIA 148, 151 (1988) (recognizing that “the Board applies state laws of intestate succession when an Indian dies owning trust or restricted property but does not execute a will”); Estate of Richard Doyle Two Bulls, 11 IBIA 77, 82-84 (1983) (holding that the decedent’s children’s right to inherit from their natural father was controlled by the law of the jurisdiction in which the real property was located, and remanding the case for a determination as to South Dakota inheritance law when the child is adopted by the spouse of one of his natural parents).

As discussed above, Decedent owned lands in North Dakota and South Dakota. Therefore, with the exception of property interests on the Sisseton-Wahpeton Reservation as discussed below, the controlling laws in this case are the law of these states governing intestate succession and adoption. 7/

In her notice of appeal, Appellant raised a question as to whether the law at the time of the adoption applied, or the law at the time of Decedent’s death. Judge Tah-bone applied North Dakota law from 1996, and South Dakota law from 1995, presumably based on a conclusion that the law at the time of a decedent’s death applied. However, he did not discuss the basis for this conclusion.

In North Dakota, both the law at the time of Appellant’s adoption and the law at the time of Decedent’s death precluded Appellant’s ability to inherit from Decedent because of her adopted-out status.

Section 14-15-14 of the North Dakota Century Code, entitled “Effect of petition and decree of adoption,” was enacted in 1971. S.L. 1971, ch. 157, § 1. At the time of Appellant’s adoption, in 1978, and at the time of Decedent’s death, in 1999, it provided, in pertinent part:

1. A final decree of adoption \* \* \*, whether issued by a court of this state or of any other place, [has] the following effect as to matters within the jurisdiction or before a court of this state:
  - a. Except with respect to a spouse of the petitioner and relatives of the spouse, to relieve the natural parents of the adopted individual of all parental rights and responsibilities, and to terminate all legal relationships between the adopted individual

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7/ Judge Tah-bone also cited to Minnesota statutes. Because Decedent only owned lands in North Dakota and South Dakota, for the purposes of this appeal, it is not necessary to consider the Minnesota statutes.

and the individual's relatives, including the individual's natural parents, so that the adopted individual thereafter is a stranger to the individual's former relatives for all purposes including inheritance \* \* \*.

Judge Tah-bone also relied on § 30.1-04-09(1) of the North Dakota Century Code (1996) in his order. Subsection 30.1-04-09(1) provides in pertinent part that, for the purposes of intestate succession, if a relationship of parent and child must be established to determine succession by, through, or from a person, "[a]n adopted individual is the child of an adopting parent or parents and not of the natural parents." That provision was not significantly altered between 1978 and 1999.

Therefore, under North Dakota law, Appellant was not eligible to inherit from Decedent.

In 1995, South Dakota adopted several provisions of the Uniform Probate Code. These provisions took effect on July 1, 1995, and applied to "decedents dying on or after July 1, 1995, to their estates, and to the identification and rights of their successors." S.D. Codified Laws § 29A-8-101 (1995). One of these provisions, entitled "Parent and child relationships," provided, with exceptions not relevant here: "For purposes of intestate succession by, from, or through a person, an adopted individual is the child of that individual's adopting parent or parents and not of that individual's birth parents[.]" S.D. Codified Laws § 29A-2-114(b). Subsection 29A-2-114(b) has not been amended since 1995. <sup>8/</sup>

There are no reported South Dakota decisions expressly interpreting this provision. However, the language of S.D. Codified Laws § 29A-8-101 makes clear that it applies to adoptions that occurred before July 1, 1995, where the Decedent died on or after that date. This approach is consistent with the majority of jurisdictions, which apply the law in effect at the time of Decedent's death. Estate of Norman Steele (Steal), 31 IBIA 12, 15 (1997). See also 2 Am. Jur. 2d Adoption § 189 (2004); C.R. McCorkle, What law, in point of time, governs as to inheritance from or through adoptive parent, 18 A.L.R. 2d 960 (1951).

Appellant's argument that because she inherited interests from her biological mother, she should be able to inherit from her great-uncle, also lacks merit. As discussed above, the only interests Appellant inherited from her biological mother were on the Sisseton-

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<sup>8/</sup> Judge Tah-bone's Nov. 5, 2003 Order, at 5, mistakenly cited to subsection 29A-2-114(a), which refers to individuals born out of wedlock.

Wahpeton Reservation. See Jan. 6, 1992 Order Determining Heirs, Estate of Myrna Patricia Owen White, IP TC 227R 91. The Sisseton-Wahpeton Act, a federal statute, governs the right to inherit trust or restricted land on the Sisseton-Wahpeton Reservation, and expressly preempts inconsistent South Dakota and North Dakota law. See Sisseton-Wahpeton Act, § 1, 98 Stat. 2411. As an enrolled member of the Sisseton-Wahpeton Tribe, Appellant was eligible to inherit under the Sisseton-Wahpeton Act as a child of a decedent. See id. § 3(a)(2) (“[I]f there is no surviving spouse, the interest shall descend in equal shares to the children of the decedent \* \* \*.”) The Act expressly includes within the definition of “children,” “children of parents whose parental rights have been terminated pursuant to lawful authority.” See id. § 3(b). Therefore, Appellant’s adopted status did not preclude her from inheriting Sisseton-Wahpeton interests from her mother.

Judge Tah-Bone recognized that Appellant’s adopted out status did not automatically preclude her from inheriting under the Sisseton-Wahpeton Act. Rather, her status as a great-niece of Decedent was the deciding factor. The Act does not extend inheritance to nieces and nephews, or great-nieces and great-nephews. See id. § 3(a)(6). Although the fact that Appellant was Myrna White’s biological daughter permitted her to inherit from her mother under the Act, her relationship as Decedent’s great-niece was not close enough to allow her to inherit from him.

Accordingly, Judge Tah-bone did not err in finding that Appellant was not eligible to inherit any of Decedent’s trust property.

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 Judge Tah-bone’s November 5, 2003 Second Order Granting Reopening and Redetermination of Heirs.

I concur:

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// original signed  
Steven K. Linscheid  
Chief Administrative Judge

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// original signed  
David B. Johnson  
Acting Administrative Judge