



INTERIOR BOARD OF INDIAN APPEALS

Estate of Anthony Munks

42 IBIA 100 (01/05/2006)

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## United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
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ESTATE OF ANTHONY MUNKS : Order Vacating Denial of Rehearing,  
: and Affirming in Part and  
: Reversing in Part Modified  
: Order Determining Heirs  
:  
: Docket No. IBIA 04-1  
:  
: January 5, 2006

This is an appeal from a September 12, 2003 order by Administrative Law Judge William E. Hammett denying rehearing in the estate of Anthony Munks (Decedent), deceased Swinomish Indian, Probate No. IP SA 220 N 98. The denial of the petition let stand a July 25, 2001 order by Judge Hammett granting a petition for rehearing instante and order modifying order determining heirs. Appellants are Kevin Day and other members of the Day family (Day cousins), who are the issue of Decedent's maternal grandparents. For the reasons stated below, the Board of Indian Appeals vacates the order denying rehearing and affirms in part and reverses in part the July 25, 2001 modified order determining heirs.

### Background

Decedent died intestate on April 1, 1997 at Seattle, Washington. Decedent's wife, parents, and siblings predeceased him. Decedent did not father or adopt any children. On his mother's side, Decedent was survived by Appellants. On his father's side, Decedent was survived by the "Stone cousins," who are the issue of Decedent's paternal grandmother, Margaret "Jennie" Munks, and her first husband, a man identified in the record as "Stone." After Stone died, Jennie Munks married Charles Munks, Decedent's paternal grandfather. The Stone cousins are therefore the "half-blood" paternal kin of Decedent.

Relevant to this appeal, Decedent died owning a two-thirds interest in Swinomish Allotment No. 23 (Allotment 23), described as the N1/2 of the SE1/4 of Sec. 23, and Lot 9 and the NW1/4 of the SW1/4 of Sec. 24, all in T. 34 N., R. 2 E., W.M., in Washington State, containing 144.30 acres. Originally, the two-thirds interest passed from Charles

Munks to Peter Munks, Decedent's father. When Peter Munks died, his two-thirds interest passed in equal shares — one-third interest each — to his wife Alice Day Munks (Decedent's mother), and to Decedent (his son). When Alice Day Munks died, her one-third interest passed to Decedent, who then held a two-thirds interest — one-third interest came from his father and one-third interest came from his mother.

Judge Hammett held a hearing to probate the estate on May 3, 1999. On June 9, 2000, Judge Hammett issued an Order Determining Heirs. Pertinent to this appeal, Judge Hammett found that, under Washington law, the Stone cousins, as half-blood paternal kin of Decedent, were not entitled to inherit any of Decedent's two-thirds interest in Allotment 23. Judge Hammett awarded the entire two-thirds interest to the Day cousins.

The Stone cousins filed a timely motion for rehearing, arguing that Judge Hammett had misinterpreted Washington law on the inheritance rights of half-blood relatives. They asserted that they were entitled to "at least a one-half interest" in Decedent's two-thirds interest in Allotment 23.

On July 25, 2001, Judge Hammett issued an Order Granting Petition for Rehearing Instantly and Order Modifying Order Determining Heirs. Judge Hammett found that only the one-third interest in Allotment 23 that Decedent inherited from his mother should pass to the Day cousins. Judge Hammett also determined that the one-third interest that Decedent inherited from his father should pass to the Stone cousins. Judge Hammett concluded that the Day cousins, as Decedent's maternal relatives, "would not share in such share which [Decedent] inherited directly from [Decedent's father]."

Kevin Day filed a motion for rehearing from Judge Hammett's order granting petition for rehearing. On October 10, 2001, Judge Hammett denied the motion as untimely, and Day appealed to the Board. The Board reversed Judge Hammett's October 10, 2001 order and remanded the case for consideration of Appellant's motion on the merits. Estate of Anthony Munks, 37 IBIA 202, 210 (2002). In an order dated May 9, 2002, Judge Hammett found that Day had not met the requirements of 43 C.F.R. § 4.241(a) and denied rehearing without issuing a decision on the merits. On appeal, the Board held that Day had satisfied the requirements of § 4.241(a) and directed Judge Hammett to decide the merits of the petition for rehearing. Estate of Anthony Munks, 39 IBIA 96 (2003). On September 12, 2003, Judge Hammett again denied Day's petition for rehearing for failure to satisfy the requirements of § 4.241(a).

The Day cousins then filed this appeal. Only the Day cousins filed a brief.

## Discussion

As an initial matter, the Board finds that Judge Hammett erred in denying the petition for rehearing for failure to comply with § 4.241 (a) because the Board had expressly held that Appellants had satisfied the requirements of that provision. See Estate of Anthony Munks, 39 IBIA at 96. The Board thus vacates the denial of the petition for rehearing. However, because the issue raised in the petition for rehearing is solely a question of law, the Board finds that another remand is unnecessary, and reaches the merits of Appellant's challenge to Judge Hammett's July 25, 2001 order.

On the merits, the Day cousins contend that Judge Hammett erred as a matter of law in holding that the Stone cousins were entitled to inherit any of Decedent's interest in Allotment 23. The Day cousins argue that, under Washington law, the Stone cousins, as half-blood relatives of Decedent, cannot inherit from Decedent because they are not descended from Peter Munks or Alice Day Munks. <sup>1/</sup>

Under 25 U.S.C. § 348, when an Indian owning trust or restricted property dies without a will, the property passes in accordance with the laws of intestate succession of the state in which the property is located. Estate of George Dragswolf, Jr., 30 IBIA 188, 194 (1997). Because Allotment 23 is located in Washington, Washington state law on intestate succession governs the descent of the property at issue here.

Section 11.04.015 of the Washington Revised Code sets out the general rules of descent and distribution for estates of persons dying intestate. Subsection (e) of that section provides:

If the intestate not be survived by issue or by either parent, or by any issue of the parent or parents or by any grandparent or grandparents, then to those issue of any grandparent or grandparents who survive the intestate: taken as a group, the issue of the maternal grandparent or grandparents shall share equally with the issue of the paternal grandparent or grandparents, also taken as a group; within each such group, all members share equally if they

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<sup>1/</sup> Judge Hammett's July 25, 2001 order set forth a list of the Stone cousins and their relationship to Decedent, and his initial June 9, 2000 order determining heirs included a similar list for the Day cousins. In addition, Judge Hammett's July 25, 2001 order set forth the proportional allocations for distribution to the heirs within each family line. The identity of heirs within each family and the determination of each one's individual allocation from the family's share are not at issue in this appeal.

are all in the same degree of kinship to the intestate, or if some be of unequal degree, then those of more remote degree shall take by representation.

(Emphasis added.)

Washington law, however, makes an exception to this rule, under certain circumstances, for kindred who are related to a decedent only by half blood. It provides:

Kindred of the half blood shall inherit the same share which they would have inherited if they had been of the whole blood, unless the inheritance comes to the intestate by descent, devise, or gift from one of his ancestors, or kindred of such ancestor's blood, in which case all those who are not of the blood of such ancestors shall be excluded from such inheritance \* \* \* .

Wash. Rev. Code § 11.04.035.

The Washington Supreme Court has held that the "ancestor" whose blood is to be considered under section 11.04.035 is the one from whom property immediately came to the decedent. In re Estate of Pearl Fitzhugh Little, 106 Wash. 2d 269, 278-80 (1986). It has also held that the exception applies only to "kindred of the half blood," and does not preclude kindred related to a decedent by whole blood from inheriting under section 11.04.015 regardless of whether or not they are "of the blood" of the ancestral owner of the property. Id. at 281-82.

To determine the inheritance rights of the Day cousins and the Stone cousins, the Board starts with Wash. Rev. Code § 11.04.015(e). Under this provision, the Stone cousins, as the issue of Decedent's paternal grandmother, would share equally in Decedent's interest in Allotment 23 with the Day cousins, as the issue of Decedent's maternal grandparents. In other words, each side would take one-half of two-thirds, or a one-third interest.

However, because the Stone cousins are half-blood relatives, the Board's analysis does not end here. Decedent inherited his two-thirds interest in Allotment 23 by descent, thereby implicating section 11.04.035. To determine whether the Stone cousins can inherit any of Decedent's two-thirds interest in Allotment 23, under Little, it is necessary to identify the immediate source of Decedent's two-thirds interest.

As discussed above, Decedent inherited a one-third interest directly from his mother, Alice Day Munks, and another one-third interest directly from his father, Peter Munks. For

ease of reference, the Board will refer to these interests as the maternal one-third interest and the paternal one-third interest. As noted earlier, under Little, the previous sources of the property interest, *i.e.*, from whom Decedent's parents inherited their interests, are irrelevant for purposes of applying the "ancestral property" restrictions on inheritance.

Because, as half-blood relatives, the Stone cousins' eligibility to inherit any of Decedent's interest is dependent upon the immediate source of Decedent's interest, and his two-thirds interest came from two different ancestors, one-third and one-third, we must analyze each one-third interest separately.

Whether the Stone cousins can inherit an interest in the maternal one-third interest is dependent upon whether they are "of the blood" of Alice Day Munks. There is no dispute that the Stone cousins, as half-blood paternal kin, do not share a common ancestor with Alice Day Munks. Accordingly, they are ineligible under Wash. Rev. Code § 11.04.035 to inherit any part of the maternal one-third interest. As the issue of maternal grandparents, and without any other eligible heirs, under Wash. Rev. Code § 11.04.15, the Day cousins, as a group, take all of the maternal one-third interest. The Board thus affirms the portion of Judge Hammett's July 25, 2001 order awarding Decedent's maternal one-third interest in Allotment 23 to the Day cousins.

The right of the Stone cousins to inherit any part of the paternal one-third interest is dependent upon whether they are "of the blood" of Peter Munks. The Day cousins argue that "of the blood" means "descended from." We disagree. Rather, "of the blood" means to share a common ancestor. See Gardner v. Collins, 27 U.S. 58, 87 (1829) ("a person is \* \* \* affirmed to be of the blood of another who has any, however small a portion, of the same blood derived from a common ancestor"); Miller v. Speer, 38 N.J. Eq. 567, 572 (1884) ("[t]o be of the blood of any person means to be able to trace descent from some progenitor of that person").

The Stone cousins and Peter Munks share a common ancestor, Jennie Munks. Peter Munks is the son of Jennie Munks and the Stone cousins are descended from Jennie Munks and her first husband, Stone. Accordingly, the Stone cousins are not excluded from inheriting a part of the paternal one-third interest, and the ordinary descent and distribution rules in Wash. Rev. Code § 11.04.015 apply. The Stone cousins, as a group, and the Day cousins, as a group, each take a one-half of the paternal one-third interest — *i.e.*, they each receive a one-sixth interest in Allotment 23. Therefore, the Board reverses the portion of Judge Hammett's order awarding the entire one-third paternal interest to the Stone cousins, and holds instead that the paternal one-third interest descends in equal shares to the Day cousins, as a group, and the Stone cousins, as a group.

To summarize, the Day cousins take the entire one-third interest in Allotment 23 that Decedent inherited from his mother plus one-half of the one-third interest that Decedent inherited from his father (a one-sixth interest), for a total of three-sixth, or one-half, interest. The Stone cousins take one-half of the one-third interest in Allotment 23 that Decedent inherited from his father (a one-sixth interest).

Accordingly, from Decedent's two-thirds (four-sixth) interest in Allotment 23, BIA shall distribute a one-half (three-sixth) interest to the Day cousins, and the remaining one-sixth interest to the Stone cousins, in accordance with proportionate shares for each heir as provided in the July 25, 2001 order.

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 vacates Judge Hammett's denial of rehearing and affirms in part and reverses in part the July 25, 2001 modified order determining heirs.

I concur:

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Steven K. Linscheid  
Chief Administrative Judge

          // original signed            
Katherine J. Barton  
Acting Administrative Judge