



INTERIOR BOARD OF INDIAN APPEALS

In re the Will of Louis Claremore Walker

43 IBIA 5 (04/06/2006)

Related Board case:
54 IBIA 95



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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IN RE THE WILL OF LOUIS
CLAREMORE WALKER

: Order Vacating Decision and
: Remanding for Further
: Proceedings
:
: Docket No. IBIA 05-86
:
: April 6, 2006

Appellants Charles H. Lohah, Alice J. Jake, and Angela J. Bush appealed to the Board from a March 22, 2005 decision by the Superintendent, Osage Agency, Bureau of Indian Affairs (Superintendent). The Superintendent's decision, styled as an "Order Approving Will," approved a settlement agreement in the estate of Louis Claremore Walker (Decedent), deceased unallotted Osage, Hearing No. H-04-216. For the reasons discussed below, the Board vacates the Superintendent's decision and remands the matter for further proceedings. 1/

The settlement agreement is dated October 28, 2004 and was signed by Clifton Fred Walker (Walker) and Shirley Howell. Walker claims to be the sole beneficiary under a will executed by Decedent in 1986, which was amended in 1987. Howell is one of several beneficiaries under a will executed by Decedent in 1993. Only Walker and Howell are identified as the parties to the settlement agreement, although it purports to fully resolve how Decedent's estate will be distributed.

On November 30, 2004, the Superintendent, through a designated Special Attorney from the Office of the Solicitor, held a hearing to consider Decedent's two wills. At that

1/ Appeals from action on wills of Osage Indians are governed by 25 C.F.R. § 17.14, which provides that appeals from the Superintendent's action shall be taken to the Secretary of the Interior. In 1992, the delegated authority for deciding Osage will appeals was transferred to the Board. See In re Will of Emanuel Mal Revard, 37 IBIA 52, 54 n.2 (2001) (discussing Departmental Manual Release 2937). The delegation is now found in 212 DM 13.5 (Departmental Manual Release 3668) (3/1/05).

hearing, Walker and Howell presented the settlement agreement. Counsel for Howell stated that Howell “wants the record [to be] very clear” that she had agreed to the settlement only on her own behalf, “and on behalf of no one else,” and “that she’s not settling on behalf of any nonappearing party.” Nov. 30, 2004 Transcript at 9-10. At the same hearing, however, counsel for Walker requested approval of the settlement “based on the failure” of other interested parties to appear. Id. at 12. Counsel for Howell stated that he had “no objection to the [Superintendent] finding that the other parties have been given adequate notice and have neglected or failed to appear.” Id.

On March 22, 2005, the Superintendent issued her decision approving the settlement agreement. Appellants, who are heirs of Hazel Lohah Harper, a named beneficiary in Decedent’s 1993 will, contend that they did not consent to the settlement agreement and therefore the Superintendent’s approval of the agreement was improper.

On December 6, 2005, after receiving the record for this appeal, the Board issued an order for interested parties who wished to support the Superintendent’s decision to show cause why the Board should not vacate and remand the matter on the grounds that not all interested parties had received notice of or consented to the settlement that the Superintendent approved. Walker filed a response to the show cause order, and Appellants filed a reply to Walker’s response. The Superintendent did not file a response or a reply.

Walker contends (1) that the terms of the settlement agreement were discussed at an October 28, 2004 hearing at which Appellant Charles Lohah was present on behalf of all Appellants and stated no objection, (2) that the October 28, 2004 hearing was continued to November 30, 2004, “thus giving the parties an opportunity to memorialize their agreement,” Walker Response at 1, (3) that Appellants were aware of the Superintendent’s intent to approve the settlement, and (4) that Appellants were afforded due process. Appellants filed a reply, denying that the settlement was discussed in their presence, asserting that each is acting pro se in these proceedings, and contending that even if the settlement had been discussed, their silence or non-objection could not bind them to the settlement.

There is no contention in this case that Appellants executed the settlement agreement, authorized it to be executed on their behalf, or otherwise gave their affirmative consent. The Superintendent’s decision makes no factual or other findings that Appellants had consented to the settlement, either expressly or impliedly, and appears to presume that the consent by Walker and Harper was sufficient.

Even assuming, for purposes of this appeal, that Walker's factual contentions are correct, we conclude that they provide an insufficient basis to find that Appellants consented to the settlement. 2/ Walker cites no authority, and we know of none, to support his contention that Appellants' knowledge of the settlement proposed by Walker and Howell gave rise to a legal obligation on their part to either object or have their non-objection treated as affirmative consent. Any knowledge Appellants had that the Superintendent would be favorably disposed to approve a settlement agreement among the parties is simply not relevant to whether their nonappearance at the hearing or non-objection would be deemed to be their consent to the settlement. Under the circumstances, it would have been at least as reasonable for Appellants to assume that their nonappearance would indicate their lack of consent to the settlement, thus preventing it from even being considered for approval by the Superintendent.

Accordingly, we conclude that the Superintendent's approval of the settlement cannot be sustained because the record is insufficient to demonstrate that all interested parties had consented to the agreement, even though the agreement purported to resolve the claims of all such interested parties. 3/

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 212 DM 13.5, the Superintendent's March 22, 2005 decision

2/ The administrative record submitted by the Superintendent does not contain a transcript or other record of an October 28, 2004 hearing, nor does it show that Appellants were given actual notice of the settlement terms prior to the November 30, 2004 hearing, or told that their failure to appear at the November 30, 2004 hearing or otherwise object would be deemed as consent to the settlement. Walker's factual assertions and Appellants' denials would raise disputed issues of fact that would be material if we could not resolve this appeal by assuming the correctness of Walker's assertions.

3/ We note that 25 C.F.R. Part 17 is silent with respect to the Superintendent's review and approval of settlement agreements in Osage will cases. Therefore, it may be appropriate for the Superintendent to look to the standards set forth in the Departmental probate regulations as guidance in determining whether a settlement that has been agreed to by all the parties should be approved. See 43 C.F.R. § 4.207.

is vacated and the matter is remanded for further proceedings consistent with this decision. 4/

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Amy B. Sosin
Acting Administrative Judge

4/ Appellants request that, in addition to remanding the case, the Board instruct the Superintendent to approve the 1993 will based on certain findings in the Superintendent's March 22, 2005 decision. The Board denies Appellants' request. The merits regarding either will are not within the scope of this appeal. By vacating the Superintendent's decision, we leave it to the Superintendent after further proceedings to address the merits in a new decision, or to again consider approving a settlement agreement if all interested parties properly consent to settlement.