



INTERIOR BOARD OF INDIAN APPEALS

Estate of Elvina Shay

44 IBIA 133 (02/26/2007)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ESTATE OF ELVINA SHAY : Order Affirming Decision
:
: Docket No. IBIA 07-49
:
: February 26, 2007

Appellant Jennifer Kaiyou seeks review of an October 12, 2006 Order Denying Rehearing entered by Indian Probate Judge Albert C. Jones (IPJ) in the estate of Elvina Shay (Decedent), deceased Shoshone Bannock Indian, Probate No. P-0000-01227-IP. The order denying rehearing left in place a July 26, 2006 decision by the IPJ, which determined that under Idaho and Wyoming laws of intestate succession 1/ Decedent's sole heir was her son, Defelton Bud Shay. Appellant is the sister of Decedent's predeceased husband, Dennis Kaiyou. The IPJ denied Appellant's petition on several grounds, including that Appellant was not an interested party within the meaning of 43 C.F.R. § 4.201 and thus did not have standing to petition for rehearing. We agree with the IPJ that Appellant does not have standing to petition for rehearing and therefore affirm the IPJ's order denying rehearing.

Appellant's petition for rehearing sought to have Decedent's interest in certain trust property "returned" to the Kaiyou family instead of passing to Decedent's son, who is not a blood relation to the Kaiyou family. The property originated in the Kaiyou family, descended to Tricia Ann Kaiyou, the daughter of Dennis Kaiyou and Decedent, and was then inherited by Decedent when Tricia died. Appellant contended that Decedent had "Tricia's interest," which should now be returned to the Kaiyou family. 2/

1/ Decedent died owning interests in property located on the Fort Hall Reservation in the State of Idaho and the Wind River Reservation in the State of Wyoming, and funds were on deposit in her Individual Indian Money account.

2/ Appellant also refers to the property as her brother Dennis's interest. Although not entirely clear from the pleadings, it appears that the property at issue is a 1/12 interest in the trust property comprising the estate of Nettie Smart Kaiyou, Bannock Allottee 871 of the Fort Hall Reservation, Probate No. IP BIA 184A 80. Nettie was Dennis's grandmother, and survived him. When Nettie died, the 1/12 interest in her trust estate that would have passed to Dennis went to his daughter Tricia, Nettie's great-granddaughter. When Tricia died intestate, her interest passed to her mother, Decedent.

In his October 12, 2006 order denying rehearing, the IPJ determined that because Appellant was not a presumptive or actual heir of Decedent and did not submit a claim against the estate, she was not a “party in interest” within the meaning of 43 C.F.R. § 4.201(i)(2000) ^{3/} and therefore did not have standing under the regulations to petition for rehearing. The IPJ also concluded that even if Appellant had standing, her petition failed to allege proper grounds for rehearing because she is not entitled to the relief she seeks.

On December 21, 2006, after receiving her notice of appeal, the Board of Indian Appeals (Board) ordered Appellant to show cause why we should not summarily affirm the IPJ’s decision because it appears that Appellant is not an interested party within the meaning of the regulations.

In response, Appellant notes that she is a full sister to Dennis Kaiyou and states that she does not understand “why the law protects people who are no relation by blood.” Feb. 5, 2007 Response from Appellant at 1. She also states that does not “understand why [she’s] not family” and that “[i]t feels unfair because [she is] overlooked as family.” *Id.* Appellant asserts that “th[e] land has been with [the Kaiyou] family for generations, passed down from family to family and the interests are small.” *Id.*

Timeliness of Appeal

Appellant’s appeal was transmitted to the Board by the IPJ, and received by the Board outside the 60-day time period provided in the regulations. *See* 43 C.F.R. § 4.320(b). However, the Board presumed for purposes of its show cause order that Appellant’s appeal was timely because the order denying rehearing advised interested parties of the 60-day period for filing an appeal but did not advise parties where such an appeal must be filed and did not refer parties to the applicable regulations, and Appellant filed her appeal with the IPJ within 60 days from the date of the order denying rehearing.

The Board has held that when an appellant is given incorrect or misleading appeal instructions, and complies with those instructions, the appeal may be treated as timely even

^{3/} In 2005, the regulations were revised to refer to an “interested party.” *Compare* 43 C.F.R. § 4.201 (2005) (defining “interested party” to include “[a]ny probable or actual heir”) *with* 43 C.F.R. § 4.201(i) (2000) (defining “party in interest” to include “any presumptive or actual heir”).

if it is not filed with the Board within the prescribed time period. See Hendry County v. Eastern Regional Director, 40 IBIA 135, 136 (2004), and cases cited therein; see also Estate of Phillip Lorraine Post, 44 IBIA 108, 109 (2007). We conclude, based on the IPJ's incomplete appeal instructions, that Appellant reasonably could have understood that her appeal could be filed with the IPJ, and because she did so within the 60-day period, this appeal is timely.

Appellant's Standing

In order to have standing to participate in a probate proceeding, an individual must be an "interested party," as defined in 43 C.F.R. § 4.201 (2005). Estate of Donald E. Blevins, 44 IBIA 33 (2006); see also Estate of Joseph Noel Simpson, 36 IBIA 67 (2001) (to have standing a person must be a "party in interest"). Relevant to these proceedings, the regulations define "interested party" to mean someone who is a "probable or actual heir." 43 C.F.R. § 4.201. 4/

Appellant suggests that she has standing because she is "family" and related by blood to Dennis Kaiyou. However, being "family" or related by blood is not the same as having standing under the regulations to participate in a probate proceeding. Appellant clearly disagrees with the law, under which an inheritance may pass to an individual who is not a lineal descendent or blood relative of the ancestral owner of property, but Appellant does not contend that she is a probable or an actual heir of Decedent. Appellant's relationship to Decedent is that of former sister-in-law, and she does not contest the IPJ's determination that she is not a probable or actual heir of Decedent under applicable intestacy law. 5/

Because Appellant has not shown that she is an "interested party" as defined by 43 C.F.R. § 4.201, we conclude that the IPJ properly denied Appellant's petition for rehearing.

4/ Section 4.201 also defines "interested party" to include a beneficiary under a will, an individual asserting a claim against a deceased Indian's estate, and a tribe having a statutory option to purchase the trust or restricted property interest of a decedent.

5/ Appellant asserts that Dennis Kaiyou and Decedent divorced on August 4, 1975. Dennis Kaiyou died on July 2, 1977.

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 IPJ's order denying rehearing.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debora G. Luther
Administrative Judge