



## INTERIOR BOARD OF INDIAN APPEALS

Nanette Kelley v. Acting Eastern Oklahoma Regional Director,  
Bureau of Indian Affairs

44 IBIA 253 (04/30/2007)



# 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

NANETTE KELLEY,	:	Order Vacating Decision and
Appellant,	:	Remanding
	:	
v.	:	
	:	
ACTING EASTERN OKLAHOMA	:	Docket No. IBIA 07-40-A
REGIONAL DIRECTOR, BUREAU	:	
OF INDIAN AFFAIRS,	:	
Appellee.	:	April 30, 2007

Nanette Kelley (Appellant) appealed to the Board of Indian Appeals (Board) from a September 13, 2006 decision of the Acting Eastern Oklahoma Regional Director, Bureau of Indian Affairs (Regional Director), which rejected Appellant’s challenge to an Amended Revocable Trust Agreement (Trust) executed by Darryl D. Durbin, a deceased Osage Indian. We now vacate and remand the Regional Director’s decision based on Appellant’s unopposed petition for a remand to allow the Regional Director to consider additional evidence.

The Trust provides that upon Decedent’s death, Kimber Lee Devitt 1/ receives a life estate in Decedent’s entire trust estate, and upon her death, the remainder interest will vest in the Osage Tribe for the Osage College Scholarship Fund. Appellant, who is one of two natural children of Decedent, 2/ contested the Trust, arguing that it should be declared null and void because Decedent lacked mental capacity to make the Trust and may have been subject to undue influence. The Osage Agency Superintendent approved the Trust, the Regional Director rejected Appellant’s contest, and Appellant appealed to the Board.

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1/ The Trust identified Kimber Lee Devitt as Decedent’s step-daughter, a status which Appellant disputes.

2/ Decedent also apparently had a natural son, Daniel E. Durbin. Counsel for Appellant has filed a motion seeking to be appointed Guardian Ad Litem for Daniel for these appeal proceedings and to intervene on Daniel’s behalf. Our disposition renders these requests moot. The Regional Director may determine on remand the appropriate means for Daniel’s interests to be represented.

Appellant filed an opening brief, and a petition to remand proceedings or, in the alternative, to open the proceedings to admission of evidence that was not considered by the Regional Director. In response, the Regional Director has advised the Board that she does not object to a remand for the purposes of allowing her to review the additional evidence submitted by Appellant during this appeal, to consider any arguments raised by Appellant and that may be raised by Devitt with regard to the validity of the Trust, and to render a new decision based upon additional evidence presented by the parties. The Osage Nation has also filed a letter with the Board in support of Appellant's request that her additional evidence be considered.

Even assuming that Devitt would object to a remand, the Board finds that a remand to the Regional Director is warranted to allow her to consider additional evidence and arguments presented by Appellant or other interested parties against or in favor of the validity of the Trust. 3/

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 the Regional Director's decision and remands this matter for consideration of additional arguments and evidence and issuance of a new decision. 4/

I concur:

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// original signed  
Steven K. Linscheid  
Chief Administrative Judge

\_\_\_\_\_  
// original signed  
Debora G. Luther  
Administrative Judge

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3/ Mail for these proceedings that was sent to Devitt was returned as undeliverable, but a review of the file indicates that this likely was attributable to a typographical error on the part of the Board. This order is being mailed to Devitt at her last known address.

4/ Appellant also filed a motion for the Board to take judicial notice of several documents she submitted concerning Decedent. Our disposition of this appeal renders Appellant's motion moot. The Regional Director may consider these documents, as appropriate, on remand.