



INTERIOR BOARD OF INDIAN APPEALS

Estate of Albert Angus, Sr. and Estate of George Angus

46 IBIA 90 (11/13/2007)

Petition for reconsideration dismissed:

47 IBIA 57

Judicial review of this case:

Affirmed, *Kakaygeesick v. Salazar*, 656 F. Supp. 2d 964 (D. Minn. 2009),
aff'd., 389 Fed. Appx. 580, 2010 WL 3190768, No. 10-1109 (8th Cir. Aug. 12, 2010)
(*per curiam*)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ESTATE OF ALBERT ANGUS, SR.)	Order Adopting Recommended
)	Decision, as Modified
ESTATE OF GEORGE ANGUS)	
)	Docket No. IBIA 05-98
)	
)	November 13, 2007

Donald Kakaygeesick (Appellant) appeals from the July 12, 2005, Recommended Decision of Administrative Law Judge David A. Clapp in which Judge Clapp declined to modify the inventories of the estates of Albert Angus, Sr. (Albert), deceased Red Lake Indian, Probate No. IP TC-013-S-02, and George Angus (George), deceased Red Lake Indian, Probate No. IP TC-014-S-02, to exclude Red Lake Allotment No. 3 (Allotment No. 3). Albert and George had inherited their interests in Allotment No. 3 from their mother, Mary Kakaygeesick Angus (Mary), who had received the allotment by gift deed from her father, John Kakaygeesick a.k.a. Everlasting Sky (Everlasting Sky) in 1968.¹ Appellant maintains that Everlasting Sky intended to convey his interest in Allotment No. 3 to his grandson, Robert Kakaygeesick, Sr. (Robert) (Appellant’s father). We find Appellant’s claim to be barred by the passage of time and the lack of diligence in pursuing any claim to Allotment No. 3. On this basis, we adopt the conclusion of Judge Clapp’s recommended decision.

Background

1. Introduction

Allotment No. 3, which is at the heart of this dispute, is located in Roseau County, Minnesota, and consists of 102.20 acres, according to the title status report of the Bureau of

¹ We note that the name “Kakaygeesick” appears with different spellings throughout the record, including “Ka Kee Ka Kee Sick,” “Kakeegeesick,” etc. In order to avoid confusion, we will use “Kakaygeesick” in this decision inasmuch as it appears to be the family’s current, preferred spelling of the name.

Indian Affairs (BIA).² At various times, the Angus family has resided on the allotment and, at other times, the Kakaygeesick family.

The original allottee of Allotment No. 3, Everlasting Sky, died in 1968. Just prior to his death, he executed a gift deed, which was approved by BIA, conveying Allotment No. 3 to his daughter, Mary. Everlasting Sky's gift deed is now the subject of this appeal because of changes on the face of the deed. Apparently, Robert's name originally was typed in as the grantee. However, his name was crossed out with a row of "xxx's" and Mary's name was typed in next to Robert's crossed-out name. The initials "WL" are written next to the change. At the bottom of the first page of the deed next to the name of the grantor, Everlasting Sky, appears a thumbprint represented to be his. Witnesses to the deed were Margaret Aas, George Kelly, and Ronald Beaulieu, each of whom signed the deed. On September 20, 1968, BIA Realty Officer Willard Leaf notarized the deed on the second page. On October 9, 1968, the deed was approved by the Acting Minnesota Area Director, BIA.

There is no indication in the record that Robert or anyone else challenged the gift deed to Mary until BIA began preparations to probate the estates of Mary's sons, George and Albert. For example, when Mary died intestate in 1975, there was no challenge to the inclusion of Allotment No. 3 in her estate inventory. Albert³ and George inherited equal shares in Allotment No. 3 when Mary's estate was probated in 1978.⁴

Albert died in 1976, followed by George in 1990. Their estates were submitted together by BIA for probate in December 2001. On April 11, 2002, counsel for Appellant and his family wrote to Administrative Law Judge, Frederick W. Lambrecht, to request that she and her clients be included on the service list for the probates of George and Albert. The letter did not state why the Kakaygeesicks were interested in these estates and made no

² Allotment No. 3 is described as "Lot 1, Sec. 27 and Lots 7 and 8, Sec. 28, T. 163 N., R. 36 W., Fifth Principal Meridian, Minnesota." According to Appellant and the Angus family, the vast majority of the allotment has been lost to erosion and, following the construction of a dam, to Lake of the Woods. Appellant avers that approximately 6.79 of the original 102.20 acres remain.

³ Albert died after Mary but before her estate was probated. Therefore, his estate inherited his interest in Allotment No. 3.

⁴ Records from Mary's estate are included in the probate records for the estates of George and Albert.

mention of Allotment No. 3. On September 6, 2002, Judge Lambrecht received a second letter from counsel in which, for the first time, Appellant's claim to Allotment No. 3 is explained: "Our clients intend to contest title to this property and present evidence to support their contention that the property should have passed to their father, Robert KaKayGeesick, Sr., rather than to the decedents' mother, Mary Angus." In response to counsel's letter, Judge Lambrecht determined that he would first hold a hearing to determine the heirs of George and Albert, followed by a "*Ducheneaux* hearing"⁵ to determine whether Allotment No. 3 should remain in the estate inventories for George and Albert.

2. Facts Relating to Everlasting Sky's Gift Deed

Beginning in September 2002, a series of hearings was held to probate the estates of Albert and George, including the *Ducheneaux* hearing. In addition, BIA Realty Officer Leaf was deposed and the transcript of his deposition is included in the record.

According to Leaf's deposition, taken in 2003, he did not recall how it came to his attention that Everlasting Sky wanted to convey his land to Robert, but he did recall having the paperwork prepared and taking it to Everlasting Sky at a nursing home in Warroad, Minnesota, for signature. He testified that he had never met Everlasting Sky prior to this time. He also stated that Everlasting Sky "was an old, old man . . . [b]ut he had . . . his 'facilities.'" Deposition of Leaf, Feb. 6, 2003, at 11. Leaf stated that he arranged for interpreting services because Everlasting Sky could not speak English. He also stated that his recollection in 2003 of what took place in 1968 was "hazy," but he did remember meeting with Everlasting Sky. *Id.* at 17. He testified that his "memory is mostly on that sheet of paper," referring to a memorandum that he wrote on September 20, 1968. *Id.*

Leaf's memorandum reflected that he initially relied on George to interpret for him with Everlasting Sky. When George told him that Everlasting Sky wanted to give

⁵ In *Estate of Douglas Leonard Ducheneaux*, 13 IBIA 169, 177-78 (1985), the Board of Indian Appeals (Board) established a process by which alleged errors in BIA's estate inventory are considered by an ALJ during a probate proceeding, rather than separately referring inventory questions to BIA for resolution. See also *Estate of Samuel Johnson (John) Aimsback (Aims Back)*, 45 IBIA 298, 300 n.4 (2007). Instead, BIA participates as an interested party in the proceedings before the ALJ. In this way, an ALJ may address both probate matters and estate inventory matters in a unified proceeding (*Ducheneaux* hearing), subject to the parties' right to appeal to the Board. *First v. Rocky Mountain Regional Director*, 42 IBIA 76, 77 n.3 (2005).

Allotment No. 3 to George's mother, Mary, and not to Robert, Leaf then sought the services of another interpreter, Margaret Aas. Leaf also brought two additional witnesses, George Kelly and Ronald Beaulieu, who spoke Ojibway.⁶ After conversing with Everlasting Sky, all three confirmed to Leaf that Everlasting Sky wanted Mary to have Allotment No. 3. The memorandum also memorialized that "[i]t was the con[s]ensus of Mr. Kelly, Mr. Beaulieu, and Mrs. Margaret Aas that [Everlasting Sky] was competent to convey." Memorandum from Leaf to Files, Sept. 20, 1968.

Leaf explained at his deposition that when he realized that Everlasting Sky intended to give Allotment No. 3 to Mary, he caused Robert's name to be crossed out, had Mary's name inserted as grantee, placed his initials next to the change, and signed the deed as the notary. Everlasting Sky placed his thumbprint on the deed next to his, Everlasting Sky's, name on the first page of the deed.⁷ Thereafter, the deed was formally approved on October 9, 1968, by the Area Director in Minneapolis, Minnesota, and recorded on October 11, 1968, in Portland with BIA's Branch of Realty, Titles and Records Section. Leaf was questioned as to how the deed traveled from Minneapolis to Portland in two days, but he did not know. He did confirm, however, that the stamp on the deed for the Portland office was genuine.

At hearings scheduled in the matter, Appellant testified that he was troubled by the form of the gift deed, i.e., that his father's name was crossed out with a row of x's and Mary's name was typed in as grantee. At a later hearing, Appellant testified that he first saw the gift deed by Everlasting Sky around the year 2000. Transcript, July 27, 2004, at 4 ("we ha[d]n't seen that [deed] until like up to four years ago"). Appellant also suggested in his testimony that his father was unaware of the gift deed to Mary.⁸ Appellant claimed that

⁶ According to Beaulieu, Everlasting Sky spoke Canadian Ojibway, which was spoken faster than the Ojibway spoken by Beaulieu and Kelly. Aas, apparently, spoke Canadian Ojibway.

⁷ It cannot be determined from the record whether Everlasting Sky executed the gift deed before or after Mary's name was typed in as the grantee.

⁸ Appellant's testimony concerning his father's knowledge was equivocal. According to the transcript, the following colloquy occurred:

Appellant: [The land] originally was supposed to go to Robert . . . , and you could tell by the bold printing that at some point, I don't know how the BIA works or . . . how they draft up papers of such, but it had to
(continued...)

Robert should have been notified “of a change like that” because the family had never seen the gift deed by Everlasting Sky to Mary. *Id.* at 6. Appellant also testified that Everlasting Sky gave the land to him when he gave Appellant a sacred crimson rod.

Appellant also submitted his notarized statement along with one executed by his mother, Florence Kakaygeesick (Florence). In his statement, Appellant contended that Everlasting Sky gave him a sacred crimson rod in 1962. Appellant explained “[t]hat the sacred crimson rod is placed at what is now known as KakayGeesick Bay [on Allotment No. 3] and the sacred crimson rod represents the ownership of that land.” Appellant’s Notarized Statement, July 28, 2003. His mother’s statement confirmed Everlasting Sky’s gift of the crimson rod to Appellant and provided additional detail concerning the Anguses’ and the Kakaygeesicks’ residence on Allotment No. 3. Florence also explained that the Kakaygeesicks took care of Everlasting Sky in his home on the allotment “until he became sick, in the early 1960s.” Florence’s Notarized Statement, July 28, 2003, at 1. Florence stated that after the death of Everlasting Sky, the Kakaygeesick family left Allotment No. 3 and moved into the town of Warroad where they lived until 1978. At that time, she explained, the Kakaygeesicks returned to Allotment No. 3. Because Everlasting Sky’s home was dilapidated, Florence stated that it was torn down and the Kakaygeesicks moved two trailer homes onto the property where they lived until Robert died on June 24, 1998. Florence did not explain what prompted the Kakaygeesicks to leave Allotment No. 3 after the death of Everlasting Sky or what prompted the family to leave after Robert’s death.

Ronald Beaulieu testified on two occasions and provided consistent testimony each time. He explained that sometime prior to the day Everlasting Sky executed the gift deed,

⁸(...continued)

have been done ahead of time. . . . At some point they must have asked the old man you know they can’t put just anybody’s name down on [the deed].

. . . .

ALJ: Apparently there were some instructions by whatever means . . . [f]or the drafting of this document that they did, more comfortably at their headquarters.

Appellant: Yes and my father, my father was aware of that but he after the change you know nobody knew until later on in life. You know there was some, [Robert] didn’t know about it.

Transcript, July 27, 2004, at 5-6.

Robert came to “the office,”⁹ and told Beaulieu and others that Everlasting Sky was “getting ready to die” and wanted Robert to have his land. Transcript, July 30, 2003, at 32. Beaulieu explained that his office had contacted Leaf to let him know what Robert had said. Beaulieu confirmed that he was present when Aas explained the gift deed to Everlasting Sky in 1968 and he was present at the time Everlasting Sky executed the gift deed. He also confirmed that Everlasting Sky wanted Allotment No. 3 to go to Mary and that, in Beaulieu’s opinion, he was competent to make that decision.¹⁰

The Angus family submitted the affidavit of Lois Angus (Lois), great-granddaughter of Everlasting Sky. Lois stated that the Kakaygeesicks knew that Everlasting Sky gave Allotment No. 3 to Mary, that they “were aware of the deed by which th[e] transfer was made,” and “[o]n various occasions, the Angus family has repeatedly told the KaKayGeesick family that they were the owners of the property and that the KaKayGeesicks had no right to deal with it.” Affidavit of Lois, Aug. 29, 2003, at 1. Lois stated that the Kakaygeesicks made several efforts to sell the property but were told they could not because they did not own the land. She did not provide any dates for these conversations with the Kakaygeesicks. Appellant does not address or dispute Lois’s statements.

3. Judge Clapp’s Recommended Decision

On July 12, 2005, Judge Clapp issued a recommended decision in which he declined to remove Allotment No. 3 from the inventories of the estates of George and Albert.¹¹ Judge Clapp concluded that

⁹ According to Leaf’s memorandum, Beaulieu was a BIA employee at the time he witnessed Everlasting Sky’s execution of the gift deed in 1968. Therefore, we presume that “the office” refers to the BIA office where Beaulieu was employed in 1968, which he said was located in Warroad, Minnesota.

¹⁰ According to the record, Kelly and Aas had died by the time the hearings were scheduled and thus were unavailable to testify as to their understanding of the gift deed transaction.

¹¹ Also on July 12, 2005, Judge Clapp issued separate Orders Determining Heirs in both estates. Albert died intestate and his heirs were determined to be the seven children who survived him. George executed a will in which he left his estate to his cousins, Robert Kakaygeesick, Sr. and Jr. However, the will was disapproved and George’s heirs were determined to be his six nieces and nephews (Albert’s surviving children), and one great-nephew. No petitions for rehearing were filed in response to the Orders Determining Heirs.

[t]he evidence contained in th[e] record indicates that . . . Everlasting Sky understood and did, in fact, intend to gift deed . . . Allotment No. 3 to his daughter Mary Angus. The record further lacks any legitimate evidence suggesting in any manner or form that the deed was not a legitimate transfer of that property. I, therefore, recommend a finding that . . . Allotment No. 3 is correctly included in the . . . property inventories [of George and Albert].

Recommended Decision at 3-4.

Appellant timely appealed the recommended decision to the Board. Appellant has submitted a notarized statement along with one by Florence.¹² He also has submitted a statement of reasons. Through counsel, the Angus family¹³ submitted a motion to dismiss. Appellant submitted a reply brief.

Discussion

On appeal, Appellant questions the validity of the deed for the following reasons:

- (1) The deed was executed on a Friday, September 20, 1968, and required Leaf to travel 137 miles one way from Bemidji to Warroad, where Everlasting Sky was in a hospital or rest home. Appellant contends that BIA should produce a record of travel on that date for Leaf.
- (2) Robert could not have gone into BIA's office in 1968 to request the gift deed because he and Florence were both working at "Northwest Angle" at that time.¹⁴ Statement of Reasons at 1. Therefore, whoever contacted BIA about the gift deed "must have been very convincing" because the Realty Officer typed up the deed and drove 137 miles to Warroad. *Id.*

¹² This second affidavit by Florence, dated September 6, 2005, was identical to the one she executed previously in 2003.

¹³ The Angus family represented in the appeal are the children of Albert Angus (Lois, Muriel Shipley, Carmen Turner, Terrance Angus, Josephine Thompson, and Michael Angus) and one grandson (Darrell Shaugabay).

¹⁴ The record does not identify what or where "Northwest Angle" is.

- (3) The deed was typed up at the hospital or rest home to reflect Robert as the grantee, then altered in Bemidji to substitute Mary as the grantee. This theory explains why Leaf wrote a memo about the day's events.
- (4) Appellant's grandmother, Veronica Kakaygeesick was present at the time of Leaf's visit to Everlasting Sky. She heard Everlasting Sky say that he wanted Allotment No. 3 to be Robert's.
- (5) The change in grantees should have been approved by Everlasting Sky with his thumbprint, not by Leaf with his initials.
- (6) The gift deed was approved by BIA in Minneapolis, Minnesota, on Wednesday, October 9, 1968, and received by BIA in Portland, Oregon, on Friday, October 11, 1968. Appellant questions the two-day delivery of mail between Minneapolis and Portland.

Notice of Appeal at 1-2.¹⁵ We decline to reach the merits of this appeal because of the lapse of time and failure by Appellant and his father to pursue any claim to Allotment No. 3 with

¹⁵ Appellant also questions how George and Albert became enrolled in the Red Lake Tribe while Appellant and his family are not considered to be members. The Board lacks jurisdiction to hear or decide tribal membership disputes. 43 C.F.R. § 4.330(b)(1); *Sanders v. Eastern Oklahoma Regional Tribal Government Officer*, 45 IBIA 222, 223 (2007).

Appellant also contends that when Everlasting Sky gave Appellant the sacred crimson rod, it commemorated Everlasting Sky's intent for Appellant to have Allotment No. 3. According to Appellant, the passing of the sacred crimson rod is a Red Lake Chippewa custom that signifies the transfer of ownership from one owner to the next. However, it is well established, and Appellant appears to concede, that conveyances of Indian trust land occur pursuant to Federal law, not Indian custom. *See Thomson v. Acting Pacific Regional Director*, 40 IBIA 36, 38 (2004) ("The ability of individual Indians to transfer, divide, and devise interests in trust property is constrained by *Federal* law, and subject to approval by the Secretary." (Emphasis added)).

Finally, we note that Appellant's Notice of Appeal identifies several documents offered in support of his contentions, but copies were not provided to the Board: an aerial view of Allotment No. 3; a statement from a written certificate of survey; and a description of Allotment No. 3 as containing 6.79 acres. Notwithstanding their absence from the record and based solely on the description of these documents, we conclude that they would not alter our decision.

due diligence. Therefore, we adopt the conclusion of the recommended decision, albeit on these alternate grounds.

Unlike personal causes of action that die with the claimant if not acted upon during the claimant's lifetime, e.g., those sounding in tort, causes of action concerning real property survive the death of the claimant and may be acted upon by his heirs. See 1 Am. Jur. 2d *Abatement, Survival, and Revival* § 88 (2005) (“A cause of action involving realty ordinarily passes to the heirs of the person having the cause”). In particular, claims for the rescission or cancellation of a deed survive the death of the claimant, the grantee, and the grantor. See 1 C.J.S. *Abatement and Revival* § 132 (1985).¹⁶ Where a claimant seeks rescission on the grounds that a deed has been forged or impermissibly and materially altered, such a claim will survive to the heirs of the grantor. Cf. 4 Am. Jur. 2d *Alteration of Instruments* § 51 (2007).

However, there is a caveat to the survival of such a claim: Claimants and their heirs may be estopped where they have slept on their rights and have failed to exercise diligence in investigating and pursuing their claims. See 13 Am. Jur. 2d *Cancellation of Instruments* § 40 (2000). Moreover, heirs are held to be in privity with their ancestors, such that if the ancestor were not diligent, the lack of diligence is imputed to his heirs. In other words, because the heirs' interest derives from the ancestor, the heirs then stand in the same shoes as the ancestor. See *Estate of Lean Woman (Sankey)*, 25 IBIA 60, 62 (2000). There is good reason for requiring diligence because there is a need for finality in matters pertaining to the ownership of land so that owners may rely on their title in making improvements and decisions relating thereto. *Estate of Frank Jones*, 1 IBIA 345, 351 (1972). Similarly, there is a need for finality in probate matters to facilitate the distribution of property and to enable heirs and devisees to exercise rights of ownership without fear of a challenge to their title. Cf. *Estate of Newton McNeer*, 33 IBIA 318, 320 (1999). The need for finality increases with the passage of time because evidence and witnesses are lost. *Id.* Even when witnesses are available and evidence is found, the memories of witnesses may be dim with respect to the details of any transaction and documents may be faded or torn and difficult to read. Thus, the greater the passage of time since the gift deed, the greater will be the burden on those who challenge the gift deed.

The Board has adhered to these legal precepts and requires appellants to be diligent in the pursuit of their claims. In the context of probates, appellants seeking to reopen

¹⁶ This argument, of course, presumes that the Board has authority to rescind or revoke gift deeds. The Board has not previously decided this issue, see *Lunday v. Aberdeen Area Director*, 34 IBIA 138, 139-40 (1999), nor need we do so today.

estates that have been closed for more than three years must establish that they have been diligent during the intervening time period. In *Estate of McNeer*, Appellant sought to reopen the estates of her ancestors, which were closed in 1920. The petition had been denied by the ALJ as untimely. The Board said,

Chief among the . . . factors considered [in determining whether to reopen a long-closed estate] is the “due diligence” factor. The Department [of the Interior] has a well-established requirement that a petitioner for reopening [must] exercise due diligence in pursuing his/her claim. As it was put in [*Estate of George*] *Dragswolf*[, Jr.], “[b]ecause of the substantial interest of Indian heirs in the finality of Indian probate decisions affecting their property rights, it is equitable to require a claimant to act on his rights within a reasonable time after he knows or should know of them.” 17 IBIA [10,] 12 [(1988)].

33 IBIA at 319. We affirmed the denial of reopening. *Id.* at 320. Diligence also is required for challenging BIA’s approval of deeds. In *Baker v. Anadarko Area Director*, 17 IBIA 218 (1989), appellant challenged a quitclaim deed, to which his tribe had consented, of approximately 20 acres, which was used to construct a hospital. The deed was executed by the Commissioner of Indian Affairs in December 1959; appellant did not pursue any inquiry relating to the deed until early 1985 and then did not formally challenge the decision until September 1988. The Board held that, even assuming the appellant had standing, his appeal was untimely not only as to his initial inquiry in 1985 but also with respect to the subsequent delay of 3 years until he submitted his formal challenge, which the Board held was “still more than 3 years too late.” *Id.* at 221.

Appellant herein is faced with similar timeliness and diligence issues — his father’s as well as his own. First, Appellant’s father failed to exercise diligence. The gift deed process was initiated by Appellant’s father: Robert went to BIA and said that Everlasting Sky wanted to give him Allotment No. 3. Therefore, it is reasonable to expect that Robert would have inquired further into the status of the gift deed and the conveyance to him. Had he done so, he would have discovered that Everlasting Sky gave the land to Mary. Certainly, by the time Everlasting Sky died, which occurred shortly after he executed the gift deed, Robert should have inquired about the status of the gift deed or the status of the

allotment and challenged BIA's decision to approve the deed.¹⁷ There is no indication in the record that Robert ever objected to the gift deed to Mary or even inquired about it.¹⁸

When Mary's estate was probated in 1978, there apparently was no inquiry or objection by Robert, Appellant, or anyone from the Kakaygeesick family concerning Mary's estate inventory.

Because Appellant's interest in the land is derivative of Robert's alleged interest in the land, Robert's lack of diligence in pursuing his claim to the land is imputed to Appellant. Therefore, we hold that Appellant's challenge to Everlasting Sky's gift deed, like appellant's challenge in *Baker*, comes too late.

Even assuming, however, that there may be an explanation for Robert's failure to object to the gift deed, Appellant's own challenge is still untimely. When Robert died in 1998, Appellant should have inquired at that time about the ownership of the land and should have raised any challenge within a reasonable time thereafter with BIA.

Finally, we note that Appellant states that he first saw the altered gift deed sometime in or about the year 2000. Yet, inexplicably, no challenge was made to the gift deed until September 2002. This delay is not reasonable. The alteration is evident on the face of the deed. To the extent Appellant believed the alteration to be illegal or unauthorized by Everlasting Sky, he should have challenged the approval within a reasonable time of its discovery.¹⁹ Moreover, Appellant provides no explanation for his own delay, let alone his father's delay.²⁰

¹⁷ Typically, challenges to completed gift deed transactions must be raised in the first instance with BIA. See, e.g., *Bernard v. Acting Great Plains Regional Director*, 46 IBIA 28 (2007); *Roberts v. Anadarko Area Director*, 28 IBIA 37 (1995); *Baker*, 17 IBIA 218.

¹⁸ Appellant, who was born in 1959, would have been nine years old at the time of Everlasting Sky's death and, thus, would not be expected to make any such inquiries.

¹⁹ Although we need not determine what would have been a reasonable time for Appellant to submit his appeal, we note that ordinarily the decisions of BIA officials, including decisions to approve or disapprove gift deeds, must be brought within 30 days of receipt of the decision and appeal rights. See 25 C.F.R. § 2.9(a).

²⁰ In addition, we note that Lois maintains that the Kakaygeesick Family attempted to sell Allotment No. 3 and said they were told at that time that they — the Kakaygeesicks — did
(continued...)

In sum, we conclude that Appellant's challenge to the 1968 gift deed executed by Everlasting Sky is untimely. We adopt the recommended decision to the extent that it declines to remove Allotment No. 3 from the inventories of the estates of George and Albert.²¹

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 adopts the July 12, 2005, recommended decision of the ALJ, as modified by this decision.

I concur:

// original signed
Debora G. Luther
Administrative Judge

// original signed
Steven K. Linscheid
Chief Administrative Judge

²⁰(...continued)

not own Allotment No. 3. However, Lois does not provide any timeframe for these conversations with the Kakaygeesicks nor does she indicate whether, in particular, Appellant was told.

²¹ Although the Board has not previously applied a due diligence standard to *Ducheneaux* proceedings, we do not construe the Board's original *Ducheneaux* order as intended to allow challenges to the estate inventory that should have been raised earlier to BIA.