



INTERIOR BOARD OF INDIAN APPEALS

Estate of Zane Jackson

46 IBIA 251 (02/13/2008)



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

ESTATE OF ZANE JACKSON) Order Affirming Decision
)
) Docket No. IBIA 08-3
)
) February 13, 2008

Appellant Max Jackson¹ appealed to the Board of Indian Appeals (Board) from an Order Denying Rehearing entered on August 3, 2007, by Administrative Law Judge Steven R. Lynch (ALJ) in the Estate of Zane Jackson (Decedent), deceased Warm Springs Indian, Probate No. P000030554IP. The order let stand a May 9, 2007, Order Approving Will and Decree of Distribution (Order Approving Will) issued by the ALJ, in which the ALJ approved Decedent's will and denied a claim filed by Appellant against Decedent's trust estate for \$37,500. Appellant's claim covered caretaker and ranching services provided by Appellant between 1980 and 2005 on property in which Decedent and Appellant both owned an interest. Appellant also objected to Decedent's will at the probate hearing, claiming that Decedent lacked competency to execute it and was unduly influenced in making the will. The ALJ denied Appellant's claim and rejected Appellant's objections to the will.

Appellant sought rehearing to appeal the denial of his claim and to challenge the validity of Decedent's will. The ALJ denied rehearing because Appellant had failed to demonstrate error in the ALJ's denial of Appellant's claim, and because Appellant, who was not an heir under the applicable laws of intestate succession, lacked standing to challenge the validity of the will. On appeal to the Board, Appellant repeats the arguments he advanced on rehearing, and argues that the ALJ denied him the opportunity to provide additional information in support of his claim. We affirm the Order Denying Rehearing because (1) Appellant has not shown that an agreement existed between Appellant and Decedent concerning payment for Appellant's services nor has he shown that, as a co-

¹ On January 29, 2008, the Board received notice that Appellant died on January 25, 2008. The Board presumes, for purposes of this decision, that Appellant's estate would continue this appeal.

owner, he would not have performed the services in the absence of an agreement, and (2) Appellant has not alleged any error in the ALJ's decision to dismiss his challenge to the will for lack of standing.

Background

Decedent died on April 18, 2005, at Madras, Oregon. At the time of his death, Decedent owned interests in trust or restricted property located on the Confederated Tribes of the Warm Springs Reservation (Tribe; Reservation) in the State of Oregon. Relevant to this appeal, Decedent is survived by his widow, Patricia Jackson; two granddaughters, Dawn Marie Behrend Lezama and Darcie Anne Behrend Stout; and a brother, Appellant. Decedent had executed a will on December 17, 2002, in which he devised his trust property, real and personal, to his widow.²

On August 10, 2005, BIA received a claim from Appellant against Decedent's estate in the amount of \$37,500 to cover caretaker and ranching services Appellant had performed from January 1980 through 2005. Appellant stated that as the operator and caretaker of the "Dry Hollow Jackson Butte" Area (Dry Hollow property), land in which Decedent and Appellant both owned interests,³ Appellant had maintained the fences, plowed the land, cleared sagebrush, and took care of straying animals. Appellant stated that he used his own equipment to maintain the land. Appellant's claim for \$37,500 for 25 years of service amounted to a rate of \$1,500 per year.⁴

On March 23, 2007, the ALJ held a hearing to probate Decedent's estate. Appellant, Decedent's widow, Decedent's granddaughters, a will witness, and a realty officer, attended the hearing. Appellant testified about his claim against Decedent's estate. He asserted that he maintained the property and that \$1,500 represented the value of his

² Decedent executed an earlier will on November 22, 2002, which did not specifically mention his trust property. The December 17 will provided that its terms would be incorporated into the earlier will. Because the November 22 will did not mention trust property, all future references to Decedent's will shall be to the December 17 will.

³ Appellant testified at the probate proceeding in Decedent's estate that Charles Jackson also owns an interest in the Dry Hollow property.

⁴ In his claim, Appellant asserted that the \$37,500 amount was calculated at the rate of \$1,500 per month for 25 years. However, \$37,500 represents a rate of \$1,500 per year for 25 years.

work in “keeping the place intact, keeping it going.” *Id.* at 23. Appellant acknowledged that he never billed Decedent while he was alive or any other owner of the Dry Hollow property. Appellant also said that he never paid rent to the other owners of the property, including Decedent. Appellant further testified that Decedent anticipated that Appellant would raise crops and “be paid by the crop.” *Id.* at 20. He explained that he tried to farm the property but, because of drought conditions, he was unable to do so.

Appellant also objected to the will, suggesting that it did not reflect Decedent’s intent and possibly that he was not competent when he executed the will. Decedent’s widow testified that Decedent was in the early stages of dementia when he executed the will but that “the majority of the time he knew what he was doing.” Transcript, Mar. 23, 2007, at 12.

On May 9, 2007, the ALJ issued the Order Approving Will. The ALJ first determined that, had there been no will, Decedent’s heirs would be his widow and two granddaughters, according to the laws of intestate succession of the State of Oregon, citing Oregon Revised Statutes §§ 112.025, 112.045 (2003). After determining that the evidence showed that the will was properly made and executed, that Decedent possessed testamentary capacity, and that Decedent was free of undue influence, the ALJ approved the will. The ALJ ordered that, pursuant to the terms of the will, all of Decedent’s trust property be distributed to his widow, subject to a purchase option by the Tribe for the property located on the Reservation.⁵

The ALJ denied Appellant’s claim because there was no explanation describing how Appellant arrived at the base amount of \$1,500, how many hours were worked, what kinds of services were performed and when, or any evidence that Decedent agreed to pay for Appellant’s services. The ALJ concluded that Appellant’s claim was “imprecise and speculative.” Order Approving Will at 2.

Appellant submitted a timely petition for rehearing. Appellant sought rehearing on the denial of his claim, explaining that he had maintained the Dry Hollow property, including the construction of over three miles of new fence. Appellant also argued that the

⁵ Because Decedent’s widow is not a Warm Springs Indian and because Decedent’s trust real property is located on the Reservation, the ALJ noted that the Tribe had a statutory right pursuant to 86 Stat. 530, Pub. L. No. 92-377, to purchase Decedent’s trust real property interests. The record reflects that the Tribe has elected to purchase certain of Decedent’s trust interests.

will was not valid because Decedent was not competent at the time he executed it; and because Decedent's widow essentially had drafted the will and forced Decedent to sign it.

The ALJ denied rehearing on August 3, 2007. The ALJ first found that Appellant lacked standing to contest Decedent's will because he would not inherit even if the will were invalid. The ALJ also rejected Appellant's challenge to the denial of his claim for \$37,500. The ALJ determined that Appellant had failed to allege proper grounds for rehearing: (1) Appellant's claim would be barred by the statute of limitations because Appellant sought payment for work performed over the course of the past 25 years; (2) Appellant failed to establish that he and Decedent had an oral or written contract for Decedent to pay Appellant for his services; (3) Appellant failed to provide any basis for his calculation of the value of his services on the Dry Hollow property; and (4) Appellant failed to establish whether, as a co-owner of the property, he would have done the work on Dry Hollow property with or without an agreement. The ALJ concluded that there was nothing in the petition for rehearing that demonstrated that the Order Approving Will was in error.

Appellant appealed to the Board, and submitted a statement of reasons with his notice of appeal. On November 7, 2007, the Board received a letter, with numerous enclosures, from Appellant.⁶ No other parties submitted briefs.⁷

Discussion

Appellant bears the burden of showing that the denial of rehearing was erroneous. *Estate of Martha Marie Vielle Gallineaux*, 44 IBIA 230, 234 (2007). We conclude that Appellant has not met his burden.

⁶ The enclosures consisted of a letter to a tribal court judge, in which Appellant repeats the assertions that form the basis of his claim against Decedent's trust estate, a tribal court order denying Appellant's claim against Decedent's non-trust estate for the same services and in the same amount as his claim against Decedent's trust estate, copies of miscellaneous documents from Decedent's probate record, and several written statements and letters by Appellant in which he discusses Decedent's will and Decedent's death.

⁷ On December 20, 2007, the Board received a Request for Partial Distribution of an Undisputed Portion of the Estate and for Expedited Hearing from the Tribe. The Board has expedited its consideration of the appeal and our decision today moots the Tribe's request for partial distribution.

A. Appellant's Claim

Appellant contends on appeal that the ALJ erred in rejecting his claim because he put considerable work into maintaining and improving the property, including putting up a fence. He argues that the ALJ should have inspected his work. He fails, however, to provide any argument or cite any evidence to rebut the ALJ's conclusion that he had no agreement with Decedent to be paid by Decedent for his work. We therefore affirm the ALJ's denial of rehearing as to Appellant's claim for services on the Dry Hollow property.

The burden is on the creditor to prove his claim. *Estate of Phillip Quacempts*, 41 IBIA 252, 257 (2005). To succeed on a claim for reimbursement for services provided during a decedent's lifetime, a creditor must show that the decedent agreed to pay for such services and that the creditor rendered the services with the expectation of payment, particularly where, as was the case here, Appellant also benefitted from the services he rendered as a co-owner of the property. *See Estate of Edith Anderson Pretty Bird Ferron*, 6 IBIA 41, 42 (1977) (claim for services rendered by the claimant consistently has been denied where there is no evidence of any agreement to pay at the time the services were alleged to have been rendered, and where claimant had no expectation of payment); *cf. Estate of Dennis G. McCreia*, 41 IBIA 206, 208 (2005) (claim for logging services denied where insufficient evidence as to terms of agreement).

Appellant's claim fails because he has not produced any evidence that Decedent agreed to pay Appellant for his services or that Appellant worked on the property with the expectation of receiving payment from Decedent. *Cf.* Transcript, Mar. 23, 2007, at 20 (Appellant testified that he never asked Decedent for any payment during Decedent's lifetime nor had he ever asked any of the other owners of the Dry Hollow property to pay for his services). To the contrary, Appellant testified that Decedent anticipated that Appellant would farm the property and would retain the proceeds from the sale of the crops. Therefore, we conclude that Appellant and Decedent did not have an agreement for Decedent to pay Appellant for work performed on the Dry Hollow property, nor did Appellant convince us that he would not have performed the work notwithstanding an agreement. For these reasons, we affirm the ALJ's denial of Appellant's claim.⁸

⁸ We also note that Appellant may have submitted his claim too late for consideration. At the time of Decedent's death, claims were required to be submitted to BIA "(1) [w]ithin 60 days from the date BIA receives a certified copy of the death certificate or other verification of the decedent's death under 25 C.F.R. [§] 15.101 or (2) [w]ithin 20 days from the date the creditor is chargeable with notice of the decedent's death, whichever of these dates is

(continued...)

B. Appellant's Challenge to the Will

Appellant repeats his allegations that the will is invalid, but he does not dispute the ALJ's conclusion that he lacks standing to challenge the will because he is not an actual or presumptive heir under the intestate laws of the State of Oregon. We agree with the ALJ that Appellant lacks standing to challenge the will.

A showing of injury is required to establish standing in probate proceedings. *See Estate of Eunice Martha Creek*, 44 IBIA 214, 215, (2007); *see also* 43 C.F.R. §§ 4.241(a) (petitions for rehearing must be filed by the “aggrieved” party), 4.320(a) (only “[a]n interested party has a right to appeal to the Board”); *Arizona State Land Dep't v. Western Regional Director*, 43 IBIA 158, 163 (2006) (“injury” is an element of constitutional standing requirements for Federal courts, which the Board follows as a matter of prudence). An individual may have standing to bring some claims and not others. *LeCompte v. Acting Great Plains Regional Director*, 45 IBIA 135, 146 (2007).

Appellant did not contest the ALJ's finding that he would not be an heir if the will were invalidated.⁹ Even assuming that Appellant intended to assert the rights of his adult grandnieces, who would inherit if the property passed by intestacy, nothing in Appellant's notice of appeal suggests that Appellant appealed on behalf of anyone other than himself nor may he represent their interests without their express authorization, which does not appear in the record. *See* 43 C.F.R. § 1.3; *Estate of Shauna Vonae Tapoof*, 40 IBIA 204 (2005). Therefore we conclude that the ALJ correctly determined that Appellant lacked standing to challenge Decedent's will.

⁸(...continued)

later.” 43 C.F.R. § 4.250(a) (2005). According to the probate record, BIA apparently received sufficient verification of Decedent's death to order the appraisal on his trust real property interests on May 9, 2005. Assuming that Appellant became aware of his brother's death within days, if not hours, of its occurrence on April 18, 2005, Appellant's claim should have been submitted to BIA — at the latest — by July 8, 2005, the 60th day after BIA ordered the appraisal.

⁹ Decedent owned interests in trust or restricted property located in Oregon, and therefore Oregon law on intestate succession governs. *Estate of Samuel R. Boyd*, 43 IBIA 11, 16 (2006). The ALJ correctly determined that Oregon law would not recognize Appellant — who was Decedent's brother — as an intestate heir of Decedent where Decedent's wife and direct descendants survived him.

C. Due Process

Finally, Appellant asserted that the ALJ's denial of rehearing unfairly denied him the opportunity to present additional evidence in support of his claims. We disagree. It was Appellant's burden to prove his claims, and Appellant had the opportunity to support his claims with evidence when he first submitted them to BIA and again at the time of the hearing in Decedent's estate. Thereafter, he could have submitted evidence with his petition for rehearing. Instead, Appellant simply repeated the same assertions that he made originally and, on appeal to the Board, he did not respond to any of the reasons asserted by the ALJ as the basis for denying rehearing.

Conclusion

Appellant has not carried his burden of showing error in the ALJ's denial of rehearing because (1) Appellant's claim was not supported by an agreement by Decedent to pay Appellant for his services or any evidence that Appellant expected to be paid for his services, (2) Appellant lacked standing to challenge the will, and (3) Appellant was afforded the opportunity to submit evidence in support of his claims.

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 ALJ's August 3, 2007, Order Denying Rehearing.

I concur:

// original signed
Debora G. Luther
Administrative Judge

// original signed
Steven K. Linscheid
Chief Administrative Judge