



INTERIOR BOARD OF INDIAN APPEALS

Estate of Lizzie McBride Rhoan

46 IBIA 262 (02/14/2008)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
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ESTATE OF LIZZIE MCBRIDE            )  
RHOAN                                    )  
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  )  
  )     February 14, 2008

Appellant Lyle A. Rhoan, Sr., appealed to the Board of Indian Appeals (Board) from an Order Denying Petition for Rehearing entered on October 16, 2007, by Administrative Law Judge (ALJ) Steven R. Lynch in the estate of Lizzie McBride Rhoan (Decedent), deceased Warm Springs Indian, Probate No. P000001054IP. The order denying rehearing let stand a June 1, 2007, Order Determining Heirs entered by the ALJ, in which the ALJ found that Decedent died without having executed a will, and therefore her property should pass to her heirs according to the laws of intestacy, including a 2/10 interest to Appellant as one of Decedent's children. We summarily affirm the Order Denying Petition for Rehearing because Appellant has failed to allege any error in the decision.

## Background

Decedent died on March 27, 2002, at Madras, Oregon, apparently owning interests in trust or restricted property located on the Yakama Reservation in the State of Washington and the Warm Springs Reservation in the State of Oregon. The ALJ held a probate hearing on March 23, 2007. Appellant apparently attended the hearing.

The ALJ issued an Order Determining Heirs on June 1, 2007, in which he determined that Decedent died without a will<sup>1</sup> and therefore her property should pass to her

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<sup>1</sup> The ALJ found that a will had been prepared for Decedent, but that she had never executed it, and that handwritten notes laying out a plan for the devise of Decedent's property were not dated, signed, or witnessed.

heirs according to the laws of intestacy, including a 2/10 interest to Appellant, as Decedent's son.<sup>2</sup>

Appellant filed a timely petition for rehearing, in which he referred to “newly discovered evidence according to allotment distribution from [Decedent],” and also complained about the manner in which the ALJ conducted the probate hearing. Appellant asserted that the heirs did not have sufficient time at the hearing to discuss whether Decedent's non-executed will reflected her intent. By order dated October 16, 2007, the ALJ denied rehearing because he found that Appellant had offered no basis for finding that the Order Determining Heirs was in error.

In his notice of appeal to the Board, Appellant again referred to “newly discovered evidence,” repeated his allegations concerning the manner in which the ALJ conducted the probate hearing, and suggested that the heirs, some of whom did not attend the hearing, “were to agree on [Decedent's] invalid Last Will and Testament.” Notice of Appeal.

Because it was unclear to the Board on what specific grounds Appellant believed he was entitled to rehearing, and on what specific grounds he sought to appeal the ALJ's finding that he had failed to allege, in his petition for rehearing, any substantive error in the Order Determining Heirs, the Board ordered Appellant to show cause why the ALJ's denial of rehearing should not be summarily affirmed. In particular, the Board ordered Appellant to explain the grounds on which Appellant contends that his petition for rehearing provided a basis for the ALJ to grant rehearing of the Order Determining Heirs. The Board also noted that Appellant filed his notice of appeal without indicating that he had served a copy of the notice on the ALJ and all interested parties, as required by 43 C.F.R. §§ 4.310(b) and 4.320(c). The Board ordered Appellant, on or before January 18, 2008, to complete service, and noted that failure to comply with the order could result in dismissal of his appeal without further notice.

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<sup>2</sup> The Order Determining Heirs only identified Oregon statutory laws governing intestacy, although the order refers to Decedent owning interests in property located on the Warm Springs Reservation in Oregon and the Yakama Reservation in Washington. The Order Denying Petition for Rehearing correctly states that inheritance rights are governed by the intestate laws of the state in which the trust lands are located, but it is unclear whether Washington laws of intestacy differ in any material respect in this case from those of Oregon. Appellant does not allege any error in the ALJ's application of the laws governing intestacy either in his petition for rehearing or on appeal to the Board.

The Board received a response from Appellant on January 17, 2008. Appellant repeats his complaints concerning the manner in which the ALJ held the probate hearing, and requests a new hearing. Appellant suggests that, because the hearing was only 30 minutes in length, and because several heirs did not attend and the ALJ did not hold a supplemental hearing, the heirs did not have a sufficient opportunity to “agree on the probate.” Appellant also identifies as a “new discovery” copies of four deeds, which show that certain allotment interests were sold by Decedent prior to her death.<sup>3</sup> Appellant does not explain what he believes may be the relevance of the deeds.

Appellant did not indicate that he had served a copy of his response on interested parties or on the ALJ, nor did he indicate that he had complied with the Board’s order to complete service of his notice of appeal.

### Discussion

Appellant bears the burden of showing that the denial of rehearing was in error. *Estate of Verna Mae Pepion Hill Hamilton*, 45 IBIA 58, 63 (2007). Appellant’s petition for rehearing did not allege any substantive error in the Order Determining Heirs, and Appellant does not argue that the ALJ erred in denying rehearing on that ground. Instead, in his response to the Board’s show cause order, Appellant simply repeats the assertions made in his petition for rehearing and notice of appeal, and refers to deeds executed by Decedent, without explaining their relevance.

The Board gave Appellant the opportunity to explain the grounds on which Appellant contends that his petition for rehearing provided a basis for the ALJ to grant rehearing. Appellant’s response to the Board’s show cause order fails to allege any substantive error in the Order Determining Heirs or the Order Denying Petition for Rehearing. Evidence that Decedent may have sold certain property interests prior to her death is not relevant to the ALJ’s determination of heirs, or to his conclusion that in the absence of an executed will, Decedent must be deemed to have died intestate. In addition, the absence of certain co-heirs of Appellant from the hearing provides no basis for us to find

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<sup>3</sup> Appellant appears to suggest that Decedent may have intended at one time to devise these interests.

error in the ALJ's denial of rehearing, nor does the 30-minute duration of the hearing.<sup>4</sup> We conclude that Appellant has failed to satisfy his burden of showing error in the denial of rehearing, and therefore, we summarily affirm.<sup>5</sup> *Cf. Estate of Esther Eleanor Trevino*, 40 IBIA 271, 272 (2005) (appellant who fails to allege error or to argue how a decision allegedly is in error fails to carry her burden of proof).

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 October 16, 2007, Order Denying Petition for Rehearing.

I concur:

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// original signed  
Steven K. Linscheid  
Chief Administrative Judge

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// original signed  
Debora G. Luther  
Administrative Judge

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<sup>4</sup> Appellant appears to suggest that the ALJ's probate order must reflect agreement among the heirs as to the disposition of Decedent's trust property, and therefore the ALJ should have continued the proceedings or held a supplemental hearing. Appellant does not contend, however, that he or other family members requested such a continuance at the hearing, and in any event, he did not allege in the petition for rehearing that the ALJ improperly denied a such a request.

<sup>5</sup> Appellant also failed to comply with the Board's order to serve interested parties and the ALJ with copies of his notice of appeal, which in itself could be grounds for dismissal of his appeal. *See* Pre-Docketing Notice, Order to Serve Interested Parties, and Order to Show Cause, Dec. 18, 2007, at 2 ("If Appellant fails to comply with this order, this appeal may be dismissed without further notice"); *Hollenbeck v. Acting Great Plains Regional Director*, 46 IBIA 45 (2007) (dismissing appeal for failure to prosecute where appellants failed to comply with Board's order to complete service).