



INTERIOR BOARD OF INDIAN APPEALS

Estate of Alvin Sherwood LeSage

46 IBIA 324 (03/27/2008)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
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ESTATE OF ALVIN SHERWOOD) Order Docketing and Dismissing Appeal
LESAGE)
) Docket No. IBIA 08-54
)
)
) March 27, 2008

On March 21, 2008, the Board of Indian Appeals (Board) received a notice of appeal from Georgia LeSage (Appellant), *pro se*. Appellant filed her appeal in response to an Order Granting Reopening and Modifying Decision issued on January 16, 2008, by Indian Probate Judge (IPJ) James Yellowtail in the estate of Appellant’s father, Alvin Sherwood LeSage (Decedent), deceased Fort Peck Indian, Probate No. P 0000 02050. Judge Yellowtail reopened Decedent’s estate after finding that the original Order Determining Heirs and Decree of Distribution had erred in its choice of state law for determining Decedent’s heirs.¹ We docket this appeal, but dismiss it because it is untimely.

Appeals from orders on reopening must be filed “[w]ithin 60 days from the date of the decision.” 43 C.F.R. § 4.320(b). The 60-day deadline for filing an appeal is jurisdictional. *Id.* Untimely appeals must be dismissed. *Estate of Dawn Marie Smith Maki*, 44 IBIA 140 (2007).

The Notice attached to the IPJ’s decision contained correct instructions for filing a notice of appeal with the Board, including the Board’s current address and the 60-day time limit for filing a notice of appeal. The IPJ’s decision was issued on January 16, 2008, and

¹ The original Order Determining Heirs and Decree of Distribution, issued by another IPJ on February 28, 2006, had applied the law of intestate succession of Decedent’s domicile (Washington), rather than the law of the state in which the real property was located (Minnesota). The original order, applying the law of the State of Washington, had decreed that 1/2 of Decedent’s trust property should pass to Decedent’s surviving spouse, and the remaining 1/2 should be distributed in equal shares to Decedent’s three surviving children, including Appellant. Judge Yellowtail’s order on reopening concluded that under *Estate of Samuel R. Boyd*, 43 IBIA 11 (2006), the correct law to apply was Minnesota law, which he concluded provided that Decedent’s spouse (and Appellant’s mother), Sandra Ronaldine Wells Olin aka Sandra Olin LeSage, was entitled to receive all of Decedent’s trust property.

therefore Appellant had until March 17, 2008, to file her notice of appeal with the Board. *See* C.F.R. § 4.310(c) (Sundays not included in computing the date by which a document must be filed). Appellant did not file her notice of appeal with the Board until March 19, 2008, as shown by the postmark on the envelope in which it was mailed. *See id.* § 4.310(a).

Because Appellant's notice of appeal was filed with the Board after the 60-day appeal period expired, her appeal must be dismissed.

We note, however, that in her notice of appeal, Appellant states that the primary purpose for her appeal is to see if the property can be distributed to herself and her two siblings, because Decedent's spouse, their mother, died on September 8, 2007.² Thus, it is unclear whether Appellant disagrees with the substance of Judge Yellowtail's order or if, instead, she is concerned about the disposition of the property now that her mother has also died. If she has not already done so, Appellant should provide the Bureau of Indian Affairs (BIA) with a certified copy of her mother's death certificate, *see* 25 C.F.R. § 15.101(a), and may seek further information and assistance from BIA regarding the probate of her mother's trust estate.

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 docketed this appeal, but dismisses it for lack of jurisdiction because it is untimely.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debora G. Luther
Administrative Judge

² The notice of appeal states the date of death as September 8, "2008," but we presume, solely for purposes of this decision, that Appellant meant "2007." The notice of appeal also states that Appellant is sending a death certificate for her mother, but no such death certificate was included with the appeal.