



INTERIOR BOARD OF INDIAN APPEALS

Estate of Bernard Charles Little Nest

47 IBIA 52 (04/30/2008)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ESTATE OF BERNARD CHARLES) Order Docketing and Dismissing Appeal
LITTLE NEST)
) Docket No. IBIA 08-74
)
) April 30, 2008

On April 28, 2008, the Board of Indian Appeals (Board) received a notice of appeal from Pearlene Victoria Foulkes (Appellant), *pro se*. Appellant seeks review of an Order Affirming Decision After Rehearing issued on February 20, 2008, by Indian Probate Judge Albert C. Jones (IPJ) in the estate of her brother, Bernard Charles Little Nest (Decedent), deceased Crow Indian, Probate No. P-0000-35290-IP. The order let stand a Decision issued by the IPJ on July 25, 2007, in which the IPJ found that Decedent was survived by a spouse by common law marriage, Leda Falls Down.¹ Appellant, who sought to challenge the validity of the common law marriage, concedes that her appeal is untimely, but asks the Board to excuse the untimeliness and decide the appeal in her favor. Because we do not have authority to ignore the jurisdictional time period for filing appeals, we docket this appeal but must dismiss it for lack of jurisdiction.

Appeals from orders on reopening² 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. *See id.* § 4.320(b)(3). Untimely appeals must be dismissed. *Estate of Alvin Sherwood LeSage*, 46 IBIA 324 (2008); *Estate of Mary Jo (Mosho) Estep*, 44 IBIA 18 (2006).

¹ Although the February 20, 2008, order is styled as an “Order Affirming Decision After Rehearing,” in substance the order constituted an affirmance of the Decision after reopening because previously the IPJ had issued an Order Granting Reopening Sua Sponte, in order to determine whether a manifest error had occurred. The IPJ then conducted a supplemental hearing, after which he re-affirmed his original decision by issuing the February 20, 2008, order.

² The same 60-day deadline applies to appeals taken from orders on rehearing, *see* 43 C.F.R. § 4.320(a) & (b), so the fact that the IPJ styled his order as an action “after rehearing” does not affect our disposition of this appeal.

The IPJ's decision was issued on February 20, 2008, and therefore Appellant had until April 21, 2008, to file her appeal. As she concedes in her notice of appeal, Appellant filed her appeal late, on April 25, 2008, as shown by the postmark on the envelope in which it was mailed. *See* 43 C.F.R. § 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.

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