



INTERIOR BOARD OF INDIAN APPEALS

Estate of Florence Wilson Rowland

47 IBIA 159 (07/31/2008)



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 FLORENCE WILSON) Order Affirming Decision
ROWLAND)
) Docket No. IBIA 06-64
)
) July 31, 2008

Appellants Rebecca M. Hatfield, Esther Yellowrobe, and Tawnya M. Rowland appealed to the Board of Indian Appeals (Board) from an Order Denying Rehearing entered on March 15, 2006, by Indian Probate Judge (IPJ) Albert C. Jones in the estate of Florence Wilson Rowland (Decedent), deceased Northern Cheyenne Indian, Probate No. RM-207-066. The effect of the IPJ's order was to let stand a Decision entered by Administrative Law Judge Robert G. Holt on June 1, 2005, in which Judge Holt approved a will executed by Decedent in 1999 (1999 Will) based on findings that it was properly executed and that, at the time of execution, Decedent possessed testamentary capacity and acted free of undue influence, fraud, menace, or duress. Before the IPJ, Appellants claimed that Decedent's will was "defective" because it contained no mention of Decedent's daughter, Appellant Yellowrobe, and because it did not contain bequests of Decedent's interest in one allotment or of the funds in her Individual Indian Money (IIM) account. The IPJ determined that, construed as a petition for rehearing, Appellants' petition was untimely. He also determined that Judge Holt fully considered the issue of Decedent's testamentary capacity in his June 1, 2005, Decision, and thus concluded that Appellants had not stated any grounds entitling them to relief. Accordingly, he dismissed the petition on this latter ground as well.

On appeal to the Board, Appellants do not contest that their petition to the IPJ was untimely, if considered as a petition for rehearing. Rather, they contend that the IPJ mischaracterized their petition, which they now contend was a request for the IPJ to reopen the probate proceedings to correct manifest error, the error being Judge Holt's failure to acknowledge Decedent's lack of testamentary capacity at the time of her 1999 Will. Appellants reiterate the same omissions considered by the IPJ and argue that these omissions show that Decedent did not know the natural objects of her bounty or the extent of her property when she executed her will. Appellants also maintain that, contrary to Judge Holt's Decision, the 1999 Will did not contain a residuary clause and, therefore, the distribution of Decedent's interest in Allotment No. 121 and the funds in Decedent's IIM account is manifestly in error. Appellants ask that we vacate the IPJ's decision and remand

for a hearing or, in the alternative, that we take jurisdiction pursuant to 43 C.F.R. § 4.318 and find that a manifest error occurred.

We affirm the IPJ's decision. Appellants are correct that the IPJ misconstrued their letter as a petition for rehearing, rather than a petition for reopening. Nonetheless, we affirm the IPJ's stated conclusion that the issue of Decedent's testamentary capacity was fully addressed before Judge Holt and that Appellants did not set forth grounds that would entitle them to relief from his Decision. To the extent Appellants request this Board to reopen Decedent's estate to correct manifest error pursuant to 43 C.F.R. § 4.318, Appellants have set forth no basis which would compel us to do so.

Background

Decedent was born on September 12, 1922, and died on May 29, 2003, at Billings, Montana. Decedent had five children, three of whom predeceased her. Her two surviving children are Appellants Hatfield and Yellowrobe. In addition, Decedent is survived by several grandchildren, including Appellant Rowland. At the time of her death, Decedent owned interests in four allotments located on the Northern Cheyenne Reservation in Montana. She owned three allotments in their entirety (Allotment Nos. 113, 432, and 685) that ranged in size from 40 acres to 160 acres and were valued at \$8,400, \$27,450, and \$30,825. Decedent's home was located on one of these allotments. Decedent also owned an undivided 1/51 interest in a fourth allotment, Allotment No. 121. This allotment contains 162.57 acres in its entirety and Decedent's 1/51 interest was valued at \$478 at the time of her death. Finally, Decedent had an IIM account that was opened for her in May 1999 and contained \$0.03 at her death.

Decedent executed two wills: the first, on July 12, 1999; the second on August 19, 2002.¹ The 1999 Will, which is the subject of this appeal, contained the following specific bequests:

SECOND I give, devise, and bequeath to My Daughters, [Appellant] Hatfield . . . Noma Ruth Rowland . . . and to my Grandchildren, [Appellant] Rowland . . . Benny Wayne Rowland, aka Benny Wayne Eagle . . . each to share and share alike in all my interests in Allotment Nos. 113-Annie Bixby Bigleg, 432-Rhoda Hisbadhorse, and 685-James Looksatthebareground.

¹ The sole devisee under the 2002 will is Decedent's grandson, Benny Wayne Rowland.

THIRD I give, devise, and bequeath to My Grandchildren [Appellant] Rowland . . . and James Durand Rowland . . . to be held in Joint Tenancy with the right of survivorship and not as tenants in common, my house along with the 2.50 acres where the house is situated described as the NE¹/₄SE¹/₄NE¹/₄NW¹/₄, Sec. 36, T.5S., R. 38 E. (less a portion of Noma Ruth Rowland's homesite acreage).

1999 Will at 1.² The will omitted mention of Appellant Yellowrobe, Decedent's IIM account,³ and her 1/51 interest in Allotment No. 121. The will contained a separate residuary clause leaving the remainder of Decedent's estate in equal shares to Appellant Hatfield, Appellant Rowland, Noma, and Benny Wayne Rowland. *Id.* at 2 ("I give, devise, and bequeath all of the rest and residue of my estate, real, personal, and mixed to: My Daughters: [Appellant] Hatfield and Noma Ruth Rowland and to my Grandchildren: [Appellant] Rowland and Benny Wayne Rowland aka Benny Wayne Eagle, each to share and share alike.").

The probate of Decedent's estate was protracted. Judge Holt conducted hearings on five dates between April 2004 and April 2005 to address Decedent's testamentary capacity at the time she executed each will. In particular, the omissions of Appellant Yellowrobe and Decedent's interest in Allotment No. 121 from Decedent's wills were the subjects of testimony. *See* Transcript, Feb. 17, 2005, at 209; Transcript, Apr. 14, 2005, at 23-24, 33-34, 40. Each Appellant was in attendance at all five hearings.

In his June 1, 2005, Decision, Judge Holt disapproved the 2002 Will and approved Decedent's 1999 Will.⁴ The Decision reflects that Judge Holt reviewed and considered the evidence concerning Appellant's knowledge of her property and the omission of Appellant Yellowrobe from Decedent's will. He made extensive factual and credibility findings concerning Decedent's testamentary capacity and concluded that she was competent to execute the will. A notice containing accurate appeal rights accompanied Judge Holt's

² Noma died in September 2002, thus pre-deceding Decedent. Judge Holt determined that, pursuant to the anti-lapse provision of 43 C.F.R. § 4.261, Noma's interests passed per stirpes to her three surviving children: Appellant Rowland, Benny Wayne Rowland, and Rochelle Walking Eagle.

³ The record does not reflect the balance in the IIM account at or near the time that the 1999 Will was finalized nor is there any information in the record concerning the amount of income expected to flow to the account.

⁴ No one has appealed Judge Holt's disapproval of the 2002 Will.

Decision. Appellants do not dispute that they received a copy of the June 1 Decision and the notice of appeal rights.

On February 3, 2006, Appellants, through counsel, submitted a letter to the Office of Hearings and Appeals (OHA) in Billings, Montana. By this letter, Appellants informed OHA that during the probate of Decedent's non-trust assets in tribal court, Tribal Judge Fred Robinson observed that the 1999 Will omitted any mention of Decedent's interest in Allotment No. 121 and of her daughter, Appellant Yellowrobe, and, thus, the will might be "defective." Appellants' Petition at 1. Appellants asserted that Judge Robinson advised them to "call these matters to the attention of the Indian Probate [Office] and the BIA." *Id.* Appellants acknowledged that the "time for appeal" from Judge Holt's Decision had expired, but nevertheless requested that OHA "look into this matter." *Id.*

On March 15, 2006, the IPJ to whom the case had been re-assigned issued his Order Denying Rehearing. First, the IPJ construed Appellants' petition as an untimely petition for rehearing. Second, the IPJ concluded that the petition did not sufficiently set forth grounds entitling Appellants to relief from Judge Holt's Decision, observing that Decedent's testamentary capacity was central to the hearings held to probate Decedent's estate and that the evidence was extensively addressed in Judge Holt's Decision. On these two grounds, the IPJ dismissed the petition. *See* 43 C.F.R. § 4.242(e).

Appellants appealed to the Board, and submitted a statement of reasons with their notice of appeal. No briefs were received.

Discussion

I. Introduction

On appeal, Appellants do not disagree with the IPJ that their February 3 letter would not have constituted a timely petition for rehearing under 43 C.F.R. § 4.241. Rather, Appellants argue that they expected the letter, and its assertion regarding Tribal Judge Robinson's alleged identification of a deficiency in Judge Holt's ruling, to persuade the IPJ to reopen the matter on his own motion to avoid the manifest error that Appellants claim was evident to Judge Robinson. Construing the IPJ's decision denying a petition for rehearing as one denying their "petition for reopening," they ask the Board to vacate it and remand the matter "for further consideration." Notice of Appeal at 6. On the one hand, Appellants request that the Board's remand direct the IPJ to conduct a rehearing. *Id.* On the other, they ask the Board to exercise its inherent authority to correct manifest error under 43 C.F.R. § 4.318 by issuing a decision *nunc pro tunc* to correct Judge Holt's Decision. Notice of Appeal at 5.

The IPJ dismissed Appellants' petition, explaining *inter alia* that the Decedent's testamentary capacity was exhaustively examined by Judge Holt and that Appellants asserted nothing entitling them to relief. Therefore, notwithstanding Appellants' references to the Tribal Judge's alleged concerns, the IPJ found no basis for concluding that Judge Holt's Decision perpetrated any error, let alone manifest error. We affirm this conclusion. It follows then that the IPJ did not abuse his discretion in failing to reopen the estate *sua sponte*, once notified of Judge Robinson's alleged concerns. Moreover, it follows that we decline Appellants' request to exercise our own authority, pursuant to 43 C.F.R. § 4.318, to correct a manifest error.

II. Manifest Error

Appellants are correct that the IPJ misconstrued their letter as a petition for rehearing. However, to the extent that Appellants' February 3 letter could be construed as a petition for rehearing, the IPJ correctly concluded that it was untimely. Petitions for rehearing must be pursued within 60 days of the probate decision. 43 C.F.R. § 4.241(a). Similarly, Appellants have no standing to petition to reopen the estate because each was an active participant in the original probate proceedings. 43 C.F.R. § 4.242(a). Appellants made no effort to conform their February 3 letter to either rule and, instead, acknowledged that "the time for appeal of Judge Holt's Decision has expired." Appellants' Petition at 1. Appellants asked the IPJ to "look into this matter as Judge Robinson suggests." *Id.* at 2. Presumably, they intended the IPJ to act on his own motion under 43 C.F.R. § 4.242(e) to correct a manifest error. Inasmuch as the IPJ ultimately determined that Appellants failed to set forth any grounds that would justify relief, let alone manifest error, we need not address whether, in the absence of standing under 43 C.F.R. § 4.242(a), a participant in a probate proceeding has standing to "petition" to reopen a probate decision pursuant to 43 C.F.R. § 4.242(e). Rather, the IPJ's finding that no error was present is sufficient reason to affirm his decision without addressing the procedural question.

Likewise, we therefore decline Appellants' invitation to reopen the matter to correct manifest error under the Board's broad authority in 43 C.F.R. § 4.318. As we explained in *Estate of Anthony "Tony" Henry Ross*, 44 IBIA 113, 119 (2007), manifest error is an obvious error. It is a "self-evident kind of error," one that is immediately recognizable. *Schinner v. Schinner*, 420 N.W.2d 381, 385 (Wis. Ct. App. 1988). Manifest error does not, however, extend to points of law that "lend themselves to legitimate legal debate and difference of opinion viewed from the standpoint of reasonable advocacy." *Id.* at 386. In the context of showing manifest error in the determination of testamentary capacity, Appellants have a high burden: Appellants must show, as a matter of law, that Judge Holt committed an obvious error in determining that Decedent was competent to execute her will notwithstanding the omission from the will of devises of her interest in Allotment No. 121

and her IIM account, and the omission of one daughter. In other words, Appellants must show that these omissions unmistakably demonstrate that “the decedent did not know the natural objects of her bounty, the extent of her property or the desired distribution of that property.” *Estate of Sallie Fambush*, 34 IBIA 254, 258 (2000). As we explain, the omissions of which Appellants complain do not compel such a finding.

Before we turn to Appellants’ arguments, we first note that Judge Holt relied upon the testimony of witnesses to find that Decedent had testamentary capacity at the time she executed her 1999 Will. These witnesses testified that Decedent was well aware of her property, how it should be distributed at her death, and that she was omitting certain family members from her will. *See* Transcript, Feb. 17, 2005, at 209; Transcript, Apr. 14, 2005, at 23-24, 33-34, 40. Judge Holt made detailed credibility findings and we see no reason to disregard those findings. *See Estate of Malcolm Muskrat*, 29 IBIA 208, 211-12 (1996) (Board typically defers to credibility findings made by the probate judge who hears the witnesses’ testimony firsthand). Indeed, Appellants neither challenge the testimony of these witnesses nor do they challenge Judge Holt’s findings, which we conclude amply support his determination that Appellant possessed testamentary capacity at the time she executed her 1999 Will.

Notwithstanding this testimony, there is simply no showing that the omission of one child from a will or the omission of a devise of two property interests — one of unknown value (IIM account) and the other (Allotment No. 121) valued significantly less than Decedent’s devised interests — compels us to conclude that it was manifest error to find Decedent had testamentary capacity. Decedent made specific bequests to three of her children and to three of her grandchildren. Decedents need not acknowledge their children in their wills, *see Estate of Reuben Mesteth*, 16 IBIA 148, 151 (1988), let alone leave property to them, *Estate of Aaron (Allen) Ramsey*, 11 IBIA 16, 19 (1982).

Decedent made specific devises of the three allotments that she owned in the entirety and which separately were valued at the time of her death at \$8,400, \$27,450, and \$30,825. In contrast, Decedent’s 1/51 interest in Allotment No. 121 was worth \$478 at the time of her death. As for Decedent’s IIM account, it had only been open for 2 months when Decedent executed her will and there is no information concerning the value of the account at the time she executed her will or of any income that was expected to flow to it. Thus, it does not appear that the omitted trust interests were so significant that their omission compels a finding of manifest error in determining Decedent was competent to execute her will.

For the first time on appeal, Appellants claim that the will did not contain a residuary clause and, therefore, those trust assets for which there was no specific devise

should pass to Decedent's heirs by intestacy, if the will is upheld. The Board ordinarily does not consider arguments that were not raised before the probate judge, 43 C.F.R. § 4.318, *Estate of Donald E. Blevins*, 44 IBIA 33, 34 (2006), and we see no reason to depart from this rule here. However, we note that the will consists of two pages and contains a residuary clause at the top of page 2. *See also* Transcript, Apr. 14, 2005, at 28 (Appellants' counsel acknowledges the will's residuary clause in questions asked of the will scrivener).

As a final note, Appellants also argue that reopening of estates is permitted where "the delay resulted from reasonable attempts to gather information regarding the merits of the case." Statement of Reasons at 6 (citing *Estate of Jason Crane*, 12 IBIA 165 (1984)). *Estate of Crane* construed the requirements of 43 C.F.R. § 4.242(h) — now found at 43 C.F.R. § 4.242(i) — which governs the reopening of estates more than 3 years after the final probate decision by petitioners who had no actual or constructive notice of the original proceedings. The quoted language from *Estate of Crane* addressed whether a petitioner with no notice acted diligently to obtain factual information necessary to seek reopening. Appellants had notice of the probate proceeding and did not present any new factual evidence, for which reason neither *Estate of Crane* nor section 4.242(i) is applicable.

Thus, we conclude that none of the arguments raised by Appellants, whether considered individually or collectively, reflect any manifest error in Judge Holt's Decision. Therefore, we affirm the IPJ's decision.

Conclusion

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, and for the reasons discussed in the decision, we affirm the IPJ's decision.

I concur:

 // original signed
Debora G. Luther
Administrative Judge

 // original signed
Lisa Hemmer
Administrative Judge*

*Interior Board of Land Appeals, sitting by designation.