



INTERIOR BOARD OF INDIAN APPEALS

Estate of Michael Wayne Shields

48 IBIA 147 (12/05/2008)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
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ESTATE OF MICHAEL WAYNE ) Order Affirming Decision  
SHIELDS )  
) Docket No. IBIA 07-82  
)  
) December 5, 2008

Lloyd S. Granley (Appellant or Granley), appeals to the Board of Indian Appeals (Board) from an Order on Rehearing entered January 23, 2007, by Indian Probate Judge P. Diane Johnson (Judge Johnson or IPJ), in the Estate of Michael Wayne Shields (Decedent or Michael), Deceased Fort Peck Assiniboine Sioux Indian, Probate No. P000027834IP. Judge Johnson’s Order Determining Heirs and Decree of Distribution (Order Determining Heirs), dated August 31, 2006, distributed Decedent’s trust assets, including interests in land held in trust for him and funds in an Individual Indian Money (IIM) account, in equal 50% shares to two half-siblings, Christy Joy Shields and Christopher Shields. The IPJ rejected Appellant’s Petition for Rehearing, in which he claimed that he is the biological father of Decedent and therefore should be entitled to share in all or a portion of Decedent’s estate. We find that Judge Johnson’s application of Montana law to the facts of this case is correct, and Appellant does not indicate how she erred. Therefore, we affirm the Order on Rehearing.

## Background

Decedent was born on October 27, 1985, to Lida Sue Buck Elk (Lida). Testimony in the record indicates that at the time of Michael’s birth, Lida was living with Lester Shields (Lester), and Lester’s name appeared on the birth certificate as the father.<sup>1</sup> Apparently, Lester raised Michael as his son, along with Christy Joy and Christopher, Lida’s other children. At an undisclosed date, Lester and Lida separated. By a sequence of events entirely unclear to us, Michael went to live with his mother’s (Lida’s) family and they received child support or welfare for him from the State of Montana. When Montana’s child services agency sought child support from Lester, Lida then explained to the agency that Michael was not Lester’s son, but was the son of Appellant. Lida died in December 2002.

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<sup>1</sup> No birth certificate appears in the record.

By letter dated July 12, 2002, the State of Montana, Department of Public Health and Human Services Child Support Enforcement Division issued a letter to Granley, advising him that Lida had identified him as Michael's biological father. Prior to this notice, Granley was entirely unaware that Michael might be his son. The letter gave Granley options to admit paternity or to undergo genetic testing. When Granley received this letter, Michael was 16 and lived in or near Culbertson, Montana.<sup>2</sup> Granley had married and fathered two sons (Aaron and Tyler Granley) for whom he was responsible.

In the summer of 2003, Granley took a paternity test. In August or September of 2003, Granley learned from this test that he was Michael's biological father. At that time, Michael was entering his senior year of high school. Granley was a basketball fan and had attended basketball games at Culbertson High School, where Michael was a star player. Thus, while Granley was aware of Michael in his capacity as a starting basketball star, they did not know each other. Transcript of Hearing (Tr.), July 7, 2006, at 81. To the extent Granley knew, during Michael's junior year at Culbertson High School in 2002-03, that Michael might be his son, he did not communicate with Michael during that year. *Id.* at 63.

In November 2003, Granley went to the house of Sharon Buck Elk, where Michael was living, to meet his son for the first time. Tr. at 71-72. The first visit occurred shortly after Michael's high school basketball practice began in November. *Id.* Granley asserted that thereafter he attempted to meet with Michael on several occasions surrounding basketball events, but Michael was with teammates or friends at such times. Granley claims that, at one point, he introduced Michael to his wife and sons Aaron and Tyler. Granley apparently went to Michael's high school graduation. Granley claims to have given money as gifts on some occasions, ranging from \$20 to \$100, in cash or in checks. The record also documents that Granley made six child support payments in 2004 through the Montana Child Support Enforcement Division, totaling \$211.<sup>3</sup> No other payments are documented.

Michael received one or more scholarships to attend Rocky Mountain College in Billings, Montana, for the 2004-05 school year. At the beginning of that school year, Michael's great-aunt Darlene Left Hand called Granley to ask him to assist Michael with

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<sup>2</sup> Culbertson is less than 20 miles from Bainville, Montana, where Appellant has maintained a post office box since July 2002, when the State notified him about Decedent.

<sup>3</sup> Appellant provided a copy of a "Debt Computation Worksheet" from Montana's Child Support Enforcement Division that reflects this payment for "obligee April N. Buck Elk." For purposes of this appeal, we accept Appellant's representation that this amount was due on Michael's behalf.

college expenses of \$900. Granley was unable to come up with that money and did not contribute. It is not clear whether Granley ever had contact with Michael after he left for college. Michael died intestate in a car accident on spring break in March 2005, at the age of 19.

On February 28, 2006, the IPJ issued an Order Determining Heirs distributing Michael's assets in equal shares to the siblings with whom he spent some or most of his early years, Christy Joy and Christopher. Citing some of the above facts, the IPJ explained her decision to exclude Granley from the distribution, as follows:

Granley never financially supported the decedent. Darlene Left Hand, in her letter stated, "Michael, growing up did not know his biological father and did not receive any financial help from Mr. Granley."

....

Pursuant to the intestacy laws of the State of Montana, in order for a parent or a parent's kindred to inherit from a child, the parent/child relationship must be established. The statute states, "inheritance from or through a child by either natural parent or the parent's kindred is precluded unless that natural parent has *openly treated* the child as the parent's and has *not refused to support* the child." [See, Mont. Code Ann. § 72-2-124(3) (2003)]. Thus, in order for a parent to inherit from their child, that parent must have acknowledged the child *and* contributed to the support or care of the child.

According to the documents submitted to the Court, the decedent never knew his biological father while growing up and never received any kind of support, financial or otherwise from Mr. Granley. The document(s) further state that the one time Mr. Granley was asked to provide financial support to the decedent for his college tuition, Mr. Granley refused and was never heard from again.

Order Determining Heirs at 1 ¶ 2.

Through counsel, Granley submitted a Petition for Rehearing on April 19, 2006, seeking recognition as an heir of Decedent. In this petition, Granley objected to the factual statements in the Order Determining Heirs, and claimed that he "acknowledged and engaged his best efforts to establish a relationship with [Michael]." Petition for Rehearing at 4. He claimed to have "attended nearly all of decedent's high school basketball games

during this period [after learning of the biological relationship], and attended other functions when so notified . . . .” *Id.* He claimed that he gave Michael “various gifts . . . from time to time,” and that he “gave money to the decedent during his lifetime as requested by decedent.” *Id.*

Judge Johnson conducted a hearing on July 7, 2006. Granley’s testimony is generally consistent with the above-recited facts. Though the IPJ attempted to pin down dates and times of communications between biological father and son, Granley’s memory was fleeting as to any specifics, including verification of his claims of monetary gifts or financial support. Granley’s counsel submitted a post-hearing brief. He argued that Montana Code § 72-2-124(3) establishes a two-part test for determining whether paternity may be denied when a child dies intestate: whether the parent openly recognized the child, and whether the parent refused financial support.

As to the first test, Granley argued that he “openly treated Michael as his son.” Post-Hearing Brief at 4, citing *Estate of Scheller v. Pesseto*, 783 P.2d 70, 75 (Utah App. 1989). In support of this assertion, Granley claimed that he communicated with Michael’s teachers, specifically describing two teachers in his testimony and in the Post-Hearing Brief, both of whom had taken a mentoring role in Michael’s life. He attached to the Post-Hearing Brief a letter from Michael’s art teacher, who asserted that during Michael’s senior year of high school, Granley had attended sports events at the school and had come into her class to look at Michael’s art work and express his interest. Letter from Joy L. Finnicum-Johnson “To Whom it May Concern.”

As to the second test, Granley denied having refused to support Michael. He acknowledged the accuracy of Darlene Left Hand’s allegations surrounding her request for financial assistance from Granley for Michael’s college expenses, but denied that his inability to find money to send to Michael for college, on the single occasion for which funding was requested, could establish a failure of support. Post-Hearing Brief at 6.

Judge Johnson issued a fairly extensive Order on Rehearing on January 23, 2007. Summarizing the facts in support of her decision to uphold the Order Determining Heirs, she noted that, though Granley was informed of the possible paternity issue in July 2002, a year passed before he attempted to verify paternity, and 16 months passed before he met Michael, at which time Michael was no longer a child. Thus, she concluded that Michael had never been raised by Granley, or held out as his child.

As to whether Granley openly acknowledged Michael, she cited Granley’s testimony: “I tried not to at first very much but then pretty soon it doesn’t take many to, for the word to spread and I wasn’t ashamed of it any.” Tr. at 83. As for the implication that Granley

had pursued an interest in Michael, she asserted that Granley had a pre-existing interest in basketball that did not derive from Michael's status as his biological son. The IPJ also noted that Granley testified that he had known Michael's art teacher for many years, and that it was the teacher who encouraged Granley to see the artwork in her role as Michael's mentor; it was not generated on Granley's own initiative. *See* Order on Rehearing at 2-3; Tr. at 89; Letter from Joy L. Finnicum-Johnson "To Whom It May Concern." The IPJ noted that there was nothing to verify more than a handful of visits between the two after their first meeting in November 2003. Order on Rehearing at 2-3, 4-5. She also noted that Michael never visited Granley's home. *Id.* at 5.

As for Granley's financial support, the IPJ noted that Granley's claims of gifts could not be verified, and that even Granley testified that it was "nothing substantial" and "not a whole lot." Order on Rehearing at 5; Tr. at 54, 84. She also cited Granley's inability to participate in Michael's college expenses. Order on Rehearing at 5. She noted that Granley did not assist in funeral expenses.

The IPJ analyzed the application of Mont. Code Ann. § 72-2-124(3). In a detailed analysis of several court cases, she concluded that none of them would suggest, on these facts, that Granley should be entitled to share in his biological child's estate, explaining that impregnation of a child's mother should not result in a windfall for the father, through the death of the child. *Id.* at 4, citing *Estate of Patterson v. Patterson*, 798 So.2d 347 (Miss. 2001). In that case, the IPJ explained, the court distinguished between acknowledging a child from time to time – which in that case amounted to taking the child sightseeing, to lunch, or shopping on random occasions – and openly treating the child as one's own. The random get togethers in *Patterson* were not enough to constitute the necessary paternal relationship, and yet the IPJ noted that the visits in *Patterson* were far more significant than anything that occurred between Michael and Granley:

In the present case, Lloyd Granley and Michael never had one public outing together, did not engage in any father/son activities, nor did Michael spend time with any of Lloyd Granley's children, or other family members. Lloyd Granley stated that he did not have time to spend with Michael; that he wanted to introduce Michael to his [own] father, who was living in a nursing home, but that there was not enough time; that he did not have time to introduce him to his sister; and, that Michael and his sons did not get time to spend together. Lloyd Granley's responses with respect to *no time* were in light of the fact of Michael's untimely death at the age of nineteen.

Order on Rehearing at 4. The IPJ concluded that "Michael Shields was raised and supported by his natural mother, step father, and maternal extended family members. . . .

Granley did not introduce himself to Michael Shields until after Michael Shields' eighteenth birthday. Therefore, the evidence presented at the hearing . . . fails to establish that Lloyd Granley should have the right to inherit from the estate of his deceased son . . . ." *Id.* at 6.

Granley submitted a timely Notice of Appeal to this Board. He asks to "set the record straight in some instances." Notice of Appeal at 1. He contends that he was the "underdog" at the hearing, that he was "very sick" at the hearing, and that "everyone was in [dis]agreeable moods. The opposing attorney . . . tried to make me out as a father who wasn't caring and unsupportive of his son. I cared for and loved Michael." *Id.* at 1-2. Granley explains that he was cooperative with the Montana Child Support Enforcement Division, and that the year's delay between notice and genetic testing, as well as the delay in paying support had to do with paperwork required by that agency and that agency's schedule. He explains that the delay, after learning of the paternity test results, in communicating with Michael resulted from the awkwardness of the situation and his own desire to "arrange for someone close to him to be with us." *Id.* at 3. He denies having said that he attended basketball games at Culbertson High School prior to learning of Michael's playing there, and claims to have been confused if he testified to that. He claims that he thinks he paid some support in 2003, but does not verify this assertion. *Id.* at 4. He states: "Oh, how I wish that Lida (Michael's mother) or one of her family or friends would have informed me of Michael years earlier. Michael was rather shy and I guess I am also." *Id.* at 4-5. He claims that he ordered the transcript for review, which would give him a foundation for further discussion or argument. *Id.* at 6. As a postscript he claims that he offered to Darlene Left Hand to help pay for funeral costs, but that she explained to him that the Fort Peck Tribe was covering all expenses.

No other pleadings or briefs were filed.

### Discussion

Appellant bears the burden of showing that an order on rehearing is in error. *Estate of Verna Mae Pepion Hill Hamilton*, 45 IBIA 58, 63 (2007). Simple disagreement with or bare assertions concerning a challenged decision are insufficient to carry this burden of proof. *Id.* We conclude that Appellant has not met his burden, and therefore we affirm.

Appellant's Notice of Appeal does not present any specific challenge to the IPJ's legal conclusion regarding the application of Montana law. The Montana Code states that "inheritance from or through a child by either natural parent or the parent's kindred is precluded unless that natural parent has openly treated the child as the parent's and has not refused to support the child." Mont. Code § 72-2-124(3). The IPJ analyzed case law and the facts to conclude that Michael's support during his lifetime overwhelmingly came from

Lester Shields and then Lida's family, and that the facts compelled the conclusion that Granley did not openly treat Michael as his child.<sup>4</sup>

Appellant's appeal appears to relate more to his view that his parenting has been criticized when his opportunity to parent was denied until Michael was almost grown. What Granley would have done if properly notified that he was a father when Michael was born is not at issue before us, and was not before the IPJ. The question is whether Appellant's conduct satisfied the legal standard under Montana law to allow him to inherit a portion of Michael's estate. Granley's assertions on appeal present the story of his biological child growing up unknown to him, with the time Granley hoped would come for them to get to know each other erased in a midnight accident. But we cannot accept Granley's professions of what relationship he would like to have established with Michael had Granley learned of his son years before as evidence that the "natural parent has openly treated the child as the parent's," because it is only speculation. The actual facts presented to the IPJ did not compel the legal conclusion that Granley openly treated Michael as his son. It is not disputed that Michael was not raised by Granley. Granley documented costs of \$211, which is not enough for us to conclude that Granley openly treated Michael as his son through support. Though informed of his potential paternity in summer 2002, Granley waited until November of 2003 when Michael was 18 years old to meet him. Granley testified that, when Michael needed financial help in college, Granley's own priorities were elsewhere. Granley was vague as to whether they ever saw each other again after Michael started college in Billings.<sup>5</sup> The interaction between Granley and Michael was insufficient to meet the legal standard under Montana law.<sup>6</sup> This is no judgment on the part of the IPJ or

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<sup>4</sup> Granley complains that the IPJ cited Granley's refusal to help Michael with the cost of college, and contends that he was unable to contribute as a result of his own financial situation. Whatever the proper description of Granley's response to the request of Michael's great-aunt Darlene Left Hand for assistance with Michael's college expenses, we find that such facts could only be considered under the category of whether Granley "openly treated [Michael] as [his son]," under § 72-2-124(3), rather than as a refusal to contribute "support," under that statute, given that Michael was no longer a minor. *Id.*

<sup>5</sup> Granley testified that Michael "was in college and then I just thought I'd give him a little more time, too . . ." Tr. at 51. He stated that he "was starting to put a plan together" to help Michael with the next year in college, and "was going to tell him" the month after the car accident. *Id.* at 52.

<sup>6</sup> The strongest information in support of the relationship appears in the letter from Michael's art teacher. This letter, however, is testimony more of lost opportunity and hopes  
(continued...)

the Board about Granley's parenting; it is simply not a relationship that entitles Granley to inherit a portion of Decedent's estate.

### 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 this decision, we affirm the January 23, 2007, Order on Rehearing.

I concur:

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// original signed  
Lisa Hemmer  
Administrative Judge\*

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// original signed  
Debora G. Luther  
Chief Administrative Judge

\*Interior Board of Land Appeals, sitting by designation.

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<sup>6</sup>(...continued)  
for a future relationship than any documentation of an existing one. She described Michael's relationship with herself, which spanned 13 years, and the fact that Granley expressed regrets about the delay in learning about the relationship, and his plans for a future including helping Michael with a car and inviting Michael to visit Granley's farm. Letter from Joy L. Finnicum-Johnson "To Whom It May Concern."