



INTERIOR BOARD OF INDIAN APPEALS

Estate of Kathy Ann Bull Child

48 IBIA 235 (01/29/2009)

Terminating Parent-Child Relationship, Blackfeet Tribal Court (Sept. 18, 1984) (1984 Tribal Order Terminating Relationship).

The IPJ nonetheless concluded that Appellant had no right to inherit from Decedent's estate in the absence of an express will directing such a distribution. He explained that he excluded Appellant as an heir because Montana law governs the issue of whether an adopted child can inherit a share of an intestate decedent's trust property, and because rights of inheritance are determined at the time of the death of the Decedent. *See* Decision at 2, citing section 72-2-124 of the Montana Code Annotated, *Estate of Samuel R. Boyd*, 43 IBIA 11, 20 (2006), and *Estate of Richard Crawford*, 42 IBIA 64 (2005).¹ He thus distributed equal shares to Faith No Runner, Stephanie Kaye Bull Child, and Daniel Jacob Bull Child, Decedent's legal children.

On September 18, 2006, Joshua's counsel served his Petition. Claiming that the Blackfeet Tribe has the authority to determine inheritance rights, the Petition argued that the "inheritance rights ordered [in the 1984 Tribal Order Terminating Relationship] are controlling over statutory law as more specific and within the rights of the Tribe." Petition at 2, *citing Montana v. United States*, 450 U.S. 544 (1981). The Petition asserted that the 1984 Tribal Order Terminating Relationship allowed Joshua to "retain his right to inherit from his natural mother" and that it should be seen as the same as a will of the Decedent. "The order of the Court in essence, becomes the writing, founded upon the signed, notarized, and witnessed consent to adoption, which proclaims the intention of the deceased as to the distribution of her estate," and "fulfills the legal qualifications of being a will which expresses the intent of the deceased in the distribution of her property." Petition at 3.

Judge Yellowtail denied the Petition on January 25, 2007. First, the IPJ repeated that Federal and not Tribal law governs the descent of trust property, and that Federal law requires trust property of an intestate decedent to be distributed according to the laws of the state where the property is located. Order Denying Petition at 2-3, citing 25 U.S.C. §§ 348, 372. Moreover, he explained that the Blackfeet Tribal Code, Chapter 3, section 4 (1999), grants jurisdiction to the Tribal Court to probate the estates of tribal members except "trust property subject to the jurisdiction of the United States." Order Denying Petition at 3. He noted that the Supreme Court's comment in *Montana v. United States* regarding rights of tribes to "prescribe rules of inheritance for tribal members," 450 U.S. at

¹ The IPJ quoted a passage from *Estate of Crawford* that cites 25 U.S.C. § 348 as requiring both the status of an adopted child as an heir and the distribution of an intestate estate to be determined according to state law.

564, did not pertain to trust land. Order Denying Petition at 3. Second, the IPJ explained that it is the state law in effect at the time of death that controls the inheritance and distribution of trust property. *Id.* at 4. Third, he explained the Federal requirements for a document to constitute a will, and concluded that nothing in the 1984 Tribal Order Terminating Relationship could plausibly “meet [F]ederal requirements for the making of an Indian will.” Order Denying Petition at 5-6, citing 43 C.F.R. §§ 4.260 and 4.233. He rejected any suggestion that “a form terminating parental rights which was signed by decedent qualifies as some type of will . . . [or] meet[s] the specifications required under Federal law.” Order Denying Petition at 7.

Joshua copied his Petition and timely submitted it as a Notice of Appeal. The Notice of Appeal does not address the IPJ’s Order Denying Rehearing. 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.* Appellant has not met his burden and thus we affirm.

Appellant’s Notice of Appeal repeats the arguments made to the IPJ in the Petition without specifically addressing the IPJ’s response to those arguments. The IPJ extensively analyzed Appellant’s arguments and responded to them. It was Appellant’s burden to explain why the IPJ’s analysis was error; it is not enough to repeat to this Board the arguments presented to the IPJ as if no legal ruling had intervened.

Nonetheless, this Board also reviews legal determinations de novo. *Estate of Mary Cecilia Red Bear*, 48 IBIA 122, 125 (2008). Thus, we address the Notice of Appeal to the extent it may be construed to reassert legal arguments. As a matter of law, we conclude that the IPJ’s ruling was correct.

Joshua argues that the 1984 Tribal Order Terminating Relationship, which expressly preserved his right to inherit from his biological mother, while also recognizing that he would be adopted, constituted the Decedent’s will under Montana law governing wills. We agree with the IPJ that nothing in the 1984 Tribal Order Terminating Relationship meets the requirements of an Indian will, which are controlled by Federal law, *see* 25 U.S.C. § 373, 43 C.F.R. § 4.201 (“will” defined), 43 C.F.R. § 4.260, nor does a form signed by

Decedent that authorizes the adoption of her biological child meet those requirements.² That the 1984 Tribal Order Terminating Relationship expressly maintained Joshua’s right to inherit from Decedent does not mean that it constitutes a will devising Decedent’s estate.

Moreover, the IPJ correctly recognized that state law on the date of Decedent’s death controlled inheritance of her estate. *Estate of Boyd*, 43 IBIA 11 (2006).³ Accordingly, we turn to that law. The Montana Code Annotated states that “[a]n adopted individual is the child of an adopting parent or parents and not of the natural parents.” Mont. Code Ann. § 72-2-124(2). There is a distinction under Montana law between termination of parental rights due to abuse and neglect, on the one hand, and adoption, on the other. *Id.* § 41-3-611(1) (2001) (termination of parent-child relationship because of abuse and neglect); *id.* § 72-2-124(2) (defining rights of an adopted individual). The severance of the parent-child relationship alone may not terminate the right of inheritance. But the adoption does.

In this case, the order issued in 1984 in a juvenile proceeding by the Blackfeet Tribal Court was identified as one terminating the parent-child relationship between Joshua and Decedent, presumably under tribal laws applicable to such terminations, and it also recognized that Appellant would be adopted. While the effect of the termination of the parent-child relationship reasonably maintained the child’s right of inheritance, under Montana law, the adoption would not maintain that right.⁴

² Appellant argues that Decedent herself “reserv[ed] the right for [Appellant] to inherit from her as her child” when she executed a consent to the adoption. Notice of Appeal at 3. Such a written consent is not part of the record before us. Appellant does not cite the existence of any document that makes a specific disposition of Decedent’s trust property, as a will must do under 43 C.F.R. § 4.201.

³ Decedent died before enactment of the American Indian Probate Reform Act of 2004, Pub. L. No. 108-374, 118 Stat. 1773 (Oct. 27, 2004).

⁴ The Chapter of the 1999 version of the Blackfeet Tribal Code cited by Judge Yellowtail directs that both adoption and termination of the parent-child relationship will be controlled by Montana law. *See* Blackfeet Tribal Code section 8 of Chapter 3 (“[a]ll members of the Blackfeet Indian Tribe shall hereafter be governed by State Law and subject to state jurisdiction with respect to adoptions hereafter consummated”); section 6.J of Chapter 3 (a voluntary or involuntary order “terminating the parent-child relationship shall have the same effect on the legal rights . . . including rights of inheritance of the parent and the child with respect to each other, as it would have had such action taken place under

(continued...)

We note as well that the record indicates that there may also have been a separate adoption decree that is not part of the record before us. A Montana Certificate of Adoption in the record identifies a Decree of Adoption, issued by the Blackfeet Tribal Court and also dated September 18, 1984, in a case numbered 84 AD 11. By contrast, the order terminating parental rights was issued in “Juvenile” proceeding No. 460. While we cannot determine the circumstances under which the Blackfeet Tribal Court severed Joshua’s relationship with his biological mother, the absence of the Decree of Adoption from Tribal adoption proceeding 84 AD 11 makes it impossible to conclude that the order terminating rights is the only statement of the Tribal Court.

In a like situation, this Board faced a circumstance in which the Crow tribe had apparently entered an order terminating a parent-child relationship, and also an adoption decree. *Estate of Alfredine Doreen Old Crane*, 37 IBIA 269, 270 (2002). The order terminating parent-child relationship was absent from the record. For purposes of analyzing the impact of the two different types of orders, we accepted as correct Appellant’s characterization of the court order terminating parent-child relationship as necessarily maintaining his right of inheritance under Montana law. *Id.* at 269-270. We held nonetheless that, because the child was also adopted, under Montana law that inheritance right no longer existed. We held: “Appellant’s right to inherit from his natural mother, while not extinguished by the termination of her parental rights, was extinguished by his subsequent adoption.” *Id.* at 270.

According to Montana Code Annotated section 42-5-205, “[w]hen the relationship of parent and child has been created by a decree of adoption of a court of any other state or country, the rights and obligations of the parties as to matters within the jurisdiction of this state must be determined pursuant to this [Adoptions] title.” *See also* Mont. Code Ann. § 42-2-101(2) (“the rights and obligations of the parties [to an adoption ordered by another jurisdiction] as to matters within the jurisdiction of this state must be determined as though the decree or order were issued by a court of this state.”). Montana would plainly follow its statutory law in answering questions of descent and inheritance. The IPJ was correct to focus on the law applicable to adoption, and to determine, consistent with the Montana Code Annotated, that because he was adopted, Joshua retained no right to inherit under State or Federal law from his biological parent. *See Estate of Red Bear*, 48 IBIA at 125.

⁴(...continued)

State law.”). Appellant does not address the 1999 version of the Blackfeet Tribal Code, but notes that the version in effect at the time of the 1984 Tribal Order Terminating Relationship “essentially mirrored” Montana law. Notice of Appeal at 3.

Finally, we agree with the IPJ that *Montana v. United States* has no applicability here. In that case, the Supreme Court addressed tribal jurisdiction to regulate non-Indian hunting and fishing within the boundaries of its reservation. The Court, citing *United States v. Wheeler*, 435 U.S. 313, 322 n.18 (1978), delineated powers retained by tribes, and mentioned the power “to prescribe rules of inheritance for members.”⁵ As the IPJ stated, tribes possess the right to prescribe rules of inheritance to the extent that the tribes have jurisdiction over probate matters. The Supreme Court did not construe or contrast the Tribe’s right to prescribe rules of inheritance with 25 U.S.C. § 372, which requires the United States to probate Indian trust estates, or § 348, which requires the intestate descent of Federal trust property to be determined in accordance with the laws of the state where the trust lands are located. Inasmuch as the Tribe does not have jurisdiction to probate the Federal trust assets of its members, the Court’s dicta in *Montana* has no applicability to this appeal. Our decision is controlled by 25 U.S.C. §§ 348 and 372, as well as applicable Montana state law.

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, we affirm the January 25, 2007, Order Denying Rehearing.

I concur:

// original signed
Lisa Hemmer
Administrative Judge*

// original signed
Debora G. Luther
Administrative Judge

*Interior Board of Land Appeals, sitting by designation.

⁵ *Wheeler* was a criminal action in which the issue was whether the double jeopardy clause of the Fifth Amendment prohibited the defendant from being tried in Federal court following his conviction for the same incident in tribal court on a lesser offense.