



INTERIOR BOARD OF INDIAN APPEALS

Estate of David Martin Champagne

49 IBIA 209 (05/20/2009)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ESTATE OF DAVID MARTIN)
CHAMPAGNE)
)
) Docket No. IBIA 09-083
)
) May 20, 2009

On May 6, 2009, the Board of Indian Appeals (Board) received a Notice of Appeal jointly signed by Appellants Clarence E. Champagne, Moses L. Champagne, Thomas B. Champagne, and Martha L. Champagne, proceeding pro se,¹ in the estate of their father, David Martin Champagne (Decedent), deceased Chippewa Cree Indian, Probate Nos. IP BI 134A 93 and P 0000 75451 IP.² Appellants purport to appeal from an April 16, 2009, modification order entered by Indian Probate Judge (IPJ) James Yellowtail in Decedent's estate to distribute certain interests owned by Decedent in trust property located on the Turtle Mountain Public Domain in Montana. Appellants seek the removal of John B. Champagne (John) as an heir to their father's estate because he "was not [Decedent's] biological son." Notice of Appeal. We docket the appeal but dismiss it because the issue presented is outside the scope of the IPJ's modification order and, thus, outside the scope of our review in an appeal from that order.

On January 31, 1994, Administrative Law Judge (ALJ) Keith L. Burrowes issued an Order Determining Heirs and Decree of Distribution (1994 Decision), in which he determined that Decedent's trust estate would be distributed equally among ten individuals that the ALJ found to be Decedent's children, including Appellants and John. In 2009, the Bureau of Indian Affairs (BIA) requested a modification of Decedent's trust estate inventory to add trust interests owned by Decedent on the Turtle Mountain Public Domain in

¹ Appellants' notice of appeal also lists Robert J. Champagne as an Appellant. However, Robert did not sign the notice of appeal or otherwise indicate that he authorized his brothers and sister to pursue an appeal on his behalf. Therefore, we do not include him as an appellant in this appeal. Even if he had signed the notice of appeal, it would not alter our decision.

² The original number assigned to the probate of Decedent's estate in 1994 was IP BI 134A 93. Subsequent modifications to the initial probate order apparently took place, and a new number eventually was assigned, No. P 0000 75451 IP, in the Department's current probate tracking system, ProTrac.

Montana, and to obtain an order of distribution of these interests. On April 16, 2009, the IPJ granted BIA's modification request, expressly noting that "[t]he purpose of this Modification Order . . . is to **ADD** the Decedent's interest[s] in the property located on the Turtle Mountain Public Domain in the State of Montana . . . and to **DISTRIBUTE** said property pursuant to the laws of intestate succession of the State of Montana."³

The Board has jurisdiction to hear appeals from orders on petitions for rehearing, orders on petitions to reopen, decisions on the purchase of a decedent's trust estate, and decisions modifying an estate inventory. 43 C.F.R. § 4.320(d), 73 Fed. Reg. 67,256, 67,288 (Nov. 18, 2008) (effective Dec. 15, 2008). Thus, any appeal to the Board necessarily is limited at this time to an appeal from the IPJ's decision to modify the 1994 Decision to add property to the inventory of Decedent's estate, and to his application of Montana law to the distribution of the newly added property interests. Appellants do not raise any claim concerning either of these two issues. Instead, Appellants' only complaint is that John should be deleted as an heir because, according to Appellants, he is not Decedent's biological son. Nothing in the IPJ's decision suggests that he reopened the 1994 Decision, in which ALJ found that John was a son of the Decedent. Thus, we conclude that the issue presented to the Board is outside the scope of an appeal from the IPJ's modification order, for which reason we dismiss Appellants' appeal.⁴

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 but dismisses this appeal.

I concur:

// original signed
Debora G. Luther
Administrative Judge

// original signed
Steven K. Linscheid
Chief Administrative Judge

³ The Board's legal assistant contacted the IPJ's office and obtained a copy of his order and the 1994 Decision, including the notice of appeal rights that accompanied each decision.

⁴ If Appellants believe they can satisfy the standard for reopening closed estates in order to revisit the issue of John's paternity, they may do so by submitting a petition to reopen to the probate judge. The regulations governing petitions to reopen closed estates are now found at 43 C.F.R. §§ 30.242-30.245, 73 Fed. Reg. at 67,302. Where an estate has been closed for more than 3 years, the time for seeking reopening is "within 1 year after the petitioner's discovery of an alleged error." 43 C.F.R. § 30.242(a)(3)(ii). All grounds for reopening must be fully set forth in the petition, and the petition must include all relevant evidence, in the form of documents or affidavits. *Id.* § 30.242(b) and (c).

After the probate judge has issued a decision in response to a petition to reopen, Appellants will have the option of appealing the decision to this Board.