



INTERIOR BOARD OF INDIAN APPEALS

Estate of Glade Sylvia Blomst Willis

50 IBIA 119 (08/11/2009)

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United States Department of the Interior

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INTERIOR BOARD OF INDIAN APPEALS
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ESTATE OF GLADE SYLVIA)
BLOMST WILLIS)
)
)
) Docket No. IBIA 09-128
)
) August 11, 2009

Carole Abshier (Appellant) seeks review by the Board of Indian Appeals (Board) of an Order Denying Petition for Rehearing (Order Denying Rehearing) entered on February 26, 2008, by Administrative Law Judge (ALJ) Richard J. Hough in the estate of Glade Sylvia Blomst Willis (Decedent), deceased Fond Du Lac Indian, Probate No. P 00000 5611 IP. The Order Denying Rehearing let stand a January 25, 2008, Decision (Decision), in which the ALJ determined that Appellant and her two sisters, Dianne M. Humphrey (now deceased) and Joyce L. Johnson, were the heirs to Decedent's estate, sharing equally. In July of 2009, Appellant submitted a "Petition for Hearing" (Petition) to the ALJ, which the ALJ forwarded to the Board as an appeal, and which the Board received on July 24, 2009. We dismiss this appeal because the Petition was filed with the Board after the 60-day deadline for filing an appeal had expired. *See* 43 C.F.R. § 4.320(b) (2008).¹

The Board initially addressed Appellant's Petition through correspondence because it was not clear whether she did, in fact, intend the Petition to be an appeal from the Order Denying Rehearing. First, the Petition cited, without comment, the Order Denying Rehearing and the Decision, and then stated that Appellant requested a hearing "to remove" Ron Humphrey and Ellen Potter as interested parties because they are part of the estate of Dianne Humphrey. Second, the length of time that had elapsed since the Order Denying Rehearing suggested that Appellant may have intended her Petition to be something other than an appeal.

¹ The time period for filing a probate appeal to the Board has since been shortened to 30 days. *See* 73 Fed. Reg. 67,256, 67,288 (Nov. 13, 2008), *to be codified at* 43 C.F.R. § 4.321(a).

On July 30, 2009, in response to the Petition, the Board wrote a letter to Appellant, explaining that an appeal from the Order Denying Rehearing would be untimely, and also explaining that the reason Ron Humphrey and Ellen Potter were listed as interested parties to Decedent's probate may be because they are potential or probable heirs to Dianne's estate. Because Dianne survived Decedent, Dianne could inherit from Decedent. And because Dianne died before Decedent's estate was probated, the Decision ordered distribution of Dianne's share to her estate, thus potentially implicating the interests of Dianne's heirs. In its response, the Board also advised Appellant that if she did intend her Petition to be a formal appeal to the Board, she could write to the Board and clarify that intent. The Board further advised Appellant that, in such a case, she would have to explain why her Petition could be considered as a timely appeal.

On August 6, 2009, the Board received a letter from Appellant, responding to the Board's correspondence to her. Appellant's letter does not expressly state that she wants her Petition treated as an appeal, but it appears that she seeks the Board's formal involvement in this matter, and therefore the Board construes her Petition, as supplemented by her subsequent letter, as an appeal from the Order Denying Rehearing. Appellant does not, however, offer any evidence or argument regarding the timeliness of her appeal.

The Board's jurisdiction over this probate — i.e., its ability to intervene and to formally address Appellant's complaints — is precluded by the fact that Appellant filed her Petition long after the 60-day time period for filing an appeal had expired. The Order Denying Rehearing was entered on February 26, 2008; the Board did not receive Appellant's Petition until July 24, 2009; and thus her appeal is untimely.²

² We note that the precise nature of Appellant's concerns about the Decision and Order Denying Rehearing remain unclear. In her original petition for rehearing, Appellant apparently sought to correct certain facts (e.g., the place of Decedent's death as recited in the Decision; Decedent's maiden name as "Glade S. Blomst not Glade Blomst Milburn"), and also referred generally to "letters" or a "document" concerning Decedent's property on the Fond du Lac Reservation. The ALJ concluded that the petition for rehearing did not allege any errors of law or fact that would warrant rehearing. As noted, the Petition before the Board seeks to "remove" Ron Humphrey and Ellen Potter as interested parties from Decedent's probate, to which the Board responded in its July 30, 2009, letter of explanation to Appellant. Appellant's response to the Board's letter does not pursue that issue, but states that the probate hearing was attended by only one heir; that Appellant believes Decedent's maiden name is relevant to this case; that Appellant requests a clear copy of the Order Denying Rehearing; and the Appellant "believe[s] there is a will." Even assuming

(continued...)

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 as untimely.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debora G. Luther
Administrative Judge

²(...continued)

that Decedent did execute a will, that would still not be relevant to the threshold issue that is now before the Board — whether Appellant’s Petition constitutes a timely appeal from the Order Denying Rehearing, and thus whether the Board has jurisdiction. We express no opinion on whether the actual discovery of a will would provide proper grounds for reopening, if submitted to the ALJ in a petition for reopening. *See* 73 Fed. Reg. at 67,302, *to be codified at* 43 C.F.R. § 30.242. With this order, we enclose for Appellant a copy of the Order Denying Rehearing.