



INTERIOR BOARD OF INDIAN APPEALS

Estate of Bertha Skyman Eastman, a/k/a Bertha Baine Skyman

50 IBIA 158 (08/25/2009)



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 BERTHA SKYMAN) Order Affirming Decision
EASTMAN, A/K/A BERTHA)
BAINE SKYMAN) Docket No. IBIA 08-53
)
) August 25, 2009

Milton J. Eastman (Appellant) appeals to the Board of Indian Appeals (Board) from an Order Upon Petition for Rehearing (Order) entered January 18, 2008, by Indian Probate Judge Ange Aunko Hamilton in the estate of Appellant’s mother, Bertha Skyman Eastman (Decedent), deceased Sisseton-Wahpeton Oyate Indian, Probate No. P000030910IP. The Order let stand an Order Approving Will and Decree of Distribution entered October 4, 2005 (Order Approving Will). Appellant submits a list of 14 assertions in support of his appeal. These assertions fall into three general categories. First, he presents, for the first time to this Board, two inches of Decedent’s medical records, without further discussion. Second, he contends that Judge Hamilton should have deferred to his contentions regarding traditional tribal law. Third, he challenges the jurisdiction of the Department of the Interior (Department) to probate his mother’s trust estate.

We reject Appellant’s assertions and affirm Judge Hamilton’s Order. Appellant’s burden was to show that Judge Hamilton made an error of fact or law. Appellant has not done so in his Notice of Appeal, nor did he avail himself of the opportunity given him in the Board’s docketing orders to submit briefing. Even attempting to give substance to his averments, we do not find in them any reason to question Judge Hamilton’s ruling. Appellant neither explains his failure to provide medical information to Judge Hamilton nor the significance of the material provided to us. Moreover, Appellant’s arguments regarding traditional tribal custom and the Department’s jurisdiction fail to demonstrate error in Judge Hamilton’s decision. We thus affirm her decision because it is well-settled that Federal law governs the probate of Indian trust assets and that jurisdiction to conduct such probates lies with the Department.

Background

Decedent was an enrolled member of the Sisseton-Wahpeton Oyate Sioux Tribe (Tribe). She was born April 12, 1906, and died on January 22, 2004, a resident of

California. She and her husband Oliver D. Eastman, Sr., who predeceased her in 1985, had nine children together. Four children predeceased her: Fern Eastman Mathias (Fern), Oliver D. Eastman, Jr., Dale C. Eastman, and Gyla Eastman Robertson. Five children survived at the time of her death: Carole Eastman Standing Elk, Emmett Eastman, Milton Eastman (Appellant), Joyce Eastman Rice, and June Eastman Pink. When she died, Decedent owned an Individual Indian Money account containing \$102 and trust lands valued at \$69,151 on the Sisseton-Wahpeton Oyate (Lake Traverse) Reservation in South Dakota. Decedent's trust inventory included four tracts that Appellant and three of his siblings had received by devise from Decedent's mother but given by gift deed to Decedent between 1970-72.

On October 24, 1985, Decedent executed a Last Will and Testament (1985 Will). This Will acknowledged that eight of her children were then surviving and that Decedent wanted all of them to share in her property. To effectuate this result, she devised all of her real and personal property to Fern. Decedent did not establish a trust, but identified Fern as an informal "trustee" of the lands to hold them "for the benefit of [Decedent's] lineal descendants."¹ Decedent explained in the 1985 Will that it was her desire to keep all of her property together for the use of her descendants and to have this "property passed on in this same manner." 1985 Will at 2-3.

The 1985 Will was approved by the BIA Field Solicitor in 1987. It did not provide for an alternative beneficiary in the case of Fern's death. Fern died in 2002.

On June 4, 2003, Decedent executed a new will (2003 Will). The 2003 Will revoked the previous will, recognized Decedent's five living children, but devised all real and personal property to one daughter, Carole Eastman Standing Elk (Carole). To this 2003 Will, Decedent attached an Affidavit to Accompany Indian Will in which she explained, consistent with her 1985 Will, that it was her "intention by such a devise to keep the property . . . available for use by my lineal descendants and their families" 2003 Will Affidavit at 1. Decedent stated that she was "mindful of the fractionalization of [her] property," and asserted in this Affidavit an express intent to devise all property to one child with "the hope and expectations that she will pass it on intact to succeeding generations" *Id.* at 2.²

¹ The 1985 Will also expressed Decedent's wish that Decedent's daughter Gyla would deed a 2.5-acre parcel of property back into Decedent's lineal family. *Id.*

² In this Affidavit, Decedent noted that her daughter Gyla had predeceased her, and expressed her hope that Gyla's heirs would take action to convey the 2.5-acre tract to Decedent's lineal family, without which Gyla's decedents would not be entitled to the use of Decedent's property. *Id.* at 3.

After due notice to potential heirs, Judge Hamilton conducted a hearing regarding Decedent's estate on September 2, 2005. Appellant testified at this hearing, but was unsure of the course of action he wished to take. Judge Hamilton continued the hearing for 30 days to give Appellant or any other potential heir an opportunity to challenge the 2003 Will. When no challenge was received, Judge Hamilton proceeded to issue the Order Approving Will, effectuating the terms of the 2003 Will.

Through a series of untimely expressions of interest, Appellant thereafter asserted a belated desire to challenge the 2003 Will. Construing his (and his wife's) communications as a Petition for Rehearing, Judge Hamilton ultimately determined to accept further documents in the probate proceeding and also to conduct a second hearing on June 20, 2007 (2007 Hearing).

Appellant again appeared and testified. He contended that his mother likely had been influenced by her daughters to make both wills as she did, averred that his mother had been ill in the last years of her life and that her infirmities likely had affected her competency to execute a will, and asserted his belief that his mother had chosen not to bequeath property to him "because [she and his sisters] figured my wife was too strong a woman and she might influence me into doing with the land something that the family didn't want." Transcript, 2007 Hearing, at 101. He did not offer Decedent's medical records or evidence in support of his contentions regarding Decedent's competency.

Appellant submitted a document, signed by four persons, purporting to present "findings" reached as a result of a March 14, 2006, hearing of the "Sissetonwan qa Wahpetonwan Traditional Court" (Traditional Court document). The findings were that the Traditional Court "does not recognize [the] jurisdiction of Dept. of Interior and the Office of Hearings and Appeals/Probate," but does recognize "Patrilineal preference." As best we can determine, Appellant asked the members of the self-described "Traditional Court" — a body of persons who disagree with the government of the Tribe — to support his request for rehearing and they did so. At the 2007 Hearing, one of the signers of the Traditional Court document — Rose Max (Inyan Yuha Najin Win) — testified on Appellant's behalf. She asserted that "their" (presumably the Traditional Court's) goals were to restore tribal tradition. Transcript, 2007 Hearing, at 25-26. She testified that she did not "really know" about the law with respect to wills and "never was aware of a law or anything." *Id.*

The will scrivener, attorney Jenny Kim, and two will witnesses, Kathryn Boschken and Jennifer Naegele, testified that Decedent appeared to be competent to execute the 2003 Will, appeared before them without family members present, and appeared to understand her own intentions in revoking the 1985 Will and issuing the 2003 Will. Kim testified that she met with Decedent several times in person or by phone; that their

communications were private; and that Decedent identified all of her children and described her purpose in executing the 2003 Will. Transcript, 2007 Hearing, at 54-57.

On January 18, 2008, Judge Hamilton issued her Order Upon Rehearing in which she affirmed her earlier Order Approving Will. She explained the above information in greater detail than presented here, and rejected Appellant's arguments. She rejected Appellant's challenge to Decedent's testamentary capacity, explaining that Appellant testified that he had not seen or talked to his mother since the time of Fern's death, and did not otherwise produce any evidence with respect to Decedent's mental state for the time period surrounding the execution of the 2003 Will. Order at 2. Judge Hamilton also rejected Appellant's suggestion that Decedent had been unduly influenced by his sisters, explaining, based on the testimony of Kim and the will witnesses, that Appellant had not shown influence by Carole or any other person at the time the 2003 Will was executed. *Id.* at 3. Finally, Judge Hamilton rejected Appellant's construction of the Traditional Court document and others related to the Tribe because she found that they did not affect the authority of the Department under Federal law to probate Decedent's trust estate or to approve the 2003 Will. *Id.* at 3-4.

Appellant submitted a Statement of Appeal, Errors of Fact and Law (Notice of Appeal) to the Board. Thereafter, he submitted what he alleges to be "4,500 pages" of medical records pertaining to his mother, extending from the 1970s to 2001. Thus, Appellant's argument is limited to the medical records submitted to this Board and the following "issues of fact and law," which we quote from the Notice of Appeal:

1. I, a[m] a landkeeper given that trust by my grandmother, Eva Little Thunder (Onapedutawin) Probate B-27-64.
2. In reference to the mental capacity of my mother, I did not wish to present or gather evidence (medical records) that would refer to her in a disrespectful state.
3. I will now present that documentation.
4. I am a member of the Sissetonwan and Wahpetonwan Traditional Government.
5. Documents presented to the probate Division, Aberdeen, South Dakota are in reference to the jurisdictional grounds in item VI (Documents Presented)

6. Jurisdiction in Indian Country is a controversial issue. The War Department, Department of Interior and the Bureau of Indian Affairs were, are the enforcement mechanisms that violate the Rights of Indigenous/Native people.
7. The documents that were included in the hearing process refer to policy enacted by U.S. Congress. In 1934, The Indian Reorganization Act was passed. (Wheeler-Howard Act, S. 3645)
8. The Wheeler-Howard Act was rejected by the Lake Traverse Reservation. (335 against/266 for) See Attachment:
9. The constitution and By-Laws of Sisseton Wahpeton Sioux and the Sisseton Wahpeton Act (1984) (P.L. 98-513) are concepts of the Anglo-American system.
10. Judge Hamilton did not validate or recognize the Sissetonwan and Wahpetonwan Traditional Court and its findings. (see attachment)
11. Sisseton-Wahpeton constitution government is a breach of right and cultural self-determination, and an attack upon the Inherent Sovereignty of the Dakota people.[³]
12. Traditional Government/Laws are the Inherent Rights we possess which are recognized by the nations of the world.
13. The Probate and Testamentary issues are English Common Law brought here by immigrant peoples.
14. The Indian Tribal Justice Act, Title 25, Chapter 38 (7) Traditional tribal justice practices are essential to the maintenance of the culture and identity of Indian tribes and to the goals of this chapter.

Notice of Appeal at 1-2.

No other briefs were submitted.

³ The Office of Hearings and Appeals (OHA) does not have jurisdiction to consider challenges to the Tribe's choice of constitutional government.

Discussion

We affirm the Order. It is incumbent upon an appellant seeking to appeal from an order on rehearing to identify factual or legal error in the decision. *Estate of Mary Josephine (Mosho) Estep*, 48 IBIA 176, 182 (2008), *citing Estate of Norman Under the Baggage, Sr.*, 37 IBIA 124, 125 (2002). From the above-quoted recitation of arguments, we find it difficult to identify a particular factual or legal challenge to Judge Hamilton's Order.

Nonetheless, we affirm Judge Hamilton's Order because Appellant's identifiable legal arguments fail to demonstrate error. Appellant's arguments fall into three categories: (1) in points 2-3, Appellant contends that Judge Hamilton erred in concluding that there was no evidence to support his assertion that Decedent lacked testamentary competency to execute a will; (2) in points 1 and 10, Appellant suggests that Judge Hamilton should have deferred to the Traditional Court document by recognizing patrilineal descent and overturning the 2003 Will; and (3) in points 4-9 and 11-14, Appellant's thrust is that OHA does not have jurisdiction either to conduct a probate of his mother's estate or to approve her will. None of these arguments justifies reversing Judge Hamilton.

With respect to the packet of medical records submitted to this Board, we have a number of difficulties in addressing them. It was Appellant's obligation to submit those documents to Judge Hamilton on rehearing and to justify his failure to obtain them before the first hearing. 43 C.F.R. § 4.241(a) (2007). Appellant testified that it was difficult for him to gather the information and that he did not have the time. Transcript, 2007 Hearing, at 81-82. His comment in his Notice of Appeal is that he did not wish to disrespect his mother by gathering such records. But, if Appellant wished to challenge Decedent's capacity to execute her will, it was incumbent upon him to provide evidence in support of that claim or else bear the consequence of a lack of proof. His decision not to provide evidence at two hearings constituted a failure of proof. In addition, it is Appellant's burden to explain the relevant portions of the medical records that he contends are evidence of his mother's lack of testamentary capacity. He did not meet this burden. In any event, we find no documents in the medical records submitted that are relevant to Decedent's capacity to execute a will in 2003.⁴

⁴ Notably, the medical evidence, which predates 2001, suggests that Decedent frequently presented to her physicians symptoms of dizziness, sinusitis, and a condition called trigeminal neuralgia, for which she was treated with medications. Without more explanation of Appellant's views, such information has no controlling probative relevance to Decedent's capacity to execute a will.

The second and third categories of arguments are related and we consider them together. Appellant acknowledges that his mother prepared a will and left all of her property to Carole. As best we understand his view, he believes that Judge Hamilton’s decision to approve that Will may have consequences on a number of matters ranging from “traditional tribal justice practices” to “culture and identity of Indian tribes.” He believes that action to effectuate aspects of either Federal law or the laws of the Tribe would be to implement the “Anglo-American system,” a system he believes should not apply.

The authority and procedure governing Indian probate proceedings with respect to trust property appear in Federal law and regulation. *See* 25 U.S.C. §§ 372, 373; 43 C.F.R. Part 4.⁵ While Appellant may believe that a higher or alternate authority precludes the exercise of jurisdiction by the Department over Indian wills or probate matters, neither this Board nor Judge Hamilton has authority to disregard the provisions of Federal statute or regulation. *See, e.g., State of South Dakota, County of Charles Mix, and City of Wagner v. Acting Great Plains Regional Director*, 49 IBIA 84, 99 (2009). Judge Hamilton correctly applied legal authority, and properly rejected Appellant’s suggestion that a self-appointed Traditional Court of persons committed to a traditional way of life could usurp it. Transcript, 2007 Hearing, at 16. Her order is affirmed.

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, the Order Upon Petition for Rehearing is affirmed.

I concur:

// original signed
Lisa Hemmer
Administrative Judge*

// original signed
Debora G. Luther
Administrative Judge

*Interior Board of Land Appeals, sitting by designation.

⁵ State and/or tribal courts have jurisdiction over the probate of non-trust assets. *See Estate of Mary Cecilia Red Bear*, 48 IBIA 122, 126 n.4 (2008).