



INTERIOR BOARD OF INDIAN APPEALS

Estate of Phillip Loring

50 IBIA 259 (10/15/2009)

Denying Petition for Reconsideration of:  
50 IBIA 178



We addressed Appellant’s point in our September 4, 2009, decision. We held: “Judge Daniel properly looked to the terms of the Will to distribute the appropriate interests in [Allotment No.] 288-A. *It was not her role to rewrite the terms of the Will, even if a party believes that Decedent meant to do something else.*” 50 IBIA at 186-87 (emphasis added). Nothing has changed, and nothing in Appellant’s Petition argues, let alone shows, that we acted in error. We cannot *sue sponte* amend the plain language of a will.<sup>1</sup>

Appellant attaches notarized statements of four of Decedent’s children — Delbert, Martha, Lester, and Sylvester Loring — dated September 30 and October 1, 2009, in support of her Petition. These statements are submitted for the first time in the context of their mother’s Petition and each assert that Decedent meant to give Gerard a .56 acre parcel of land that Gerard had purchased. This Board does not entertain evidence presented for the first time with a petition for reconsideration. *Hoopa Valley Tribe v. Special Trustee for American Indians*, 44 IBIA 247, 248 n.2 (2007); *Yeahquo v. Southern Plains Regional Director*, 36 IBIA 59 (2001); *Hamilton v. Acting Sacramento Area Director*, 29 IBIA 188 (1996). “The Board does not grant reconsideration when the issues raised in the petition were considered when the Board issued its initial decision or were not raised in prior proceedings.” *New Mexico Highway and Transportation Department v. Albuquerque Area Director*, 18 IBIA 232 (1990). In *Crooks v. Minneapolis Area Director*, 14 IBIA 271, 272 (1986), we explained: “Appellant’s failure to prepare his appeal with care in the first instance is not an ‘extraordinary circumstance’ warranting the granting of reconsideration pursuant to 43 [C.F.R. §] 4.315.”<sup>2</sup>

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<sup>1</sup> As we pointed out, OHA’s role in construing a will that is ambiguous would be to distribute the relevant portion of the estate as if the decedent died intestate. “OHA would not simply distribute the estate in accordance with the wishes or beliefs of a beneficiary.” 50 IBIA at 187-88 n.15. Thus, if Appellant had convinced us to view the Will as less than clear, because of her allegations that Decedent meant to do something other than what is reflected in his Will, the only result could have been intestate distribution, rather than the distribution plan pursued by Appellant in her appeal and in her Petition.

<sup>2</sup> In any event, evidence of Gerard’s *purchase* of property would have no bearing on the construction of Decedent’s Will. To the extent Appellant means to suggest that Gerard purchased a land interest from May Loring, or even from Decedent, such a purchase (if properly approved by the Bureau of Indian Affairs) would be immaterial to the distribution of trust or restricted property remaining in Decedent’s estate.

Moreover, Appellant’s insistence that Gerard should have received a distribution of .56 acres is a contention already addressed and rejected in this appeal. The Petition explains that Appellant relies on the “fractional method and descriptions used by the Salt River Pima-Maricopa Indian Community Realty Probate Office [SRPMIC]” for her beliefs. Petition at 2. But we already explained that Decedent owned an “undivided interest in the entire 10 acre allotment,” *not* a specific subparcel within Allotment No. 288-A, and also that because the interests in the allotment are undivided, it was inaccurate for SRPMIC’s letter to characterize them as equivalent to partitioned smaller acreages. 50 IBIA at 182 n.7, 185, and n.11. Appellant does not suggest that this conclusion was error.

For the foregoing reasons, we find that Appellant has failed to show extraordinary circumstances warranting reconsideration. Under the regulations applicable to the Board, a “party may file only one petition for reconsideration.” 43 C.F.R. § 4.315(b). No further petitions will be entertained by this Board.

### 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 Petition for Reconsideration is denied.

I concur:

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// original signed  
Lisa Hemmer  
Administrative Judge\*

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// original signed  
Debora G. Luther  
Administrative Judge

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