



INTERIOR BOARD OF INDIAN APPEALS

Estate of Preston Toledo

51 IBIA 3 (12/04/2009)



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 PRESTON TOLEDO) Order Docketing and Dismissing Appeal
))
) Docket No. IBIA 10-013
))
) December 4, 2009

Zonia Sanchez (Appellant) appeals to the Board of Indian Appeals (Board) from the “Order Modifying Order of June 13, 2007, To Include Omitted Property” (modification order) entered on September 29, 2009, by Indian Probate Judge (IPJ) Roberta Dee Joe in the estate of Appellant’s father, Preston Toledo (Decedent), deceased Navajo Indian, Probate No. P000026935IP. The modification order distributed additional trust property inherited by Decedent from his uncle, Eugene B. Charles.¹ The modification order distributed this additional property in accordance with Decedent’s will, which was approved in 2007. Appellant challenges the distribution of this additional property, alleging that “[i]t is not fair” to her and her siblings. We docket the appeal but dismiss it as untimely because the IPJ provided accurate instructions for filing an appeal with the Board, and this appeal was not filed with the Board within the 30-day deadline following the IPJ’s modification order.²

In accordance with the Department of the Interior’s probate regulations, 73 Fed. Reg. at 67,288, *to be codified at* 43 C.F.R. § 4.321(a), an appeal from a probate judge’s decision must be filed with the Board within 30 days after the decision was mailed with accurate appeal instructions. Any appeal that is not filed by the 30-day deadline will be dismissed. *Id.*; *Estate of Daniel Temartz Sampson*, 49 IBIA 207, 208 (2009). No extensions of time may be granted for filing a notice of appeal. 43 C.F.R. § 4.310(d)(1).

¹ The additional trust property consisted of interests in Allotment Nos. 211153, 211491, 211492, and 211495.

² Appellant’s appeal does not indicate that it was served on interested parties, as required by 73 Fed. Reg. 67,256, 67,288 (Nov. 13, 2008), *to be codified at* 43 C.F.R. § 4.323. Because we summarily dismiss this appeal as untimely, we have not required Appellant to complete this service requirement.

In the present case, the modification order contained accurate appeal instructions, including the deadline for filing an appeal and the Board's address. *See* Modification Order at 2. The modification order also included a certification that it was mailed on September 29, 2009. *Id.* Therefore, the time for filing an appeal expired 30 days later on October 29, 2009. Appellant did not send her appeal to the Board, as directed by the modification order, but sent it instead to Judge Joe's office in Albuquerque, New Mexico. That office forwarded Appellant's appeal by overnight courier, which delivered it to the Board on November 2, 2009, four days after the appeal period expired.³ *See* 43 C.F.R. § 4.310(a) (date of filing is the date of mailing or date of personal delivery to the Board). An appellant who fails to follow accurate appeal instructions bears the risk that the appeal will not be timely filed. *See Castillo v. Pacific Regional Director*, 43 IBIA 9, 10 (2006), and cases cited therein.

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.⁴

I concur:

// original signed
Debora G. Luther
Administrative Judge

// original signed
Steven K. Linscheid
Chief Administrative Judge

³ On October 30, 2009, Judge Joe's office sent a copy of Appellant's appeal by facsimile (fax) to the Board. However, an appeal is initiated by delivering or mailing the *original* notice of appeal to the Board. *See* 73 Fed. Reg. at 67,288, *to be codified at* 43 C.F.R. § 4.323(a). Even assuming that the faxed copy were acceptable, it was not filed with the Board within the 30-day appeal period.

⁴ We note that the modification order issued in accordance with the revised probate regulations, 73 Fed. Reg. at 67,293, *to be codified at* 43 C.F.R. § 30.126(a) ("What happens if property was omitted from the inventory of the estate?"). That is, the modification order acknowledged that additional property was inherited by Decedent after his death (from Eugene Charles), and ordered the distribution of this additional property in accordance with the original, June 13 probate decision in Decedent's estate, i.e., pursuant to Decedent's approved will. The modification order did not purport to reopen the original June 13 decision wherein Decedent's will was approved.