



INTERIOR BOARD OF INDIAN APPEALS

Estate of Frances Marie Ortega
51 IBIA 29 (12/16/2009)

Denying Petition for Reconsideration of:
50 IBIA 322



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ESTATE OF FRANCES MARIE)
ORTEGA)
)
)
) Docket No. IBIA 09-086-1
)
)
) December 16, 2009

On November 16, 2009, the Board of Indian Appeals (Board) decided an appeal from Wilford Ward (Appellant), seeking review of a Recommended Decision on Inventory Dispute (Recommended Decision) entered by Administrative Law Judge Thomas F. Gordon during the probate of the Indian trust estate of Appellant's great-aunt, Frances Marie Ortega, deceased Luiseno Mission (La Jolla Band) Indian. In our decision, 50 IBIA 322 (2009), we vacated the Recommended Decision and referred the matter to the Bureau of Indian Affairs (BIA), explaining that revised regulations of the Department of the Interior (Department) supplanted prior Board procedures and required that the inventory dispute be referred to BIA for a decision.

On December 14, 2009, the Board received a petition for reconsideration from Appellant. Appellant seeks reconsideration of our decision, arguing that the Board cannot legally be required to refer the dispute to BIA because, Appellant contends, the dispute is with or against BIA. Appellant suggests that the matter must be resolved by the Board.

Reconsideration of a Board decision will be granted only in extraordinary circumstances. 43 C.F.R. § 4.315(a). We find no such circumstances to be presented in Appellant's petition.

Appellant suggests that BIA cannot be a disinterested decision maker, and therefore the Department's regulations, which require that inventory disputes arising during probate be referred to BIA, are invalid. But the Board is bound by duly promulgated regulations and lacks authority to declare such regulations invalid. See *South Dakota v. Acting Great Plains Regional Director*, 49 IBIA 84, 103 n.18 (2009); *San Carlos Apache Tribe v. Western Regional Director*, 41 IBIA 210, 220 (2005). Moreover, BIA's decision will be subject to the administrative appeal rights provided in 25 C.F.R. Part 2, which ultimately include a right of appeal to the Board by adversely affected interested parties. Thus, our decision did not

foreclose the possibility of eventual review of the inventory dispute on the merits by the Board.

We have also reviewed the other arguments raised in Appellant's petition for reconsideration and conclude that they provide no basis for us to reconsider our prior decision that the inventory dispute must be referred to BIA.

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 denies the petition for reconsideration.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debora G. Luther
Administrative Judge