



INTERIOR BOARD OF INDIAN APPEALS

Estate of Theresa Underwood Dick

51 IBIA 31 (12/29/2009)

Denying reconsideration of:
50 IBIA 279



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
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ESTATE OF THERESA)
UNDERWOOD DICK)
)
) Docket No. IBIA 07-107-1
)
)
) December 29, 2009

On November 2, 2009, the Board of Indian Appeals (Board) affirmed the April 9, 2007, Final Decision on Rehearing by Indian Probate Judge M.J. Stancampiano (IPJ) in the Estate of Theresa Underwood Dick (Decedent), deceased Quinault Indian, Probate No. P000000368IP. 50 IBIA 279. This decision both decided the issues appealed by Alfreda LaBonte and disposed of the remainder of Decedent's estate that survived an earlier settlement between LaBonte and 15 of Decedent's 24 heirs.

On November 30, 2009, the Board received a timely petition for reconsideration from seven of the non-settling heirs (collectively, the Youcktons), through their representative Jessica M. Goddard.¹ In their petition, the Youcktons set forth the share of Decedent's estate that they contend they are entitled to receive. Briefly summarized, the Youcktons contend that they are entitled (collectively) to share equally in 25% of Decedent's estate as the children of Leona (who was one of Decedent's four children). But the Youcktons apparently interpret the Board's decision — incorrectly — as awarding them less than 25% of the estate.

We agree that the Youcktons, collectively, are entitled to 25% of Decedent's estate. And that is precisely the result of the distribution order included in the Board's November 2 decision, except that the percentages stated in the Board's order apply to the *remainder* of Decedent's estate after the distribution of part of the estate to satisfy the settlement between LaBonte and the 15 settling heirs. It appears that this may be the source of the Youcktons' misunderstanding. As explained below, the portion of the estate to be distributed to the Youcktons as a result of the Board's November 2 decision constitutes 25% of Decedent's *entire* estate.

¹ Goddard represents herself and her siblings Rodney K. Youckton, Winona R. Youckton, Arland M. Youckton, Theresa J. Youckton, Stanley F. Youckton, and Vanessa N. Youckton. The Youcktons point out that the Board's November 2 decision incorrectly identifies Stanley as a "granddaughter" of Decedent. Stanley is one of Decedent's grandsons.

At the outset of this appeal, there were 24 heirs each of whom stood to share in a part of Decedent's estate, if the IPJ's decision were affirmed. These heirs included LaBonte, Vitalis, the Youcktons, and 15 additional descendants of Decedent. The settlement between LaBonte and 15 of the heirs resulted in the distribution of 70.24% of Decedent's estate to the parties to the settlement. *See* Order Adopting Recommended Decision and Approving Partial Settlement, Apr. 9, 2008. Those 15 heirs have now received all that they are entitled to receive from Decedent's estate, and have no stake in the remaining 29.76% of Decedent's estate that was set aside pending our decision in this appeal. Our November 2 decision addressed the distribution only of this remaining portion of Decedent's estate, not the entire estate.

This 29.76% remainder, which was set aside, consists of the Youcktons' collective intestate share (25%), LaBonte's intestate share (1/28, which equals 3.57%), and William Vitalis's intestate share (1/84, which equals 1.19%) (25% + 3.57% + 1.19% = 29.76% of Decedent's entire estate). Thus, the remainder of the estate — that is, 29.76% of the entire estate — that was preserved and subject to this appeal *includes* the 25% of the *entire* estate that the Youcktons collectively claimed and are now entitled to receive, *plus* the intestate shares reserved for LaBonte and Vitalis.

As the Youcktons observe in their petition for reconsideration, the collective share of the estate that was awarded to them by the November 2 decision was 21/25 (3/25 multiplied by 7 Youckton heirs), which is 84% ($21 \div 25 = .84$) of the remainder. And 84% of the 29.76% remainder equals 25% of the entire estate ($.84 \times .2976 = .24998$). Thus, the percentage of the remainder awarded collectively to the Youcktons is the same as the percentage that the Youcktons claim they should receive from the entire estate.²

² The equal division of Leona's 1/4 share among the 7 Youckton heirs is not at issue. And the calculations yield the same result when figured on an individual basis. Each Youckton heir receives 1/7 of 1/4 of Decedent's estate, which equals 1/28, or 3.571%. The 7 Youckton heirs each receive an equal share of their collective 84% of the 29.76% that remains to be distributed from Decedent's estate, or 12% each ($84 \div 7 = 12$), which is the same as the 3/25 share calculated for each Youckton heir in the Board's November 2 decision ($3 \div 25 = .12$). Mathematically, 1/28 (3.571%) of 100% of Decedent's estate is the same as 3/25 (12%) of 29.76% of Decedent's estate ($3.571 = .12 \times 29.76$). Therefore, each Youckton heir will receive the share the Youcktons claim they are entitled to receive, whether expressed as a percentage of Decedent's entire estate or as a percentage of the remainder of the estate that was set aside.

Thus, we cannot identify any actual difference between the Youcktons' position, as represented in their petition for reconsideration, and the Board's order, for which reason we find no basis to reconsider our decision.³

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 reconsideration of 50 IBIA 279.

I concur:

 // original signed
Debra G. Luther
Administrative Judge

 // original signed
Steven K. Linscheid
Chief Administrative Judge

³ Of course, to the extent the Youcktons actually do disagree with the percentage of the estate set aside in the Recommended Decision on Partial Settlement, or the manner in which the remainder was to be divided in the event the IPJ's order was affirmed (which it was), we note that they did not object to the Recommended Decision when given the opportunity to do so, and thus they failed to preserve any basis for seeking reconsideration based on any such objection.