



INTERIOR BOARD OF INDIAN APPEALS

Estate of Caroline Davis

51 IBIA 101 (01/26/2010)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ESTATE OF CAROLINE DAVIS) Order Docketing and Dismissing Appeals
))
) Docket Nos. IBIA 10-031 and 10-032
))
) January 26, 2010

The Board of Indian Appeals (Board) received nearly identical notices of appeal from Marla Frances Davis and Rebecca A. Bless-Ward (Appellants), in which both Appellants seek review of a December 11, 2009, Modification Order entered by Indian Probate Judge (IPJ) Albert C. Jones, in the estate of their mother, Caroline Davis (Decedent), deceased Turtle Mountain Chippewa, Probate No. P000079904IP. The IPJ's order reopened Decedent's estate to modify the inventory to include additional interests in trust property located in Montana. The additional trust interests, which Decedent inherited from her mother, Agnes (Dee Dee) Azure, were ordered to be distributed to Decedent's heirs in accordance with the June 26, 2003, Order Determining Heirs and Decree of Distribution (2003 Order) entered in Decedent's estate. The 2003 Order applied the relevant rules of intestate succession to distribute Decedent's trust assets to Appellants and the two surviving children of Decedent's predeceased son, Wade Davis. Appellants argue that their brother's children, Jessie and Jordan Davis, are not entitled to inherit from their grandmother.

We docket this appeal but dismiss it because the substance of Appellants' appeal is directed at the 2003 Order where the probate judge determined that Jessie and Jordan were eligible heirs entitled to share in Decedent's estate. At the time of the 2003 Order, the probate judge was aware of the pending probate in the estate of Decedent's mother, and he provided for the distribution of the inheritance expected from Azure's estate in his 2003 Order. Although the Modification Order purports to be a "modification," in reality it simply confirmed that, as anticipated, Decedent did inherit trust property from her predeceased mother and it ordered the distribution of those interests in accordance with the 2003 Order. The issue of whether Jessie and Jordan Davis are entitled to inherit from Decedent was not reopened by the Modification Order, and thus that issue is not within the scope of an appeal from the Modification Order. *See* 43 C.F.R. § 4.318 (Scope of review); *Estate of Irma Ross*, 51 IBIA 21 (2009) (the issue of an individual's status as an heir was not reopened by an order that modified the inventory of the estate, and thus, was not within the scope of an appeal from the modification order). The Modification Order was, in effect,

only a ministerial act to conform the record of Decedent's estate inventory to the probate order in Azure's estate.

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 because Appellants' challenge is outside the scope of the IPJ's order.¹

I concur:

// original signed
Debora G. Luther
Administrative Judge

// original signed
Steven K. Linscheid
Chief Administrative Judge

¹ Pursuant to 43 C.F.R. § 30.242(a)(3), *see* 73 Fed. Reg. 67,256, 67,302 (Nov. 13, 2008), Appellants may petition the probate judge to reopen their mother's estate, provided that less than one year has elapsed since they discovered the alleged error(s) *and* provided that the alleged error(s), if not corrected, would result in manifest injustice.