



INTERIOR BOARD OF INDIAN APPEALS

Estate of Franklin Porter

52 IBIA 243 (11/18/2010)



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 FRANKLIN PORTER) Order Docketing and Dismissing
) Appeal
)
) Docket No. IBIA 11-032
)
) November 18, 2010

Mable P. Blackbird (Appellant) appeals from an Order Denying Rehearing (Rehearing Order), entered on September 29, 2010, by Indian Probate Judge (IPJ) Ange Aunko Hamilton in the estate of Appellant's brother, Franklin Porter (Decedent), deceased Omaha Indian, Probate No. P000036896IP. The Rehearing Order denied a petition for rehearing filed by Appellant,¹ in which she challenged the paternity of certain children of predeceased nephews of Decedent who were determined to be among Decedent's heirs in the IPJ's September 20, 2008, Order Determining Heirs and Decree of Distribution (Order Determining Heirs).² Appellant sent her appeal to the IPJ, who transmitted it to the Board of Indian Appeals (Board).³ We docket but dismiss this appeal because the IPJ provided accurate appeal instructions for filing an appeal with the Board, and this appeal was not filed

¹ Tracy L. Mitchell, Decedent's niece, joined in the petition for rehearing.

² In the Order Determining Heirs, Appellant and three other surviving siblings of Decedent were determined to be heirs, each entitled to a 1/6 share in his estate. Two of Decedent's siblings, Fletcher Mitchell, Sr., and Christine Mitchell, predeceased him, and the remaining 2/6 of Decedent's estate was divided among their surviving children or the surviving children of predeceased children. In her petition for rehearing, Appellant challenged the paternity of Mario J. Stabler and Latheresa F. Stabler, who were determined to be among nine surviving children of Fletcher Mitchell, Jr., who was one of seven children of Fletcher Mitchell, Sr. Appellant also challenged the paternity of Corrine Wilkinson, who was determined to be one of two surviving children of Marlin Mitchell, who was one of six children of Christine Mitchell.

³ The appeal is styled as a request for "another hearing," but successive petitions for rehearing are not permitted, *see* 43 C.F.R. § 30.240, and thus the IPJ properly transmitted it to the Board.

with the Board within the 30-day deadline following the IPJ's September 29, 2010, Rehearing Order.

An appeal from a probate judge's decision must be filed with the Board within 30 days from the date the decision was mailed with accurate appeal instructions. 43 C.F.R. § 4.321(a); *Estate of John Kenneth Flood*, 51 IBIA 225, 225 (2010). Untimely appeals must be dismissed. *Id.*

The IPJ's Rehearing Order included accurate appeal instructions, and included a certification that it was mailed to the listed interested parties (including Appellant) on September 29, 2010. Therefore, the deadline for filing an appeal with the Board was October 29, 2010. Appellant did not mail her appeal to the Board, but instead sent it to the IPJ, who forwarded it to the Board, and to which it was delivered on November 9, 2010, after the appeal deadline had expired. See 43 C.F.R. § 4.310(a) (date of filing is date of mailing or date of personal delivery to the Board). It is well-established that an appellant who fails to follow accurate appeal instructions bears the risk that the appeal will be untimely. See, e.g., *Estate of Mary Louise Medina*, 51 IBIA 255, 256 (2010); *Estate of Preston Toledo*, 51 IBIA 3, 4 (2009); *Estate of Douglas Keams*, 37 IBIA 111, 111 n.1 (2002).

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
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debora G. Luther
Administrative Judge

⁴ Even if this appeal were timely, dismissal would be appropriate for lack of standing. An interested party may appeal to the Board if he or she is "adversely affected" by an otherwise appealable probate order. See 43 C.F.R. § 4.320. The paternity determinations that Appellant seeks to challenge did not adversely affect Appellant's entitlement to a 1/6 share in Decedent's estate; they only affected the size of shares inherited by grandnephews and grandnieces of Decedent through predeceased children of Decedent's predeceased siblings. See *supra* note 2. Thus, whether or not Mario, Latheresa, and Corrine, were determined to be heirs of Decedent, Appellant's share in Decedent's estate would remain unchanged.