



INTERIOR BOARD OF INDIAN APPEALS

Estate of James Byron Granbois

53 IBIA 252 (6/28/2011)

In 2009, Appellant sought to have Decedent's estate reopened on procedural and substantive grounds to set aside the determination that Kimberly was Decedent's heir. According to the Order Denying Reopening, among the arguments made by Appellant was that Kimberly, as a non-Indian, could not inherit Decedent's trust property. The IPJ rejected Appellant's arguments on the merits, but also concluded that when the land was distributed to Kimberly pursuant to the 2004 Decision, it passed to her in fee (i.e., out of trust) because she is non-Indian.² Therefore, the IPJ concluded, he lacked jurisdiction over the land and would lack jurisdiction to grant relief, even assuming Appellant's arguments had merit.

Appellant appealed to the Board. Upon receipt of this appeal, the Board issued an order to show cause (OSC), which directed Appellant to explain to the Board why the Order Denying Reopening should not be summarily affirmed because it appeared that the IPJ had properly rejected Appellant's arguments and had correctly concluded that distribution of the land to Kimberly would have divested the Department of probate jurisdiction over that land.³ In addition, the Board requested that BIA submit information showing whether all the property that was in Decedent's estate had been conveyed or distributed to Kimberly and out of trust, and whether any trust assets in Decedent's estate remain in trust. *Id.* at 4.⁴

In response to the Board's request, BIA's Rocky Mountain Land Title and Records Office (LTRO) submitted a copy of the inventory of Decedent's trust real property that was prepared for the probate in 2003, and current title status reports for those interests indicating that they had been conveyed in fee to Kimberly. The LTRO manager reported to the Board that the "[p]roperty has been conveyed to the heir and has been taken out of

² "Non-Indians who inherit interests in Indian trust or restricted property take those interests in fee simple, rather than trust or restricted status." *Estate of Pansy Jeanette (Sparkman) Oylor*, 16 IBIA 45, 47 (1988) (citing *Bailess v. Paukune*, 344 U.S. 171 (1952)).

³ See Pre-Docketing Notice, Order for Appellant to Serve Interested Parties and to Show Cause, and Order for Information from the Bureau of Indian Affairs Land Title and Records Office, Aug. 18, 2010.

⁴ The Board declined to order the complete probate record pending resolution of the OSC.

trust and conveyed to fee status.” Memorandum to Board from LTRO Manager, Mar. 10, 2011. The information provided by BIA did not include information about whether any balance remained in Decedent’s IIM account. The Board provided Appellant with a copy of BIA’s submission.

Appellant responded to the Board’s OSC, but he did not address the information submitted by BIA, despite being given an opportunity to do so.⁵ Instead, Appellant reiterates his belief that Decedent’s property was improperly given to Kimberly. In his notice of appeal, Appellant contended that the Indian Land Consolidation Act of 2000 (ILCA 2000) requires reopening, even though he acknowledged that ILCA 2000 had not taken effect when Decedent died. In his response to the Board’s OSC, Appellant contends that it was illegal and a treaty violation for the property to pass to a non-tribal individual because Appellant and his sister “have a birth right” to the property. Letter to Board from Appellant, Apr. 11, 2011 (citing *Johnson v. McIntosh*, 21 U.S. 543 (1823), and 1868 Treaty of Fort Laramie).

It is Appellant’s burden to show that the Order Denying Reopening was in error. *See Estate of Reginald Paul Walkingsky*, 52 IBIA 233, 235 (2010) (citing *Estate of Verna Mae Pepion Hill Hamilton*, 45 IBIA 58, 63 (2007)). We conclude that he has failed to do so.

Appellant does not contest BIA’s report that Decedent’s property has passed to Kimberly in fee, nor does he argue that the IPJ was incorrect in concluding that when the property passed out of trust, the IPJ lost any probate jurisdiction that would otherwise attach to the property. Because it is undisputed that the trust real property included in the inventory of Decedent’s estate is no longer held in trust, the IPJ correctly concluded that he did not have jurisdiction over the property, and neither would the Board. *See Estate of Marvin Lee Tissidimit*, 51 IBIA 211, 212 (2010) (“The Department does not have jurisdiction over non-trust real or personal property.”) (citation omitted); *Estate of Oyler*, 16IBIA at 47 (“[T]he Department’s probate jurisdiction is limited to property held in trust or restricted status.”) (citations omitted). *See also Estate of Ollie Bourbonnais Glenn Smith*, 25 IBIA 1, 3 (1993) (“Neither [the ALJ] nor this Board has jurisdiction over land once it has passed out of trust status.”) (citing 25 U.S.C. §§ 372, 373 (1988)) (additional citation omitted).

⁵ *See* Letter to Board from Appellant, Apr. 11, 2011. *See also* Order Allowing Additional Time for Appellant to Respond to the Order to Show Cause and Information Submitted by BIA, Mar. 25, 2011; Order Granting 20-Day Extension for Appellant to Respond to the Order to Show Cause and Information Submitted by BIA, Apr. 14, 2011.

Given the passage of time between issuance of the ALJ's 2004 Decision and Appellant's petition for reopening in 2009, it appears possible, if not likely, that Decedent's trust personalty (i.e., the money deposited in his IIM account or accruing at the time of death) has also been distributed to Kimberly, and thus is beyond the Department's probate jurisdiction. But because the information provided by BIA does not include information about Decedent's IIM account, we address Appellant's arguments on the merits to the extent they might be construed as contending that Kimberly was not entitled to inherit Decedent's trust personalty. In his notice of appeal and his response to the Board's OSC, Appellant contends that the intent of ILCA 2000 should affect disposition of Decedent's property, and that it would be illegal and a treaty violation for Kimberly to inherit Decedent's property and deprive Appellant and his sister of a "birth right" to the property.⁶

Neither of these arguments shows that the IPJ committed error in denying reopening. Appellant acknowledges that ILCA 2000 had not taken effect when Decedent died, and the IPJ had no legal basis to apply ILCA 2000 to Decedent's estate.⁷ Further, as the IPJ pointed out, the fact that Kimberly was non-Indian did not bar her from inheriting Decedent's trust lands. *See* Order Denying Reopening at 4. None of the authority relied upon by Appellant in his response to the OSC — *Johnson v. M'Intosh*; the Treaty of Fort Laramie — is applicable to the disposition of an individual Indian's trust property, as provided by Federal statute and regulation. And Appellant does not dispute that in the absence of ILCA 2000 or AIPRA, the law of the State of Montana applies, nor does he claim that the IPJ misapplied Montana state law. In summary, Appellant has not demonstrated that the IPJ erred in rejecting his arguments and in denying reopening.

⁶ It appears that Appellant's arguments are directed primarily at the land included in Decedent's estate inventory which, as we have concluded, is no longer within the Department's probate jurisdiction. Giving Appellant the benefit of the doubt, we construe his arguments as also directed to Decedent's trust personalty.

⁷ Although Appellant refers to ILCA 2000, he may also intend to refer to the American Indian Probate Reform Act of 2004 (AIPRA), which amended ILCA. AIPRA's rules of intestate succession became effective in 2006. Until AIPRA became effective or unless another statute applied, Congress specified that the intestacy law(s) of the state where trust property is located should be applied in the probate of trust assets of a deceased Indian. *See Estate of Cyprian Buisson*, 53 IBIA 103, 110 (2011) (citing 25 U.S.C. § 348).

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 affirms the Order Denying Reopening.⁸

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debora G. Luther
Administrative Judge

⁸ According to the 2004 Decision, Decedent may have owned additional trust property on the Turtle Mountain Off Reservation Area in the State of North Dakota, although no such property was identified at the time of the 2004 Decision nor in the Order Denying Reopening. The 2004 Decision only provided for the disposition of Decedent's property in Montana, applying Montana rules of intestate succession, and the Order Denying Reopening only addressed that property. *See* Order Denying Reopening at 2. Our affirmance of the Order Denying Reopening is similarly limited to the property distributed pursuant to the 2004 Decision.