



INTERIOR BOARD OF INDIAN APPEALS

Estate of Celestus Arrowtopknot

54 IBIA 120 (10/21/2011)



# 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 CELESTUS	)	Order Docketing and Dismissing Appeal,
ARROWTOPKNOT	)	and Referring Inventory Dispute to
	)	Superintendent
	)	
	)	Docket No. IBIA 11-154
	)	
	)	October 21, 2011

In this appeal, Debbie F. White Grass Bull Shoe (Appellant) seeks to challenge the inclusion of certain property in the inventory of the estate of Celestus Arrowtopknot (Decedent).<sup>1</sup> The Board of Indian Appeals (Board) lacks jurisdiction to consider the challenge for two reasons, and therefore we must dismiss the appeal. First, the appeal is untimely. Second, Appellant’s underlying claim is in the nature of an inventory dispute, which must first be resolved by the Bureau of Indian Affairs (BIA), subject to a right of appeal to the Board from a BIA regional director’s decision. Therefore, we dismiss the appeal for lack of jurisdiction, but we refer the matter to the BIA Blackfeet Agency Superintendent (Superintendent) for action, and for issuance of a decision that complies with 25 C.F.R. § 2.7, if no such decision has been issued to resolve the inventory dispute.

## Background

Decedent died on October 14, 2007. At a probate hearing held in 2009 for Decedent’s estate, Appellant challenged the inventory of Decedent’s estate, contending that Decedent had intended to gift deed his undivided 25/2592 interest in Blackfeet Allotment No. 2025 (Allotment)<sup>2</sup> to Appellant. Appellant’s claim was supported by a copy of a gift

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<sup>1</sup> Decedent, a.k.a. Celestus J. Arrow Top Knot, was Blackfeet. Appellant appealed to the Board from an August 12, 2011, Order Denying Rehearing (Rehearing Order) issued in Decedent’s estate (Probate No. P000065293IP) by Administrative Law Judge R.S. Chester (ALJ).

<sup>2</sup> The Allotment, also referred to by the name of the original allottee, Jennie Ground, is described on the gift deed application as containing 326.72 acres, more or less.

deed application executed by Decedent in 2004. Indian Probate Judge (IPJ) James Yellowtail referred the inventory dispute to the Superintendent pursuant to 43 C.F.R. § 30.128 for resolution and issuance of a decision by BIA under the BIA's applicable regulations in Title 25 of the Code of Federal Regulations.

It appears that instead of issuing a decision that was sent to all interested parties, and which advised them of their appeal rights under 25 C.F.R. Part 2, the Superintendent submitted a memorandum to IPJ Yellowtail, making certain "finding of facts" and concluding that Decedent's interest in Allotment 2025 "should be transferred by deed to [Appellant]." *See* Memorandum from Superintendent to IPJ Yellowtail, June 15, 2009. IPJ Albert Jones, to whom the probate case had been reassigned,<sup>3</sup> responded to the Superintendent and asked him to clarify whether his "decision" had been sent to all interested parties, with notice of appeal rights, and whether the appeal period had expired. IPJ Jones advised the Superintendent that if the Superintendent had not mailed the decision and advised interested parties of their appeal rights, the Superintendent should do so. IPJ Jones indicated that he would delay issuing a probate decision until the Superintendent responded. *See* Memorandum from IPJ Jones to Superintendent, Oct. 30, 2009.

After waiting several months, and apparently receiving no response from the Superintendent, IPJ Jones issued a decision in Decedent's probate case to determine Decedent's heirs and settle the trust or restricted property in the estate. *See* Decision, April 27, 2010. In the Decision, IPJ Jones noted that the inventory dispute had been referred to the Superintendent for resolution. The Decision stated that "[t]o the extent [BIA] makes a final determination which changes the Decedent's inventory, this estate can be reopened and modified at that time." *Id.* at 3.

Within the time period allowed for filing petitions for rehearing from a probate decision, Appellant sent a letter to the ALJ's office stating — in apparent reference to the Allotment — that "[t]he land that [Decedent] had gift deeded to me in 2004 was listed in the probate [in 2009]," and "[t]his is a petition for [Decedent's] probate." Letter from Appellant to Probate Hearings Division, Office of Hearings and Appeals (OHA), Billings, Montana, May 25, 2010. The ALJ construed Appellant's letter as a petition for rehearing, but concluded that Appellant lacked standing to petition for rehearing because she was not

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<sup>3</sup> The case was reassigned after IPJ Yellowtail left his position with the Department of the Interior.

an “interested party” under 43 C.F.R. § 30.101.<sup>4</sup> In a footnote, the ALJ also stated that it appeared that Appellant had made a “similar claim” at the hearing held by IPJ Yellowtail and that the matter had been referred to the Superintendent. Rehearing Order at 3 n.1.<sup>5</sup> The Rehearing Order was mailed to interested parties, including Appellant, and included a notice containing appeal instructions advising parties that any appeal must be filed with the Board within 30 days after the decision was mailed, on August 12, 2011, and giving the Board’s correct address.

On September 12, 2011, the last day of the appeal period,<sup>6</sup> Appellant hand-delivered her notice of appeal to the ALJ’s office in Billings, Montana. She did not mail or otherwise deliver it to the Board. The ALJ’s office promptly transmitted the appeal to the Board, to which it was delivered on September 13, 2011.

## Discussion

### I. Timeliness

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, and appeals that are not timely filed with the Board must be dismissed. *See* 43 C.F.R. § 4.321(a). The Rehearing Order included accurate appeal instructions and a certification that it was mailed to the interested parties (including Appellant) on August 12, 2011. Appellant did not mail her appeal to the Board, but instead delivered it to the ALJ, who forwarded it to the Board. The appeal was delivered to the Board on September 13, 2011, which was after the appeal deadline had expired. *See id.* § 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 Franklin*

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<sup>4</sup> Section 30.101 defines “interested party” to mean “(1) Any potential or actual heir; (2) Any devisee under a will; (3) Any person or entity asserting a claim against a decedent’s estate; (4) Any tribe having a statutory option to purchase the trust or restricted property interest of a decedent; or (5) Any co-owner exercising a purchase option.”

<sup>5</sup> The Rehearing Order also addressed a separate petition for rehearing that was unrelated to the inventory issue raised by Appellant.

<sup>6</sup> Because the 30th day fell on Sunday, September 11, 2011, the deadline was extended to the next business day, which was Monday, September 12, 2011. *See* 43 C.F.R. § 4.310(c)(2).

*Porter*, 52 IBIA 243, 244 (2010); *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). Accordingly, Appellant’s appeal from the Rehearing Order must be dismissed.

## II. Inventory Dispute

Even if the appeal were timely, the Board would lack jurisdiction to consider Appellant’s challenge to the inventory of Decedent’s estate through this appeal from a probate decision. Instead, the dispute must first be addressed through a decision by BIA, from which BIA’s appeal regulations provide an eventual right of appeal to the Board.

Under the Department of the Interior’s probate regulations, inventory disputes that arise during a probate proceeding must be referred to BIA for a decision. *See* 43 C.F.R. § 30.128(b); *see also Estate of William Earl Moore, Jr.*, 51 IBIA 98, 98-99 (2010); *Estate of Frances Marie Ortega*, 50 IBIA 322, 325-26 (2009).<sup>7</sup> As noted above, pursuant to 43 C.F.R. § 30.128, Appellant’s challenge to the inventory of the trust or restricted property included in Decedent’s estate was referred to the Superintendent by IPJ Yellowtail. The Superintendent responded with a memorandum to the IPJ stating that the property “should be transferred by deed” to Appellant, but as IPJ Jones noted, it was not apparent that the Superintendent complied with the requirements of 25 C.F.R. § 2.7 by sending a decision to interested parties and advising them of their right to appeal the Superintendent’s decision to the BIA Rocky Mountain Regional Director. IPJ Jones advised the Superintendent of these requirements and solicited a response from the Superintendent, which apparently was never provided.

It remains unclear whether the Superintendent ever issued a decision that he sent to Appellant and the interested parties, giving proper notice of their appeal rights under 25 C.F.R. Part 2. The probate decisions issued by IPJ Jones and by the ALJ, and Appellant’s appeal, all suggest that such a decision has never issued. Regardless, we lack jurisdiction to consider Appellant’s inventory challenge in the context of this probate appeal. Therefore, we dismiss this appeal and refer Appellant’s challenge to the Superintendent for consideration and action, as appropriate. If the Superintendent has not yet issued a decision to resolve Appellant’s inventory challenge, and given proper notice to all interested parties

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<sup>7</sup> The regulations specify that “[w]hen an error in the estate inventory is alleged, the OHA deciding official will refer the matter to BIA for resolution . . . .” 43 C.F.R. § 30.128 (2009). As we explained in *Estate of James Jones, Sr.*, the term “OHA deciding official” includes the Board, which is part of OHA. 51 IBIA 132, 135 (2010) (citing 43 C.F.R. § 4.1(b)(2) (2010)).

of their appeal rights, he must do so as required by § 30.128, IPJ Yellowtail's referral, and 25 C.F.R. § 2.7.<sup>8</sup>

### Conclusion

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 for lack of jurisdiction and refers the inventory dispute to the Superintendent for a response and for issuance of a decision in accordance with § 2.7 if no such decision has yet been issued.

I concur:

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// original signed  
Steven K. Linscheid  
Chief Administrative Judge

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// original signed  
Debora G. Luther  
Administrative Judge

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<sup>8</sup> If Appellant believes that such a decision has been unreasonably delayed, Appellant may submit a demand to the Superintendent, in accordance with the requirements of 25 C.F.R. § 2.8, for a decision.