



INTERIOR BOARD OF INDIAN APPEALS

Estate of Laura Iron Ring

54 IBIA 265 (02/14/2012)



Order, but we refer the matter to the Bureau of Indian Affairs (BIA) to address as an inventory dispute.

Upon receipt of this appeal, the Board issued an order to show cause (OSC) why this appeal should not be dismissed as outside the scope of the Modification Order, which Appellant did not appear to be challenging. *See* Pre-Docketing Notice and Orders for Appellant to Submit Notice of Appeal with Original Signature, to Complete Service, and to Show Cause, Nov. 3, 2011; 43 C.F.R. § 4.318 (scope of review). Appellant responded to the OSC, but she does not contest the Modification Order, nor does she argue that when the ALJ issued the Modification Order, he reopened any matters in the Order Approving Will. Appellant provides no basis for us to conclude that her appeal is within the scope of review for an appeal from the Modification Order, or that we otherwise would have jurisdiction to address her complaint. Thus, her appeal must be dismissed. *See Estate of Beverly Ann Vernwald*, 52 IBIA 350, 351 (2010) (because appellant challenged the original decision and not the modification order, his appeal was dismissed); *Estate of Caroline Davis*, 51 IBIA 101 (2010) (challenge to original probate decision was not within the scope of an appeal from the modification order); *Estate of Irma Ross*, 51 IBIA 21 (2009) (same).

Under 43 C.F.R. § 30.128, however, if an inventory dispute arises during a probate proceeding, the dispute must be referred to BIA for issuance of a decision. *See, e.g., Estate of Harrison Yazzie*, 51 IBIA 307, 310 (2010); *Estate of David Bravo*, 51 IBIA 198, 200-01 (2010). BIA's decision is then subject to appeal under BIA's appeal regulations found in 25 C.F.R. Part 2. An inventory dispute includes an allegation by an interested party that property should be added to the estate inventory. *See* 43 C.F.R. § 30.128(a)(3).

Appellant characterizes her appeal as questioning the validity and legality of the conveyance by Decedent of the 40-acre homesite. Appellant contends that her uncle, Joseph Red Thunder, improperly influenced Decedent to convey the property to him. Appellant argues that she and her surviving siblings are entitled to the property by virtue of Decedent's codicil.<sup>3</sup>

The Board has obtained a copy of the inventory for the probate of Decedent's estate in 1972, and the inventory makes clear that the 40-acre parcel was not included in the inventory of the estate. The Board understands Appellant to argue that the 40-acre parcel

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<sup>3</sup> Appellant states that the property currently is owned by Joseph Red Thunder's daughter, Kathleen Red Thunder Ventura.

should be added to Decedent's estate inventory so that the codicil may be given effect and the property distributed to and through Ione's estate to Ione's heirs.<sup>4</sup>

Fairly construed, we conclude that the substance of Appellant's appeal is an inventory dispute. Thus, although we dismiss the appeal for lack of jurisdiction because it is outside the scope of review for the Modification Order, we refer the matter to the BIA Rocky Mountain Regional Director (Regional Director) for issuance of an appealable administrative decision in accordance with 25 C.F.R. § 2.7.<sup>5</sup>

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 docket and dismisses this appeal, but refers the inventory dispute to the Regional Director for consideration and issuance of a decision in accordance with 25 C.F.R. § 2.7.

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>4</sup> Appellant was determined to be among the heirs to Ione's estate. *See* Order Determining Heirs, *In the Matter of the Estate of Virginia Ione LaPlante Red Thunder*, Nov. 11, 1976, Probate No. IP TC 27 R 76.

<sup>5</sup> We express no views on the merits of Appellant's claim, and also leave for BIA to decide, in the first instance, whether any threshold issues might preclude consideration of the claim.