



INTERIOR BOARD OF INDIAN APPEALS

Estate of Amos Sidney Bearshield, Jr.

55 IBIA 10 (05/03/2012)

Related Board case:
56 IBIA 244



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ESTATE OF AMOS SIDNEY)	Order Vacating Rehearing Order and
BEARSHIELD, JR.)	Remanding
)	
)	Docket No. IBIA 10-089
)	
)	May 3, 2012

Rebecca Bear Shield (Appellant) appealed to the Board of Indian Appeals (Board) from an Order Denying Rehearing (Rehearing Order) entered on March 31, 2010, by Indian Probate Judge (IPJ) Michael J. Stancampiano in the estate of Appellant’s father, Amos Sidney Bearshield, Jr. (Decedent).¹ Appellant contests the IPJ’s finding that LaCosta Odette Stone Arrow (LaCosta) is Decedent’s biological daughter and therefore one of his heirs. In the Rehearing Order, relying on new evidence that he had solicited, the IPJ denied Appellant’s petition to set aside the paternity determination in the IPJ’s initial March 11, 2009, probate decision (Decision). We vacate and remand the Rehearing Order because the IPJ did not give Appellant and other interested parties notice and an opportunity to respond to or challenge the new evidence relied upon by the IPJ in issuing the Rehearing Order.

Background

Decedent died intestate on September 24, 2005.² At the time of his death, Decedent was not married, and his trust estate included interests in property located on the Rosebud,

¹ Decedent, who was also known as Amos Bear Shield and Amos Sidney Bearshield, II, was a Rosebud Sioux. The probate number assigned to Decedent’s case in the Department of the Interior’s probate tracking system, ProTrac, is No. P000034917IP.

² Two letters were submitted as possible wills for Decedent. The IPJ disapproved a September 20, 2002, letter signed by Decedent because it was not witnessed by two disinterested adult witnesses. *See* 25 C.F.R. § 15.4. He also disapproved a July 11, 2005, letter as a will because it was not signed by Decedent. *See id.*

Standing Rock, and Crow Creek Reservations in South Dakota, and \$0.43 in his Individual Indian Money (IIM) Account.³

On October 16, 2008, the IPJ conducted a hearing at which some of Decedent's children disputed that LaCosta is Decedent's daughter. On March 11, 2009, the IPJ issued the Decision in which he found, based upon the evidence presented, including a paternity affidavit executed by Decedent, that LaCosta is Decedent's child.⁴ The IPJ found that Decedent had five children who survived him, including LaCosta, and determined that each of the five surviving children is entitled to share equally in Decedent's trust estate.

Appellant and one of Decedent's other daughters, Pauline Bear Shield, sought rehearing, contesting the IPJ's finding that LaCosta is Decedent's daughter. After receiving the requests for rehearing, the IPJ asked the Rosebud Agency of the Bureau of Indian Affairs to supplement the record with a statement from LaCosta's mother, Roberta I. Stone Arrow (Roberta).⁵ In a letter dated December 16, 2009, Roberta stated that Decedent is the father of LaCosta. Finding that this document, which the IPJ characterized as a sworn statement, added "considerable weight and great credibility" in favor of finding that LaCosta is Decedent's daughter, the IPJ entered his Rehearing Order and denied the requests for rehearing. Rehearing Order at 1-2. The IPJ did not provide Appellant or Decedent's other heirs any notice that the record would be supplemented with Roberta's letter, nor did he give them an opportunity to respond to Roberta's letter.

Appellant appealed the Rehearing Order to the Board. Appellant continues to dispute the IPJ's finding of Decedent's paternity of LaCosta.

Discussion

We vacate the Rehearing Order and remand this case to the Probate Hearings Division for further proceedings because the IPJ's reliance on new evidence, without

³ By the time the probate hearing was held, additional funds had been deposited into Decedent's IIM account.

⁴ Because Jason Stone Arrow's (Jason) birth certificate did not reflect paternity, the IPJ also examined evidence to make his finding that Jason is Decedent's son. Decedent's paternity of Jason has not been challenged in this matter.

⁵ Roberta did not attend the October 16, 2008, hearing, nor did she submit an affidavit regarding the paternity of LaCosta before the issuance of the Decision.

affording interested parties notice and an opportunity to respond, violated their due process rights.

The Board has previously explained that when a probate judge's failure to provide notice and an opportunity for parties to respond to evidence results in a due process violation, it is grounds for vacating a decision. *See, e.g., Estate of George Laverne Francis*, 54 IBIA 149, 151 (2011) (decision vacated because the Administrative Law Judge reopened the estate based on new or additional evidence to which interested parties were not given an opportunity to respond); *Estate of Melissa Heminger*, 53 IBIA 241, 244 (2011) (decision vacated because the IPJ reopened the estate without providing notice to interested parties of BIA's petition for reopening and the IPJ's determination that the petition was meritorious); *Estate of Thomas Boe*, 47 IBIA 138, 144 (2008) (because Appellant had no notice of previous proceedings or opportunity to provide evidence, and because her allegations and proffer of evidence were sufficiently specific to warrant a supplemental hearing, Board vacated denial of reopening and remanded for further proceedings).

In this case, the IPJ solicited additional evidence to supplement the record and then relied on that evidence to deny the requests for rehearing without giving Appellant and the other interested parties any notice that the record was being supplemented or giving them an opportunity to respond to the supplemental evidence. *See* Rehearing Order at 1. In fact, the IPJ expressly gave "considerable weight" to Roberta's letter, and mistakenly characterized it as a "sworn statement." *Id.*⁶ In conjunction with her notice of appeal, Appellant has proffered evidence, including two affidavits, intended to rebut Roberta's letter and to further support her contention that LaCosta is not Decedent's daughter. *See* Notice of Appeal, Apr. 28, 2012, at 1-2 (alleging that LaCosta coerced her mother into signing the letter and discussing affidavits stating that LaCosta is not Decedent's daughter). The lack of notice to Appellant regarding the supplementation of the record deprived her of the opportunity to have the IPJ consider such evidence before making his determination.

When the IPJ solicited and obtained new evidence in response to the petitions for rehearing, it was incumbent upon him to provide notice to interested parties and to afford them an opportunity to respond. *See Estate of Francis*, 54 IBIA at 151 (citing *Matthews v. Eldridge*, 424 U.S. 319, 348-49 (1976) (summarizing the requirements of procedural due process)). And "the Board is not the proper forum for considering and weighing, in the first instance, objections and counter evidence offered in rebuttal to that evidence on which the probate judge relied." *Estate of Francis*, 54 IBIA at 152. Instead, we must vacate the

⁶ The letter is notarized, but it does not purport to be a sworn statement. *See* Letter from Roberta I. Stone Arrow to IPJ, Dec. 16, 2009 (Administrative Record Tab 16).

Rehearing Order and remand the case to the Probate Hearings Division for further proceedings, including consideration of the evidence proffered by Appellant in response to Roberta's letter.

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 vacates the IPJ's Rehearing Order and remands this matter to the Probate Hearings Division for further proceedings consistent with this decision.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debora G. Luther
Administrative Judge