INTERIOR BOARD OF INDIAN APPEALS

Estate of Byron Keith Other Bull

55 IBIA 115 (06/14/2012)

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 BYRON KEITH OTHER BULL	)	Order Vacating Decision and Remanding
	)	
	)	Docket No. IBIA 10-082
	)	
	)	June 14, 2012

Rachel Other Bull, Jaime Other Bull, and Cameron Other Bull (Appellants) challenge an Order Removing Improperly Included Property from Estate Inventory (Modification Order), entered on March 25, 2010, by Indian Probate Judge (IPJ) Albert C. Jones in the estate of Appellants' father, Byron Keith Other Bull (Decedent), deceased Crow Indian, Probate No. P000017142IP. The Modification Order removed interests in Allotments No. 202-157-B (Allotment 157-B) and No. 202-M157-F (Allotment M157-F), located on the Crow Reservation, from Decedent's estate inventory pursuant to the request of the Superintendent of the Crow Agency (Superintendent), Bureau of Indian Affairs (BIA).[1] Appellants argue that they were not provided notice of the proposed modification or an opportunity to be heard on the matter, in violation of their due process rights.

We do not reach the issue of whether Appellants were afforded appropriate due process because we conclude that we must vacate the Modification Order and remand this matter for another reason: BIA's request was not properly supported. With respect to Decedent's interest in Allotment 157-B, BIA's request was based on a 1999 administrative order issued by the manager of BIA's Rocky Mountain Land Titles and Records Office (LTRO) in the estate of Decedent's mother, Margaret Other Bull (Margaret), from whom Decedent inherited his interest in Allotment 157-B. The administrative order purported to remove Margaret's interest in Allotment 157-B from her estate inventory. On its face, the administrative order is invalid because the LTRO was not authorized to remove trust

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[1] Allotment 157-B is the surface interest in the N½ SW¼ of Section 28, Township 1 South, Range 35 East, Principal Montana Meridian and the W½ NW¼ of Section 29, Township 2 South, Range 32 East, Montana Principal Meridian, containing 160 acres, more or less.

Allotment M157-F is the mineral interest underlying the W½ NW¼ of Section 29, Township 2 South, Range 32 East, Montana Principal Meridian, containing 80 acres, more or less. Thus, this mineral interest lies under one half of Allotment 157-B.

property from Margaret's estate inventory. With respect to Decedent's (and Margaret's) interest in Allotment M157-F, the record is devoid of any explanation for the removal of this interest. It is not mentioned in the 1999 administrative order or elsewhere in Decedent's probate record.

Background

Margaret died in 1988. Her trust estate was probated in 1989 and, by order entered May 25, 1989, was distributed in equal shares to her 4 children, including Decedent. *Estate of Margaret Hill Other Bull*, No. IP BI 382A88 (May 25, 1989) (Probate Record (PR) Tab 7). Shortly thereafter, on June 29, 1989, the LTRO manager issued an administrative modification (1989 administrative modification) to add property to Margaret's estate inventory, including a 1/12 undivided interest in Allotment 157-B. PR Tab 7. The 1989 administrative modification set forth the justification for adding the interest as "1/12 Thru 14487957."[2] The 1/12 interest in Allotment 157-B then was distributed pursuant to the May 25, 1989, probate order in Margaret's estate, i.e., in four equal 1/48 shares to each of Margaret's four children, including Decedent. No mention of Allotment M157-F is made in the 1989 administrative modification.

Ten years later, in 1999, the LTRO manager issued an order in which he purported to "vacate" the 1989 administrative modification and thereby remove Allotment 157-B from Margaret's estate inventory (1999 administrative order). PR Tab 7. According to the 1999 administrative order, Margaret "had no interest in [Allotment] 157-B at the time of her death." No further explanation or documentation was provided to show, e.g., that Margaret was not entitled to a "1/12 [interest] through 14487957," as set forth in the 1989 administrative modification, or that Margaret had disposed of the interest in the allotment during her lifetime. The 1999 administrative order apparently was not entered in the Department of the Interior's (Department's) Trust Asset and Accounting Management System (TAAMS), which is the Department's computerized land records system. Allotment M157-F is not mentioned in the 1999 administrative order.

Decedent died in 2004 and his trust property passed to his widow, Marlene Blackburn Other Bull (Marlene).[3] Probate Decision, Apr. 21, 2005 (PR Tab 10). Because

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[2] We cannot determine whether the number 14487957 is an Indian probate docket number or whether it refers to a non-probate action or document.

[3] Marlene died on September 2, 2009. *Estate of Marlene Other Bull*, No. P000080235IP (Apr. 15, 2011). Marlene's children, Appellants herein, shared equally in her estate.

the 1999 administrative order had not been entered in TAAMS, the 1/48 interest in Allotment 157-B remained in Decedent's estate inventory at the time his estate was probated. At Decedent's death, this interest was thus among the property interests that transferred to Marlene. Decedent's interest in Allotment M157-F also transferred to Marlene.[4]

In January 2010, the LTRO manager issued a memorandum to the Superintendent in which she stated that interests in Allotments 157-B and M157-F were "erroneously attached to the decedent's inventory" and requested that the Superintendent seek an order from an administrative law judge (ALJ) removing these interests from Decedent's estate. *See* Memorandum from LTRO manager to Superintendent, Jan. 28, 2010 (PR Tab 7). She explained that Margaret "incorrectly received" her interest in Allotment 157-B and that BIA had started, but not completed, the process to remove it from Margaret's estate in TAAMS, for which reason the interest carried over into Decedent's estate. *Id*. The LTRO manager provided no explanation for seeking the removal of Decedent's interest in Allotment M157-F. *Id*. In an undated memorandum (Petition), the Superintendent submitted a formal request to the Department's Office of Hearings and Appeals to remove the interests in Allotments 157-B and M157-F from Decedent's estate. *See* Petition, undated (PR Tab 6). In the Petition, the Superintendent repeated the LTRO manager's explanation for removing Allotment 157-B. An attached distribution list indicates that copies of the Petition were sent to each of the Appellants.

Without soliciting or receiving any objections to the Petition, the IPJ issued the Modification Order on March 25, 2010, removing the two interests from Decedent's estate inventory. The Modification Order recounted the facts and analysis as they had been presented in the Petition and in the LTRO manager's memorandum to the Superintendent. Appellants appealed and filed an opening brief.[5] No other briefs were filed.

Standard of Review

The Board reviews legal determinations and the sufficiency of the evidence *de novo*. *Estate of Martha Matilda Bordeaux*, 53 IBIA 53, 56 (2011). Appellants bear the burden of proving error in the IPJ's decision. *See id*. But the Board is vested with the authority to

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[4] Decedent inherited a 1/48 interest in Allotment M157-F from Margaret. *See* Title Status Report for Decedent's Estate (PR Tab 7 at 7 (unnumbered)).

[5] Decedent's siblings also appealed the Modification Order, but their appeals were dismissed for failure to prosecute. *See Estate of Byron Keith Other Bull*, 52 IBIA 259 (2010).

"correct a manifest injustice or error where appropriate." 43 C.F.R. § 4.318; *Estate of Anthony "Tony" Henry Ross*, 44 IBIA 113, 119-20 (2007).

Discussion

Appellants claim that they were denied notice of and an opportunity to respond to the Modification Order before it was issued, in violation of the Due Process Clause of the 14th Amendment to the United States Constitution. *See* Opening Brief at 1-2. As relief they seek a hearing on the matter and an investigation into the propriety of removing the interests from Decedent's estate inventory. *Id.* at 2. However, we need not reach this issue because we find that the record before the IPJ did not support removal of the property interests in the first place, and therefore we conclude that the IPJ manifestly erred in issuing the Modification Order.

In ruling on a petition to modify an estate inventory to remove land interests, the probate judge is required to "review the merits of the petition and the record of the title from the LTRO on which the modification is to be based [and] enter an appropriate decision." 43 C.F.R. § 30.127(b). Thus, the Superintendent had a duty to submit a properly supported Petition and the IPJ had a corresponding duty to examine the Petition to determine whether it was validly supported and otherwise meritorious.

Here, the evidence produced by the Superintendent in support of his Petition was an *invalid* administrative order purporting to remove Margaret's interest in Allotment 157-B from her estate inventory. The LTRO had no authority to *remove* property from Margaret's estate, and it could not do so by simply purporting to vacate one of its administrative modifications adding property to the closed estate.[6] Section 150.7(b)(2) of 25 C.F.R. required the LTRO, upon discovering improperly included property in the inventory of a closed estate, to notify the Superintendent that a modification *by an ALJ* was needed. Similarly, 43 C.F.R. § 4.273 (1999) (now codified at 43 C.F.R. § 30.127) mandated that improperly included property be removed from a closed estate via a petition to an ALJ. These requirements remain in place today. And there is no order from a probate judge in

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[6] The 1989 administrative modification *adding* the property interest was, in contrast, authorized by 25 C.F.R. § 150.7(b)(1). But that provision does not authorize *removal* of property from an estate inventory through an administrative modification of a probate order. And vacating a modification that added property to a closed estate effectively *removes* the property from the estate inventory. Thus, while the LTRO might otherwise be able to revoke, rescind, or vacate other memoranda it may issue, it did not have the same authority once the property had been added to a closed estate.

the record before us that removed either Allotment 157-B or M157-F from Margaret's estate inventory.[7]

The IPJ relied upon BIA's Petition and the 1999 administrative order in Margaret's estate to order the removal of Decedent's interests in Allotments 157-B and M157-F from his estate. But, the IPJ should have recognized that the LTRO lacked authority to remove trust property from Margaret's estate and, thus, the IPJ should have rejected BIA's proffer of the 1999 administrative order as support for the removal of these interests from Decedent's estate inventory. Moreover, the 1999 administrative order makes no mention of Allotment M157-F nor does any other explanation exist in the record for the removal of this interest from Decedent's estate.

Even if the IPJ were inclined to consider the Superintendent's request as one for an order modifying Margaret's estate inventory as well as Decedent's, the 1999 administrative order itself is incomplete. It does not mention Allotment M157-F, much less support the removal of the interest in this allotment from Margaret's estate inventory.[8] And there is no explanation of or evidence showing why Margaret's interest in Allotment 157-B should be removed. BIA must provide a cogent basis, supported by evidence, to justify its request to remove property from an estate inventory. It is not enough for BIA to simply assert, e.g., that Margaret "incorrectly" received an interest in the subject property or that Margaret "had no interest in" a certain allotment at the time of her death. These statements are conclusory. BIA must adduce a factual basis for the removal of interests from Margaret's estate.

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[7] We cannot determine from the record whether the LTRO has, in fact, changed its title records to conform to the invalid 1999 administrative modification. Until proper procedures are followed for determining, with notice to affected parties, whether or not the interests in Allotments 157-B and M157-F are or are not properly included in Margaret's estate inventory, BIA may not rely on its title records as accurate with respect to these interests.

[8] We note that Allotment M157-F is the mineral interest for half of Allotment 157-B, and if Margaret did not have an interest in Allotment 157-B when she died, she might not have had an interest in the mineral estate on part of the allotment if, e.g., the surface and mineral estates were not severed prior to her death. But, because the two allotments are independent interests, BIA must separately establish that Allotment M157-F did not belong in Margaret's estate inventory at the time of her death.

Therefore, we conclude that the IPJ manifestly erred in relying upon BIA's 1999 administrative order to grant BIA's request for removal of Decedent's interests in Allotments 157-B and M157-F from his estate. Given our disposition of Appellants' appeal on this ground and our remand for further proceedings, we need not reach Appellants' argument that they were denied due process.

Conclusion

The IPJ issued the Modification Order to remove Allotments 157-B and M157-F based on an invalid administrative order, and nothing in the record otherwise supports the removal of these interests from Decedent's estate. Thus, we conclude that the IPJ manifestly erred in issuing the Modification Order.

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 Modification Order and remands this matter to the Probate Hearings Division for further proceedings consistent with this order.

I concur:

// original signed
Debora G. Luther
Administrative Judge

// original signed
Steven K. Linscheid
Chief Administrative Judge