



INTERIOR BOARD OF INDIAN APPEALS

Estate of Caroline Arrive

55 IBIA 218 (08/03/2012)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ESTATE OF CAROLINE ARRIVE) Order Docketing and Dismissing
) Appeal
)
) Docket No. IBIA 12-132
)
) August 3, 2012

Stanley Arrive, Jr. (Appellant) appealed to the Board of Indian Appeals (Board) from an Order Denying Rehearing (Rehearing Order), entered on June 15, 2012, by Administrative Law Judge (ALJ) Earl J. Waits in the estate of Caroline Arrive (Decedent).¹ We docket but dismiss this appeal because the ALJ provided accurate appeal instructions for filing an appeal with the Board, and the appeal was not filed with the Board within the 30-day period allowed for filing an appeal following the Rehearing Order.²

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. 43 C.F.R. § 4.321(a); *Estate of Franklin Porter*, 52 IBIA 243, 244 (2010); *Estate of John Kenneth Flood*,

¹ Decedent, who was also known as Caroline Hardin and Caroline Moon, was a Goshute Indian. The probate number assigned to Decedent’s case in the Department of the Interior’s probate tracking system, ProTrac, is No. P000077046IP.

² The Rehearing Order left in place the ALJ’s September 2, 2011, Decision distributing Decedent’s estate according to her December 14, 1987, will (Will). In the Decision, the ALJ held that a document, entitled “Attached List of Caroline Moon Arrive” (Attachment), which apparently purported to devise Decedent’s trust property in Orury, Utah, to Appellant, could not legally be considered part of the Will. The ALJ explained that the Will states that a list of *personal property* that Decedent intended to give to other people would be incorporated as part of the Will, but because the Attachment concerned *trust real property*, and not personal property, it could not be considered part of the Will. The ALJ further stated that the Attachment itself could not be considered a separate will because it was not witnessed by the requisite two disinterested witnesses. Appellant, Decedent’s son, states that he does not understand why his request for a rehearing was not granted, and that his mother intended to devise her property in Utah to him and his children. See Notice of Appeal at 1 (unnumbered).

51 IBIA 225, 225 (2010). The effective date of filing a notice of appeal with the Board is the date of mailing (if sent by U.S. mail) or the date of personal delivery (if not mailed). 43 C.F.R. § 4.310(a). Untimely appeals must be dismissed. *Id.* § 4.321(a); *Estate of Porter*, 52 IBIA at 244; *Estate of Flood*, 51 IBIA at 225.

The ALJ's Rehearing Order included accurate appeal instructions and included a certification that it was mailed to the listed interested parties (including Appellant) on June 15, 2012. Calculated from that mailing date, the deadline for filing an appeal with the Board expired on July 16, 2012.³ Appellant mailed his appeal to the Board on July 17, 2012, as shown on the U.S. Postal Service-generated postage affixed to the envelope. Thus, the appeal is untimely and must be dismissed for lack of jurisdiction.

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.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

//original signed
Debora G. Luther
Administrative Judge

³ The 30th day after the date the decision was mailed was Sunday, July 15, 2012. When the last day for filing a document with the Board falls on a Saturday, Sunday, or holiday, the time period is automatically extended to the next business day, which in this case was Monday, July 16, 2012. 43 C.F.R. § 4.310(c)(2).