



INTERIOR BOARD OF INDIAN APPEALS

Estate of James Bongo, Jr.

55 IBIA 227 (08/08/2012)



# 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 JAMES BONGO, JR.            )     Order Affirming Denial of Reopening  
                                                          )       
                                                          )     Docket No. IBIA 10-125  
                                                          )       
                                                          )     August 8, 2012

Sandra A. Popa (Appellant) appealed to the Board of Indian Appeals (Board) from an Order Denying Petition to Reopen Estate (Order Denying Reopening) entered on July 15, 2010, by Administrative Law Judge (ALJ) Richard J. Hough in the estate of James Bongo, Jr., a.k.a. James Eldred Bongo (Decedent).<sup>1</sup> The ALJ denied a request by Appellant and the Great Lakes Agency Acting Superintendent (Superintendent), Bureau of Indian Affairs (BIA), to reopen Decedent’s estate on the grounds that Appellant believes that her mother, Mata Caroline Bungo (Mata), was the natural daughter of Decedent and was erroneously omitted from a June 26, 1939, Order Determining Heirs for his estate. The ALJ denied reopening because Appellant had not shown that she was diligent in pursuing her alleged rights, through Mata, to a share of Decedent’s closed estate.<sup>2</sup> We find no error in the ALJ’s conclusions. But even if Appellant had shown diligence, we would still affirm the denial because Appellant’s mother was not diligent in pursuing *her* claim to the estate and the mother’s lack of diligence is imputed to Appellant. We therefore affirm the Order Denying Reopening.

## Background

Decedent died in 1931 and his trust estate was probated in 1939. The 1939 Order Determining Heirs found that Decedent was survived by one child, Russell Bongo (Russell), who inherited all of Decedent’s trust estate. The trust property has since descended through multiple generations of Russell’s heirs.

Mata, Appellant’s mother, was born in 1926 and her birth certificate lists as her parents Aldred James Bungo and Agnes Martha Maas. According to Appellant, Mata lived

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<sup>1</sup> Decedent was a Bad River Chippewa whose estate was assigned Probate No. P000084289IP (formerly No. 30345-39).

<sup>2</sup> The Superintendent did not appeal from the Order Denying Reopening.

with her father on the Bad River Reservation until age three, when she was taken in by her maternal grandparents. Opening Brief (Br.) at 1; Petition for Reopening (Petition) (Administrative Record (AR) Tab 6).

Appellant asserts that “Aldred James Bungo” was the same person as “James Eldred Bongo, Jr.,” meaning that Mata was Decedent’s daughter. Appellant claims that Mata was improperly excluded from sharing in Decedent’s trust estate and seeks reopening of Decedent’s probate to add Mata as an heir and to redistribute Decedent’s trust assets accordingly.<sup>3</sup>

The record shows that Mata identified her father as “James Bungo” as early as 1947. That year, Mata applied to change information in her social security record to reflect that her father’s name was “James Bungo.” *See* Request for Change in Records, Oct. 4, 1947 (Appellant’s Br., unnumbered attach.). And Mata apparently believed that her father may have been affiliated with the Bad River Band of the Lake Superior Tribe of Chippewa Indians (Tribe) no later than 1973: According to Appellant, Mata contacted the Tribe in 1973 seeking information about her father, but she never followed up after being told by the Tribe that she should return with a copy of her birth certificate in order to pursue the inquiry. Opening Br. at 1; *see also* Petition (AR Tab 6). There is no evidence in the record that Mata ever consulted with or sought information from BIA about Decedent.

According to Appellant’s brief, Appellant did not learn of her possible connection to Decedent until March 2008.<sup>4</sup> Opening Br. at 2. Around that time, Appellant inquired with the Tribe about enrolling, but apparently was too late to meet an April 2009 deadline for submitting information. *Id.* Appellant states that she met the next deadline by submitting her enrollment-related information to the Tribe on February 25, 2010. *Id.* At the same time, Appellant prepared a petition to reopen Decedent’s estate. The Superintendent transmitted Appellant’s petition to the ALJ by cover memo dated February 25, 2010, in which the Superintendent also requested reopening to add Mata as an heir, without further discussion. *Id.*; AR Tabs 4 & 5.

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<sup>3</sup> Appellant states that she is Mata’s only child, and we assume, solely for purposes of this decision, that Appellant would be the ultimate beneficiary of an interest in Decedent’s estate if it were to pass to Mata’s estate.

<sup>4</sup> It is not clear when or how Appellant learned of Mata’s 1973 inquiry with the Tribe. Appellant contends that Mata did not follow up with the Tribe; she “was mad because *she said* her father . . . did not come to look for her,” but Appellant does not say when or from whom she obtained this information. Petition (AR Tab 6) (emphasis added). Mata died in 2005.

The ALJ, even taking as true Appellant's assertion that Decedent was Mata's father, denied the Petition.<sup>5</sup> The ALJ cited the standard for reopening a probate case that had been closed for more than 3 years, which requires that a petitioner file for reopening within 1 year from discovery of the alleged error and establish that an error occurred which, if not corrected, would result in "manifest injustice." Order Denying Reopening at 1-2 (citing 43 C.F.R. § 30.242 (2010), now codified at 43 C.F.R. § 30.243); *Estate of Francis Rock*, 38 IBIA 297 (2003), and cases cited therein. The ALJ concluded that Appellant "had the knowledge necessary to question the [Order Determining Heirs] for many years prior to actually filing the [P]etition and failed to demonstrate that the delay in requesting relief was not caused by a lack of diligence on her part." Order Denying Reopening at 2 (presuming that Appellant received the information connecting her to Decedent from Mata before her death in 2005). The ALJ thus concluded that because Appellant had not demonstrated that she had been diligent in pursuing her rights, it was improper to reopen Decedent's probate over 70 years after it was closed.

Appellant appealed the ALJ's Order Denying Reopening to the Board and filed a brief in support. Appellant argues that Mata exercised diligence in seeking the identity of her father, although she abandoned her investigations after her initial inquiry to the Tribe in 1973. Appellant also contends that, contrary to a statement by the ALJ in the Order Denying Reopening, Appellant did not learn that Decedent may have been Mata's father until after Mata had died. Appellant claims that she first learned in March 2008 that Decedent may have been Mata's father, and, after learning in February 2010 of the potential existence of trust assets, that she diligently pursued her claim by seeking reopening.

### Discussion

Appellant bears the burden of showing error in the Order Denying Reopening. *See Estate of Carl Sotomish*, 52 IBIA 44, 47 (2010). Reopening a probate case that has been closed for more than 3 years requires a showing that "manifest injustice" would result if an error of fact or law in the case were not corrected. 43 C.F.R. § 30.243(a)(2)(ii).<sup>6</sup> The Board has interpreted the "manifest injustice" requirement to require a petitioner to

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<sup>5</sup> Decedent's relationship to Mata was never conclusively established. Affidavits from Decedent's half-sisters and two disinterested witnesses that were submitted for his probate in 1939 repeatedly state that Decedent had only one child: Russell. AR Tab 13 at 3; AR Tab 14 at 4, 5; AR Tab 15 at 6.

<sup>6</sup> As noted earlier, § 30.243 also contains a strict 1-year limitation for an individual to file a petition for reopening, after discovery of the alleged error, but the 1-year period does not apply to BIA. In the present case, the Superintendent submitted a separate affidavit, executed by a BIA employee, requesting reopening.

demonstrate that she has acted with due diligence in pursuing her claim. *Sotomish*, 52 IBIA at 46. This requires Appellant to “provide compelling proof that [s]he exercised due diligence in pursuing h[er] rights as a possible heir to Decedent’s estate once [s]he discovered that [s]he might be Decedent’s [granddaughter].” *Id.* at 45.

Appellant concedes that she discovered the information allegedly connecting her to Decedent no later than March 2008, but she did not seek reopening until February 2010. Thus, Appellant did not contact BIA until 2 years after she admittedly learned of her possible relationship to Decedent. In *Estates of Angus*, the Board held that waiting 2 years to challenge a 34-year old conveyance after an appellant received the information necessary to do so was “not reasonable.” *Estates of Albert Angus, Sr. and George Angus*, 46 IBIA 90, 100 (2007). As the Board observed in that case, as more time passes after an estate has been closed, the interest in its finality increases. *Id.* at 98. Here, the undisputed facts show that Appellant waited 2 years after learning of her possible connection to Decedent before seeking reopening for an estate that had been closed for over 70 years.

Appellant argues, however, that while she learned her alleged grandfather’s name and tribe in 2008, she did not learn that his estate included trust assets until 2010 and she diligently pursued her claim upon learning of the trust assets. But finding out about the existence of trust assets is not the triggering event for determining whether an individual exercised reasonable diligence. Upon learning of her possible connection to Decedent, Appellant “knew or should have known” that if Mata were Decedent’s daughter, she “might have been entitled to a share of Decedent’s estate because it is common knowledge that the property of a deceased person may pass to that person’s heirs.” *Sotomish*, 52 IBIA at 47.

We conclude that Appellant has not met her burden to show that the ALJ erred in deciding that it would be improper to reopen Decedent’s estate after 70 years, because she failed to demonstrate reasonable diligence in pursuing her alleged rights to a share of the estate.

But even if we accepted Appellant’s argument that she had exercised reasonable diligence, we would still affirm the Order Denying Reopening. While “causes of action concerning real property survive the death of the claimant and may be acted upon by [her] heirs[,] . . . [c]laimants and their heirs may be estopped [when they] . . . have failed to exercise diligence in investigating and pursuing their claims.” *Angus*, 46 IBIA at 98. Further, an heir’s interest is derived from the original claimant’s, and it follows that an original claimant’s lack of diligence is imputed to her heirs. *Id.* (citing *Estate of Lean Woman (Sankey)*, 25 IBIA 60, 62 (2000)).

Here, Mata knew Decedent’s name and his possible affiliation with the Tribe no later than 1973 (and the name alone as early as 1947), but failed to follow up on her initial inquiry when the Tribe told her to return with her birth certificate. Opening Br. at 1 (Mata

“never pursued bringing documents to this tribe”); Petition (AR Tab 6) (“nor did [Mata] gather records to follow[]up [on] the request [for] information”). And regardless of how the Tribe responded, Mata could readily have made inquiries to BIA regarding Decedent and any probate records related to his estate. There is no evidence in the record that she did so. Mata failed to exercise diligence in investigating and pursuing her claim of possible heirship to Decedent and that failure of diligence is now imputed to Appellant. *See Angus*, 46 IBIA at 100. We therefore would affirm the Order Denying Reopening even if Appellant had been diligent in pursuing her claim because Mata abandoned her inquiry and both Mata’s and Appellant’s potential claims to Decedent’s estate were extinguished by Mata’s lack of diligence.

Decedent’s probate has been closed for over 70 years, and, as the ALJ recognized, the interest in finality is substantial. Reopening would require “compelling proof” of both Mata’s and Appellant’s diligence in pursuing their claims of heirship. *See Sotomish*, 52 IBIA at 45. Mata abandoned her inquiry in 1973, and Appellant waited at least 2 years after learning of her alleged relationship to Decedent before she filed the Petition. Because neither Mata nor Appellant exercised diligence in pursuing their inquiries, we affirm the ALJ’s denial of reopening.

One additional observation is appropriate in this case. As noted above, the Superintendent not only assisted Appellant by transmitting her petition for reopening to the ALJ, an action with which we do not take issue, but he also submitted a BIA request for reopening in the form of an affidavit by a BIA employee. But the affidavit stated nothing more than that the estate should be reopened to add an omitted heir, meaning Mata. BIA provided no argument or other evidence to support reopening the estate after 70 years, i.e., no argument for why reopening outweighs the interest in finality and no argument for why leaving the estate closed would result in a manifest injustice. Whatever assistance BIA may wish to provide to individuals seeking to reopen a closed estate, if BIA submits its own request, it is incumbent upon BIA to fully justify its request and explain in clear and detailed terms why BIA believes that the standard in the regulations for reopening has been met.

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 affirms the Order Denying Reopening.

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