



INTERIOR BOARD OF INDIAN APPEALS

Estate of Shirley Rose Thayer

55 IBIA 237 (08/28/2012)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
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ARLINGTON, VA 22203

ESTATE OF SHIRLEY ROSE)	Order Docketing and Dismissing
THAYER)	Appeal
)	
)	Docket No. IBIA 12-106
)	
)	August 28, 2012

Lisa F. Thayer (Appellant) appealed to the Board of Indian Appeals (Board) from a Modification Order to Add Omitted Property (Modification Order) entered on May 24, 2012, by Indian Probate Judge (IPJ) Thomas K. Pfister in the estate of Appellant’s mother, Shirley Rose Thayer (Decedent).¹ The Modification Order added to Decedent’s estate inventory property that was not previously included in the inventory when the Order Determining Heirs, Approving Will, and Decree of Distribution (Decision) for Decedent’s estate was issued on July 11, 2003.² The additional property is located on the Lac Courte Oreilles Reservation in Wisconsin and was distributed in the Modification Order to Decedent’s sole devisee, Donna L. Thayer, another daughter, in accordance with the Decision approving Decedent’s will.³ We dismiss this appeal because Appellant failed to raise her objection when the IPJ gave notice of the proposed modification and ordered any party who objected to respond, and because Appellant’s objection is based on her disagreement with the Decision’s approval of Decedent’s will, which is outside the scope of the Modification Order.

Upon receiving Appellant’s appeal, the Board ordered Appellant to show cause why her appeal should not be summarily dismissed because it appeared that she had failed to

¹ Decedent, a.k.a. Shirley Rose Corbine, was a Lake Superior Chippewa (Lac Courte Oreilles Band). The probate number assigned to Decedent’s case in the Department of the Interior’s probate tracking system, ProTrac, is No. P000018908IP.

² The Decision was issued by Administrative Law Judge (ALJ) Frederick W. Lambrecht.

³ The Modification Order was issued after the Bureau of Indian Affairs (BIA) requested that the estate inventory be modified to add and to distribute property that Decedent inherited from the estate of Blanche Corbine. The Modification Order added to the inventory and distributed Decedent’s fractional interests, ranging from 0.0016666667 to 0.0000192901, in 13 tracts.

respond to a notice that the IPJ had sent to interested parties, informing them of the proposed modification and providing them with an opportunity to object. Order for Appellant to Show Cause, June 11, 2012, (OSC) at 2-3; *see* Modification Order at 1 (“No responses to the [IPJ’s order] have been received within the time allowed.”). In addition, because it appeared that Appellant was seeking to revisit the 2003 Decision approving Decedent’s will by challenging the distribution of the additional property pursuant to the 2003 Decision, the Board ordered Appellant to clarify the grounds for her appeal. The Board asked Appellant whether she was seeking to appeal the IPJ’s decision to modify the estate inventory (i.e., to add property), or whether she sought to challenge the earlier Decision approving Decedent’s will. OSC at 3. Specifically, the Board ordered Appellant to identify what errors, if any, she contends the IPJ committed in the Modification Order. *Id.*

Appellant responded, arguing that she wishes to challenge both the Modification Order and the original Decision, because, according to Appellant, Decedent would have wanted her property to be distributed among all of Appellant’s siblings, and not to a sole devisee. Letter from Appellant to Board, June 27, 2012. Appellant does not address, however, why she should be permitted to challenge the Modification Order when she had failed to raise her objection with the IPJ when provided an opportunity to do so.

Although Appellant argues that she is challenging both the Modification Order and the original Decision, her only purported challenge to the Modification Order is dependent upon a challenge to the Decision approving Decedent’s 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. The focus of Appellant’s appeal is on the ALJ’s approval of Decedent’s will in the Decision. *See* Letter from Appellant to Board, June 27, 2012 (arguing that Decedent “would have wanted her estate to be distributed equally, among siblings” and not solely to Donna L. Thayer as set forth in Decedent’s will). Appellant’s challenge to the Modification Order is dependent on reopening the issue of the will approval in the Decision. Accordingly, her appeal must be dismissed as outside the scope of review for the Modification Order. *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 the original probate decision was not within the scope of an appeal from the modification order); *Estate of Irma Ross*, 51 IBIA 21 (2009) (same).⁴

⁴ Even if we were to construe Appellant’s appeal as directed, independently, at the Modification Order, we would then summarily affirm the Modification Order because Appellant failed to preserve any arguments for appeal by failing to present an objection to
(continued...)

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 dismisses this appeal.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

//original signed
Debora G. Luther
Administrative Judge

(...continued)

the IPJ, *see Estate of Edwin Melvin Long Soldier*, 52 IBIA 239, 240 (2010), nor does she allege any error in the Modification Order, except to the extent the additional property is distributed according to the Decision.