



INTERIOR BOARD OF INDIAN APPEALS

Estate of Selwyn Wade Drum

56 IBIA 50 (12/11/2012)

which are outside the scope of the Modification Order. But because Appellant also seeks to reopen the estate, we refer this matter and her pleadings to the Probate Hearings Division for consideration.

On receipt of the appeal, the Board ordered Appellant to show cause why the issues she apparently seeks to raise are not outside the scope of an appeal from the Modification Order. Order for Appellant to Show Cause, Oct. 19, 2012, (OSC) at 2. Appellant's notice of appeal argued that she should be "considered as the legal and rightful heir to [Decedent] as his legal spouse." Notice of Appeal at 1 (unnumbered). But as the Board explained in the OSC, the Modification Order does not purport to reopen or revisit the approval of the will or determination of the will beneficiaries. OSC at 3. Instead, the issue of who was entitled to receive property in Decedent's estate was resolved 16 years earlier in the Order Approving Will. *Id.*

Appellant's response to the OSC provides no basis for us to conclude that her appeal is within the scope of review for an appeal from the Modification Order. Appellant does not allege that the ALJ erred in the Modification Order. Rather, the focus of Appellant's appeal is on the approval of Decedent's will. *See* Letter from Appellant to Board, Nov. 19, 2012, at 1 (questioning Decedent's state of mind and asserting that Decedent's will was changed to include only his immediate siblings shortly before his death). Appellant's challenge to the Modification Order is dependent on reopening the issue of the will approval and the determination of Decedent's will beneficiaries in the Order Approving Will. 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).

Appellant's response makes clear, however, that she seeks to reopen Decedent's estate. Letter from Appellant to Board, Nov. 19, 2012, at 2 (Appellant requests "a reopening of the hearing regarding [her] deceased spouse"). The Board does not have original jurisdiction to reopen an estate. *Estate of Rita Marie Peterson*, 54 IBIA 272, 272 (2012). Thus, the Board refers this matter to the Probate Hearings Division for consideration of Appellant's pleadings under 43 C.F.R. §§ 30.243–30.246.

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 but dismisses this appeal. The

Board refers Appellant's appeal to the Probate Hearings Division for consideration as a petition for reopening.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

//original signed
Debora G. Luther
Administrative Judge