



INTERIOR BOARD OF INDIAN APPEALS

Estate of Marie A. Wilkie

56 IBIA 211 (03/14/2013)



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 MARIE A. WILKIE)	Order Affirming Rehearing Order,
)	Referring Inventory Dispute to Bureau
)	of Indian Affairs, and Dismissing
)	Appeal in Remaining Part
)	
)	Docket No. IBIA 12-134
)	
)	March 14, 2013

Juliane Wilkie Gillette (Appellant) appealed to the Board of Indian Appeals (Board) from an Order Denying Rehearing and Referring Inventory Challenge (Rehearing Order),¹ entered on June 22, 2012, by Indian Probate Judge (IPJ) Albert C. Jones in the estate of Appellant’s mother, Marie A. Wilkie (Decedent).² Appellant contends that the inventory of Decedent’s estate is incomplete or contains errors and that the Rehearing Order denied Appellant her due process rights because it does not include land descriptions and more specific identification of acreage in the order itself.

We affirm the Rehearing Order³ because the IPJ properly referred Appellant’s challenge to the estate inventory to the Bureau of Indian Affairs (BIA) for a decision, and because the IPJ’s order did not deprive Appellant of due process: it was sufficient for the IPJ to incorporate in his orders, by reference, BIA’s inventory of Decedent’s estate. BIA’s inventory identifies the trust or restricted property in the estate, includes legal descriptions of each tract, and includes the size of the interests owned in each tract by Decedent. To the extent that Appellant seeks to pursue her inventory challenges or to assert new ones in this appeal, we refer those to BIA as well, and dismiss the appeal in remaining part because the

¹ On receipt of the appeal, the Board addressed, and authorized the IPJ to correct, several apparent typographical errors in the Rehearing Order, which might otherwise have caused confusion in understanding Appellant’s allegations. The IPJ corrected the Rehearing Order, *see* Order Correcting Order Denying Rehearing and Referring Inventory Challenge, Aug. 15, 2012, and our references are to the Rehearing Order as corrected.

² Decedent was a Turtle Mountain Chippewa, and her case was assigned Probate No. P000076416IP in the Department of the Interior’s probate tracking system, ProTrac.

³ The Rehearing Order left in place the IPJ’s December 22, 2010, Decision.

Board does not have jurisdiction over an inventory dispute in the context of a probate appeal. That dispute must await resolution through BIA's administrative decision making process and, if necessary, the administrative appeals process.

Background

Decedent died intestate (i.e., without a will) on April 11, 2009. At the probate hearing for Decedent's estate, according to the Decision, Appellant alleged that certain land was missing from BIA's inventory of Decedent's estate. The IPJ referred the inventory dispute to BIA, pursuant to 43 C.F.R. § 30.128, for an administrative decision. *See* Notice of Referral of Inventory Challenge, May 18, 2010.⁴ On December 22, 2010, the IPJ issued a Decision determining Decedent's heirs and ordering the distribution of her estate. The IPJ noted that the inventory dispute had been referred to BIA, and that upon resolution of that dispute, the Decision could be subject to modification. Decision at 2.⁵

Appellant sought rehearing from the Decision, asserting that there were three tracts of land that were missing from the Decision:

1. Allotment No. 304-M803,
2. Allotment No. 304-2471-D, and
3. Allotment No. 304-5184.

See Petition for Rehearing, Jan. 6, 2011.

In the Rehearing Order, the IPJ explained that each of those three allotments *was* included in BIA's inventory of Decedent's estate. Rehearing Order at 2. As further

⁴ Section 30.128 provides that when an inventory dispute arises during a probate proceeding, the dispute must be referred to BIA for resolution outside the probate process through issuance of an administrative decision, which is then appealable through BIA's administrative appeal process, *see* 25 C.F.R. Part 2, with an ultimate right of appeal to the Board.

⁵ The Decision applied the intestacy provisions of the American Indian Probate Reform Act (AIPRA), *see* 25 U.S.C. § 2206(a), and ordered the distribution of Decedent's trust property as follows: (1) to Decedent's six children, in equal shares, (a) Decedent's trust real property interests that constituted 5% or more of the respective parcel in which the interest was held, and (b) her trust personalty (i.e., her Individual Indian Money account balance that had accrued as of the date of death); and (2) to Appellant, as Decedent's oldest child, all of Decedent's trust real property interests that constituted less than 5% in the respective parcel, pursuant to AIPRA's "single heir rule." *See* 25 U.S.C. § 2206(a)(2)(D)(iii)(I).

explained by the IPJ, and as shown on BIA's inventories, Decedent's estate contained the following interests in five Turtle Mountain allotments, and one Turtle Mountain public domain allotment, all of which were incorporated in the Decision and are to be distributed to Decedent's heirs as provided in the Decision:

1. Allotment No. 304-M803 (Alexander Davis)⁶ (minerals) (0.2946428571 interest in an 80-acre allotment)
2. Allotment No. 304-2471-D (Gilbert Davis) (surface and minerals) (0.3015873016 interest in a 40-acre allotment)
3. Allotment No. 304-2826 (surface) and 304-M2826 (minerals) (John Baptiste Wilkie #2)⁷ (0.0179894180 interest in a 76.88-acre parcel)
4. Allotment No. 304-5184 (surface and minerals) (1.0 (full) interest in a 0.313-acre allotment)
5. Allotment No. 226-805 (Julia Davis) (surface and minerals) (0.1569940476 interest in a 160-acre allotment)⁸

See Rehearing Order at 2; BIA Inventories, July 8, 2009, and June 11, 2010.

The IPJ concluded that the land that Appellant asserted was missing from Decedent's inventory was not in fact missing, and would be distributed pursuant to the Decision. Rehearing Order at 2. Nonetheless, the IPJ noted that to the extent Appellant still asserted that the inventory was incorrect, the IPJ lacked authority to adjudicate that dispute, and had already referred the inventory dispute to BIA. The IPJ denied rehearing, but issued a Second Notice of Referral of Inventory Challenge (Second Notice), again referring the dispute to BIA to address any unresolved inventory challenge(s). Second Notice, June 22, 2012.

⁶ The name in parenthesis is the name of the original allottee, if shown on the inventory.

⁷ On some probate records, the "#2" designation is not used, but the common identifying information for Wilkie #2 includes his identification numbers (R-323 and 304A02826) and date of death (March 1, 1920).

⁸ Julia Davis Gourneau (No. 304-A00805) was a Turtle Mountain allottee (and Decedent's sister) who received a public domain allotment in Montana in the vicinity of the Fort Peck Reservation and Agency, identified as Allotment 226-805. Their mother, Adele Laverdure Davis Allard (No. 304-A00804), also received a public domain allotment, contiguous to Julia's, but it appears that Adele's allotment was fee patented in 1914 and passed out of her ownership. *See* Letter from Administrative Law Judge Keith J. Burrowes to Mae Racine, May 23, 1978 (regarding estate of Lewis Mitchell Granbois, deceased unallotted Turtle Mountain U-6851) (copy added to appeal record).

Appellant appealed the Rehearing Order to the Board, contending that she had never received any information from BIA's Turtle Mountain Agency Superintendent (Superintendent) on whether the Superintendent had resolved the inventory dispute, and reasserting that the inventory contained errors. In order to understand more clearly the nature of the dispute, the Board issued an order summarizing what property was included in BIA's inventories, enclosing copies for Appellant, and soliciting from Appellant a more specific statement on whether she continued to assert that property is missing from Decedent's estate inventory.

Appellant responded by filing an Amended Appeal and Supplemental Information, in which she contends that the inventory for Allotments 304-5184 and 226-805 still contains errors. Appellant also argues that the Rehearing Order (and underlying Decision) were deficient because they do not describe what property was passed to the heirs or where the land is located, and merely referred to BIA's "inventory," without specifying land descriptions "and what shares we get by acres or by legal description." Amended Appeal & Supplemental Information at 2. Appellant argues that a probate order should contain a legal description "and list the actual acres passed to an heir." *Id.* Appellant suggests that the IPJ's failure to include this information in his orders violated her due process rights. *Id.*

Discussion

As we explain below, with the exception of Appellant's argument that the IPJ's orders should have included additional information and detailed property descriptions, Appellant's objections to the Rehearing Order do not fall under the Board's jurisdiction over this probate appeal. We first address the issue of the sufficiency of the IPJ's orders with respect to property descriptions, and then turn to the inventory dispute.

I. The IPJ Was Not Required to Repeat in his Orders the Legal Descriptions in BIA's Inventory, or to Identify Specific Acreage.

Decisions issued in probate proceedings must meet certain requirements, *see* 43 C.F.R. §§ 30.204, 30.235, but there is no requirement that a probate judge's decision must include detailed property descriptions in the body of the decision. In this case, after Appellant initially raised questions about the inventory, the IPJ received from BIA a revised inventory, which he distributed to the interested parties prior to issuing the Decision. *See* Second Notice at 1. The Decision referred generally to BIA's inventory of Decedent's estate, and the Rehearing Order identified, by date, an initial inventory and a revised inventory prepared by BIA. It was sufficient for the IPJ to identify the inventory in this way, and to provide copies to Appellant. Doing so provided Appellant with adequate notice regarding the property that BIA had identified as being in Decedent's estate. The

IPJ was not required to repeat, in the text of his orders, legal descriptions of the property or additional information to identify and describe the property in Decedent's estate inventory.

In addition, Appellant's argument that the IPJ should have identified inherited shares "by acreage," to "list the actual acres passed to an heir," appears to be based on a mistaken understanding of how trust interests in land are passed to heirs. Decedent held her ownership in the allotments as "undivided interests," and her heirs also receive their shares from her estate in undivided interests. An undivided interest means that the interest is held in the allotment as a whole, not in separate subparcels (or acreage). See *Estate of Phillip Loring*, 50 IBIA 178, 185 n.11 (2009). For example, an individual who owns a 1/4 interest in a 160-acre allotment owns a 1/4 undivided interest in the entire 160 acres, not a separate full interest in a discrete 40-acre parcel. Thus, the interests inherited by Appellant are undivided interests in each allotment as a whole; she does not inherit a specific subparcel within the allotment.⁹

The Board finds no deficiency in the IPJ's orders with respect to the property descriptions. Appellant has not demonstrated that the Rehearing Order, or the underlying Decision, violated her due process rights. See *Estate of Beverly M. Howard*, 55 IBIA 300, 300 (2012) (affirming the probate order, in part, because appellants failed to establish due process violation); *Estate of Cyprian Buisson*, 53 IBIA 103, 109 (2011) (appellant bears the burden of establishing due process violation).

II. The IPJ Properly Referred the Inventory Dispute to BIA

Appellant also contends that her rights were violated because the IPJ referred the inventory dispute to BIA for a decision, and BIA has not issued a decision. We affirm the Rehearing Order and the IPJ's referral actions. Neither the IPJ, nor the Board in the context of this probate appeal, has jurisdiction to consider Appellant's challenges to the estate inventory, nor any complaint that BIA has unduly delayed issuing a decision. Instead, as the IPJ correctly recognized, the inventory dispute must first be addressed through a decision by BIA, from which BIA's appeal regulations provide an eventual right of appeal to the Board from a regional director's decision. And to the extent Appellant believes that a decision by BIA is overdue, her remedy is to follow the procedures in BIA's administrative appeal regulations for prompting action by BIA. See 25 C.F.R. § 2.8.

⁹ A co-owner of an allotment who wants the allotment divided into discrete parcels among the owners may apply to BIA to have the allotment partitioned. See *Poler v. Midwest Regional Director*, 56 IBIA 6, 7 (2012).

As the Board stated in *Estate of Laura Iron Ring*:

Under 43 C.F.R. § 30.128, . . . if an inventory dispute arises during a probate proceeding, the dispute must be referred to BIA for issuance of a decision. *See, e.g., Estate of Harrison Yazzie*, 51 IBIA 307, 310 (2010); *Estate of David Bravo*, 51 IBIA 198, 200-01 (2010). BIA's decision is then subject to appeal under BIA's appeal regulations found in 25 C.F.R. Part 2. An inventory dispute includes an allegation by an interested party that property should be added to the estate inventory. *See* 43 C.F.R. § 30.128(a)(3).

54 IBIA 265, 266 (2012).

After Appellant filed her Amended Appeal and Supplemental Information, confirming that she still contested the inventory, the Board solicited information from the Superintendent concerning the status of the matter. The Board received a copy of a notice that the Superintendent had sent to interested parties, soliciting evidence or argument regarding the estate inventory. *See* Notice to all Persons Having or Claiming an Interest in the Real Property the Subject Matter of this Issue, Oct. 18, 2012 (Superintendent's Notice). The matter remains pending before the Superintendent.

On appeal to the Board, Appellant reiterates, and possibly expands or refines, her arguments that the inventory contains errors. To summarize the IPJ's characterization of Appellant's challenges in his referrals to BIA, and the allegations raised by Appellant in this appeal:

1. Appellant alleges that land is missing from Decedent's estate that Decedent received from her spouse, Lawrence Wilkie, which Appellant contends may have been sold without Decedent's consent. Notice of Referral at 1; Second Notice of Referral at 1.
2. Appellant states that Allotment No. 304-5184 was purchased by her parents and placed in trust, and that it should consist of 5 acres or more, instead of 0.313 acre. Amended Appeal at 1.¹⁰

¹⁰ Appellant's Amended Appeal apparently contains a typographical error, referring to this allotment as "Tract 304 No. 5185," but the reference to the 0.313-acre size on the inventory and the location identified by Appellant indicates that the tract at issue is Allotment 304-5184. Amended Appeal at 1. The inventory report for this parcel identifies the name in which it was first acquired as "Elma D. Wilkie," another name used by Decedent.

(continued...)

3. Appellant alleges that Decedent's inventory should include other land located at Turtle Mountain that Decedent received from her father, Alexander Davis (Probate No. 11094-30). Notice of Referral at 1; Second Notice of Referral at 1.
4. Appellant alleges that for Allotment No 226-805, Decedent's estate inventory should include a 1/3 interest, rather than a 0.156994076 interest, because Decedent's mother, Adele, *see supra* note 8, devised a 1/3 share of her estate to Decedent. Appellant also contends that the inventory identifies the wrong original allottee for this allotment, because Adele's identification number was 804, not 805. *But see id.*

The Board refers these issues to BIA, to the extent they are not already under consideration by the Superintendent. In issuing its decision, BIA must address each of these allegations, and must either correct the inventory, if it is found to contain errors, or must provide Appellant with a clear explanation—with supporting documentation—why BIA has concluded that the inventory is correct.¹¹ The Board strongly encourages BIA to

(...continued)

It is not entirely clear whether the first and second issues raised by Appellant are intended to refer to the same property.

¹¹ The Superintendent's Notice included some documentation that may provide a basis for BIA to explain the inventory, e.g., for the Alexander Davis allotment, but it is still important for BIA to provide a full explanation to Appellant.

The Board has added to the appeal record certain probate documents from related estates that may also be of assistance to BIA in reviewing the matter and issuing a decision to Appellant. These are not intended to be comprehensive, and it may be necessary for BIA to conduct a more thorough review of additional probate and title records to respond to Appellant's concerns.

Several probate documents reviewed by the Board, and added to the appeal record, raise an additional issue that the Board, on its own motion, refers to BIA to address in its decision. Adele's estate inventory includes two separate parcels of land identified as Allotment No. 304-2826, and originally allotted to Wilkie #2. One parcel consists of 76.88 acres, and is described as Lots 2 and 3, Sec. 19, T. 162 N., R. 70 W., 5th Principal Meridian, North Dakota. *See* Administrative Modification, *Estate of Adele Laverdure Davis Allard*, Probate No. BI 213D-77 (Mar. 25, 1987). Adele's inventory includes a 1/63 interest in this parcel, 1/3 of which (1/189) apparently was devised to Decedent, and is shown in Decedent's inventory. A second parcel also identified in Adele's inventory as Allotment No. 304-2826 (and in Clifford Louis Allard's inventory, Probate No. IP-TC-330R-88, as Allotment 304-2826-A), consists of 78.01 acres, and is described as the SE¹/₄NW¹/₄ and Lot 3, Sec. 7, T. 162 N., R. 70 W., 5th Principal Meridian, North Dakota. *See* Inventory and Appraisal of Indian Trust Lands of Adele Laverdure Davis Allard,

(continued...)

consult directly with Appellant prior to issuing a decision in order to ensure that BIA fully understands and therefore can fully address Appellant's concerns.¹²

Conclusion

The IPJ did not err by failing to include in the text of his orders specific descriptions of the property in Decedent's estate; it was sufficient for him to identify the estate inventory by reference and to provide a copy of the inventory to Appellant. With respect to Appellant's challenges to the inventory of Decedent's estate, the IPJ correctly referred the matter to BIA. Because we lack jurisdiction in this probate appeal to consider the inventory dispute, we also refer the matter to BIA and dismiss the appeal with respect to that dispute.

(...continued)

Sheet 4A, *Estate of Adele Laverdure Davis Allard*, Probate No. BI 213D-77 (Sept. 27, 1977). No interest in the 78.01-acre parcel appears in the inventory of Decedent's estate. In addition, Adele's inventory states that she owned a 1/63 interest in this second parcel, through her predeceased husband Joseph Roy Allard (Allottee 5154). *Id.* Adele apparently inherited a 1/2 interest in Joseph's estate, but a 1972 inventory for Joseph's estate shows that Joseph possessed a 1/3 interest in the 78.01-acre parcel, which he apparently inherited as the surviving spouse of his first wife, Justine Wilkie Allard (304-A00213), who apparently received a full interest by devise from Wilkie #2. *See* Report on Heirship, *Estate of Justine Wilkie Allard*, Probate No. 32323-28 (June 14, 1928). If so, Adele's inherited 1/2 interest in Joseph's 1/3 interest would be 1/6, not 1/63. It is unclear why Adele's inventory reflects a 1/63 interest, and why Decedent's inventory does not reflect any interest, in the 78.01-acre tract associated with Allotment 304-2826 (possibly identified more specifically as Allotment 304-2826-A).

¹² Nothing precludes BIA and Appellant from mutually resolving the dispute without BIA issuing a formal decision, but any such resolution must be clearly documented in writing, i.e., through a written withdrawal by Appellant of her inventory dispute. Unless a settlement of the dispute is documented, BIA must issue a formal written decision, served on Appellant and all interested parties, and accompanied by notice of appeal rights.

Whenever a probate judge refers an inventory dispute to BIA pursuant to 43 C.F.R. § 30.128, the referral triggers an obligation for BIA to issue a written administrative decision, with notice to all interested parties and notice of appeal rights, pursuant to 25 C.F.R. § 2.7. It is not sufficient for BIA to informally address the dispute, e.g., by sending additional information to the probate judge, with the hope that the matter will be cleared up. BIA is only relieved of its obligation to issue a formal written decision if the party formally withdraws his or her inventory challenge, and if that occurs, BIA must inform the probate judge (if the probate case is still open), or add the documentation of that withdrawal to the probate record (if the case has been closed).

See 43 C.F.R. § 30.128; *Estate of Celestus Arrowtopknot*, 54 IBIA 120, 123 (2011); *Estate of Andrew Gullik*, 53 IBIA 168, 172 n.5 (2011) (§ 30.128 divests the Board of jurisdiction over pending inventory disputes in a probate proceeding).

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 Rehearing Order, refers the inventory dispute to BIA for a decision, and dismisses the appeal in remaining part.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

//original signed
Debora G. Luther
Administrative Judge