



INTERIOR BOARD OF INDIAN APPEALS

Estate of Henry Jacob Birdtail

57 IBIA 134 (06/13/2013)



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 HENRY JACOB)
BIRDTAIL) Order Docketing and Dismissing
) Appeal
)
) Docket No. IBIA 13-092
)
) June 13, 2013

Donita J. King (Appellant) appealed to the Board of Indian Appeals (Board), stating that she was filing an appeal in the estate of Henry Jacob Birdtail (Decedent)¹ on behalf of her son. Although Appellant's notice of appeal did not identify the probate order she seeks to appeal, it appears that Appellant is challenging an Order Denying Reopening (Reopening Order), entered on April 17, 2006, by Indian Probate Judge (IPJ) Albert C. Jones.² We docket but dismiss this appeal because it was not filed with the Board within the time period allowed for filing an appeal following the Reopening Order.

At the time the Reopening Order was issued, an appeal from a probate judge's decision had to be filed with the Board within 60 days from the date of the decision. 43 C.F.R. § 4.320(b) (2006).³ 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). *Id.* § 4.310(a)(1). Untimely appeals must be dismissed. *Id.* § 4.320(b)(3).

¹ Decedent was an Assiniboine and Gros Ventre Indian. The probate number assigned to Decedent's case in the Department of the Interior's probate tracking system, ProTrac, is No. RM-204-0018.

² The Reopening Order is the most recent decision issued in Decedent's estate. In the Reopening Order, the IPJ denied Appellant's petition, in which she sought to reopen Decedent's estate and challenge the June 6, 2002, Revised Decision, which denied her claim for unpaid child support and other claims based upon state law filed against Decedent's estate.

³ All citations are to the regulations in effect when the Reopening Order was issued. The regulations have subsequently been amended and now provide that 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.

The Reopening Order was issued on April 17, 2006. Calculated from that date, the deadline for filing an appeal with the Board expired on June 16, 2006. Appellant's appeal was filed on May 15, 2013, as shown by the postmark on the envelope. *Id.* § 4.310(a)(1). The appeal was filed with the Board well after the 60-day deadline expired and thus 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 as untimely.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

//original signed
Thomas A. Blaser
Administrative Judge