



INTERIOR BOARD OF INDIAN APPEALS

Estate of Juanita Mary Porter

57 IBIA 229 (07/24/2013)



# 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 JUANITA MARY )  
PORTER ) Order Docketing and Dismissing  
) Appeal  
)  
) Docket No. IBIA 13-067  
)  
)  
) July 24, 2013

David M. Fienhold (Appellant) appealed to the Board of Indian Appeals (Board) from a Modification to Add and Distribute Omitted Property (Modification Order) entered on March 4, 2013, by Administrative Law Judge (ALJ) James Yellowtail in the estate of Appellant's mother, Juanita Mary Porter (Decedent).<sup>1</sup> The Modification Order added trust interests on the Cheyenne River and Crow Creek Reservations in South Dakota to Decedent's estate inventory for probate, and ordered that these interests be distributed (in equal shares) to Appellant and his three siblings, pursuant to the January 6, 2004, Order Determining Heirs and Decree of Distribution (Decision).<sup>2</sup>

Upon receipt of the appeal, the Board ordered Appellant to show cause why the Board should not either dismiss the appeal or summarily affirm the Modification Order because: (1) Appellant failed to object to the proposed modification when provided an opportunity; and (2) the Modification Order appeared to correctly distribute the additional property in Decedent's estate. *See* Order to Show Cause (OSC), Apr. 2, 2013.<sup>3</sup> The Board

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<sup>1</sup> Decedent, who was also known as Juanita Mary Lebeau, was a Shoshone. The probate number assigned to Decedent's case in the Department of the Interior's probate tracking system, ProTrac, is No. RM-282-0167.

<sup>2</sup> The Decision included a determination that under South Dakota laws of intestate succession, Decedent's trust real property located in South Dakota was inherited in equal shares by her four children, all of whom survived her.

<sup>3</sup> In his notice of appeal, Appellant contended that because his brother, Eric, is now deceased, the additional trust interests should be divided three ways, rather than four. In the OSC, the Board explained that the heirs' rights, including Eric's, vested at the time of Decedent's death, even with respect to property owned by Decedent that was only later identified and added to the estate inventory for distribution. For that reason, the ultimate disposition of Eric's share will be determined in the probate of his estate.

set a deadline of May 6, 2013, for Appellant to comply with the Board's order, and advised Appellant that if he failed to respond to the OSC, his appeal might be dismissed without further notice.

Appellant did not respond to the OSC.<sup>4</sup> Accordingly, the Board will dismiss this appeal for failure to prosecute. *See Estate of Franklin Lee Tonasket*, 57 IBIA 142, 143 (2013) (dismissing appeal because appellant failed to respond to an order to show cause); *Estate of Fern Ruby Paul*, 55 IBIA 130, 131 (2012) (same); *Estate of Glade Sylvia Willis*, 54 IBIA 316, 317 (2012) (same).

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 for failure to prosecute.

I concur:

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// original signed  
Steven K. Linscheid  
Chief Administrative Judge

\_\_\_\_\_  
//original signed  
Thomas A. Blaser  
Administrative Judge

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<sup>4</sup> The U.S. Postal Service's Track-and-Confirm service on its website indicates that Appellant received the Board's order on April 8, 2013.