INTERIOR BOARD OF INDIAN APPEALS

Estate of Samuel Sumner Davis

57 IBIA 258 (08/13/2013)

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ESTATE OF SAMUEL SUMNER DAVIS	)	Order Affirming Decision
	)	
	)	Docket No. IBIA 11-141
	)	
	)	August 13, 2013

In this appeal to the Board of Indian Appeals (Board), we affirm the June 30, 2011, Order Denying Reopening entered by Indian Probate Judge Albert C. Jones (IPJ) in the estate of Samuel Sumner Davis (Decedent).[1] Appellant Margaret Rodriguez, who is apparently Decedent's granddaughter, petitioned to reopen Decedent's estate in order to overturn the approval in 1955 of Decedent's will. The IPJ denied Appellant's petition on the grounds that the IPJ lacked jurisdiction over the property because Decedent's trust real property interests had all passed out of trust status. The IPJ also stated that he was not comfortable reconsidering the testamentary capacity of a decedent who had been dead for more than 60 years, and questioned whether Appellant would even have a right to pursue such a claim when her predecessor-in-interest (her mother) failed to do so.

We affirm the IPJ's decision. The IPJ is correct: Once trust property has been distributed in fee, it is no longer subject to the probate jurisdiction of the Department.

History

Decedent died on September 5, 1947, in Texas. Decedent was survived by three children, Margaret Davis DeHoyos (Margaret), Samuel Jose Davis, and John P. Davis. Decedent left a will, executed in October 1946, in which he devised his Indian trust property, consisting of the remainder of his own Indian allotment, No. 203SA,[2] and a 1/15

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[1] Decedent was a Crow Indian. In the probate tracking system maintained by the Department of the Interior (Department), Decedent's probate first was assigned number D-129-55 and is now assigned number P000083937IP.

[2] According to the Order Approving Will and Decree of Distribution (Order Approving Will) entered on October 3, 1955, by Examiner of Inheritance Frances C. Elge (EI), Decedent's allotment originally consisted of approximately 760 acres. Decedent sold 440 acres during his lifetime, leaving approximately 320 acres in trust at the time of his death.

interest in a 40-acre allotment, Allotment No. 304. Both allotments are located on the Crow Reservation in Montana. Each of Decedent's surviving children is mentioned in his will but Decedent declined to devise any of his property to them. Instead, Decedent devised his property to two attorneys and to Janie Vasquez Torres (Torres), all of whom were non-Indian.[3] The will also attempted to devise a life estate interest to Mary Minnie Ramirez, which the EI invalidated.

Decedent's surviving children, represented by counsel, contested the will in 1948. They alleged that Decedent lacked testamentary capacity, that the will failed to comply with state law, and that the will resulted from undue influence exerted on Decedent by two of the devisees. The EI held two hearings[4] and received deposition testimony concerning Decedent's estate. On October 3, 1955, the EI issued his Order Approving Will. He found that Decedent was not subject to undue influence at the time of his will, that his mind and memory were sound, and that he knew the nature and extent of his property, the natural objects of his bounty, and his intended disposition of his property. The EI also explained that "state law has no application to the validity of the wills of Indians disposing of restricted and trust property." Order Approving Will at 2.

The Order Approving Will was sent to each of Decedent's children and to their attorney with a notice permitting aggrieved parties to seek rehearing. No one sought rehearing, including Decedent's children. *See* Memorandum from EI to Assistant Regional Director, Billings Area Office, Bureau of Indian Affairs (BIA), Jan. 12, 1956 (Probate Record Tab 29). Thus, the decision became final.

Over 50 years later, in April 2009, Appellant filed a Petition to Reopen (Petition) her grandfather's estate. Appellant represents that she is Decedent's granddaughter and the daughter of Decedent's daughter, Margaret. In addition to seeking to reopen the decision as to Decedent's testamentary capacity, Appellant also raised several new arguments challenging the legal sufficiency of the will. The IPJ rejected the Petition. Relying on information provided by Appellant and a communication from BIA, the IPJ held that he lacked jurisdiction to consider the Petition because Decedent's trust interests have been distributed to the will devisees and, in particular, fee patents were issued for Decedent's trust real property interests. The IPJ also expressed reluctance to reopen and reassess Decedent's testamentary capacity.

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[3] The EI also concluded that Torres was Decedent's common law wife.

[4] According to the IPJ, one hearing, set for December 20, 1948, was unattended. The second hearing, held December 6, 1949, apparently went forward but no transcript or recording of the hearing was located.

This appeal followed. Appellant filed an opening brief. No other briefs were received.

Discussion

Appellant neither disputes the fact that her grandfather's land has passed out of trust nor does she disagree with the IPJ's determination that he lacked jurisdiction to entertain her challenge to her grandfather's will. In fact, in her Petition, Appellant asserted that patents to Decedent's land were issued to non-Indians in 1958 and she attached documents that supported her assertion and confirmed the information that the IPJ received independently from BIA. As a matter of law we agree with the IPJ that because none of Decedent's assets remain in trust status under the Department's stewardship, the IPJ lacked jurisdiction to entertain Appellant's Petition. We thus affirm.

This appeal is not the first in which an appellant seeks to reopen a closed Indian probate estate after the trust estate has been distributed and passed out of trust. *See Estate of James Byron Granbois*, 53 IBIA 252 (2011); *Estate of Ollie Bourbonnais Glenn Smith*, 25 IBIA 1 (1993). As we have previously explained, once land has passed out of trust and into fee status, the Department no longer has any authority over the land. Similarly, when land passes out of trust *after* probate proceedings have concluded, the Department lacks jurisdiction to reopen the estate. In both *Estate of Granbois* and in *Estate of Smith*, petitions to reopen the decedents' estates were brought after land had passed out of trust into fee status. In both appeals, we explained that, as a matter of law, the Department has jurisdiction only to the extent that it holds assets in trust for a decedent or his heirs. *See, e.g.,* 25 U.S.C. §§ 372, 373 (authorizing the Department to probate the trust estates of Indians for whom the United States holds assets in trust). Thus, we affirm the IPJ's decision on this ground.

Moreover, even if the absence of jurisdiction did not bar Appellant's claims, the principles of res judicata would: Once a claim has been decided and the time for appeals has lapsed, the decision becomes final and ordinarily bars relitigation of that same claim or any that could have been raised at the same time by the original litigants and those who would take through them. Here, Appellant's mother challenged Decedent's will in 1948 and the EI decided her challenge in 1955. That 1955 decision became final when no appeal was filed. Res judicata attached at the end of the appeal period to bar any further effort by Appellant's mother (and brothers) to relitigate the validity of Decedent's will. *See Estate of Ralph James (Elmer) Hail*, 12 IBIA 62, 65 (1983) ("When appellant failed to exercise his appeal rights within the time permitted by regulation and explained to him by the Administrative Law Judge, the [decision] became final and *res judicata*. Other parties to this proceeding are entitled to rely upon the finality of decisions of the Department after the expiration of time periods established in Departmental regulations.").

Res judicata not only bars further claims by Appellant's mother but would also bar the claims of those who would inherit through her.[5] As we explained in *Estate of Little Snake (John Smith)*, 24 IBIA 121, 124 (1993), in which the appellant sought to reopen the estate of her stepfather, "Appellant has no personal interest in decedent's estate. Instead, her claimed interest derives [entirely] from her mother. Accordingly, appellant's standing here is also derivative. Her standing is the same as her mother's . . . ." Thus, because Appellant stands in her mother's shoes, res judicata would also bar Appellant's attempts to challenge her grandfather's will.

Thus, we affirm the IPJ's Order Denying Reopening for the simple reason that none of Decedent's assets remain in trust and, thus, neither the IPJ nor this Board has jurisdiction to conduct further proceedings in Decedent's estate. And even were that not the case, res judicata would bar Appellant's efforts to relitigate the validity of Decedent's will.

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 Order Denying Reopening.

I concur:

// original signed	//original signed
Debora G. Luther	Steven K. Linscheid
Administrative Judge	Chief Administrative Judge

[5] Appellant made no showing that she was determined to be an heir or devisee upon her mother's death. If she was determined not to be an heir or devisee, Appellant would lack standing to pursue this appeal. We have presumed, for purposes of our decision, that Appellant does have standing.