



INTERIOR BOARD OF INDIAN APPEALS

Estate of William Keith Garson

57 IBIA 296 (08/26/2013)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
801 NORTH QUINCY STREET  
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ESTATE OF WILLIAM KEITH	)	Order Affirming Denial of Rehearing
GARSON	)	and Dismissing Appeal in Part
	)	
	)	Docket No. IBIA 11-134
	)	
	)	August 26, 2013

Appellant Reginald Island appealed to the Board of Indian Appeals (Board) from a June 23, 2011, Order Denying Petition for Rehearing (Rehearing Order), issued by Administrative Law Judge (ALJ) Richard L. Reeh in the estate of William Keith Garson (Decedent).<sup>1</sup> The Rehearing Order denied Appellant’s challenge to the ALJ’s May 4, 2011, Order Determining Heirs and Decree of Distribution (Probate Decision) for Decedent’s estate. The Probate Decision distributed Decedent’s estate to his adoptive siblings and to the Cheyenne and Arapaho Tribes, Oklahoma (Tribes), pursuant to the American Indian Probate Reform Act of 2004 (AIPRA).<sup>2</sup> The ALJ determined that AIPRA bars Appellant, who is Decedent’s biological sibling, from receiving any of the estate because Decedent was adopted out of his biological family. On appeal, Appellant argues that AIPRA should not govern the probate of Decedent’s trust estate or, if it does, the ALJ did not interpret it properly. We affirm the Rehearing Order and dismiss the appeal in part for lack of standing.

The distribution of Decedent’s trust estate is governed by AIPRA because it became effective before Decedent died, which is when inheritance rights become fixed. We lack jurisdiction to consider Appellant’s claims that AIPRA is unconstitutional or that it impermissibly infringes on the Tribes’ sovereignty by superseding pre-existing Tribal law that Appellant contends (albeit erroneously) would benefit him. In addition, state law no longer applies to the probate of Indian trust assets following AIPRA’s implementation in 2006. We also reject Appellant’s assertion that he had a right to inherit from Decedent that

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<sup>1</sup> Decedent was a member of the Cheyenne and Arapaho Tribes, Oklahoma. His probate was assigned No. P000066579IP in the Department of the Interior’s probate tracking system.

<sup>2</sup> AIPRA was enacted as a set of amendments to the Indian Land Consolidation Act (ILCA), 25 U.S.C. § 2201 *et seq.*

vested when Decedent was born, and that applying AIPRA to Decedent's probate would therefore have an impermissible retroactive effect.

Next, we affirm the ALJ's interpretation of AIPRA. Appellant is neither Decedent's "surviving sibling" nor an "eligible heir" because, for the purpose of distributing Decedent's trust estate, Decedent's adoption out of Appellant's family severed Appellant's sibling relationship with Decedent. And because Appellant is not a potential heir of Decedent, as a matter of law, he lacks standing to challenge the ALJ's determination that Decedent's adoptive siblings, Kellie Ann Sorenson (Kellie) and Brittonie C. Garson (Brittonie), do qualify as Decedent's "surviving siblings" and as "eligible heirs."

AIPRA governs the probate of Decedent's trust estate and the ALJ's interpretation of AIPRA was correct. We therefore affirm the June 23, 2011, Rehearing Order.

### **Background**

Decedent died intestate on January 22, 2008, owning interests in trust property and funds in his Individual Indian Money (IIM) account. Probate Decision at 1 (Probate Record (PR) Tab 7<sup>3</sup>). Decedent never married and never had or adopted any children. *Id.* at 2. Decedent was adopted as a child; his biological mother was Leona Rose Island (Leona) and the identity of his biological father is not known. *Id.* Decedent's adoptive parents, James and Wilmadine Garson, preceded him in death. *Id.* The Garsons also adopted two other Indian children, Kellie and Brittonie,<sup>4</sup> both of whom survived Decedent. *Id.* Decedent was also survived by his biological brother, Appellant, who was not adopted out.<sup>5</sup> *Id.*; Hearing Transcript, Dec. 16, 2009, at 6 (PR Tab 1).

After her death in 1993, Leona's entire estate was distributed to Appellant. Probate Decision at 2. Her estate was reopened in 2004 to add Decedent as an heir and Decedent then received half of her estate. *Id.* Until the reopening proceedings, neither Decedent nor

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<sup>3</sup> The probate record for this case is divided under seven unnumbered tabs. The tab numbers used here are in the order they appear in the record.

<sup>4</sup> Brittonie is Kellie's biological daughter, but both were adopted by the Garsons. Probate Decision at 2 n.3. Kellie's maternal relationship with Brittonie has no effect on Decedent's probate: Decedent, Kellie, and Brittonie are all adoptive children of the Garsons.

<sup>5</sup> The Probate Decision refers to Appellant as Decedent's half-brother, Probate Decision at 2, but Appellant maintains that he and Decedent are full siblings, *e.g.* Opening Brief (Br.) at 1. Neither Appellant's nor Decedent's father has been identified. Whether Appellant and Decedent are half- or full biological siblings is not material to this appeal.

Appellant knew that they had a biological sibling. *Id.* at 3. Appellant maintains that the two soon established a close relationship, which the ALJ found to be supported by “substantial evidence.” *Id.* Nevertheless, the ALJ concluded that Decedent’s heirs were Kellie and Brittonie and that Appellant could not inherit from Decedent as a matter of law because of Decedent’s adoption. *Id.* at 2.<sup>6</sup>

The Probate Decision contained a detailed explanation of the Indian probate laws relevant to inheritance in situations involving adoptions. The ALJ determined that AIPRA, like most intestacy statutes, treats an adopted child as a full member of the adoptive family and severs the ties to the biological family, with limited exceptions not applicable in this case. The relevant provision in AIPRA states that “an adopted person shall not be considered the child or issue of his natural parents, except in distributing the estate of a natural kin, other than the natural parent, who has maintained a family relationship with the adopted person.” 25 U.S.C. § 2206(j)(2)(B)(iii). The ALJ held that even if Appellant and Decedent had maintained a family relationship, Appellant was not permitted to inherit from Decedent because AIPRA only authorizes inheritance in the other direction, i.e., *by* the adopted-out person, not *from* the adopted-out person. Probate Decision at 4. He held that the statute is not ambiguous, so its plain language controls and bars Appellant from inheriting from Decedent. *Id.*

The ALJ determined that Kellie and Brittonie were eligible to inherit from Decedent. He held that under § 2201(9) “full siblings” are eligible to inherit from a decedent. *Id.* at 5. He determined that Kellie and Brittonie were Decedent’s full siblings by adoption and nothing in the statute barred inheritance from an adoptive sibling. *Id.* at 5-6. Kelly and Brittonie would therefore inherit the funds in Decedent’s IIM account and his interests in trust land that were 5% or greater of each undivided parcel. *Id.* at 2, 6.

Appellant petitioned for rehearing. Petition for Rehearing, June 3, 2011 (Petition) (PR Tab 6). He argued that state and/or Tribal laws govern the distribution of Decedent’s trust estate; that AIPRA is unconstitutional; that AIPRA violates the Tribes’ sovereignty by preempting pre-existing Tribal laws; that AIPRA does not preempt other Federal statutes that would distribute the estate differently; that AIPRA has an impermissibly retroactive effect in this case; and that the ALJ misinterpreted AIPRA. The ALJ addressed each of Appellant’s arguments and denied rehearing on June 23, 2011.

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<sup>6</sup> The Probate Decision also distributed Decedent’s interests in trust land that were less than 5% of each respective parcel to the Tribes. Probate Decision at 2.

Appellant appealed the Rehearing Order to the Board. He reasserted each argument he raised in the Petition and also alleged errors in the Rehearing Order. No other parties filed briefs in this matter.

## Discussion

We reject Appellant's arguments and affirm the Rehearing Order, but also dismiss the appeal in part for lack of standing. Appellant's arguments fall generally into two categories: those alleging that AIPRA does not apply to the probate of Decedent's trust estate and those claiming that the ALJ's interpretation of AIPRA was incorrect. We discuss each in turn.

### I. Application of AIPRA

Appellant raises a variety of arguments claiming that Decedent's estate should not be distributed pursuant to AIPRA. He argues that AIPRA is unconstitutional and violates Tribal sovereignty, that state and/or Tribal law applies rather than Federal law, and that application of AIPRA to Decedent's estate would have an impermissibly retroactive effect. We address Appellant's arguments below.

#### A. AIPRA Governs the Probate of Decedent's Trust Estate

We agree with the ALJ that AIPRA applies to the probate of Decedent's trust estate. Decedent died on January 22, 2008, which was after AIPRA's rules of intestate succession became effective. *See* Secretary's Certification of Notice of AIPRA, 70 Fed. Reg. 37107 (June 28, 2005) (making AIPRA effective on June 20, 2006).

#### B. The Board Lacks Jurisdiction to Consider the Constitutionality of Statutes

Appellant argues that application of AIPRA to Decedent's estate amounts to an unlawful taking under the Fifth Amendment to the Constitution. Opening Br. at 17-23, 50-53. It is well-settled that the Board lacks jurisdiction to adjudicate the constitutionality of statutes and regulations. *E.g.*, *Village of Hobart, Wisconsin v. Midwest Regional Director*, 57 IBIA 4, 13 (2013). We therefore do not decide this issue.<sup>7</sup>

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<sup>7</sup> We note that the case law Appellant relies upon here concerns pre-AIPRA probate laws that are no longer in effect. *See, e.g.*, Opening Br. at 18-21 (quoting *Babbitt v. Youpee*, 519 U.S. 234 (1997); *Hodel v. Irving*, 481 U.S. 704 (1987)). AIPRA was passed, in part, to address the issues identified in those cases.

(continued...)

C. Neither Tribal Law Nor State Law Governs the Probate of Decedent's Trust Estate

Appellant argues that AIPRA violates the Tribes' sovereignty. Opening Br. at 26-30, 61-65. He claims that the Tribes' preexisting Law and Order Code (Tribal Code) contains provisions that govern the descent of trust property, that AIPRA's distribution scheme differs from the Tribes', and therefore applying AIPRA instead of the Tribal Code violates the Tribes' sovereignty. The ALJ held that Appellant lacked standing to assert the Tribes' interests. Rehearing Order at 3. But to the extent Appellant argues that AIPRA may not be applied to him because it impermissibly preempts Tribal law, he arguably has standing. Nonetheless, even if Appellant has standing to pursue this claim, AIPRA does not conflict with Tribal law. By its own terms the Tribal Code does not apply to the probate of Decedent's trust estate. Nor does state law apply.

Appellant advances several theories for why state or Tribal law should govern the probate of Decedent's trust estate. Opening Br. at 11-16, 23-34, 48-50, 61-65. He argues that 25 U.S.C. §§ 348 and 373 were not amended by AIPRA and that their incorporation of state law controls. He also argues that adoptions are created under state law, and that states have "exclusive" jurisdiction to determine the legal rights of adopted-out individuals, and those who would inherit from them. Finally, he argues that the Tribal Code requires that trust assets be probated under state law, and thus the application of Tribal law leads us back to applying state law. None of these arguments succeeds. We affirm the ALJ's determination that AIPRA controls the probate of Decedent's trust assets. *See* Rehearing Order at 1-2.

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(...continued)

Appellant also argues that neither he nor Decedent was notified that the AIPRA amendments would alter the existing distribution scheme and that "merely publishing AIPRA in the Federal Register" was not enough to satisfy due process. Opening Br. at 53. However, the Secretary of the Interior certified 1 year prior to AIPRA's effective date that notice of AIPRA's changes had been issued to owners of Indian trust interests via direct mail and newspapers, in addition to publication in the Federal Register. *See* 70 Fed. Reg. 37107 (referencing Pub. L. No. 108-374, § 8, 118 Stat. 1773, 1809-10 (Oct. 27, 2004) (notice requirements)). Notice of AIPRA's impending changes was sufficient to satisfy AIPRA's requirements, and we lack jurisdiction to question the Secretary's certification or to question whether AIPRA's requirements comport with due process.

I. 25 U.S.C. §§ 348 and 373 Do Not Control

Neither 25 U.S.C. § 348 nor § 373 required the ALJ to apply state laws of intestate succession to Decedent's probate. Appellant relies on language in § 348 that states that allotted lands will be held in trust for the allottee or "his heirs according to the laws of the state . . . where such land is located." Opening Br. at 31 (quoting 25 U.S.C. § 348). He claims that "AIPRA does not amend 25 U.S.C. § 348." Opening Br. at 16. Appellant is incorrect. The ALJ correctly noted that § 6(c) of AIPRA, 118 Stat. at 1805, states explicitly that "25 U.S.C. [§] 348 . . . is amended." Rehearing Order at 1. And, although the language in § 348 that Appellant quoted has not been revised to conform to AIPRA, § 348 itself was amended elsewhere to state that, "subject to section 8(b) of [AIPRA], the rules of intestate succession under [ILCA] (including a tribal probate code approved under that Act or regulations promulgated under that Act) shall apply." 25 U.S.C. § 348. Additionally, a report on AIPRA issued by the House of Representatives prior to its passage states that AIPRA would preempt state, local, and tribal laws. H.R. Rep. No. 108-656, at 10 (2004), *reprinted in* 2004 U.S.C.C.A.N. 1952, 1960. Thus, § 348 neither applies state law to the probate of trust assets nor conflicts with AIPRA's intestate succession provisions—it explicitly incorporates them.

Appellant also argues that § 373 required the ALJ to apply state law in Decedent's probate. The portion of § 373 that Appellant wishes to invoke says that:

in [a] case where a will has been approved and it is subsequently discovered that there has been fraud in connection with the execution or procurement of the will the Secretary of the Interior is authorized within one year after the death of the testator to cancel the approval of the will, and the property of the testator shall thereupon descend or be distributed in accordance with the laws of the State wherein the property is located.

Opening Br. at 30-31 (quoting 25 U.S.C. § 373).<sup>8</sup> Appellant does not claim that Decedent had a will, let alone one that the Secretary approved and then disapproved after discovering fraud. Section 373 clearly has no application in Decedent's probate.

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<sup>8</sup> This particular provision in § 373 has not been amended to conform to AIPRA. *Cf.* 25 U.S.C. § 2206(b)(4) (descent of trust assets in event will is disapproved).

2. State Adoption Laws Do Not Escape the Preemptive Effect of AIPRA for the Descent of Trust Property

Appellant claims that Oklahoma law should govern all aspects of Decedent's probate because Decedent was adopted in Oklahoma and states have exclusive jurisdiction to determine legal rights relevant to adoptions. Opening Br. at 11-16. The brief does not clearly explain this argument. Appellant states that Decedent's adoption "occurred and was consummated in the State of Oklahoma" and "[t]he law regarding the laws of inheritance from and to the adopted child existed at the moment the adoption was approved." *Id.* at 13. He also quotes an Oklahoma law that permits an adopted-out child to inherit from his or her biological parents. *Id.* (citing 10 O.S. § 7006-1.3, re-codified at 10A O.S. § 1-4-906 (2009)). He then concludes that Oklahoma law must govern all aspects of Decedent's probate and that it allows a sibling to inherit from an adopted-out sibling. Appellant cites no authority for the proposition that states have exclusive authority to determine the legal rights of adopted Indian children or their Indian biological siblings with regard to the inheritance of trust property, thus rendering AIPRA's adoption provision invalid (a claim we cannot, in any event, consider). Even assuming this is not simply another attack on the validity of AIPRA, Appellant's arguments are unconvincing. AIPRA controls, not state law.

3. Tribal Law Does Not Require that Trust Assets Be Probated Under State Law

We reject Appellant's claim that Tribal law, if it were applicable, requires that Decedent's trust property be probated under state law. Opening Br. at 26-30 (citing § 1105(b) of the Tribal Code).<sup>9</sup> By its express terms, the Tribal Code's grant of probate jurisdiction to the Tribal Court does *not* include trust property. It is clear that § 1105(b), even if it were relevant, only applies to proceedings in the Tribal Court, which does not have jurisdiction to probate property held in trust by the United States. Nothing in the Tribal Code would apply Tribal or state laws to the probate of trust property, and thus AIPRA does not conflict with Tribal law. And, like the argument concerning state adoption laws discussed above, Appellant's assertion that tribal adoption law somehow affects the intestate descent of trust property, *see* Opening Br. at 27-28, is not adequately explained and also appears to be based on a false premise—that inheritance rights vest prior to a decedent's death, *see* § I.D. *infra*. The Tribal Code does not apply Tribal or state law to the probate of assets held in trust by the United States.

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<sup>9</sup> Appellant does not contend that the Tribes adopted a tribal probate code that would apply *pursuant to* AIPRA. Instead, he argues that preexisting Tribal law would apply because it was impermissible for Congress to preempt tribal law.

#### D. Applying AIPRA's Provisions to Decedent's Estate is Not Retroactive

Appellant argues that AIPRA had an impermissible retroactive effect on the probate of Decedent's estate because it became effective after Appellant's inheritance rights had already vested. He argues throughout the brief that his right to inherit from Decedent vested when Decedent was born and thus existed when Decedent was adopted. *E.g.*, Opening Br. at 22 ("The rights of the Decedent and Appellant, as the same relates to inheritance, were vested and fixed on the date of the birth of Decedent and thereafter on the entry of the Final Decree of Adoption . . ."); *see also id.* at 17, 22-23, 28, 46-50, 70-72. Inheritance rights vest on the date of a decedent's *death*, not on the date of birth or adoption. *Estate of John Fredericks, Jr.*, 57 IBIA 204, 208 n.11 (2013); 23 Am. Jur. 2d Descent and Distribution § 14 (2013) ("As a rule, the right to the succession of the property of a decedent is vested at his or her death. . . . From this general rule, it follows that an estate must be distributed among heirs and distributees according to the law as it exists at the time of the death of the ancestor."). Appellant cites no authority for his position that inheritance rights vest prior to a decedent's death. Decedent died after AIPRA's effective date; any right to inherit from Decedent's estate therefore vested after AIPRA's effective date. There was thus no impermissible retroactive effect.

#### II. The ALJ's Interpretation of AIPRA Was Correct

Appellant argues that the ALJ misinterpreted AIPRA in distributing Decedent's estate. He argues that he is not barred from inheriting from his adopted-out brother and he claims that Kellie and Brittonie are not eligible to inherit from Decedent. We disagree that Appellant can inherit from Decedent and hold that the ALJ's interpretation was correct. With respect to Appellant's challenge to the ALJ's determination that Kellie and Brittonie are heirs of Decedent, we dismiss those claims for lack of standing.

#### A. AIPRA Prohibits Appellant from Inheriting from Decedent

Appellant argues that § 2206(j)(2)(B)(iii) allows him to inherit from Decedent. Opening Br. at 34-45, 54-61, 65-69. We disagree. The plain, unambiguous language in the statute prohibits people from inheriting trust property from their adopted-out siblings because they are no longer considered siblings for purposes of 25 U.S.C. Chapter 24.

In *Estate of Clayton Donald Mountain Pocket*, which was decided after the ALJ's decision in this case, we held: "[U]nder § 2206(j)(2)(B)(iii)(I), for purposes of probating the estate of a *decedent* who was adopted out, the decedent is only the child of his adoptive parents, is not a child or issue of his biological parents, and his legally cognizable 'siblings' must be determined accordingly." 54 IBIA 236, 244 (2012) (footnote omitted) (emphasis in original). As explained in that decision, subject to specific exceptions,

§ 2206(j)(2)(B)(iii) severs the relationship between an adopted-out child and his biological parents for purposes of 25 U.S.C. Chapter 24 (§§ 2201- 2221). 54 IBIA at 244; *see* 25 U.S.C. § 2206(j)(2)(B)(iii) (“For purposes of this chapter, an adopted person shall not be considered the child or issue of his natural parents”). Unless an exception applies, this provision has the effect of severing the relationship between the adopted-out person and his biological siblings because siblings are defined as people who have one or both parents in common. *See, e.g.*, Black’s Law Dictionary 220, 1506, 1513 (9th ed. 2009). If Decedent is no longer his biological parents’ child, he is no longer Appellant’s brother, because they no longer have any parents in common. *See Mountain Pocket*, 54 IBIA at 242-44. And, as we recognized in *Mountain Pocket*, neither of the two exceptions to this exclusion applies to inheritance from a biological sibling when it is the *decedent* who is the adopted-out person whose estate is being probated. *See id.* at 244.

One exception permits an adopted-out child to inherit from a biological parent if the biological parent marries the adoptive parent.<sup>10</sup> 25 U.S.C. § 2206(j)(2)(B)(iii)(I). The other exception permits an adopted-out person to inherit from a deceased biological relative if they have maintained a close family relationship. *Id.* The exception is unambiguous, and does not work in the reverse—nothing in the plain language permits a person to inherit, through intestate succession, from a biological relative who was adopted out. *Mountain Pocket*, 54 IBIA at 242-44. In other words, because Appellant was *not* adopted but remained with his biological mother, Decedent could have inherited from Appellant, but the law does not permit the reverse.

Appellant also argues that § 2206(a)(2)(B)(iv) should be read in conjunction with § 2201(9), that he is an “eligible heir” under § 2201(9) (as a “full sibling”), and therefore he must be permitted to inherit from Decedent notwithstanding the severance of the sibling relationship by § 2206(j)(2)(B)(iii). But Appellant is *not* an “eligible heir.” Section 2206(j)(2)(B)(iii) severs the adopted-out person’s relationship with his biological family for purposes of *all of* 25 U.S.C. Chapter 24, including § 2201(9). Thus, Appellant is not Decedent’s “full sibling” or even his “half sibling by blood” for purposes of § 2201(9). Appellant therefore does not qualify as Decedent’s eligible heir because they are not siblings under § 2201(9). We affirm the ALJ’s determination that Appellant is not Decedent’s heir.<sup>11</sup>

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<sup>10</sup> As noted above, Decedent inherited from his biological mother, although his inheritance rights were determined by state law because AIPRA had not yet been effective (or even enacted) at the time of Leona’s death.

<sup>11</sup> Even if Appellant were an eligible heir, the suggestion that § 2201(9) is inconsistent with § 2206(a)(2)(B)(iv) has been previously rejected. The two provisions serve distinct purposes. *See Mountain Pocket*, 54 IBIA at 244.

B. Appellant Lacks Standing to Challenge the Determination that Kellie and Brittonie Inherit from Decedent

Because Appellant is not an heir of Decedent, he lacks standing to challenge the ALJ's determination that Decedent's adoptive siblings, Kellie and Brittonie, are Decedent's heirs: Whether or not they are heirs has no effect on Appellant. If Kellie and Brittonie were not Decedent's heirs, it is the Tribes who would inherit, not Appellant. *See Mountain Pocket*, 54 IBIA at 244-45; 25 U.S.C. § 2206(a)(2)(B)(v). And Appellant makes no argument that pursuant to § 2206(a)(2)(B)(v) he is a co-owner who seeks to pay fair market value, or that pursuant to § 2206(a)(2)(C)(i) he is an heir as a co-owner of property in the estate over which no tribe has jurisdiction. Therefore, we dismiss for lack of standing Appellant's claim that Kellie and Brittonie are not Decedent's heirs.

**Conclusion**

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 June 23, 2011, Rehearing Order and dismisses Appellant's appeal in part for lack of standing.

I concur:

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// original signed  
Thomas A. Blaser  
Administrative Judge

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//original signed  
Steven K. Linscheid  
Chief Administrative Judge