



INTERIOR BOARD OF INDIAN APPEALS

Estate of Irene L. Parker

58 IBIA 61 (10/25/2013)

Background

Decedent died on July 10, 2008, leaving a will that divided her estate equally among five of her children, subject to a life estate in Appellant.³ Four of the devisee-children (devisees)⁴ were from a previous marriage between Decedent and Richard Henry, a.k.a. “Henry R.,” Cline, Jr. (Henry).⁵ Decedent and Henry also had another child, Janet Edna Cline (Janet), who predeceased Decedent (and was not included in the will). The fifth devisee, Diane K. Sheridan (Diane), was Decedent’s daughter with another father and was born prior to Decedent’s marriage to Appellant. *See* Affidavit of Family History, Diane K. Sheridan, at 2 (Administrative Record (AR) Tab 54).⁶

Following a probate hearing, the IPJ approved Decedent’s will and ordered that her estate be distributed to the five devisees, subject to the life estate devised to Appellant. Decision, Dec. 4, 2009 (Decision) (AR Tab 41).⁷ Shortly thereafter, Henry’s children wrote to the IPJ asking that “all interest inherited from our father, [Henry], and [biological sister] Janet . . . be returned and divided equally to us.” Letter from Ward A. Cline, et al. to IPJ, Dec. 14, 2009 (AR Tab 39). Henry’s children explained that Diane is not the biological daughter of Henry, and thus should be excluded from “the interest inherited from” Henry and Janet. *Id.* They further explained that Appellant, as their stepfather, “should also be excluded from any interest inherited from our father, Henry,” and concluded by stating that they would like “the interest from our father to remain within our family.” *Id.*

The IPJ construed the letter as a petition for rehearing. *See* Order to Show Cause and Order for Hearing Upon Petition for Rehearing, Feb. 22, 2010 (OSC) (AR Tab 35). The IPJ explained, however, that because Decedent and Henry were divorced before Henry

³ A “life estate” is a possessory interest in property that is limited in duration to a person’s life, ordinarily the life of the holder of the life estate. At death, the life estate expires, and the right to possession passes to those holding the “remainder interest.”

⁴ Although Appellant is also the devisee of a life estate interest, for convenience we refer to the devisees of the remainder interest as the “devisees.”

⁵ Ward A. Cline, Jeanene S. Griffin (Jeanene), Henry R. Cline III, and JeanAnn Cline. The Board will refer to these individuals, collectively, as “Henry’s children.”

⁶ Decedent and Appellant had two biological children, Donna M. Parker and Colin Parker, Jr., and also adopted Donise Morris, a granddaughter of Donna. Transcript of Nov. 17, 2009, Hearing (Hearing Tr.) at 9-10 (AR 43); Order for Adoption (AR 60).

⁷ Distribution of funds in Decedent’s Individual Indian Money account was also made subject to a claim of the Omaha Tribe of Nebraska.

died, Decedent “could not and did not inherit” from Henry. *Id.* at 2 (unnumbered).⁸ On the other hand, the IPJ stated that Decedent did inherit from Janet. *Id.* The OSC also stated, apparently in reference to the letter, that “it was requested” that Appellant’s life estate “be denied.” *Id.* at 1 (unnumbered). The IPJ concluded that the letter, in substance, sought to challenge Decedent’s will, and scheduled a supplemental hearing to accept evidence on the will challenge.

The IPJ conducted the supplemental hearing, which Appellant did not attend. At the hearing, however, the IPJ accepted disclaimers of interest from Appellant and Diane, which had been sent to the IPJ by Jeanene. *See* Transcript of Mar. 24, 2010, Supplemental Hearing (Supp. Hrg. Tr.) at 5 (AR Tab 16). Appellant’s disclaimer reads:

TO WHOM IT MAY CONCERN:

I, Colin Parker Sr., inherited some acreage from my deceased wife, Irene Louis Robinson Parker, . . . I am hereby relinquishing my share of property such as Land, to my step children: [listing Henry’s children].

AR Tab 33. Diane’s disclaimer recited that she had “inherited some acreage from” Henry, and that she disclaimed any interest in that property. AR Tab 32. Diane also stated that she had inherited property from Decedent, and wished to keep that property. At the supplemental hearing, the IPJ solicited objections to the disclaimers, and in the absence of any objections, accepted them. Supp. Hrg. Tr. at 6-7.

In an order granting rehearing and modifying the Decision, the IPJ characterized the disclaimers from Appellant and Diane as “disclaiming their inherited shares of Indian trust land that the [D]ecedent *received from Henry*.” Order Granting Rehearing and Modifying Decision (Order Granting Rehearing), Mar. 30, 2010, at 1 (emphasis added). The IPJ found that that Diane and Appellant had “voluntarily, knowingly and freely executed a Renunciation/Disclaimer of their interests in this estate, *which the decedent received from [Henry]* . . . including any life estate that the decedent *inherited or would inherit from [Henry]*,” and approved the disclaimers. *Id.* at 2 (emphases added). The IPJ again approved Decedent’s will, subject to the disclaimers. After providing the above description of the effect of the disclaimers, the Order Granting Rehearing decreed that all of Decedent’s trust interests, “except for those interests inherited from [Henry],” be divided equally among the five devisee-children named in the will. The order further decreed that Decedent’s trust or restricted interests “inherited from [Henry]” pass to Henry’s children.

⁸ Appellant and Decedent were married in 1969. Hearing Tr. at 7-8 (AR Tab 43); *see* Marriage License (AR Tab 67). Henry died in 1980. Hearing Tr. at 7; OHA-7, at 1 (AR Tab 42).

The distribution language in the Order Granting Rehearing was silent with respect to Appellant.

Several weeks later, the Acting Superintendent of the Winnebago Agency, Bureau of Indian Affairs (Superintendent), asked the IPJ to modify the Order Granting Rehearing, stating that a modification was “necessary to include the Life Estate Clause for spouse, Colin Parker, Sr., identified [in] the original [Decision]. This Life Estate should remain in effect for interests inherited from other than Janet Edna Cline. All other items remain the same.” Letter from Superintendent to IPJ, Mar. 23, 2010 (AR Tab 18).

On August 31, 2010, without notice to the parties, the IPJ issued an Order Nunc Pro Tunc in response to the Superintendent’s request. The IPJ stated that the Order Granting Rehearing had “already addressed the issue of the Life Estate of Colin Parker Jr.[sic].” Order Nunc Pro Tunc at 1 (AR 12).⁹ Nevertheless, the IPJ found that the Order Granting Rehearing “needed clarification,” and that “a scrivener’s error resulted in an erroneous description and no prejudice could be affected allowing the same.” *Id.* The IPJ ordered that the Order Granting Rehearing be “corrected” to read as follows:

Disclaimers. The decedent’s child, Diane Sheridan, and the decedent’s spouse, Colin Parker, Sr., voluntarily, knowingly and freely executed a Renunciation/Disclaimer of their interests in this estate. Neither reserved a life estate interest in the property they disclaimed. . . . The disclaimers apply to the decedent’s trust estate, now known and shown on the inventory and any after-acquired trust property. . . .

Colin Parker, Sr., disclaimed his Life Estate interest in all decedent’s property (in which all he had was a Life Estate pursuant to her approved Last Will). . . .

Id. at 2. A copy of the Order Nunc Pro Tunc was sent to Appellant and interested parties, but no appeal rights were provided.

On November 18, 2010, the Superintendent filed a petition for reopening to exclude Diane from sharing in the interests that Decedent had inherited from Janet. Letter from Superintendent to IPJ, Nov. 18, 2010 (AR Tab 8). The IPJ denied reopening, finding that Diane had only disclaimed an interest in property that Decedent had inherited

⁹ The IPJ also stated that the Superintendent had made no mention in his request that the Order Granting Rehearing had been issued. That was factually incorrect. The Superintendent’s request expressly referred to the IPJ’s “probate order” for Decedent’s estate “dated March 30, 2010.” AR Tab 18.

from Henry, not in property that Decedent had inherited from Janet. As relevant to this appeal, the IPJ found that in 2009, Henry’s children had

filed a petition for rehearing requesting the court to remove land devised in the Will *that was inherited by the Decedent from their predeceased father, [Henry] Cline, and predeceased half-sister, Janet Edna Cline*. They did not want *such land* to be devised to non-blood relatives, i.e., Colin Parker Sr. (spouse of Decedent) and Diane Sheridan, half-sister.

. . . .

Prior to the [supplemental] hearing, the court received a notarized Disclaimer from Decedent’s spouse, Colin Parker Sr., who disclaimed the Life Estate he received in the Will.

. . . .

. . . [T]he court issued the Order Granting Rehearing . . . based on the Disclaimers received *which accomplished the wishes of the Petitioners*

Order Denying Reopening at 1-2 (Findings 1, 4, and 7) (emphases added).

Appellant filed a timely appeal with the Board from the Order Denying Reopening, and contends:

I was unaware of what I was signing. Enclosed is a copy of the paper stating that I Relinquished all my share of property, which isn’t true. I signed a paper that wasn’t the right letter I was supposed to sign. The only thing I was supposed to sign is for [Henry] Cline Jr. and Stepdaughter Janet E. Cline, Deceased. I have Life long use of my late wife[’s] estate . . . The letter that is enclosed my Step daughters Jeanene S. Cline Griffin and Jean A. Cline told me it was just Relinquish the Right for [Henry] Cline and Janet Cline, not to the rights of my wife. . . . Also, my step daughter did not tell me I was relinquishing all my rights.

Notice of Appeal at 1-2.

Discussion

I. Scope and Timeliness of Appeal

In denying the Superintendent’s petition to reopen Decedent’s estate to address property received by Diane, the IPJ reiterated her earlier findings and conclusions regarding Appellant’s disclaimer. Appellant filed an appeal within 30 days after the Order Denying Reopening was mailed, with appeal rights. *See* 43 C.F.R. § 4.321(a) (a probate appeal must be filed “within 30 days after we have mailed the judge’s decision or order and

accurate appeal instructions”). To the extent that the IPJ, even while denying reopening of the case concerning Diane’s right to share in property that Decedent inherited from Janet, newly addressed, *sua sponte*, Appellant’s disclaimer, this appeal is both timely and within the scope of the Order Denying Reopening, and thus within the scope of an appeal from that order. *See* 43 C.F.R. § 4.318 (scope of review).

But we need not decide whether the appeal is within the scope of the Order Denying Reopening because even if that is not the case, the appeal is a timely appeal from the Order Nunc Pro Tunc. The Order Nunc Pro Tunc cannot fairly be characterized as simply correcting a nonsubstantive “scrivener’s error” in the Order Granting Rehearing. Instead, the Order Nunc Pro Tunc significantly and substantively changed the IPJ’s earlier description of the effect of Appellant’s disclaimer. And an order that substantively changes an earlier probate order—in effect reopening the case—must provide appeal rights. *See* 43 C.F.R. § 30.245(a). The Order Nunc Pro Tunc was not accompanied by a notice of appeal rights to interested parties, and thus the time period for appeals, including Appellant’s, was tolled. *See* 43 C.F.R. § 4.321(a).

We conclude that the appeal is both timely and within the ordinary scope of our review under 43 C.F.R. § 4.318.¹⁰

II. Merits

On the merits of the appeal, we conclude that the IPJ’s Order Granting Rehearing was internally inconsistent, and that the Order Nunc Pro Tunc arbitrarily sought to resolve the inconsistency in a way that substantively affected the rights of the parties without giving them proper notice and without providing an explanation for the changes made in the Order Nunc Pro Tunc. After the Decision issued, Henry’s children asked that property inherited by Decedent from Henry and from Janet be distributed only to them, as Henry’s biological children and Janet’s biological siblings. In the Order Granting Rehearing, the IPJ’s specific descriptions of the effect of the disclaimers closely tracked that request, thus reflecting an interpretation of the disclaimers as accomplishing the wishes of Henry’s children (but no more). But the distribution language in the order was silent with respect to Appellant’s life estate, thus creating an internal inconsistency in the order.

Clearly, the Superintendent interpreted the specific description of the limited nature of the disclaimers in the Order Granting Rehearing as indicating that the omission of any reference to Appellant’s life estate for property not covered by his disclaimer was

¹⁰ Because we reach this conclusion, we need not consider whether we would otherwise exercise our additional authority, under § 4.318, to go outside the normal scope of review to correct manifest error or injustice.

inadvertent. But in the Order Nunc Pro Tunc, instead of reconciling the distribution language in the decision with her earlier description of the disclaimers, the IPJ characterized the description as a “scrivener’s error,” and “clarified” her earlier order by making a wholesale change in the descriptions of the disclaimers and expressly finding that Appellant had disclaimed “his Life Estate interest of *all* decedent’s property.” Order Nunc Pro Tunc at 2 (emphasis added). And in the Order Denying Reopening, the IPJ reiterated that Appellant had “disclaimed the Life Estate he received in the Will,” even while stating that the disclaimers “accomplished the wishes of” Henry’s children, whose request only referred to property inherited by Decedent from Henry and Janet. Order Denying Reopening at 2; *see* Letter from Ward A. Cline, et al. to IPJ, Dec. 14, 2009 (AR Tab 39).¹¹

We are well aware that the IPJ’s description of the disclaimers in the Order Granting Rehearing made little or no sense: having advised the parties that Decedent had not inherited any property from Henry, the IPJ repeated the parties’ misunderstanding by describing the disclaimers as only covering that (nonexistent) property in Decedent’s estate. But having described them as such, she could not simply reinterpret Appellant’s disclaimer without seeking clarification from him, or at least providing him notice and an opportunity to respond.

In addition, quite apart from the IPJ’s erroneous revision of the Order Granting Rehearing without soliciting responses or providing appeal rights, both the Order Granting Rehearing and the Order Nunc Pro Tunc included findings that the disclaimers were “voluntarily, knowingly and freely executed.” Order Granting Rehearing at 2; Order Nunc Pro Tunc at 2. But there is no support in the record for that finding. The IPJ never questioned Appellant about his disclaimer, which the IPJ had received in the mail from Jeanene, whose interests in the matter were adverse to those of Appellant. Nor is there any other evidence in the record that would indicate that Appellant “knowingly” executed the disclaimer with the understanding that he was relinquishing all of his rights under the will. Thus, on remand, the probate judge must obtain additional evidence before determining that any disclaimer by Appellant is or was voluntarily, knowingly, and freely executed.

¹¹ We are not holding that the language of Appellant’s disclaimer, viewed in isolation, could not reasonably be interpreted to cover all of his life estate in Decedent’s property. We need not decide that issue. But considering the limited nature of the request from Henry’s children, the fact that there was no indication that the parties had received professional assistance in drafting the disclaimer, and the fact that it was Jeanene, not Appellant, who mailed it to the IPJ, it was not reasonable for the IPJ to reinterpret the effect of the disclaimer based solely on its language and without giving notice to the parties.

Conclusion

For the reasons discussed above, we conclude that the Order Granting Rehearing was internally inconsistent, that the Order Nunc Pro Tunc was arbitrary and capricious, and that the Order Denying Reopening incorporated the IPJ's errors with respect to the effect of Appellant's disclaimer. We also conclude that the record does not support the IPJ's finding that Appellant's disclaimer, as interpreted by the IPJ, was voluntarily, knowingly, and freely executed by him.

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 vacates the Order Denying Reopening, the Order Nunc Pro Tunc, and the Order Granting Rehearing, and remands the matter to the Probate Hearings Division for further proceedings consistent with this decision.¹²

I concur:

 // original signed
Steven K. Linscheid
Chief Administrative Judge

 //original signed
Debora G. Luther
Administrative Judge

¹² On remand, the Probate Hearings Division shall also consider the potential applicability of 25 U.S.C. § 2206(j)(2)(B)(i) (rights of children of a testator who are born or adopted after the testator's will was executed) to Donise, a minor. It does not appear that a guardian ad litem was appointed for Donise for the probate proceedings, or that her potential rights were considered by the IPJ.