INTERIOR BOARD OF INDIAN APPEALS

Estate of Charles David Wood

58 IBIA 135 (12/11/2013)

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 CHARLES DAVID WOOD	)	Order Affirming Denial of Rehearing
	)	
	)	Docket No. IBIA 12-019
	)	
	)	December 11, 2013

Barbara M. Burch (Appellant) appealed to the Board of Indian Appeals (Board) from an Order Correcting Citation in Original Order and Denying Petition for Rehearing (Order Denying Rehearing) entered on September 22, 2011, by Administrative Law Judge (ALJ) Richard J. Hough in the estate of Appellant's putative father, Charles David Wood (a.k.a. Charles Darrell Wood) (Decedent).[1] The IPJ held that, because Appellant was adopted out, she is not entitled to share in Decedent's estate. Appellant has not met her burden of showing error in the Order Denying Rehearing and we therefore affirm it.

Background

Appellant was born in 1986 in Texas, and for purposes of this decision we assume—as the ALJ found—that she is one of Decedent's biological children. In September 1995, the State of Texas terminated any parental rights that Decedent may have had over Appellant. Decree of Termination, *In the Matter of Barbara Wood*, No. 95-0127 (15th Jud. Dist. Ct., Grayson County, Tex., Sept. 12, 1995) (Probate Record (PR) Tab 36). The Court found that Protective Services for Families and Children of the Texas Department of Protective and Regulatory Services (Protective Services) had made adequate efforts to locate Appellant's father. *Id.* at 2. The Court also found that Appellant's father voluntarily left and failed to provide support to Appellant and her mother, and that termination of the parent-child relationship between Appellant and her father was in Appellant's best interest. *Id.* at 4-5. At the same time, the State appointed Protective Services as Appellant's permanent managing conservator, and gave it authority to consent to Appellant's legal adoption. *Id.* at 5-6. The following year, the State granted a petition by Phillip and Jacquelyn Burch to adopt Appellant, and her name was changed from Barbara J. Wood to

[1] Decedent was a Fond du Lac (Minnesota Chippewa) Indian, and his case was assigned Probate No. P000077471IP in the Department of the Interior's probate tracking system, ProTrac.

Barbara M. Burch. Decree of Adoption, *In Re Barbara Wood*, No. 95-1781-15 (15th Jud. Dist. Ct., Grayson County, Tex., Apr. 19, 1996) (PR Tab 49).

Decedent died intestate on November 22, 1998, in Indiana, where he had been residing. At the time of his death, Decedent was possessed of interests in trust or restricted property in the State of Wisconsin.[2]

The ALJ held a hearing to probate Decedent's estate on March 16, 2011. At the hearing the ALJ received testimony that Appellant is a biological child of Decedent, and that Appellant had been adopted by another set of parents. Hearing Transcript (Tr.), Mar. 16, 2011, at 13-14 (PR Tab 14).[3]

On March 24, 2011, the ALJ issued his original decision (Decision). The ALJ determined that Appellant, as an adopted-out child of Decedent, is barred under the laws of intestate succession in the State of Minnesota from inheriting from Decedent and is instead an heir of her adoptive parents. Decision at 2. Accordingly, the ALJ determined that under Minnesota law the heirs of Decedent's trust or restricted property were his five biological children who were not adopted out.[4] *Id.* The ALJ ordered the distribution of Decedent's estate to his five heirs in equal shares. *Id.*

Appellant filed a timely petition for rehearing. As the ALJ understood Appellant's petition, she "ask[ed] that the finding of her adoption be vacated, and that she be allowed to share in Decedent's estate, as one of his surviving children." Order Denying Rehearing at 1.

On September 22, 2011, the ALJ issued the Order Denying Rehearing. The ALJ left in place his March 24, 2011, Decision, which found that Appellant had been adopted out, and therefore did not qualify as an heir to Decedent. The ALJ added findings that the

---

[2] Appellant owned a 1/1512 (.0006613757%) interest in 154.6 acres (surface and minerals) in Douglas County, Wisconsin. Estate Inventory, Apr. 20, 2010, at 1 (PR Tab 43).

[3] Decedent's surviving spouse, Carla J. Wood (Carla), has at various times (though not at the hearing) questioned whether Appellant is in fact Decedent's biological daughter, as the ALJ found. This appeal by Appellant is limited to challenging the effect given by the ALJ to her adoption. As noted earlier, we assume for purposes of this decision that Appellant is Decedent's biological daughter and it is unnecessary to address the ALJ's finding of paternity in order to resolve the appeal.

[4] The ALJ did not include Carla as an heir because he found that she had disclaimed her right to inherit from Decedent. Decision at 1.

State of Texas had terminated Decedent's parental rights over Appellant prior to her legal adoption. *See* Order Denying Rehearing at 2. And the ALJ modified the Decision to rely on Wisconsin law because Decedent's trust property was located in Wisconsin. *See id.* at 2-3. But the effect of Appellant's adoption under Wisconsin law was the same, and thus the result remained the same: Appellant is not an heir to Decedent because she was adopted out.

Appellant appealed to the Board, and set forth the reasons for her appeal in her notice of appeal.

Discussion

An appellant bears the burden of showing that an order on rehearing is in error. *Estate of Lucille Kingbird Owens*, 46 IBIA 306, 308 (2008); *Estate of Verna Mae Pepion Hill Hamilton*, 45 IBIA 58, 63 (2007). We conclude that Appellant has not met her burden, and we therefore affirm the Order Denying Rehearing.

In her notice of appeal—which makes the same arguments as her petition for rehearing—Appellant contends that Decedent "had no knowledge of losing his [parental] rights." Notice of Appeal. She alleges that "the State of Texas failed to accurately locate Charles David Wood; aka Charles Darrell Wood." *Id.* Appellant also asserts, without further explanation, that this case is "out of the normal" and "requir[es] special attention." *Id.* As we understand Appellant's arguments, she wishes to be treated as Decedent's biological daughter for purposes of her inheritance rights, on the grounds that the Decree of Termination and/or the Decree of Adoption issued by the Texas District Court are defective or should be disregarded under the circumstances of this case. We are not persuaded by Appellant that it was error for the ALJ to deny rehearing.

For estates of those Indian decedents who died before June 20, 2006, the law of the state where the decedent's real property is located governs the distribution of real property interests and any income that the property accrues after his death. *Estate of Martha Matilda Bordeaux*, 53 IBIA 53, 56 (2011) (citing *Estate of Owens*, 46 IBIA at 307 n.2). Whether a child may inherit through intestacy from the biological parent after parental rights have been terminated and the child has been adopted also is determined according to the substantive law that governs the distribution of the assets. *Id.* (citing *Estate of Kathy Ann Bull Child*, 48 IBIA 235, 238 (2009); *Estate of Richard Doyle Two Bulls*, 11 IBIA 77, 82-84 (1983)). Thus, the ALJ's application of Wisconsin law in the Order Denying Rehearing was proper.

It is undisputed that the Texas District Court ordered termination of Decedent's parental rights over Appellant and granted the adoption of Appellant to the Burches.

Although the ALJ construed Appellant's petition for rehearing as seeking an order "vacating" the State court adoption decree, the ALJ did not expressly address that issue in his Order Denying Rehearing. But we find no basis, on this record, to disregard the State court orders, which in any case neither the ALJ nor the Board would have authority to "vacate."

The Board has recognized that in "appropriate circumstances" the Department of the Interior has the authority to reject the findings or conclusions of a state court, in determining the heirs to Indian trust property. Those circumstances include cases involving paternity findings and cases in which the state court decree is questioned on jurisdictional grounds. *See Lane v. United States*, 241 U.S. 201, 210-11 (1916); *Estate of Malcolm Muskrat*, 29 IBIA 208, 210 (1996); *Estate of James Howling Crane, Sr.*, 12 IBIA 209, 210-12 (1984); *Estate of James Wermy Pekah*, 11 IBIA 237, 240-42 (1983). In the present case, however, Appellant's assertions, *see supra* at 137, provide no basis for us to question the jurisdiction of the State court over the adoption proceedings or to otherwise question the effect to be given the adoption order in these proceedings.

In this case, Appellant has not met her burden to show that it was error for the ALJ to recognize and give effect, in the probate proceeding, to the Texas District Court's decisions, in concluding, pursuant to Wisconsin law, that Appellant is not an heir of Decedent. Nor has Appellant shown any other error by the ALJ. Therefore, we affirm the Order Denying Rehearing.

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 ALJ's September 22, 2011, Order Correcting Citation in Original Order and Denying Petition for Rehearing.

I concur:

// original signed	//original signed
Thomas A. Blaser	Steven K. Linscheid
Administrative Judge	Chief Administrative Judge