



INTERIOR BOARD OF INDIAN APPEALS

Estate of George Umtuch, Jr.

58 IBIA 205 (02/24/2014)

spouse, Patricia Umtuch (Patricia), and his seven children, including Appellant, were the heirs to Decedent's estate, pursuant to Washington State rules of intestate succession.²

In 2005, Judge Hammett issued an Order Reopening Estate and Order Re-Determining Heirs, which reopened Decedent's estate for the limited purpose of determining Decedent's heirs for trust real property interests on the Warm Springs Reservation in Oregon, which Decedent had inherited from his mother. In that order, Judge Hammett concluded that Patricia was the sole heir of those property interests, and that because she was not a member of the Confederated Tribes of the Warm Springs Reservation (Tribe), the Tribe had a right to purchase any Warm Springs allotment interests that she had inherited from Decedent.³ In a subsequent appeal in the probate of Patricia's estate, one of Decedent's daughters sought review of Judge Hammett's determination that Decedent's Warm Spring allotment interests were subject to purchase by the Tribe. We dismissed that appeal because it was outside the scope of the proceeding to probate Patricia's estate. *See Estate of Patricia Umtuch*, 50 IBIA 76 (2009). In our decision, we noted that Decedent had died intestate and that Patricia had been found to be the sole heir of Decedent's Warm Springs trust real property interests. *See id.* at 77.

In 2012, Appellant sought to have Decedent's probate case reopened. Appellant argued that the determination of Decedent's heirs had failed to follow Decedent's last will and testament and to recognize Appellant as Decedent's sole heir. Judge Gordon rejected Appellant's assertion as unsupported, noting that Appellant had failed to submit any such will or other evidence that would establish grounds to reopen the case. Thus, the ALJ found that Appellant had failed to show proper grounds to reopen, and he denied Appellant's request.

Appellant appealed to the Board. In his appeal, Appellant suggested, for the first time, that a copy of the will could be obtained from the Tribe. He also contended that errors were committed regarding the Tribe's purchase option for Decedent's Warm Springs property.

² Judge Hammett apparently made the heirship determination based on Decedent's residence. It appears that, at the time, the only trust assets identified in the estate were trust funds, although Judge Hammett recognized that trust real property might be added when the estate of Josephine Umtuch, Decedent's mother, was probated.

Patricia survived Decedent, but died in 2001, and thus her inheritance from Decedent passed to her estate.

³ *See* Warm Springs Inheritance Act, Aug. 10, 1972, Pub. L. No. 92-377, 86 Stat. 530 (WSIA).

Upon receipt of the appeal, the Board issued an order to show cause, which directed Appellant to explain to the Board why the Order Denying Reopening should not be summarily affirmed because it appeared that Appellant had failed to submit any evidence to the ALJ demonstrating that his petition for reopening was timely (i.e., filed within 1 year of discovery of the alleged error) or evidence supporting his allegation that Decedent had left a will. Order to Show Cause, Aug. 23, 2012 (OSC), at 3 (citing 43 C.F.R. § 30.243) (requirements for petition for reopening).

Appellant responded to the Board's OSC, reiterating his assertion that the Tribe has a copy of Decedent's will and contending that the ALJ could have issued a subpoena and ordered the Tribe to produce its copy of the will. Appellant also seeks review of the Board's statements in *Estate of Patricia Umtuch* that Patricia was the sole heir of Decedent's Warm Springs trust real property interests, and he raises concerns about the Tribe's purchase of Decedent's Warm Springs property.

Discussion

Appellant has the burden of showing that the Order Denying Reopening is in error. *Estate of Carl Sotomish*, 52 IBIA 44, 47 (2010). Simple disagreement with or bare assertions concerning a challenged decision are insufficient to carry this burden of proof. *Estate of John Squally Kalama*, 49 IBIA 201, 204 (2009). In the absence of extraordinary circumstances, the Board's review in an appeal is limited to the issues and evidence that were presented to the probate judge. 43 C.F.R. § 4.318 (scope of review). With that exception, the Board generally does not consider arguments raised for the first time on appeal. *Estate of John Fredericks, Jr.*, 57 IBIA 204, 208 (2013); *Estate of Evelyn F. Broadhead*, 51 IBIA 238, 241 n.2 (2010).

We conclude that Appellant has not met his burden to show that the ALJ erred in denying reopening. In response to the OSC, Appellant makes little attempt to show that the ALJ erred in finding that Appellant's request for reopening failed to show proper grounds for reopening. See Order Denying Reopening at 1-2; 43 C.F.R. § 30.244(a) (judge will deny reopening if proper grounds are not shown); see also 43 C.F.R. § 30.243 (requirements for reopening). Nor does Appellant contend that he submitted evidence to the ALJ (or has done so on appeal) to show that his petition for reopening to the ALJ was timely. See *id.* § 30.243(c)(1). Instead, Appellant argues that the ALJ should have ordered the Tribe to produce a copy of Decedent's alleged will. But Appellant's petition for reopening to the ALJ did not even contend that the Tribe had a copy of any such will. That allegation was raised for the first time on appeal. Although we find no basis to consider it

for the first time on appeal, we note that Appellant has yet to produce any evidence suggesting any likelihood that the Tribe has a copy of a will executed by Decedent.

It was not the ALJ's role, based on Appellant's bare assertions, to initiate an investigation and to use his subpoena authority to assist Appellant to gather evidence that might support reopening of a closed probate case. *Cf. Estate of Rachel Nahdayaka Poco*, 54 IBIA 248, 252 (2012) ("the opportunity to conduct discovery is not a proper ground for seeking rehearing"). Rather, it was Appellant's responsibility to submit sufficient relevant evidence to the ALJ along with the petition for reopening. 43 C.F.R. § 30.243. Appellant does not contend that he submitted any evidence to support the existence of a will (nor has he done so on appeal). He does not contend that he described to the ALJ what efforts, if any, he had made to obtain a copy of a will, e.g., from the Tribe, nor does he suggest that he has any reason to believe that an *original* will, and not just a copy, exists. Accordingly, Appellant has failed to establish that the ALJ committed any error in issuing the Reopening Order.⁴

Appellant's arguments that the Tribe's purchase option for Decedent's Warm Springs property was misapplied were not included in his petition for reopening. Because they are raised for the first time on appeal, we do not consider them.⁵

Because Appellant has not met his burden of establishing that the ALJ erred, we affirm the Order Denying Reopening.

⁴ Appellant's contention that the Board's decision in *Estate of Patricia Umtuch* was in error, because of our statements that Patricia was Decedent's sole heir of his Warm Springs property, appears simply to be an extension of Appellant's unsupported contention that Decedent left a will.

⁵ Even were we to consider this issue, we would find Appellant's arguments to be without merit. For example, Appellant argues that he was not given a choice about selling the property or an opportunity to consent to the sale. Even if Appellant had been found to be an heir to Decedent's Warm Springs property, his consent would not have been required because he is not a member of the Tribe. *See* WISA, § 1(a), 86 Stat. 530; Statement of Reasons, June 12, 2012, at 2 (Appellant is a member of the Cowlitz Indian Tribe). Appellant also argues that when the Tribe purchased the property, his share of the proceeds from the sale (received as an heir of his mother, *see Estate of Patricia Umtuch*, 50 IBIA at 79) was slightly more than initially estimated. That fact, however, would not show that Appellant was adversely affected by the sale or that the purchase option was misapplied.

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 July 23, 2012, Order Denying Reopening.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

//original signed
Thomas A. Blaser
Administrative Judge