



INTERIOR BOARD OF INDIAN APPEALS

Estate of Freddie Azure

58 IBIA 220 (03/12/2014)



# 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 FREDDIE AZURE ) Order Dismissing Appeal  
)  
) Docket No. IBIA 13-073  
)  
) March 12, 2014

Jeremy Ralph Azure (Appellant) appealed to the Board of Indian Appeals (Board) from an Order Denying Reopening entered on February 21, 2013, by Indian Probate Judge (IPJ) Albert C. Jones in the estate of Appellant’s father, Freddie Azure (Decedent).<sup>1</sup> Judge Jones denied a request submitted by the Turtle Mountain Agency Superintendent (Superintendent), Bureau of Indian Affairs (BIA), on behalf of Appellant, to reopen Decedent’s estate in order to add Appellant as a son and an heir of Decedent.

We dismiss the appeal for failure to prosecute because Appellant failed to respond after the Board ordered him twice to submit an original signed notice of appeal, and advised him that failure to do so might lead to summary dismissal of his appeal. But as we also note, even assuming that Appellant had complied with the Board’s orders, he would not have prevailed in this appeal because the arguments and assertions included in Appellant’s notice of appeal are insufficient to demonstrate that Judge Jones erred in denying reopening.

## Discussion

On May 27, 2008, IPJ James Yellowtail issued a Decision (Decision) in Decedent’s estate in which the IPJ made a finding that Decedent had one child, Crystal A. Azure (Crystal). The IPJ approved a will executed by Decedent on October 24, 2001, in which Decedent left his entire trust estate to Crystal.

Four years later, in August of 2012, Appellant sent a letter to BIA, stating that Decedent was his father, that he had not received notice of a hearing in Decedent’s estate, and that he wanted to be included as an heir. *See* Administrative Record (AR) Tab 11. The BIA Turtle Mountain Superintendent petitioned to reopen Decedent’s probate case,

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<sup>1</sup> Decedent was a Turtle Mountain Chippewa. His probate is assigned Probate No. P000047858IP in the Department of the Interior’s probate tracking system, ProTrac.

transmitting to the Probate Hearings Division in the Office of Hearings and Appeals an updated OHA-7 Form (Data for Heirship Finding and Family History), a certificate of Indian blood and birth certificate for Appellant, and a copy of Appellant's letter to BIA. Neither Appellant's letter to BIA nor the Superintendent's petition for reopening included any allegation or evidence questioning the validity of Decedent's will. The Superintendent's petition stated only that the case should be reopened "to include a child that was not listed on the OHA-7." AR Tab 9.

In the Order Denying Reopening, Judge Jones found that Appellant's birth certificate showed that Decedent had completed a paternity affidavit acknowledging Appellant as his child, several years before Decedent executed his will. But Judge Jones also found that Decedent's paternity of Appellant would not change the outcome of the case because the distribution of Decedent's estate was governed by Decedent's will, which left his entire trust estate to Crystal. Thus, although there was an error of fact in the Decision, i.e., by the omission of Appellant as a son of Decedent, Judge Jones concluded that the error did not warrant reopening the case because it did not affect the outcome.<sup>2</sup>

Appellant appealed the Order Denying Reopening to the Board, submitting a photocopy of his notice of appeal. The Board ordered the probate record from BIA but also ordered Appellant to submit a signed original of his notice of appeal. *See* 43 C.F.R. § 4.323 (appellant "must deliver or mail the original notice of appeal to the Board"). After receiving no response, the Board scheduled briefing, but again ordered Appellant to submit an original signed copy of his notice of appeal. The Board advised Appellant that if he failed to comply, the Board might dismiss the appeal for failure to prosecute.

The Board received no response from Appellant. Therefore, we dismiss the appeal for failure to prosecute.<sup>3</sup>

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<sup>2</sup> Because the Superintendent sought reopening more than 3 years after the Decision, the "manifest injustice" standard would apply to any errors in the initial Decision in determining whether reopening of the case was warranted. *See* 43 C.F.R. § 30.243(a).

<sup>3</sup> Even if we did not dismiss the appeal, we would conclude that Appellant failed to demonstrate error in the Order Denying Reopening. Appellant's only arguments are contained in his notice of appeal. Appellant questions the validity of Decedent's will, but his arguments concerning the will are raised for the first time on appeal, and thus are not properly before the Board, absent extraordinary circumstances that we find are not present here. *See Estate of John Fredericks, Jr.*, 57 IBIA 204, 208 (2013); *Estate of Sarah Stewart Sings Good*, 57 IBIA 65, 72 (2013). Moreover, although Appellant states his strongly held belief that Decedent was debilitated by alcoholism, and that Decedent was taken advantage of, he provides no evidence that Decedent, in fact, lacked testamentary capacity or that the  
(continued...)

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 dismisses the appeal.

I concur:

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// original signed  
Steven K. Linscheid  
Chief Administrative Judge

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//original signed  
Thomas A. Blaser  
Administrative Judge

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(...continued)

will was, in fact, the product of undue influence. Instead, Appellant suggests that the matter “needs to be investigated.” Notice of Appeal at 3; *but see Estate of George Umtuch, Jr.*, 58 IBIA 205, 208 (2014) (petitioner has responsibility to submit sufficient relevant evidence to probate judge along with the petition for reopening); *Estate of James Bongo, Jr.*, 55 IBIA 227, 231 (2012) (when BIA submits a petition for reopening, it must fully justify its request). Appellant’s allegations are not sufficient to warrant a finding by the Board that Judge Jones erred in denying reopening.