



INTERIOR BOARD OF INDIAN APPEALS

Estate of Meredith Dreke Irwin

58 IBIA 223 (03/20/2014)

jurisdiction of the IPJ, or of the Board in the context of a probate appeal.⁴ Therefore, the Board solicited briefing from Petitioners on why their Petition (as an appeal) should not be summarily dismissed for lack of subject matter jurisdiction, without prejudice to their right to pursue their administrative rights and remedies before BIA with respect to the inventory dispute.

On March 10, 2014, the Board received a response from Petitioners stating that they do not and did not intend to appeal any order of the IPJ to the Board. Petitioners further state that they will address the proper disposition of their Petition before the IPJ and/or BIA, as appropriate.⁵ Petitioners request that this matter be removed from the Board's docket, which the Board construes as consent to a dismissal.

The Board contacted the Superintendent's office and has been informed that no decision has been issued yet in response to the IPJ's referral of the inventory dispute to BIA. Petitioners have expressed an intent to file a statement with BIA of their position on the dispute. *See supra* note 5. Consistent with 43 C.F.R. § 30.128, the Board refers the matter and the appeal record to the Superintendent for consideration as part of the referral from the IPJ. The Board requests that before issuing a decision on the inventory dispute, the Superintendent provide Petitioners with an opportunity to present evidence and arguments in support of their position, and provide interested parties with an opportunity to respond.

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:

// original signed
Steven K. Linscheid
Chief Administrative Judge

//original signed
Thomas A. Blaser
Administrative Judge

⁴ *See* 43 C.F.R. § 30.128 (inventory disputes arising during probates must be referred to BIA for a decision; BIA's decision is subject to appeal under the 25 C.F.R. Part 2 appeal procedures); *Estate of Marie A. Wilkie*, 56 IBIA 211, 215-16 (2013) (same); *Estate of Laura Iron Ring*, 54 IBIA 265, 266 (2012) (same); *Estate of Frances Marie Ortega*, 50 IBIA 322, 325-26 (2009) (same).

⁵ On March 10, 2014, the IPJ received from Petitioners a Request to Withdraw Petition for Rehearing and Notice of Intent to File Position with Bureau of Indian Affairs, which the IPJ's office forwarded to the Board. In light of our dismissal of the appeal and referral of the matter to BIA, further action on the request to withdraw the petition for rehearing is unnecessary.