



INTERIOR BOARD OF INDIAN APPEALS

Estate of Eva Maria MacArthur

59 IBIA 22 (07/10/2014)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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|---------------------|---|------------------------------------|
| ESTATE OF EVA MARIA |) | Order Dismissing Appeal and |
| MACARTHUR |) | Referring Inventory Dispute to the |
| |) | Bureau of Indian Affairs |
| |) | |
| |) | Docket No. IBIA 14-085 |
| |) | |
| |) | July 10, 2014 |

Donald MacArthur, Jr. (Appellant), appealed to the Board of Indian Appeals (Board) from a March 31, 2014, Order Denying Rehearing issued by Administrative Law Judge (ALJ) Earl J. Waits in the estate of Appellant’s mother, Eva Maria MacArthur (Decedent).¹ Appellant seeks to challenge the inclusion in Decedent’s estate of certain restricted land that, according to Appellant, Decedent intended to convey to him by gift deed.² We dismiss the appeal and refer the matter to the Bureau of Indian Affairs (BIA) as a dispute over the estate inventory.

Because it was unclear from Appellant’s notice of appeal exactly what error(s) he was alleging that the ALJ made in the Order Denying Rehearing, the Board issued a Pre-Docketing Notice and Order to Show Cause on May 13, 2014, requesting an explanation from Appellant.³ On June 30, 2014, the Board received a response from Appellant, in which Appellant explained that he was not challenging the Order Denying Rehearing except to have his claim regarding the alleged gift deed referred to BIA as an inventory dispute.

¹ Decedent was an Alaska Native. Her probate is assigned Probate No. P000062697IP in the Department of the Interior’s probate tracking system, ProTrac.

² In the initial Decision entered on January 10, 2013, the ALJ approved Decedent’s will and distributed her trust and restricted estate to two sons, Appellant and Douglas MacArthur, each receiving a 1/2 share. Appellant alleges that Decedent intended to gift deed to him 12.5 acres out of the 160 acres listed in the estate inventory, and that the estate inventory should therefore contain approximately 148 acres. Notice of Appeal at 2.

³ See Pre-Docketing Notice and Order to Show Cause Why the ALJ’s Order Denying Rehearing Should Not Be Summarily Affirmed in Part and the Matter Referred in Remaining Part to BIA as an Inventory Dispute at 2-3.

Under the probate regulations, “[w]hen an error in the estate inventory is alleged, the OHA deciding official will refer the matter to BIA for resolution” 43 C.F.R. § 30.128(b). And, as the Board explained in *Estate of James Jones, Sr.*, the term “OHA deciding official” includes the Board, which is part of OHA. 51 IBIA 132, 135 (2010) (citing 43 C.F.R. § 4.1(b)(2) (2010)). Thus, the Board must refer inventory disputes that arise during a probate proceeding to BIA for resolution, subject to a right of appeal under BIA’s administrative appeal regulations. *See Estate of Michael Lawrence Study*, 51 IBIA 227, 228-29 (2010). Accordingly, we dismiss the appeal and refer the dispute over the estate inventory to the Alaska Regional Director, BIA, for a decision, subject to a right of an appeal to the Board from BIA’s decision.⁴

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 this appeal and refers the matter to BIA as an inventory dispute for a response and for issuance of a decision in accordance with 25 C.F.R. § 2.7 if no such decision has yet issued.⁵

I concur:

// original signed
Thomas A. Blaser
Administrative Judge

//original signed
Steven K. Linscheid
Chief Administrative Judge

⁴ Any error by the ALJ in not referring the matter to BIA as an inventory dispute is now moot as a result of the Board’s referral of the matter to BIA.

⁵ If Appellant believes that such a decision has been unreasonably delayed, Appellant may submit a demand to BIA, in accordance with the requirements of 25 C.F.R. § 2.8, for a decision.