



INTERIOR BOARD OF INDIAN APPEALS

Estate of Raymond P. Sauser

59 IBIA 29 (07/17/2014)

Petition for reconsideration dismissed:

59 IBIA 116

Judicial review of this case:

Affirmed, Estate of Sauser v. United States, No. CIV 14-5051, 2016 U.S. Dist.
LEXIS 36844 (D.S.D. March 22, 2016)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ESTATE OF RAYMOND P. SAUSER) Order Affirming Denial of Rehearing
)
) Docket No. IBIA 12-058
)
) July 17, 2014

James Raymond Sauser (Appellant) appealed to the Board of Indian Appeals (Board) from an Order Denying Rehearing entered on December 20, 2011, by Administrative Law Judge (ALJ) Richard D. Hines in the estate of Appellant's adoptive father, Raymond P. Sauser (Decedent).¹ The Order Denying Rehearing denied a petition for rehearing filed by Appellant and, as relevant to this appeal, left in place the ALJ's August 18, 2011, Decision decreeing that, pursuant to Decedent's will, Appellant is to receive a life estate in Pine Ridge Allotment No. 3075-B and an undivided 1/2 share life estate in Decedent's other trust lands.

We affirm the ALJ's Order Denying Rehearing because Appellant has failed to show error on the part of the ALJ.

Background

Decedent died on March 15, 2008, owning Indian trust personalty and trust real property interests. Decision at 1. Decedent executed a last will and testament on October 13, 2005. *Id.*; Will (Administrative Record (AR) Tab 56). After conducting a hearing, the ALJ issued the August 18, 2011, Decision approving Decedent's will and ordering distribution of Decedent's Indian trust estate. Relevant to this appeal, the ALJ determined that under the terms of the will, and consistent with the American Indian Probate Reform Act (AIPRA) of 2004, 25 U.S.C. § 2201 *et seq.*, Appellant is entitled to receive a life estate in Allotment No. 3075-B (referred to as the "Home Place") and an undivided 1/2 share life estate in Decedent's other trust lands. Decision at 3-4.

On September 19, 2011, Appellant submitted a petition for rehearing wherein he asserted that the ALJ had misinterpreted Decedent's will and that it was Decedent's intent

¹ Decedent was an Oglala Sioux. His probate case is assigned Probate No. P000068140IP in the Department of the Interior's probate tracking system, ProTrac.

that all trust property—other than the property described as the “Home Place”—pass exclusively to Jonathan Sauser (Jonathan), Decedent’s other son.² Notice of Appeal (Petition for Rehearing) at 1 (AR Tab 16). Appellant argued that Decedent’s intent was that Decedent’s trust property would stay in trust and that the disputed devise of a 1/2 share life estate to Appellant would be inconsistent with that intent, because if AIPRA were repealed, there could be a risk that property subject to a life estate in Appellant would go out of trust. *See id.* at 1-2. Appellant explained that, “[a]t the time of the drafting of the Decedent’s will a question existed as to whether a non-Indian might be ineligible to take property in trust.” *Id.* at 2, n.1. In the alternative, were the ALJ to deny his petition for rehearing, Appellant requested clarification from the ALJ that the devise to Appellant will not result in removal of the property from trust. *See id.* at 3. Appellant did not purport to renounce or disclaim any interest in Decedent’s estate.

The ALJ denied rehearing on December 20, 2011, concluding that Appellant’s petition for rehearing lacked merit. The ALJ found:

This forum does not have the authority to disregard or reform the clear provisions of Indian wills for any purpose—particularly not unforeseen acts of Congress. Further, the desire of the beneficiaries is not “a sufficient basis upon which [the Office of Hearings and Appeals] can amend language in a will.” *Estate of Phillip Loring*, 50 IBIA 178, 187 (2009); petition for reconsideration denied, 50 IBIA 259 (2009).

Order Denying Rehearing at 2 (*italics added*).

Appellant submitted a Notice of Appeal to the Board on January 19, 2012, wherein he gave his reasons for appeal as follows:

[T]he decisions regarding the Decedent’s knowledge of law and intent in making the devise of his property amounted to an impermissible substitution of the preferences of the Administrative Law Judge and those of the Secretary of the Interior for those of the Decedent, and exceed the discretion vested in the Secretary of the Interior and the Administrative Law Judge.

On February 29, 2012, the Board issued a Notice of Docketing and Order Setting Briefing Schedule.

² Some of Appellant’s submissions refer to Jonathan as “Jonathon.” For purposes of this decision, the Board uses “Jonathan,” the name used by Decedent in his will, and the name used by the ALJ in his Decision.

On April 4, 2012, Appellant submitted a “Request for Stay Pending Settlement Discussions.” Appellant asked the Board to “stay the briefing schedule while the parties discuss the possibility of settling the issues in this appeal by means of a renunciation or disclaimer under 25 U.S.C. § 2206(j)(8).”

On April 12, 2012, the Board denied, without prejudice, Appellant’s request for a stay. On its own motion, the Board granted Appellant an extension until May 29, 2012, for filing his opening brief or for filing a motion for a stay joined by other interested parties.

On May 22, 2012, Appellant filed with the Board a “RENUNCIATION OR DISCLAIMER OF INTERESTS IN CERTAIN TRUST LANDS PURSUANT TO [25] U.S.C. § 2206(j)(8).” Appellant states in material part that the will “clearly recites that the most important and overriding intent of the Decedent . . . is that only his enrolled son, Jonath[a]n Thomas Sauser . . . receive all of the trust land interests of our father, the Decedent, to the exclusion of me, with the exception of the ‘Home Place’”; the Decision “fails to follow the intent of the Decedent”; Appellant has appealed the Decision to the Board “so that no final probate order has yet been entered in the [probate] proceedings”; and Appellant “irrevocably and without qualification, renounce[s] or disclaim[s] any and all right, title, and interest in and to” the 1/2 share life estate in trust lands held by Decedent on the Pine Ridge Reservation, excluding the life estate in the Home Place, with such renunciation and disclaimer to be made in favor of Jonathan, pursuant to 25 U.S.C. § 2206(j)(8).

No further submissions were received by the Board.

Discussion

Appellant bears the burden of showing error in an order on rehearing. *See Estate of Margerate Arline Glen*, 50 IBIA 5, 21 (2009). In his notice of appeal, Appellant makes only a conclusory assertion that, in construing the will, the ALJ substituted his own judgment for Decedent’s intent. *See supra* at 30. In his renunciation and disclaimer filed with the Board, Appellant also asserts, without quoting or citing any provision of the will, that Decedent intended for Jonathan to receive all of Decedent’s trust land except for the Home Place. *See this page, supra*. Appellant does not show how the ALJ erred in giving effect to a provision of the will in which Decedent gave “to [his] sons the right to occupy the real Indian Trust properties during their lifetimes (i.e., a life estate)” Decision at 2 (quoting Will, Art. VI(C)) (emphasis added). Simple disagreement with or bare assertions concerning a challenged decision are insufficient to carry Appellant’s burden of proof. *See Estate of Drucilla (Trucilla) Pickard*, 50 IBIA 82, 91 (2009). Thus, Appellant has not met his burden to show that the Order Denying Rehearing is either factually or legally incorrect.

Returning to Appellant’s renunciation and disclaimer of certain interests in favor of his brother Jonathan, submitted for the first time on appeal, we conclude that, as a renunciation and disclaimer, it is untimely and that the Board lacks jurisdiction to consider it. “To renounce an interest under [43 C.F.R.] § 30.180, [one] must file with the *judge, before the issuance of the final order in the probate case*, a signed and acknowledged declaration specifying the interest renounced.” 43 C.F.R. § 30.181 (emphasis added). The regulations define “Judge” to mean an Administrative Law Judge or Indian Probate Judge. 43 C.F.R. § 30.101 (definition of “Judge”). In this case, Appellant did not present his renunciation to the ALJ during the underlying proceedings. And, contrary to Appellant’s assertion that this appeal to the Board prevented a final order from being entered by the ALJ, *see supra* at 31, the Order Denying Rehearing was a final order of the ALJ. *See* 43 C.F.R. § 30.243 (a final order on rehearing must include a notice stating that interested parties who are adversely affected have the right to appeal the final order to the Board). In this appeal from the Order Denying Rehearing, the Board has no authority to accept or approve disclaimers.

Because Appellant has not met his burden of establishing that the ALJ erred, we affirm the Order Denying Rehearing.³

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 Order Denying Rehearing.

I concur:

// original signed
Scott K. Fukumoto
Acting Administrative Judge

//original signed
Thomas A. Blaser
Administrative Judge

³ Appellant was devised only life estate interests in Decedent’s trust property. A devise of a life estate in trust property to a non-Indian (or to a “non-enrolled Indian,” as Appellant has at times referred to himself, *see* Petition for Rehearing at 2, 3) does not, by itself, remove trust property from trust status. Without making any representation that the property would remain in trust in perpetuity after a conveyance of Appellant’s life estate to Jonathan, we note that nothing in this decision precludes Appellant from working with BIA—outside of the context of the probate of Decedent’s estate—to convey his life estate to Jonathan, if he still wishes to do so. *See* 25 C.F.R. Part 152.