



INTERIOR BOARD OF INDIAN APPEALS

Estate of Taylor Beautiful Bald Eagle

59 IBIA 62 (08/01/2014)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ESTATE OF TAYLOR BEAUTIFUL)	Order Affirming Order Denying
BALD EAGLE)	Reopening
)	
)	Docket No. IBIA 12-096
)	
)	August 1, 2014

Curtis Floyd Bald Eagle (Appellant) appeals from an Order Denying Reopening entered on March 13, 2012, by Indian Probate Judge (IPJ) Ange Aunko Hamilton in the estate of Appellant’s grandfather, Taylor Beautiful Bald Eagle (Decedent).¹ The petition for reopening was filed by the Cheyenne River Agency Superintendent (Superintendent), Bureau of Indian Affairs (BIA), on behalf of Appellant, who asserted that Decedent’s will was wrongly disapproved. In the Order Disapproving Will and Order Determining Heirs (Decision), issued by Examiner of Inheritance (Examiner) David J. McKee on January 14, 1966, the Examiner found that Appellant, who was the sole devisee under Decedent’s will, was ineligible to receive Decedent’s trust land interests on the Cheyenne River Reservation pursuant to the Indian Reorganization Act (IRA) of 1934, *see* 25 U.S.C. § 464; disapproved the will; and distributed Decedent’s trust property to Decedent’s heirs at law, i.e., Decedent’s children, determined in accordance with applicable state law.

We affirm the Order Denying Reopening because Appellant has not shown any factual or legal error in the Examiner’s decision.

Background

Decedent died November 12, 1964, owning Indian trust land interests located on the Cheyenne River Reservation. Decision at 1. Decedent executed a last will and testament dated August 30, 1963, which left his entire estate to Appellant, who is Decedent’s grandson. *Id.*; Will (Administrative Record (AR) Tab 74).

¹ Decedent was an enrolled member of the Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota. His probate case is assigned Probate No. P000048834IP in the Department of the Interior’s probate tracking system, ProTrac.

The probate hearing for Decedent's Indian trust estate was held on August 4, 1965.² AR Tab 64. At the time of the probate hearing and Decision, Appellant was not an enrolled member of the Cheyenne River Sioux Tribe. His application for enrollment with the Tribe was presented and disapproved in 1963. Decision at 2.

In his Decision dated January 14, 1966, the Examiner found that, if Decedent had died intestate (i.e., without a will), his heirs at law under South Dakota law of intestate succession would be his seven children. Decision at 1. Although the Examiner found that Decedent executed a will, in which Appellant was the sole devisee, the Examiner disapproved the will because he determined that the devise of Decedent's trust real property interests located on the Cheyenne River Reservation to Appellant was prohibited by § 464 of the IRA. *Id.* at 2. The Examiner reasoned:

The Indians of the Cheyenne River Sioux Reservation in South Dakota have voted to accept the provisions of the [IRA, A]ct of June 18, 1934 (48 Stat. 984; 25 U.S.C. §464), which act provides that no devise to a person not an *heir at law* of the testator *or a member* of the tribe having jurisdiction of the land devised may be approved.

A finding is made that Curtis Floyd Bald Eagle, named as sole devisee in the will of August 30, 1963, is not eligible to receive the land interests so devised to him. Distribution shall therefore be made under the laws of descent and distribution to the heirs of the testator as hereinbefore determined.

Id. (emphases added).

In the ensuing years after his military deployment, Appellant contacted BIA about Decedent's will and his potential entitlement to Decedent's Indian trust estate. AR Tab 8 at 10-11. Eventually, in a letter to BIA dated September 29, 2010, Appellant requested reopening of Decedent's estate. AR Tab 32. On Appellant's behalf, the Superintendent filed a petition for reopening with the Office of Hearings and Appeals dated October 6, 2010, which in turn discusses Appellant's reasons for seeking reopening, without stating why BIA believes that the standard for reopening in the probate regulations has been met. AR Tab 31. Although unclear from the petition filed by BIA, Appellant appears to believe

² The Decision incorrectly states that the hearing was held on November 12, 1964. Appellant did not attend the hearing because he was not aware of it, and because at that time, he was on deployment to Viet Nam serving as a United States Marine. Transcript of Hearing, Nov. 4, 2011, at 8-11 (AR Tab 8).

that reopening is warranted on the ground that the IRA authorizes a devise of IRA lands not only to heirs of a decedent or to a member of the tribe, but also to a decedent's "lineal descendants" regardless of whether they are enrolled in the tribe having jurisdiction over the land. *Id.* (quoting 25 U.S.C. § 464, *as amended by* Pub. L. No. 96-363, § 1, 94 Stat. 1207 (Sept. 26, 1980), and Pub. L. No. 106-462, § 106(c), 114 Stat. 2007 (Nov. 7, 2000)).³

The IPJ conducted a hearing on the reopening petition on November 4, 2011, wherein Appellant appeared and testified. At the conclusion of the hearing, the IPJ stated that, whether or not the Examiner's decision was correct, "manifest injustice" can both favor and disfavor reopening, and that this case "comes down to what is reasonable as far as title is concerned, and that title has already been disbursed." AR Tab 8 at 25-26. On March 13, 2012, the IPJ issued her Order Denying Reopening, explaining her reasoning as follows:

An Indian will may be presented for probate even though the estate has been distributed as intestate property, *Estate of Joan (Joanna) Horsechief*, 5 IBIA 182 (1976). However, in this case the court finds that the [Examiner] fully considered the case at the time of probate and made findings of fact and conclusions of law in 1966. The court will not reconsider the case based on this reason; and in addition, because the trust land in question has been transferred by probate, assignment, or sale over the last 46 years and those transactions cannot financially nor realistically be reversed. Therefore, the petition to reopen and distribute Decedent's estate in accordance with the will is hereby denied.

Order Denying Reopening.

BIA did not appeal from the Order Denying Reopening. Appellant filed a notice of appeal and an opening brief. As we understand Appellant's arguments, the estate should have been reopened for several reasons: "The Secretary of the Interior can only disapprove a will "if it is technically deficient or if it is irrational"; "[t]he omission of an heir from a probate constitutes manifest injustice"; lineal descendants of a testator are permitted to receive devises of IRA lands; and a devisee of IRA land need not be an enrolled member of

³ As pertinent to this appeal, Pub. L. No. 96-363 of September 26, 1980, amended § 464 "by striking the phrase 'or any heirs of such members' and inserting in lieu thereof, the phrase 'or any heirs or lineal descendants of such member or any other Indian person for whom the Secretary of the Interior determines that the United States may hold land in trust.'"

the tribe so long as he or she is an Indian by blood of the tribe where the land is located. Appellant's Opening Br. at 3-4.⁴

Discussion

Appellant bears the burden of showing on appeal that it was error for the IPJ to deny reopening. *Estate of Reginald Dennis Birthmark Owens*, 45 IBIA 74, 78 (2007). We conclude that Appellant has not met his burden, and affirm the Order Denying Reopening for the reasons discussed below.

When a petition to reopen is filed more than 3 years after the date of the original decision, as is the case here, and whether the petition is filed by BIA or by an interested party, the party seeking reopening must show that there is "an error of fact or law in the original decision which, if not corrected, would result in a manifest injustice." 43 C.F.R. § 30.243(a)(2)(ii) and (3)(ii).⁵ Appellant does not allege any factual errors in the Examiner's decision. The dispositive, threshold issue on appeal is whether the Examiner's application of the IRA to invalidate Decedent's will was erroneous as a matter of law. The

⁴ Appellant further contends that the Order Denying Reopening should be reversed because it is deficient in several respects, including, *inter alia*: The IPJ did not support her decision with citations to authority; she made no determination as to whether manifest injustice to Appellant would occur if the probate were not reopened; *Toahmippah v. Hickel*, 397 U.S. 598 (1970), prohibits other considerations of fairness from factoring into the decision to reopen; there is nothing in the Order Denying Reopening indicating what land or property of Decedent still remains, what land was transferred, when the land may have been transferred, and to whom the land may have been transferred; and there is nothing in the record to support the IPJ's conclusion that transactions concerning the land cannot be reversed. Appellant's Opening Br. at 4-5.

⁵ We note that the Superintendent assisted Appellant in the proceedings before the IPJ by submitting the petition for reopening on Appellant's behalf. Were the Superintendent to have forwarded Appellant's original request for reopening to the IPJ, the Board would not have taken issue with that assistance. And, were the Superintendent to have submitted his own request for reopening—and fully explained why BIA believes that the standard in the regulations for reopening has been met—the Board would not have taken issue with that assistance. But where, as here, the Superintendent submits a request for reopening on behalf of Appellant, without explaining why reopening outweighs the interest in finality and without arguing why leaving the estate closed would result in a manifest injustice, neither the interests of Appellant, nor the Department, are properly advanced. See *Estate of James Bongo, Jr.*, 55 IBIA 227, 231 (2012).

Board reviews legal determinations *de novo*. *Estate of Laberta Stewart*, 54 IBIA 198, 203 (2012).

The trust real property in Decedent's estate, as of the date of his death, consisted of land interests located on the Cheyenne River Reservation. The Cheyenne River Sioux Tribe voted to accept the provisions of the IRA. Decision at 2. The relevant portions of the IRA in effect as of the date of Decedent's death in 1964 provided:⁶

Except as herein provided, no . . . devise, . . . of restricted Indian lands . . . shall be made or approved: *Provided, however*, That such lands or interests may, with the approval of the Secretary of the Interior, be . . . devised . . . to the Indian tribe in which the lands . . . are located . . . and in all instances such land or interests shall descend or be devised, in accordance with the then existing laws of the State, or Federal laws where applicable, in which such lands are located . . . to any *member* of such tribe . . . or *any heirs* of such member. . . .

48 Stat. 985 (June 18, 1934) (emphases added).

"Heirs," as used above, has been interpreted to mean "heirs at law." *See Cultee v. United States*, 713 F.2d 1455, 1459 (9th Cir. 1983) ("Where an Indian attempts to devise restricted property to his heirs, . . . , we interpret the reference to state law in [25 U.S.C. § 464] to identify, by incorporating state law, those persons who are the testator's heirs under state law . . ."). Thus, at the time of Decedent's death, the IRA allowed devises of IRA lands only to the tribe in which the lands were located, to any *member* of such tribe, or to any of Decedent's *heirs at law* determined in accordance with applicable state law. *See id.*

The Examiner concluded that the IRA prohibited Decedent's devise of his IRA lands to Appellant because Appellant was neither an "heir at law" of Decedent, nor a member of the Cheyenne River Sioux Tribe.⁷ *See supra* at 63. Under applicable state law, Decedent's

⁶ As relevant to the issues in this case, "[t]he law in effect at the time of death must be applied, not a later-enacted law." *Estate of Cyprian Buisson*, 53 IBIA 103, 110 (2011) (citing *Estate of Kathy Ann Bull Child*, 48 IBIA 235, 238 (2009); *Estate of Samuel R. Boyd*, 43 IBIA 11, 18 (2006)).

⁷ Regardless of the extent to which, as Appellant asserts, the Secretary may determine that a will is technically deficient or irrational, the Secretary or her designee may disapprove a will if the provisions of the will are contrary to Federal law. As of the date of Decedent's death, the IRA prohibited the devise of IRA lands except to specific categories of devisees, and the Department must give effect to the prohibition in applicable cases. The Board is

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heirs at law were Decedent's children. Because Decedent left surviving children, Appellant, as Decedent's grandchild, is not an "heir at law" of Decedent. And on appeal, Appellant has not shown that, as of Decedent's date of death, Appellant was a member of the Cheyenne River Sioux Tribe.

Instead, Appellant argues that the Examiner's decision is erroneous because there is no requirement that he be enrolled with the Tribe. To the extent that Appellant is contending that having Cheyenne River Sioux Indian blood is sufficient to qualify him as a "member" of the Tribe as that term is used in the IRA, he offers no legal authority for his position. 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).

Appellant next asserts that the will should have been approved because he is a lineal descendant of the testator. The IRA was amended in 1980 to include lineal descendants as eligible devisees of IRA lands. *See supra* note 3. The IRA's amended provision pertaining to lineal descendants, however, is not applicable to this case because Decedent died before the amendment was enacted. *See supra* note 6.

Appellant's remaining challenges to the IPJ's Order Denying Reopening are not further addressed because Appellant has not shown how the Examiner's decision was legally incorrect. If there is no legal or factual error in the original probate decision, there is simply no basis for reopening the estate, even if the specific grounds for denying reopening in the Order Denying Reopening are not adequately explained or supported in the record.

Because Appellant has failed to meet his burden of showing error in the Examiner's decision, we affirm the Order Denying Reopening for the specific reasons discussed above.

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"bound to follow the laws set down by Congress. We may not substitute our judgment — or Appellant's judgment — in place of Congress'." *Buisson*, 53 IBIA at 110 (footnote omitted).

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 Reopening for the reasons stated herein.

I concur:

// original signed
Scott K. Fukumoto
Acting Administrative Judge

//original signed
Thomas A. Blaser
Administrative Judge