



INTERIOR BOARD OF INDIAN APPEALS

Estate of Robert Marcel Vanderveer

59 IBIA 76 (08/13/2014)

Related Board case:
56 IBIA 32



United States Department of the Interior

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INTERIOR BOARD OF INDIAN APPEALS
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ESTATE OF ROBERT MARCEL)	Order Docketing and Dismissing
VANDERVEER)	Appeal
)	
)	Docket No. IBIA 14-104
)	
)	August 13, 2014

Jillian Garza (Appellant) appealed to the Board of Indian Appeals (Board) from a Modification to Add and Distribute Omitted Property (Modification Order) entered on May 29, 2014, by Administrative Law Judge (ALJ) Larry M. Donovan in the estate of Appellant’s father, Robert Marcel Vanderveer (Decedent).¹ The Modification Order granted a request by the Cheyenne River Agency Superintendent, Bureau of Indian Affairs (BIA), to add to Decedent’s estate inventory and distribute a real property interest that Decedent inherited from the Estate of Evangeline Vanderveer, Probate No. P000065491IP.² The ALJ ordered that the additional property interest be distributed in accordance with the American Indian Probate Reform Act (AIPRA), 25 U.S.C. §§ 2206(a)(2)(A)(i) and 2206(a)(2)(B)(i), and as provided in the Decision issued in Decedent’s estate on March 10, 2010.³ The Board docketed but dismisses the appeal because it raises issues that are outside the scope of an appeal from the Modification Order.

¹ Decedent was a Cheyenne River Sioux. The probate number assigned to Decedent’s case in the Department of the Interior’s probate tracking system, ProTrac, is No. P000073908IP.

² Based on information obtained by the Board, it appears that the Modification Order added a 1/8 (0.125) trust interest in Allotment No. 340 M 5058 (minerals only) on the Cheyenne River Reservation, South Dakota.

³ As pertinent to this appeal, the Decision ordered, for Decedent’s trust real property interests on the Cheyenne River Reservation constituting 5% or greater of the total allotment, that the interests be distributed in equal shares (1/3 each) among Decedent’s children, Amy Beth Nottingham or Vanderveer (Amy), Brian Williams (Brian), and Appellant, subject to a life estate for Decedent’s surviving spouse, Sharon Morris (Sharon). Decision at 3.

On receipt of the appeal, the Board ordered Appellant to complete service of her notice of appeal on the interested parties as required by 43 C.F.R. §§ 4.310(b) and 4.323, and to notify the Board that she had done so.⁴ In addition, it appeared that Appellant was attempting to seek the Board's direct review of the Decision, and to raise issues that are outside the scope of an appeal from the Modification Order. Therefore, the Board ordered Appellant to show cause (i.e., explain) why her appeal should not be dismissed. Pre-Docketing Notice and Order for Appellant to Complete Service on Interested Parties and to Show Cause (OSC), June 19, 2014, at 3-4.

In her response to the OSC, Appellant argues that Sharon, as a non-Indian, should not receive any interest in Decedent's trust estate. Appellant also argues that Decedent's children should share equally in Decedent's trust estate, but only if each is enrolled or can demonstrate close social and economic ties to an Indian community. As we explained in the OSC, the argument that Sharon, Amy, and/or Brian are not (or might not be) entitled to receive an interest in Decedent's trust estate is improper as a basis for appealing from the Modification Order because it raises an issue that was decided in the initial probate Decision. *See id.* at 3. The Board does not have jurisdiction to review directly an initial probate decision determining heirs or beneficiaries; a party must first exhaust remedies with the probate judge by seeking rehearing or reopening.⁵ *See* 43 C.F.R. § 4.320; *Estate of Thomas Eugene Iron*, 58 IBIA 123, 123 n.2 (2013). And where, as here, a probate judge's modification order simply adds property to a decedent's estate for it to be distributed pursuant to the terms of a prior, and final, probate decision determining heirs, the initial probate decision is not within the scope of an appeal to the Board from the modification order. *See* 43 C.F.R. § 4.318 (scope of review); *Estate of Caroline Davis*, 51 IBIA 101, 101 (2010) (docketing and dismissing appeals); *Estate of Irma Ross*, 51 IBIA 21, 21 (2009) (same).

Further, to the extent that Appellant challenges a determination that Amy, as the eldest child, is entitled to receive Decedent's entire interest in trust real property constituting less than 5% of the total allotment, pursuant to the "single heir rule" of AIPRA, 25 U.S.C. § 2206(a)(2)(D)(iii)(I), that issue was decided in a previous Modification to Add and Distribute Omitted Property entered on September 26, 2012, by ALJ Earl J. Waits. The Board dismissed Appellant's appeal of ALJ Waits's order because the appeal was not timely filed with the Board. *See Estate of Robert Marcel Vanderveer*, 56 IBIA 32, 32 n.2 (2012). The Modification Order issued by ALJ Donovan does not purport to reopen or revisit ALJ Waits's determination that Amy is the single heir of less-than-5% interests as a

⁴ Appellant complied with that order.

⁵ No petitions for rehearing were filed within the deadline for seeking rehearing on the Decision.

matter of Federal law. Accordingly, this issue is also outside the scope of an appeal from the Modification Order.

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 docketed but dismisses the appeal.

I concur:

// original signed
Thomas A. Blaser
Administrative Judge

//original signed
Steven K. Linscheid
Chief Administrative Judge