



INTERIOR BOARD OF INDIAN APPEALS

Estate of Louise Two Bears

59 IBIA 147 (09/29/2014)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
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|----------------------------|---|-------------------------------------|
| ESTATE OF LOUISE TWO BEARS | ) | Order Dismissing Appeal in Part and |
|                            | ) | Affirming Modification Order in     |
|                            | ) | Remaining Part                      |
|                            | ) |                                     |
|                            | ) | Docket No. IBIA 14-118              |
|                            | ) |                                     |
|                            | ) | September 29, 2014                  |

Doreen C. Bagola (Appellant) appealed to the Board of Indian Appeals (Board) from a Modification Order to Include Omitted Property (Modification Order) entered on July 25, 2014, by Administrative Law Judge (ALJ) R. S. Chester in the estate of Appellant’s grandmother, Louise Two Bears (Decedent).<sup>1</sup> The order granted a request from the Standing Rock Superintendent, Bureau of Indian Affairs, to add to the inventory of Decedent’s estate previously omitted trust real property located on the Standing Rock Reservation in North Dakota. The ALJ ordered the distribution of those interests pursuant to the September 5, 1974, Order Approving Will and Decree of Distribution, as amended by a September 20, 1974, Order Amending Order Approving Will and Decree of Distribution (Amending Order) (collectively, “Decision”). The 1974 Decision approved Decedent’s will and decreed that, with the exception of a specific devise not relevant here, all of Decedent’s trust property interests on the Standing Rock Reservation in North and South Dakota pass to Decedent’s husband, Mandan Two Bears, under the rest-and-residue (residuary) clause in Decedent’s will. The Modification Order rejected objections raised by Appellant, which the ALJ characterized as asserting that property not included in the inventory at the time of Decedent’s death should be treated as though it does not exist, and that the residuary clause in Decedent’s will only applies to trust personalty.

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,

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<sup>1</sup> Appellant, who was also known as Louise Fearless Hawk and Louise Bagola, was a Standing Rock Sioux. Her probate is assigned Probate No. P000092251IP in the Department of the Interior’s probate tracking system, ProTrac. Her probate was previously assigned No. IP BI 284C 72.

and to notify the Board that she had done so.<sup>2</sup> In addition, it appeared that Appellant was attempting to seek the Board's direct review of the 1974 Decision and, to the extent Appellant raised issues that are within the scope of an appeal from the Modification Order, the ALJ correctly explained the law on those issues. Therefore, the Board ordered Appellant to show cause why her appeal should not be dismissed on the ground that the issues raised in her appeal are outside the scope of review or, if the issues are within the scope of review for an appeal from the Modification Order, why the Modification Order should not be summarily affirmed. Pre-Docketing Notice and Order for Appellant to Complete Service on Interested Parties and to Show Cause (OSC), Aug. 8, 2014, at 3-4.

In her response to the OSC, Appellant argues that “[t]he rest and residue clause pertains to any and all [Individual Indian Money] funds that are in the account on the date of death of the [D]ecedent in which she leaves to her husband whom is now deceased. Said interest and newly omitted interest should go through the probate process as if she died intestate.” Clarification of Intent to Petition and to Serve Interested Parties, Aug. 20, 2014, at 1. As we explained in the OSC, the issue of whether the residuary clause in Decedent's will included trust real property was clearly decided, in the affirmative, in the 1974 Decision, which the Board does not have jurisdiction to review directly. *See* 43 C.F.R. § 4.320; *Estate of Thomas Eugene Iron*, 58 IBIA 123, 123 n.2 (2013). Therefore, we dismiss that portion of Appellant's appeal.

With respect to the other issue raised by Appellant concerning the disposition of the previously omitted interests—the subject of the modification order—the ALJ considered and rejected Appellant's position that those interests should be probated as intestate interests, outside the will. The ALJ correctly explained that the property being added to the inventory had always been part of Decedent's estate because Decedent was entitled to it at the time of death, and thus it had always been subject to distribution under Decedent's will. The ALJ also correctly explained that, as the residuary clause in Decedent's will applies to real property, Appellant's objection to distributing the additional Standing Rock property to Decedent's husband, Mandan Two Bears, pursuant to the 1974 Decision and the will, had no merit. Although Two Bears died in 1991, his right as an heir vested at the time of Decedent's death, and his subsequent death does not preclude his inheritance from Decedent, regardless of when it is determined that the property is part of Decedent's estate. Therefore, as to the remainder of Appellant's appeal, we affirm the Modification Order.

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<sup>2</sup> Appellant complied with that 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 dismisses the appeal in part and affirms the Modification Order in remaining part.

I concur:

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// original signed  
Thomas A. Blaser  
Administrative Judge

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//original signed  
Steven K. Linscheid  
Chief Administrative Judge