



INTERIOR BOARD OF INDIAN APPEALS

Estate of Eugene Wilbur Eagle

59 IBIA 215 (10/30/2014)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
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ARLINGTON, VA 22203

ESTATE OF EUGENE WILBUR	)	Order Affirming Order Denying
EAGLE	)	Rehearing
	)	
	)	Docket No. IBIA 14-119
	)	
	)	October 30, 2014

Thomasine E. Eagle (Appellant) appealed to the Board of Indian Appeals (Board) from an Order Denying Rehearing entered on July 16, 2014, by Indian Probate Judge (IPJ) Albert C. Jones in the estate of her father, Eugene Wilbur Eagle (Decedent).<sup>1</sup> The IPJ denied, for failure to allege any error of fact or law in the initial probate Decision,<sup>2</sup> a petition for rehearing filed by Appellant in which she asserted that she dialed the number for the telephonic probate hearing held on March 14, 2013, but was not transferred to the IPJ.<sup>3</sup> We summarily affirm the Order Denying Rehearing.

Upon receipt of Appellant’s appeal, on August 28, 2014, the Board issued a pre-docketing notice and order for Appellant to complete service of the appeal and to clarify whether and, if so, on what grounds she contends that the Order Denying Rehearing is, in substance, erroneous. Pre-Docketing Notice and Order at 2. We explained that the purpose of an appeal to the Board is for an appellant who has been adversely affected by a probate judge’s decision to seek review by the Board in order to have errors corrected in the judge’s decision. *Id.*; *see also* 43 C.F.R. § 4.320 (an interested party has a right to appeal if

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<sup>1</sup> Decedent was a Three Affiliated Tribes Indian, and his probate case was assigned Probate No. P000098677IP in the Department of the Interior’s probate tracking system, ProTrac.

<sup>2</sup> The Decision, which was issued by Administrative Law Judge (ALJ) R.S. Chester on March 28, 2013, approved Decedent’s will and ordered that Decedent’s trust estate be distributed in accordance with the will to Decedent’s spouse, Marjorie Patricia Eagle.

<sup>3</sup> The Order Denying Rehearing also denied a petition for rehearing filed by Appellant’s sister, Gloria J. Eagle (Gloria), who alleged that she too called in for the hearing but was not transferred to the IPJ. Gloria additionally alleged that a divorce decree required Decedent to pay child support for Gloria and Appellant, which allegation the IPJ construed as a possible claim against Decedent’s trust estate.

he or she is adversely affected by the probate decision). We further explained that Appellant's assertion to the IPJ that she was not connected to the telephonic hearing is not an allegation of error in the actual Decision itself. *Id.*

In her response to the Board's order,<sup>4</sup> Appellant elaborates on her assertion in her petition for rehearing that she attempted but was unable to connect to the telephonic hearing. Response to Order at 1 and Attach. 1 & 2. As noted, this argument does not allege any error in the Decision. An alleged procedural error, standing alone, is not sufficient to state a ground for rehearing pursuant to 43 C.F.R. § 30.238. In addition, Appellant encloses the Final Decree of Divorce between Decedent and Mary E. Eagle (Mary), the mother of Appellant and Gloria. *Id.*, Attach. 3. Appellant contends that Decedent supported several of her half-siblings during his lifetime and that it is only fair for Appellant and Gloria to share in his trust estate, and requests 18 years of back child support. *Id.* at 2.

In the Order Denying Rehearing, the IPJ considered and rejected the same claim for child support, made by Gloria. In response to Gloria's assertion that child support should be paid to Gloria and Appellant out of Decedent's trust estate, the IPJ correctly explained that any claim against Decedent's estate for unpaid child support must have been filed before the conclusion of the first probate hearing pursuant to 43 C.F.R. § 30.140.<sup>5</sup> *See* Order Denying Rehearing at 3; *see also Estate of Kelly Lynn Walker*, 58 IBIA 269, 273-74 (2014). Gloria did not appeal the IPJ's determination. And as we advised Appellant upon receipt of the appeal, to the extent that Appellant seeks to raise the same issue that Gloria raised to the IPJ regarding child support, Appellant must show why the Order Denying Rehearing should not be summarily affirmed. Pre-Docketing Notice and Order at 3. Appellant does not show that the claim was submitted prior to the conclusion of the probate hearing. Thus, we affirm the IPJ's determination that the claim is untimely.

Even if the claim for child support had been timely, the IPJ also determined—and we agree—that the claim could not be approved in any event. *See* Order Denying Rehearing at 3. The divorce decree, which was entered by a New Mexico court, states that Decedent “should be ordered to contribute a reasonable amount of money” to Mary, for the support of Appellant and Gloria, “when and if the Court obtains personal jurisdiction” over Decedent. Final Decree of Divorce, *Mary E. Eagle v. Eugene W. Eagle*, No. 7177 (N.M.

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<sup>4</sup> Appellant did not certify that she served the notice of appeal, or her response to the Board's order, on the IPJ and interested parties. However, the failure to do so is rendered moot by our affirmance of the Order Denying Rehearing.

<sup>5</sup> Subsection 30.140(a) of 43 C.F.R. provides that, in a formal probate proceeding, “claims that are not filed by the conclusion of the first hearing are barred.”

1958), at 2-3. The IPJ found no evidence that such an order was ever issued, or that a judgment identifying the amount Decedent owed was ever obtained from a court of competent jurisdiction. Order Denying Rehearing at 3. Pursuant to 43 C.F.R. § 30.143, a claim that has not been reduced to judgment by a court of competent jurisdiction, or is unliquidated, will not be allowed. *See* 43 C.F.R. § 30.143(b)(2) and (3). Thus, the IPJ is correct that Appellant's claim for child support provides no grounds for rehearing, and as Appellant alleges no other error, we summarily affirm the Order Denying Rehearing.

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 IPJ's July 16, 2014, Order Denying Rehearing.

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