



INTERIOR BOARD OF INDIAN APPEALS

In the Matter of the Will of Mildred M. Gillert

60 IBIA 83 (03/09/2015)

Related Board case:
64 IBIA 35



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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SUITE 300
ARLINGTON, VA 22203

IN THE MATTER OF THE WILL OF)	Order Docketing and Dismissing
MILDRED M. GILLERT)	Appeal as Premature
)	
)	Docket No. IBIA 15-054
)	
)	March 9, 2015

Jeanne G. Gillert (Appellant) appealed to the Board of Indian Appeals (Board) from a November 25, 2014, Order Reopening Will Approval (Order for Reopening) issued by the Osage Agency Superintendent (Superintendent), Bureau of Indian Affairs (BIA), which reopened the matter of the approval of the last will and testament dated April 24, 2012, of Mildred M. Gillert (Decedent), deceased unallotted Osage.¹

On receipt of the appeal, the Board requested the Superintendent to clarify whether the scope of the reopening proceedings will include the issues raised by Appellant in her notice of appeal and petition for reopening.² The Board explained that if, as a procedural matter, the Superintendent intended to grant Appellant’s petition for reopening, in addition to having granted (as a procedural matter) a separate petition for reopening submitted by Nicholas Gillert, Appellant’s appeal from the Order for Reopening would appear to be premature and subject to summary dismissal. And in that scenario, the Board also ordered Appellant to show cause (i.e., explain) why the Board should not dismiss the appeal as premature. The Board gave Appellant 15 days from receipt of the Superintendent’s response in which to comply with the order to show cause, and advised Appellant that if she

¹ The Superintendent’s action on Osage wills is governed by 25 C.F.R. Part 17, and the Secretary of the Interior’s authority to consider appeals from the Superintendent’s approval or disapproval of an Osage will, *see id.* § 17.14(a), has been delegated to the Board. *See* 212 Departmental Manual 13.4(A)(3) (June 1, 2012); *In the Matter of the Will of Agnes Marie Finegan*, 55 IBIA 236, 236 n.1 (2012).

² Notice of Receipt of Appeal, Order for Appellant to Complete Service, and Order for Clarification, Jan. 27, 2015. The Board also ordered Appellant to complete service of her notice of appeal on the interested parties, and to notify the Board that she had done so. On February 18, 2015, the Board received written notice from Appellant that she complied with the Board’s order to complete service.

failed to comply with or respond to the order, her appeal might be dismissed without further notice.

On February 13, 2015, the Board received a response from the Special Attorney for the Osage Indians (Special Attorney), Tulsa Field Solicitor's Office, advising the Board that his recommendation to the Superintendent, and the intended effect of the Superintendent's Order for Reopening, was to reopen the will approval proceedings for all purposes, and for any party, regardless of who filed a request for reopening. Special Attorney's Response to Order for Clarification, Feb. 10, 2015, at 1-2. The Board has received no response from Appellant to the Special Attorney's response.

In the Board's order to show cause, the Board explained that if, as a procedural matter, the Superintendent granted Appellant's request for reopening, Appellant's appeal would appear to be premature because the issues raised in her notice of appeal and petition for reopening might ultimately be decided favorably by the Superintendent. As noted, the Special Attorney has clarified that the will approval proceedings will be reopened for all purposes and for any party. Therefore, the Board dismisses Appellant's appeal as premature.³

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 this appeal as premature.

I concur:

// original signed
Thomas A. Blaser
Administrative Judge

//original signed
Steven K. Linscheid
Chief Administrative Judge

³ The Board also notes that enclosed with the Special Attorney's response to the Board's order are two letters dated February 2, 2015, which were received by the Special Attorney and the Superintendent, and ostensibly signed by Nicholas Gillert. The Special Attorney expresses doubts as to the authenticity of the signatures on the letters. The Board leaves for the Superintendent to address the letters, as appropriate, in the will approval proceeding.