INTERIOR BOARD OF INDIAN APPEALS

Estate of St. Ann Hauge

60 IBIA 158 (03/27/2015)

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
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ESTATE OF ST. ANN HAUGE	)	Order Affirming Modification Order
	)	and Dismissing Appeal in Remaining
	)	Part
	)	
	)	Docket No. IBIA 13-006
	)	
	)	March 27, 2015

Duane Hauge (Appellant) appealed to the Board of Indian Appeals (Board) from a Modification Order to Include Omitted Property (Modification Order) entered on September 20, 2012, by Indian Probate Judge (IPJ) Albert C. Jones in the estate of Appellant's mother, St. Ann Hauge (Decedent).[1] The Modification Order added property to Decedent's estate inventory that was not previously included when the Order Determining Heirs for Decedent's estate was issued on June 6, 1977. The additional property is located in Montana, and the IPJ determined that under the Montana laws of intestate succession,[2] the property passed to Decedent's surviving spouse and Appellant's father, Joseph Hauge (Joseph), who is now deceased. On appeal, Appellant contends that he is the sole surviving child of Decedent, and that because his father was non-Indian, all of Decedent's interests in both Turtle Mountain Reservation lands in North Dakota, and those in Montana, should pass directly to him.

We affirm the Modification Order because Appellant has failed to show that the IPJ erred in determining that, under Montana law, Decedent's interests in the trust property in Montana passed to Joseph as her surviving spouse. We dismiss the appeal in remaining part because Appellant's request that Decedent's Turtle Mountain Reservation property in North

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[1] Decedent, who was also known as St. Ann Grant, was a Turtle Mountain Chippewa. Her probate is assigned No. P000100523IP in the Department of the Interior's probate tracking system, ProTrac. The original number assigned to the probate of Decedent's estate was IP BI 375 A 77.

[2] Because Decedent died before the American Indian Probate Reform Act, *see* 25 U.S.C. § 2206 *et seq.*, became effective, the intestacy laws of the state where the trust property is located apply to determine heirship for her trust property. *Estate of Cyprian Buisson*, 53 IBIA 103, 110 (2011) (citing 25 U.S.C. § 348).

Dakota pass directly to him is outside the scope of the Modification Order, which did not reopen the issue of inheritance of Decedent's North Dakota property.

Discussion

Decedent died on March 2, 1976, without a will. Order Determining Heirs, June 6, 1977 (Administrative Record (AR) Tab 12). The Order Determining Heirs for her estate determined that under the North Dakota laws of intestate succession, Decedent's surviving spouse, Joseph, inherited all of the property identified in her estate inventory, which consisted of an interest in a Turtle Mountain Reservation allotment in North Dakota. *Id.*; Inventory and Appraisement of Indian Trust Lands of St. Ann Grant Hauge, Mar. 16, 1977 (AR Tab 22).

On April 25, 2012, the Bureau of Indian Affairs (BIA) submitted a petition to reopen Decedent's probate case to add to her estate inventory an interest in Turtle Mountain Public Domain (Fort Belknap) Allotment 224 M2168 (Allotment), located in Montana. Petition for Reopening to Distribute Trust Property, Apr. 25, 2012 (AR Tab 6). Decedent inherited interests in the Allotment from her parents, and the interests had not been identified when Decedent's estate was probated. *Id.*[3] The Modification Order granted BIA's petition, added the Allotment to Decedent's estate, and determined that inheritance was determined by the law of Montana, as the state in which the Allotment is located. Modification Order, Sept. 20, 2012, at 1 (AR Tab 4). The IPJ determined that under Montana law, Decedent's interest in the Allotment passed in full to Joseph as her surviving spouse. *Id.* at 2.

On appeal to the Board, Appellant seeks to have all of Decedent's property pass directly to him as the sole surviving child of Decedent, rather than to the estate of his father, who was non-Indian and to whom the property passes out of trust.[4] Letter from Appellant to Board, Jan. 18, 2013.

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[3] The inventory accompanying BIA's petition for reopening indicates that Decedent inherited a 2/21 interest in the Allotment from her mother, Virginia Grant, and a 1/21 interest in the Allotment from her father, Joseph Grant. Inventory of Decedents Report, Mar. 27, 2012 (AR Tab 8).

[4] Decedent and Joseph had two children, Appellant and his sister JoAnn Hague, who is deceased. JoAnn had two children, who survived her. Data for Heirship Finding and Family History, June 6, 1977, at 1 (AR Tab 23); Letter from McNiel to the Board, Jan. 21, 2013.

Appellant has the burden to show error in the Modification Order. *Estate of Aloysius Plainfeather*, 56 IBIA 154, 160 (2013). Simple disagreement with the conclusion reached by the IPJ is not sufficient to carry this burden of proof. *Estate of Alverda Beck*, 55 IBIA 93, 94 (2012). Appellant has not met his burden to show error in the Modification Order.

The Modification Order correctly applied Montana law. Under the applicable Montana law, Mont. Rev. Code Ann. § 91A-2-102 (1978), Joseph, as Decedent's surviving spouse, was her sole heir. Although Joseph died in 1977,[5] his right as the heir vested at the time of Decedent's death on March 2, 1976, even with respect to property owned by Decedent that was only later identified and added to Decedent's estate inventory. *Estate of Samuel R. Boyd*, 43 IBIA 11, 18 (2006) (inheritance is determined as of the time of a decedent's death). Thus, the IPJ correctly determined that Decedent's interests in the Allotment pass to Joseph's estate, where they are subject to separate probate proceedings that are not conducted by the Department of the Interior.[6] *Estate of Herbert Bartlett Levering*, 37 IBIA 89, 90 (2001) (any property that the deceased inherited would be part of the deceased's estate and would pass in accordance with the probate of that estate). To the extent Appellant seeks to avoid the application of state law in order to achieve what he believes would be a more appropriate result, neither the IPJ nor the Board has authority to disregard Federal law, which in this case requires the application of state laws of intestate succession. *Estate of Bertha Skyman Eastman*, 50 IBIA 158, 164 (2009). Because Appellant has not shown error in the Modification Order, we affirm that order.

In his appeal, Appellant also requests, for the same reasons, that Decedent's interests in property on the Turtle Mountain Reservation in North Dakota also pass directly to him. That issue is outside the scope of this appeal because the Modification Order did not purport to reopen the inheritance of Decedent's property located in North Dakota. *See* 43 C.F.R. § 4.318 (scope of appeal); *Estate of Robert Marcel Vanderveer*, 59 IBIA 76, 77-78 (2014) (dismissing appeal because it raised issues outside the scope of the modification order from which the appeal was taken). Therefore, to the extent Appellant seeks to revisit the distribution of Decedent's North Dakota property, we dismiss the appeal.[7]

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[5] *See* Notice of Appeal at 8 (unnumbered).

[6] Because Joseph is non-Indian, the interests that his estate inherited from Decedent will pass out of trust. *Estate of Beck*, 55 IBIA at 95. The Department does not have jurisdiction over non-trust property. *Estate of Marvin Lee Tissidimit*, 51 IBIA 211, 212 (2010). Accordingly, after the property passes to Joseph's estate, its ultimate disposition will be determined in the probate of his estate in a state forum. *Estate of Beck*, 55 IBIA at 95.

[7] Although we dismiss this portion of the appeal, we note that, as with the Montana property, Appellant disagrees with the result of applying state law, but does not contend that the Order Determining Heirs misapplied North Dakota law.

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 IPJ's September 20, 2012, Modification Order, and dismisses the appeal in remaining part.

I concur:

// original signed	//original signed
Steven K. Linscheid	Thomas A. Blaser
Chief Administrative Judge	Administrative Judge