



INTERIOR BOARD OF INDIAN APPEALS

Estates of Thurman Parton and Arnita Lois Parton Gonzales

60 IBIA 172 (04/06/2015)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

ESTATES OF THURMAN PARTON)	Order Affirming in Part, Dismissing in
AND ARNITA LOIS PARTON)	Part, and Vacating in Part
GONZALES)	
)	Docket Nos. IBIA 12-145
)	12-147
)	
)	April 6, 2015

Gene Parton (Appellant), appealed to the Board of Indian Appeals (Board) from an Order of Modification to Remove Property from Inventory in the estate of Appellant’s father, Thurman Parton (Thurman), and a corresponding Order of Modification to Add Omitted Property to Inventory in the estate of Appellant’s aunt, Arnita Lois Parton Gonzales (Arnita).¹ Both modification orders were issued by Administrative Law Judge (ALJ) Richard L. Reeh on August 3, 2012. The orders were issued in response to a petition from the Bureau of Indian Affairs (BIA) to remove Caddo Allotment 722-D (Allotment 722-D) from the inventory of Thurman’s estate, and add it to the inventory of Arnita’s estate.

Alice Long Hat, a.k.a. Alice Long Hat Parton (Long Hat), the mother of Arnita and Thurman, devised her interest in Allotment 722-D to Arnita, and the devise was incorporated in a final probate order approving Long Hat’s will. But BIA mistakenly recorded Thurman as the owner of Allotment 722-D. The mistake went unnoticed when Arnita died, and after Thurman died, the interest was included in the inventory of his estate (to which Appellant is the beneficiary). When BIA discovered the error, it sought and was granted modification orders for both probate cases, to remove the property from Thurman’s estate and to add it to Arnita’s estate (to which Thurman was a beneficiary, but not the sole beneficiary). Appellant contends, on several grounds, that the Department of the Interior (Department) lacked jurisdiction to modify the estate inventories or, alternatively, that it was arbitrary and capricious and an abuse of discretion for the ALJ to do so.

¹ Thurman was a Caddo Indian, and his probate is assigned Probate No. P000043470IP in the Department of the Interior’s probate tracking system, ProTrac. Arnita, Thurman’s sister, was also a Caddo and her probate is assigned Probate No. P000091036IP in ProTrac (formerly No. IP OK 192 P 97).

We affirm the ALJ's modification order for Thurman's estate to the extent it approves the correction of BIA's trust real property records to remove Allotment 722-D from Thurman's estate inventory. The ALJ had authority under the probate regulations to correct the error in Thurman's estate inventory, and his decision to do so was not arbitrary or capricious, or contrary to law. We reject Appellant's numerous arguments to the contrary.

We dismiss for lack of standing Appellant's challenge to the modification order for Arnita's estate, to the extent it adds trust real property to Arnita's estate inventory. Appellant has not shown, or even alleged, how he is injured by the addition of trust real property to Arnita's estate. Even assuming Appellant has standing to challenge this modification order, we reject his arguments against the modification on the merits.

We vacate both modification orders in part, however, to the extent they authorize BIA and the Office of the Special Trustee for American Indian Affairs (OST) to "adjust" individual Indian money (IIM) account records and balances to reflect erroneous distributions of income to Thurman, and possibly to Appellant, attributable to BIA's error regarding the title to Allotment 722-D. BIA's petitions to correct the inventory errors regarding Allotment 722-D did not seek relief with respect to improperly distributed income from Allotment 722-D, nor did BIA provide any evidence upon which it could be determined whether, on what basis, or against whom, relief might be available for such improper distributions. In the absence of any such request from BIA, and the absence of a supporting record, it was error for the ALJ to address matters regarding the implications that correction of the title records for Allotment 722-D may have for Thurman's estate IIM account, Arnita's estate IIM account, or Appellant's IIM account.

Background

I. Alice Long Hat's Probate

Long Hat died on December 20, 1978, leaving a will that devised her property to Arnita and Thurman. Order Approving Will and Decree of Distribution, June 12, 1980, at 1 (Estate of Alice Long Hat Administrative Record (Long Hat AR) No. 1). Among other trust real property interests, Long Hat owned a 1/2 interest in the mineral estate in a parcel of Caddo Allotment 722 consisting of the S1/2 S1/2 NW1/4 of Section 5, Township 9 North, Range 10 West, Indian Meridian, Caddo County, Oklahoma. Inventory and Appraisal of Indian Trust Lands of Alice Long Hat, July 19, 1979, at 1 (unnumbered) (Long Hat Inventory) (Long Hat AR No. 3). Long Hat devised all of her interests in the western half of that parcel to Arnita (which included Allotment 722-D), and all of her

interests in the eastern half of that parcel to Thurman (Allotment 722-C).² Long Hat Will at 1 (unnumbered) (Long Hat AR No. 4). At the probate hearing, Thurman testified that he had read and understood Long Hat's will, and that he had no objections to the will. Transcript of Hearing, Apr. 17, 1980, at 4-5 (Long Hat AR No. 15). On June 12, 1980, ALJ William E. Hammett issued an Order Approving Will and Decree of Distribution, under which Long Hat's interest in Allotment 722-D passed to Arnita.

Instead of recording title to Allotment 722-D in Arnita, as determined in the probate order, BIA recorded title as held by Thurman.³

II. Arnita Lois Parton Gonzales' Probate

Arnita died on August 26, 1996. Certificate of Death, Sept. 4, 1996 (Arnita Lois Gonzalez) (copy added to the record). Arnita left a will in which she devised her entire estate to her niece Lenora Parton.⁴ Thurman and Arnita's surviving spouse both contested the will, arguing that Arnita had destroyed the original with intent to revoke it. Order of Modification on Petitions for Rehearing, Mar. 26, 1999, at 1 (unnumbered) (Arnita AR No. 23). Without a valid will, Thurman would inherit 2/3 of Arnita's estate, and Arnita's

² By its terms, Long Hat's will devised all of her interests in "Caddo No. 722, described as the SW/4 NW/4" of Section 5 to Arnita, and all of her interests in "Caddo No. 722, described as the SE/4 NW/4" of Section 5 to Thurman. Last Will and Testament of Alice Long Hat, June 23, 1964, at 1 (unnumbered) (Long Hat Will) (Long Hat AR No. 4). In the SW1/4 NW1/4 of Section 5, Long Hat's interests consisted of the 1/2 interest in Allotment 722-D (the mineral estate under the south half of the SW1/4 NW1/4) and a full interest in a 4.69-acre parcel (surface and minerals) (Allotment 722-A) located in the north half of the SW1/4 NW1/4. Long Hat Inventory at 1 (Long Hat AR No. 3). In the SE1/4 NW1/4 of Section 5, Long Hat's only interest consisted of the 1/2 interest in Allotment 722-C (the mineral estate under the south half of the SE1/4 NW1/4). *Id.* Long Hat devised the rest and residue of her estate to Arnita and Thurman, in equal shares. Long Hat Will at 2 (unnumbered) (Long Hat AR No. 4). Only Allotment 722-D is at issue in this appeal.

³ BIA correctly recorded title to Allotment 722-C in Thurman.

⁴ Arnita identified Lenora as her niece in her will, and Lenora's birth certificate identified Thurman as her father, but Thurman later disclaimed paternity of Lenora in his will. *See Estate of Thurman Parton*, Case No. P00043470IP (Dec. 6, 2007) (Order Determining Heirs, Approving Will and Decreeing Distribution, at 1-2) (Estate of Thurman Parton Administrative Record (Thurman AR) No. 16). Because ALJ Reeh approved Thurman's will, he found it unnecessary to make a determination on the paternity issue. *Id.* at 2.

spouse would inherit 1/3. *Id.* After probate proceedings before ALJ Reeh, and a decision by the Board ordering reinstatement of an initial order by ALJ Reeh approving Arnita's will, *see Estate of Arnita Lois Parton Gonzales*, 35 IBIA 207, *recon. denied*, 35 IBIA 224 (2000), Thurman proceeded to court to challenge the Board's decision.

The parties agreed to settle the litigation, and the court entered an Order Approving Settlement Agreement and Directing Distribution of Estate, June 7, 2001 (Order Approving Settlement) (Arnita AR No. 6). The settlement and order granted Thurman a life estate in a 1.25-acre parcel, with the remainder to pass to Lenora, and divided equally between Thurman and Lenora the 4.69-acre parcel that Arnita had inherited from Long Hat. Order Approving Settlement at 1-3; *see supra* note 2. For "all remaining properties owned by [Arnita] on the date of her death," Thurman was granted a life estate in an undivided 1/2 interest, and "entitled to all rent, income, and oil and gas royalty payments derived therefrom during his lifetime." Order Approving Settlement at 2. Lenora was granted a full undivided 1/2 interest in the same remaining properties, and the remainder interest for the life estate granted to Thurman. *Id.* at 2-4.

The "remaining properties" that were apparently known to all of the parties at the time, as evidenced by the inventory of Arnita's estate, consisted of interests in five additional allotments. *See* BIA Inventory of Decedents Report Trust/Restricted Title Holdings, Arnita Lois Parton, Dec. 31, 1996 (Arnita Inventory) (Arnita AR No. 26) (interests in Caddo Allotments 219-A, 723, 723-A, and 724, and Wichita Allotment 232-B). Because BIA's records showed title to Allotment 722-D as being held by Thurman, it was not included in Arnita's estate inventory. The Order Approving Settlement concluded by stating "[t]hat once the Secretary of the Interior or her representative completes the execution of this Order, this action shall be dismissed by the Court." Order Approving Settlement at 4. The Court subsequently dismissed the litigation. *See Parton v. Norton*, CIV-00-2111-L (W.D. Okla. Dec. 10, 2001) (Order Dismissing Plaintiff's Complaint With Prejudice) (entered "on . . . Motion of Amos E. Black, III, . . . requesting that the Court dismiss [Thurman's] Complaint With Prejudice") (copy added to the record).

III. Thurman Parton's Probate

Thurman died on August 23, 2006, leaving a will designating Appellant as the beneficiary of his estate. BIA Inventory of Decedents Report, Thurman Parton, Nov. 29, 2006, at 1 (Thurman Inventory) (Thurman AR No. 23). Thurman's estate inventory included Allotment 722-D. *See id.* at 3 (identifying Allotment 722-D as received from Alice (Long Hat) Parton) (date of last examination identified as July 14, 1981). On December 6, 2007, ALJ Reeh issued an Order Determining Heirs, Approving Will and Decreeing Distribution for Thurman's probate case, in which he approved Thurman's will

and decreed that Thurman's entire estate, after payment of certain claims, passed to Appellant. Order Determining Heirs, Dec. 6, 2007 (Thurman AR No. 16).

IV. Petitions to Reopen the Estates of Thurman and Arnita, and Orders Modifying Estate Inventories

On December 3, 2010, the BIA Anadarko Agency Superintendent (Superintendent) submitted a petition to the Probate Hearings Division (PHD) to reopen Thurman's probate case to remove Allotment 722-D from Thurman's estate inventory. Petition for Reopening, Dec. 3, 2010 (Thurman AR No. 14). The petition states that a review by the Land Title and Records Office (LTRO) of the Southern Plains Regional Office, BIA, found that "said Order added property to [Thurman's estate] inventory from the probate of Alice Long Hat, Probate TU247P979. The correct heir for this omitted property was A[r]nita L. Parton, daughter of Alice Long Hat." *Id.* The Superintendent enclosed various supporting materials with the petition, including a copy of the final probate order in Long Hat's probate, a copy of the inventory of Thurman's trust real property for his probate in 2006, and a copy of the "corrected" title record for Arnita's estate inventory, dated November 8, 2010. *See* Thurman AR Nos. 15-23.

As relevant to the Superintendent's petition for Thurman's probate case, the Department of the Interior's probate regulations provide:

(a) When, after a decision and order in a formal probate proceeding, it is found that property has been improperly included in the inventory of an estate, the inventory must be modified to eliminate this property. . . .

(b) A judge will review the merits of the petition and the record of the title from the LTRO [Land Title and Records Office] on which the modification is to be based, enter an appropriate decision, and give notice of the decision

43 C.F.R. § 30.127 (What happens if property was improperly included in the inventory?); *see also* 25 C.F.R. § 15.202 (probate file includes a "certified inventory of trust or restricted land").

Also on December 3, 2010, the Superintendent petitioned PHD to reopen Arnita's probate case to add Allotment 722-D to her estate inventory, similarly stating that the LTRO's review found that Arnita's estate inventory did not include this property received from Long Hat. Petition for Reopening to Add Omitted Trust Property, Dec. 3, 2010 (Arnita AR No. 14).

As relevant to the Superintendent's petition for Arnita's probate case, the Department of the Interior's probate regulations provide:

This section applies when, after issuance of a decision and order, it is found that trust or restricted property or an interest therein belonging to a decedent was not included in the inventory.

(a) A judge can issue an order modifying the inventory to include the omitted property for distribution under the original decision. . . .

(b) When the property to be included takes a different line of descent from that shown in the original decision, the judge will:

(1) Conduct a hearing, if necessary, and issue a decision; and

(2) File a record of the proceeding with the designated LTRO.

. . . .

43 C.F.R. § 30.126 (What happens if property was omitted from the inventory of the estate?).

Upon receipt of the petitions, ALJ Reeh issued notices of the petitions for reopening for each probate case. Based on the evidence provided by BIA, including the final order in Long Hat's probate case, the ALJ stated that the petitions for reopening were well-founded and that Allotment 722-D should be removed from Thurman's estate and added to Arnita's estate. Notice of Petition to Reopen and Order to Show Cause, Jan. 4, 2012, at 2 (Arnita AR No. 10). The ALJ ordered the parties to show cause why that should not be done. *Id.* In his order, the ALJ stated that because Allotment 722-D was not included in Arnita's estate at the time of the settlement agreement in the litigation over her will, its disposition was not addressed and ultimate distribution of the tract remained in question. *Id.* The ALJ afforded the parties an opportunity to negotiate an addendum to the settlement agreement, or if unable to do so, the ALJ would issue an order distributing the tract based on the evidence. *Id.*

The parties failed to negotiate a settlement regarding Allotment 722-D, and Appellant thereafter lodged an objection to the petitions to reopen the two probate cases. Answer and Brief in Support of Appellant's Objections to Petition for Reopening, May 1, 2012 (Arnita AR No. 5). On August 3, 2012, ALJ Reeh issued twin orders granting BIA's petitions.

In Thurman's probate case, relying on § 30.127, the ALJ issued an order of modification to remove Allotment 722-D from Thurman's estate inventory, based on the final order in Long Hat's probate case. *See* Order of Modification to Remove Property from Inventory, Aug. 3, 2012 (Thurman AR No. 1). In Arnita's probate case, relying on § 30.126, the ALJ issued an order of modification to add Allotment 722-D to Arnita's

estate inventory, to make it conform to the final order in Long Hat’s probate case. *See* Order of Modification to Add Omitted Property to Inventory, Aug. 3, 2012 (Arnita AR No. 1).⁵ For Arnita’s estate, the ALJ determined that Allotment 722-D was covered by the all-remaining-properties paragraph in the Settlement Agreement, and thus should be distributed accordingly. *See supra* at 175.

In granting the Superintendent’s petitions, the ALJ rejected Appellant’s arguments (1) that the Order Approving Settlement in the litigation involving Arnita’s will precluded the ALJ from asserting jurisdiction over either Arnita’s or Thurman’s probate cases to correct the inventories; (2) that, also based on the Order Approving Settlement, the doctrines of collateral estoppel and *res judicata*⁶ prohibit the Department from reopening the two probate cases and modifying the inventories; (3) that modifying the inventories would be arbitrary and capricious, an abuse of discretion, and contrary to law; (4) that removal of Allotment 722-D from Thurman’s estate would be an unconstitutional “taking”; (5) that the record was insufficient to support modifying the inventories; and (6) that the doctrine of laches precluded correction of the inventories because 32 years had elapsed since BIA made the error.

In both modification orders, the ALJ found that BIA’s failure to properly record title to Allotment 722-D in Arnita had “provided Thurman with a windfall between 1978 and 1996.” Modification Orders at 5. The ALJ stated that “[t]rust personalty of the parties will require adjustment to properly account for income erroneously received by Thurman,” and “require adjustment to account for” income received by Arnita’s estate under the settlement agreement in *Parton v. Norton*. *Id.* In the conclusion to his orders, in addition to authorizing BIA to correct the trust real property inventories regarding Allotment 722-D, the ALJ authorized BIA and OST “to adjust [IIM] account records and balances for the IIM accounts of Arnita . . . and Thurman . . . to reflect . . . income erroneously received by Thurman . . . and . . . the life estate granted to Thurman under the settlement agreement.” *Id.* at 6.

⁵ The modification orders in Thurman and Arnita’s estates are hereinafter referred to collectively as “Modification Orders.”

⁶ Under the doctrine of collateral estoppel, also characterized as issue preclusion, a party generally may not relitigate an issue actually litigated and necessarily decided in a valid and final judgment. *See Citizen Potawatomi Nation v. Director, Office of Self-Governance*, 42 IBIA 160, 167-68 (2006) (and sources cited therein). The doctrine of *res judicata*, also characterized as claim preclusion, generally bars a party from relitigating the same cause of action (including claims that were raised or could have been raised) after a final decision has been issued on the merits. *Castillo v. Pacific Regional Director*, 46 IBIA 209, 212-13 (2008); *Estate of Samuel Sumner Davis*, 57 IBIA 258, 260-61 (2013).

Appellant appealed to the Board and filed an opening brief. No other parties filed briefs in the appeal.

Discussion

On appeal, Appellant reasserts the arguments that he made to the ALJ against correcting the inventories with respect to Allotment 722-D. In addition to reasserting the arguments made to the ALJ regarding the trust real property inventories of Thurman and Arnita, Appellant also contends that the ALJ erred, both procedurally and substantively, in purporting to authorize what Appellant construes as a possible “lien” or “hold” on Thurman’s or Appellant’s IIM accounts to collect income from Allotment 722-D that was allegedly misdirected to Thurman or Appellant. Opening Brief (Br.) at 5.

Although the two modification orders issued by the ALJ are directly related, each affects Appellant differently, and therefore we address his arguments separately as they relate to each order in each probate case. Most important for Appellant, of course, are his arguments as they pertain to the modification order in Thurman’s probate case, because that order would remove Allotment 722-D from Thurman’s estate inventory, thus preventing it from passing in its entirety to Appellant, and the order also appears to authorize relief that could affect Appellant’s IIM account.

Thus, we first address Appellant’s arguments against the order to remove Allotment 722-D from Thurman’s estate inventory and adjust various IIM account balances. We are not persuaded that Thurman’s litigation over Arnita’s will precludes the Department from correcting the inventory for Thurman’s estate, or that equitable principles prevent application of the Department’s regulations governing the modification of estate inventories to correct the error and give effect to the final order in Long Hat’s probate case. We agree with Appellant, however, that the record does not support the portion of the ALJ’s order appearing to authorize BIA and OST to adjust past balances or to recover funds from either Thurman’s estate IIM account or Appellant’s IIM account.

After addressing Appellant’s arguments regarding the modification order for Thurman’s estate, we turn to his arguments against the modification order for Arnita’s estate. We first conclude that Appellant lacks standing to challenge the addition of property to Arnita’s estate because he has failed to show, or even allege, how he is injured by having property added to Arnita’s estate. Even assuming, however, that Appellant has standing to object to the addition of property to Arnita’s estate inventory, we would reject his arguments on the merits: nothing in the Order Approving Settlement precludes the Department from adding property to Arnita’s estate and distributing it pursuant to that order.

I. Modification Order to Remove Property From Thurman’s Estate Inventory and Adjust IIM Account Balances

A. The Order Approving Settlement in *Parton v. Norton* Does Not Bar the Department From Modifying Thurman’s Estate Inventory to Remove Allotment 722-D

Appellant contends that “all properties” in “the Estate of Thurman Parton” were “subject to and litigated” in *Parton v. Norton*, and that any proceeding to remove Allotment 722-D from Thurman’s estate inventory would constitute an impermissible collateral attack on the court’s Order Approving Settlement. Opening Br. at 3, 21. According to Appellant, the Department is bound by the Order Approving Settlement, and thus lacks authority, under principles of collateral estoppel and res judicata, to modify Thurman’s estate inventory by removing Allotment 722-D to conform to the final order in Long Hat’s probate case. *Id.* at 3-4, 21.

Contrary to Appellant’s characterizations, *Parton v. Norton* was not about the estate of, or properties then owned (or shown in BIA’s records to be owned) by Thurman Parton.⁷ Thurman was the plaintiff—still very much alive—in *Parton v. Norton*. To say that the full extent of *Thurman’s* properties were “subject to and litigated” in Thurman’s challenge to the validity of Arnita’s will mischaracterizes both the cause of action in that litigation and the issues settled in that case. It may go without saying that the Department is bound by the Order Approving Settlement, but Appellant’s contention that the ALJ “disregarded” the Order Approving Settlement is wholly without merit. Nothing in the Order Approving Settlement purports to determine the extent of, or confirm title to, properties already owned or apparently owned by Thurman. Appellant produces no evidence to show that the ownership of Allotment 722-D was “at issue,” was “litigated,” or was necessarily decided in *Parton v. Norton*. Appellant contends that the Secretary failed to raise the issue of Thurman’s ownership of Allotment 722-D in *Parton v. Norton*, see Opening Br. at 32, which presumably is correct, but he fails to explain how that is relevant to Thurman’s cause of action against the Department regarding the validity of Arnita’s will. In short, Appellant never articulates how either the doctrine of collateral estoppel or the doctrine of res judicata, see *supra* note 6, preclude the Department from modifying Thurman’s estate inventory in order to make it conform to the final order in Long Hat’s probate case.

⁷ We note that Appellant’s attorney in these proceedings, Amos E. Black III, also represented Appellant’s father, Thurman, as the plaintiff in *Parton v. Norton*.

By arguing that Thurman’s property holdings were “considered by the parties” in *Parton v. Norton*, Appellant implies that Thurman disclosed his property holdings, including Allotment 722-D, to the other parties in that litigation. That assertion is not supported by any evidence produced by Appellant, and undoubtedly Appellant’s counsel, who was also Thurman’s counsel, could have produced such evidence if it existed. And to suggest that the incorrect record of Thurman’s ownership of Allotment 722-D somehow influenced his decision on the terms of settlement in his challenge to Arnita’s will, *see* Opening Br. at 40, 42, is pure speculation. Regardless of what went into Thurman’s decision in agreeing to the terms of the settlement, Appellant provides no support for his assertions that the extent of *Thurman’s* property holdings were litigated in *Parton v. Norton*.

Nothing in the modification order for Thurman’s probate case purports to, or could be construed to, alter in any way the Order Approving Settlement issued in *Parton v. Norton*. In short, Appellant fails to articulate how the judgment in *Parton v. Norton* operates to bar the Department, whether on grounds of res judicata, collateral estoppel, or otherwise, from correcting BIA’s mistake in recording title to Allotment 722-D in Thurman, which was contrary to the final order in Long Hat’s probate case.

B. The Probate Regulations Authorized the ALJ to Reopen Thurman’s Probate Case to Modify the Estate Inventory

Appellant concedes that the language of 43 C.F.R. § 30.127 provides authority and procedures for a probate judge to modify an estate inventory “after a decision and order” has issued in a probate case.⁸ But Appellant argues that § 30.127 does not authorize such a modification after a court has issued a final order and judgment. Once again, Appellant conflates the proceedings involving Arnita’s probate with those involving Thurman’s estate inventory, implying—incorrectly—that the Order Approving Settlement arose from and settled litigation over Thurman’s probate case or his existing property holdings, and thus precludes the Department from modifying Thurman’s estate inventory. Whether or not the Order Approving Settlement might affect the Department’s authority to reopen *Arnita’s* probate case, an issue we discuss later, it contains no language purporting to be applicable

⁸ Appellant does not argue that the ALJ erred in finding that the reopening provisions in § 30.243 do not apply to inventory modification proceedings, and we do not address that issue. *See* Opening Br. at 52. We note, however, that BIA’s petition to “reopen” Thurman’s probate case to modify the inventory for his estate was filed within 3 years from the date of the original probate decision, so even assuming that § 30.243 is relevant to proceedings conducted under §§ 30.126 and 30.127, Thurman’s probate case could be reopened simply to correct the error in the original decision and inventory. *See* 43 C.F.R. § 30.243(a)(2)(i).

to Thurman's (future) probate case, or that might otherwise preclude the Department from reopening Thurman's probate case to correct the inventory by removing property improperly recorded as owned by Thurman.

Appellant also argues that another inventory-correction provision in the regulations—43 C.F.R § 30.128—does not apply in this case. We agree. Section 30.128 applies to inventory disputes that arise “during a probate proceeding,” which we have construed to encompass proceedings, including appeals, conducted prior to when a probate decision becomes final for the Department. The inventory disputes to which § 30.128 are applicable pertain to the certified inventories that BIA has submitted for the probate proceedings, but which have not yet been incorporated in a probate decision that is final for the Department. In those cases, the probate judge and the Board are required to refer the dispute to BIA for resolution, subject to the administrative appeals process. In contrast, once a certified inventory has been subsumed in a probate decision that has become final for the Department, §§ 30.126 and 30.127 provide the mechanism for returning to the probate judge to correct the inventory.⁹

C. Modification of Thurman's Estate Inventory of Trust Real Property to Conform to the Long Hat Final Probate Order Is Not Barred by the Passage of Time, was not Arbitrary and Capricious or Contrary to Law, and Is Not an Unconstitutional “Taking”

Appellant argues that because over 30 years have passed since BIA mistakenly recorded Thurman as the owner of Allotment 722-D, the ALJ was barred from granting the Superintendent's petition to reopen Thurman's probate case and correct the inventory. Appellant argues that the equitable doctrine of laches precludes the Department from correcting the error. Opening Br. at 41-44. The ALJ concluded that the doctrine of laches does not bar application of § 30.127 to modify Thurman's estate inventory. *See* Modification Orders at 5.

We agree with ALJ Reeh. With respect to property that was improperly included in an estate inventory, § 30.127 provides that the inventory “must” be modified to eliminate

⁹ Even then, the subject matter jurisdiction granted by §§ 30.126 and 30.127 may be limited, e.g., only BIA has the delegated authority and discretion to decide whether to approve a deed or conveyance retroactively, and thus some predicate final action by BIA may be required. But where, as here, the dispute involves correcting BIA's title records to conform the record of ownership to a final and binding probate order, i.e., from Long Hat's probate, we conclude that such modification orders fall within the subject matter jurisdiction granted by §§ 30.126 and 30.127.

the property. That mandate has been included in the Department's probate regulations since at least 1957. *See* Final Rule, 22 Fed. Reg. 10524, 10527 (Dec. 24, 1957) ("shall be modified"; *cf.* 25 C.F.R. § 15.32 (1971) (same); 43 C.F.R. § 30.127 (2014) ("must be modified").

Although Appellant argues that the doctrine of laches bars the Department from correcting the error regarding ownership of Allotment 722-D, he does not clearly explain how applying the doctrine—even if otherwise applicable—would be supported by the facts in this case. Appellant contends that it would be unfair to correct the error and remove Allotment 722-D from Thurman's estate when Thurman is no longer living and his testimony is unavailable, but Appellant does not articulate to what issues Thurman would have testified. Long Hat's will and the final order in her probate case were clear in how Allotment 722 was to be divided. And as noted earlier, at Long Hat's probate hearing, Thurman testified that he read and understood Long Hat's will, under which Arnita received Long Hat's interest in the SW1/4 NW1/4 of Section 5 and Thurman received Long Hat's interest in the SE1/4 NW1/4 of Section 5.¹⁰ But even if Thurman benefited from his ownership of Allotment 722-D during his lifetime—something Appellant now apparently denies, *see* Opening Br. at 61—we fail to see how that weighs against correcting BIA's title records after his death.

Although Appellant repeatedly seeks to rely on the principles of collateral estoppel and *res judicata* in relation to the final order entered in *Parton v. Norton* regarding the distribution of Arnita's property, Appellant fails to acknowledge that the modification orders are based on the final unappealed order in Long Hat's estate. Appellant's contention that "Alice Longhat is not now available to express her intent regarding the devolution of her property to either of her children," Opening Br. at 43, suggests that Appellant now seeks to collaterally attack the final order in Long Hat's probate case, implying that Longhat may have intended Thurman to receive *both* Allotment 722-C and 722-D. Appellant's own words, that "[f]orfeiture, hardship, or alleged damages . . . do not serve as a legal basis to avoid the application of the doctrine of *res judicata*," Opening Br. at 34, would seem particularly applicable to the final order in the *Estate of Long Hat*, and support correcting the estate inventory of Thurman.¹¹

¹⁰ Whether or not Thurman ever relied on his "ownership" of Allotment 722-D during his lifetime, Appellant does not contend that Appellant ever did so, and as we have noted, BIA filed the petition for modification within 3 years after the close of Thurman's probate case.

¹¹ We note that Appellant has not, in fact, identified any actual hardship or damages that he would suffer from correcting the estate inventory for Thurman's estate, particularly when Appellant contends that neither Thurman nor he has ever received any income from Allotment 722-D. *See* Opening Br. at 61 and *infra* at 185.

Appellant contends that “[t]aking property away from one heir and giving it to another not only changes heirship but also changes ownership.” Opening Br. at 37. But in the present modification proceeding, “heirship” is not changed. To the contrary, the modification orders permit the heirship determination from Alice Long Hat’s probate case to be given proper effect through correction of the inventories. BIA’s record of ownership of Allotment 722-D is changed, which is why the Department must afford due process to Appellant, pursuant to 43 C.F.R. § 30.127, and by affording him this right of appeal.¹²

The “title” document for Allotment 722-D was the final probate order entered in Long Hat’s estate, and that document vested title in Arnita. *See* 25 C.F.R. § 150.2(l) (definition of “Title document”); § 150.6(a) and (b) (distinguishing between “title documents other than probate records” and “probate records”). The fact that BIA mistakenly recorded ownership as being held by Thurman does not change the title document itself. Whether or not Thurman and Appellant benefitted from BIA’s mistake, it was not arbitrary and capricious for the ALJ to correct that mistake by removing Allotment 722-D from Thurman’s estate inventory in order to properly record ownership in Arnita. And because Thurman was never entitled to receive Allotment 722-D, no compensation is due by correcting the record of ownership in BIA’s records.

D. The ALJ’s Order Authorizing BIA and OST to Adjust the Records and Balances in IIM Accounts Was Outside the Scope of BIA’s Petition for Reopening, Issued Without Proper Notice to Appellant, and Was Not Supported by the Record

In contrast to his arguments against correcting the trust real property inventory of Thurman’s estate, we agree with Appellant that the ALJ erred in addressing the adjustment of IIM account balances in connection with income from Allotment 722-D that may have been paid improperly to Thurman.¹³ The Superintendent’s petition to re-open these estates

¹² Appellant argues generally that the record is insufficient to support the ALJ’s order. With respect to correcting the trust real property inventories of Thurman and Arnita, the final order in Long Hat’s probate case is ample evidence to support the modification orders.

¹³ It is not entirely clear precisely what effect the ALJ intended by this portion of his order, but we agree with Appellant that it might be construed as authorizing action by BIA or OST that would adversely affect him. Nothing in our decision, however, should be construed as precluding BIA or OST from conducting an accounting related to the erroneous recording of title to Allotment 722-D, in order to determine the possible effect of that error on IIM accounts. Any action that would affect IIM account balances, however, would need to be supported by a proper decision in an appropriate forum, with appeal rights.

only requested correction of the trust real property inventories to remove Allotment 722-D from Thurman's estate and to add it to Arnita's estate. Thus, Appellant had no notice that IIM account funds were at issue and no opportunity to present arguments against the adjustment of IIM account balances or recovery of improperly paid income.

In addition, because BIA's petitions appear to have been directed only to requesting relief in the form of correcting the title records to Allotment 722-D, and the real property inventories, BIA did not submit an evidentiary record upon which to determine whether, and if so how and under what authority, relief might be available with respect to proceeds paid from Allotment 722-D to Thurman. The record does not include any statements of Thurman's IIM account activity while he was alive, with respect to income from Allotment 722-D, nor does it include any evidence that a balance still exists in the IIM account for Thurman's estate.

Appellant suggests that no royalty payments from Allotment 722-D were ever paid to Thurman or Appellant. Opening Br. at 61. The credibility of that assertion appears to be questionable, because the record indicates that the same lease on Allotment 722 that was producing income when Long Hat died was still producing income when Thurman died, and the annual estimate of income on Thurman's trust real property inventory does not appear to be limited to Allotment 722-C. *See* Long Hat Inventory at 1 (unnumbered) (Long Hat AR No. 3); Thurman Inventory at 7 (Thurman AR No. 23). On the other hand, the inventory of Arnita's estate also shows the same leases as producing income for "Caddo 722," without indicating whether the estimate is limited to Allotment 722-A (the 4.69-acre parcel), or whether Arnita may, in fact, have been receiving some income from Allotment 722-D, as unlikely as that might seem. Arnita Inventory at 7 (Arnita AR No. 26).

In the present case, BIA's petitions did not clearly seek relief against any IIM accounts, nor did they set the legal or factual basis for doing so. Under the circumstances, it was error for the ALJ to address the issue.¹⁴ We therefore vacate the portions of the modification orders regarding the adjustment of IIM account balances.

¹⁴ Because it is not even clear what the factual or legal basis for relief, if any, would be, e.g., with respect to Thurman's estate account or Appellant's IIM account, we express no opinion on the forum for such relief, i.e., a probate proceeding or in a BIA administrative proceeding.

II. Modification Order to Add Allotment 722-D to Arnita's Estate Inventory and Distribute It Pursuant to the Order Approving Settlement

A. Appellant Lacks Standing to Challenge the Order to Add Property to Arnita's Estate Inventory

As distinguished from his standing to challenge the modification of Thurman's estate inventory, Appellant identifies no basis upon which to establish his standing to challenge the addition of Allotment 722-D to Arnita's estate inventory. Appellant makes no allegations of injury to him caused by adding property to Arnita's estate inventory. *See Estate of Zane Jackson*, 46 IBIA 251, 256 (2008) ("A showing of injury is required to establish standing in probate proceedings."). Thus, we dismiss Appellant's appeal from the modification order to add Allotment 722-D to Arnita's estate inventory and distribute it pursuant to the Order Approving Settlement.

B. The Order Approving Settlement in *Parton v. Norton* Does Not Bar the Department From Adding Property to Arnita's Estate Inventory

Even assuming Appellant has standing to challenge the addition of Allotment 722-D to Arnita's estate, his arguments fail on the merits. The Order Approving Settlement does not, by its terms, preclude the addition of property to Arnita's estate inventory. *See* Opening Br. at 13. In fact, the catch-all paragraph in the settlement—determining how "all remaining properties" are to be distributed—suggests that the parties agreed, at least impliedly, *not* to prevent unidentified properties in the estate from being added later and subject to the settlement. Nor does Appellant articulate any reason why the parties would not have wanted such flexibility.

Repeating the arguments he makes with respect to the modification of Thurman's estate inventory, Appellant contends that all issues "regarding" the property of Arnita were "subject to and fully litigated" in *Parton v. Norton*, and are not subject to "collateral attack." *See* Opening Br. at 3, 25, 28-29, 32. We fail to see—and Appellant never explains—how the *addition* of property to Arnita's estate inventory constitutes a "collateral attack" on the Order Approving Settlement in *Parton*, under which all settling parties, including Thurman, would benefit from the *addition* of property, in the context of the litigation over Arnita's will and the distribution of her estate.

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 ALJ's modification order to remove Allotment 722-D from Thurman's estate inventory, dismisses Appellant's appeal

from the modification order to add Allotment 722-D to Arnita's estate inventory, and vacates in part both modification orders to the extent they address the adjustment of IIM account balances.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

//original signed
Thomas A. Blaser
Administrative Judge