



INTERIOR BOARD OF INDIAN APPEALS

Estate of Josephine Eunice Mechance

60 IBIA 247 (05/04/2015)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
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ESTATE OF JOSEPHINE EUNICE ) Order Affirming Denial of Reopening  
MECHANCE )  
)  
) Docket No. IBIA 13-028  
)  
)  
) May 4, 2015

Karol Black Hawk (Appellant) appealed to the Board of Indian Appeals (Board) from an Order Denying Reopening entered on October 31, 2012, by Administrative Law Judge (ALJ) R. S. Chester in the estate of Appellant’s mother, Josephine Eunice Mechnace (Decedent).<sup>1</sup> The ALJ issued the Order Denying Reopening in response to a letter from Appellant seeking to contest Decedent’s will (which left property to Appellant’s sister, Corrine Mechnace (Corrine), but not to Appellant) on the grounds of undue influence. The ALJ construed the letter as a petition for reopening because it postdated, by over 2 years, the final Decision in Decedent’s estate, dated April 24, 2009, which had approved the will. The ALJ denied reopening, finding that Appellant’s letter was untimely as a petition to reopen the case and because it failed to show proper grounds for reopening.

We affirm the Order Denying Reopening on the grounds that Appellant has failed to demonstrate that the ALJ erred in concluding, on the merits, that her submission failed to demonstrate proper grounds to reopen the case.

## Background

Decedent died on October 5, 2007. Order Denying Reopening, Oct. 31, 2012, at 1 (Administrative Record (AR) Tab 4). Decedent’s will, executed on September 29, 2006, distributed her estate equally between Corrine and Bow Horn Weasel (Bow), a relative. *Id.*; Decision, Apr. 24, 2009, at 2-3 (AR Tab 5).

The probate hearing initially scheduled for Decedent’s estate was postponed at Appellant’s request. Letter from Appellant to Probate Hearings Division (PHD), Oct. 17, 2008 (AR Tab 4); Order Granting Continuance, Oct. 24, 2008 (AR Tab 4). The hearing was rescheduled for April 21, 2009. Notice of Initial Hearing, Mar. 13, 2009 (AR Tab 7).

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<sup>1</sup> Decedent was a Fort Belknap Indian and her probate was assigned Probate No. 000064463IP in the Department of the Interior’s probate tracking system, ProTrac.

In a letter dated April 8, 2009, Appellant asked that the April 21 hearing be rescheduled because she had been unable to secure counsel and wished to contest the will. Letter from Appellant to PHD, Apr. 8, 2009 (AR Tab 4).

Indian Probate Judge (IPJ) James Yellowtail<sup>2</sup> convened the hearing as scheduled on April 21 in Fort Belknap, Montana, to consider the validity of Decedent's will. Hearing Transcript (Tr.), Apr. 21, 2009 (AR Tab 1). Corrine and Bow appeared at the hearing; Appellant did not. The IPJ first addressed Appellant's written request for another continuance. While noting that the hearing notice mailed to Appellant had been returned, and that PHD did not have Appellant's "current correct mailing address," the IPJ found that Appellant had actual notice of the hearing, as evidenced by her specific reference to the April 21 hearing date in her request for a continuance. *Id.* at 4. The IPJ found that Appellant had "about nine months to retain an attorney," and had already received one continuance of the probate hearing, and he declined to postpone the proceedings further. *Id.* at 5. At the hearing, there were no objections to the will.

On April 24, 2009, the IPJ issued a Decision approving Decedent's will. The Decision found that at the time the will was executed, Decedent possessed testamentary capacity and was not subject to undue influence in making the will. Decision at 2. The IPJ formally denied Appellant's April 8 request for a continuance of the proceedings, citing the previous continuance granted to Appellant, Appellant's failure to appear at the hearing, and the fact that Appellant had failed to obtain counsel, which was the basis for her requests for a continuance. *Id.* at 2-3. The Decision was mailed to Appellant at an address provided by Corrine during the probate hearing. Notice, Apr. 24, 2009, at 2 (AR Tab 5); Hearing Tr. at 8.

In December 2009, Appellant wrote to PHD, again requesting that the probate hearing be postponed, indefinitely, because she had been unable to secure counsel. Letter from Appellant to PHD, Dec. 18, 2009 (AR Tab 4). The letter shows no indication that Appellant had notice of the Decision. PHD did not respond to Appellant's letter. Order Denying Reopening at 3.

Approximately 2 years later, Appellant sent another letter to PHD, stating that she wanted to contest Decedent's will, asserting that Decedent's health had been deteriorating in her final years and alleging that Corrine had "convinced" Decedent to make out the will to Corrine and Bow. Letter from Appellant to PHD, Nov. 29, 2011 (AR Tab 4). The letter does not indicate that Appellant had notice of the Decision. Appellant subsequently sent a follow up letter, making allegations that Corrine treated Decedent poorly and that

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<sup>2</sup> Judge Yellowtail is now an ALJ, but at times relevant to this case, he was an IPJ.

the two had a dysfunctional relationship, and enclosing statements from third parties to support those allegations. Letter from Appellant to PHD, Apr. 2, 2012 (AR Tab 4).

The ALJ construed Appellant's November 29, 2011, letter, and the followup letter, as a petition to reopen the Decision approving Decedent's will. Under the probate regulations, an interested party may file a petition for reopening "within 1 year after the petitioner's discovery of an alleged error." 43 C.F.R. § 30.243(a)(3). The regulations also provide that a petition for reopening must, among other things, "[i]nclude all relevant evidence, in the form of documents or affidavits, concerning when the petitioner discovered the alleged error." *Id.* § 30.243(c)(1).

On October 31, 2012, the ALJ issued the Order Denying Reopening. The ALJ concluded that Appellant's petition for reopening was not timely because it was filed over 2 years after the Decision had issued and failed to explain when Appellant learned of the alleged error in the Decision. Order Denying Reopening at 2. The ALJ found that because a copy of the Decision had been mailed to Appellant on April 29, 2009, "the presumption is that she should have filed a petition . . . upon receipt of that Decision, rather than waiting for well over two and a half years." *Id.*

In addition to finding that the petition should be denied as untimely, the ALJ also concluded, on the merits, that Appellant had failed to set forth proper grounds for reopening the case. *Id.* The ALJ found that Appellant had failed to provide any evidence to support her assertion that Appellant had been in deteriorating health, and found that Appellant had not even specifically alleged that Decedent lacked testamentary capacity to execute the will. *Id.* at 4. The ALJ also found that Appellant's allegations against Corrine, and the statements of third parties submitted in support of reopening, did not shed light on the undue influence issue and failed to provide proper grounds for granting reopening.<sup>3</sup> *Id.* at 4-5. For example, Appellant asserted that Corrine "controlled and dominated" Decedent, but also that the two argued a lot and that Decedent "always intervened for Corrine." *Id.* at 4. The ALJ stated that such statements did not substantiate an assertion of undue influence in making the will, and could even be construed to support a finding that the will accurately reflected Decedent's intent. *Id.*

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<sup>3</sup> To establish undue influence, a will opponent bears the burden to establish each of the following four elements by a preponderance of the evidence: "(1) Decedent was susceptible of being dominated by another; (2) the person allegedly influencing Decedent in the execution of his will was capable of controlling her mind and actions; (3) such a person did exert influence upon Decedent of a nature calculated to induce or coerce her to make a will contrary to her own desires; and (4) the will is contrary to Decedent's desires." *Estate of Sarah Stewart Sings Good*, 57 IBIA 65, 77 (2013).

Appellant appealed to the Board. In her appeal to the Board, Appellant contends that PHD sent all correspondence related to the probate proceedings to an incorrect address, and as a result, she did not receive any of the filings at her address in Billings, Montana. Letter from Appellant to Board, Dec. 19, 2012, at 2 (unnumbered). In addition, Appellant reiterates that her mother’s will was the result of Corrine’s undue influence and coercion.<sup>4</sup> *Id.* at 1 (unnumbered).

### Standard of Review

We review factual determinations by the probate judge to determine whether they are substantially supported by the record. *Estate of Edward Teddy Heavyrunner*, 59 IBIA 338, 346 (2015). We review legal determinations and the sufficiency of the evidence *de novo*. *Id.* As a general rule, the scope of an appeal is limited to the issues and evidence that were presented to or considered by the probate judge. 43 C.F.R. § 4.318 (scope of review). Thus, we generally do not consider arguments raised for the first time on appeal. *Estate of George Umtuch, Jr.*, 58 IBIA 205, 207 (2014). Appellant bears the burden of showing that the Order Denying Reopening is in error. *Id.* Disagreement with, or bare allegations concerning, a challenged decision are insufficient to satisfy an appellant’s burden of proof. *Id.*

### Discussion

We affirm the ALJ’s decision, on the merits, to deny reopening.<sup>5</sup> Appellant has not met her burden to show that the ALJ erred in finding that the evidence Appellant presented was insufficient to demonstrate that the will was the product of Corrine’s undue influence.

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<sup>4</sup> On appeal, Appellant does not argue that Decedent lacked testamentary capacity, acknowledging that when Decedent made her will, “she was of sound mind.” Letter from Appellant to Board, Dec. 19, 2012, at 1 (unnumbered).

<sup>5</sup> We decline to affirm the denial of reopening as untimely because Appellant’s correspondence to PHD in December 2009 suggested that Appellant had not received a copy of the Decision—she was again seeking a continuance—and PHD did not respond to her, e.g., by making an attempt to notify her of the Decision. Appellant’s November 29, 2011, letter was styled as a contest to the will, not as a petition for reopening, and the record remains unclear whether or if Appellant had obtained a copy of the Decision by that time. We recognize that the probate regulations require a party filing a petition for reopening to include affirmative evidence of the date of discovery of the alleged error, but Appellant’s correspondence does not clearly allege that any error had already been committed, i.e., that she was aware that the Decision had issued. Instead, she asserted that she wished to contest the will, leaving the context of her correspondence ambiguous. It was  
(continued...)

The ALJ considered Appellant's allegations, and supporting statements, that Corrine was controlling of and abusive to Decedent. The ALJ concluded, however, that the evidence submitted by Appellant did not substantiate that Decedent was incapable of making her own decisions, or that the will was contrary to Decedent's wishes. Order Denying Reopening at 4-5.

We agree. The allegations and evidence submitted by Appellant may, if accepted as true, indicate a dysfunctional relationship between Decedent and Corrine. But the allegations and statements submitted to the ALJ clearly fell short of demonstrating that Corrine actually caused, induced, or coerced Decedent to execute the will. *See Estate of Jeanette Little Light Adams*, 39 IBIA 32, 38 (2003) (stating that broad, but unsubstantiated, allegations that the sole beneficiary had the opportunity and the motive to exercise undue influence failed to meet appellants' burden of proof).

For the first time on appeal, Appellant apparently contends that a confidential relationship existed between Decedent and Corrine at the time the will was executed. *Compare* Appellant's Opening Brief, Apr. 22, 2013, *with* Letter from Appellant to ALJ, Nov. 29, 2011, *and* Letter from Appellant to ALJ, Apr. 2, 2012. The existence of a confidential relationship is relevant to a presumption of undue influence, which if applicable shifts the burden to will proponents to show that a decedent's will was *not* the product of undue influence. *Estate of Heavyrunner*, 59 IBIA at 343 n.5. Because this argument is raised for the first time on appeal to the Board, we do not consider it.<sup>6</sup>

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undoubtedly appropriate for the ALJ to address the merits of Appellant's correspondence through an order denying reopening. But under the facts of this case, we are not convinced that the ALJ should have held Appellant's correspondence to the same *procedural* requirements as a petition for reopening regarding affirmative evidence of timeliness, based on the assumption that Appellant had actual notice of the Decision over a year before she sent her November 29, 2011, letter.

<sup>6</sup> Even if we were to consider this issue, we would find that Appellant has not demonstrated that a presumption of undue influence should apply. "In order for a presumption of undue influence to arise from the existence of a confidential relationship, the will challenger must show that: (1) a confidential relationship existed; (2) the person in the confidential relationship actively participated in the preparation of the will; and (3) the person in the confidential relationship was the principal beneficiary under the will." *Estate of Heavyrunner*, 59 IBIA at 343 n.5. Here, Appellant alleges that Corrine drove Decedent to where the will was prepared and executed, but offers no evidence that Corrine actively participated in the preparation of the will.

## Conclusion

Appellant has failed to demonstrate that the ALJ erred in denying reopening.

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 October 31, 2012, Order Denying Reopening.

I concur:

          // original signed            
Steven K. Linscheid  
Chief Administrative Judge

          //original signed            
Thomas A. Blaser  
Administrative Judge