



INTERIOR BOARD OF INDIAN APPEALS

Estate of Patrick Carlyle Butler

60 IBIA 253 (05/04/2015)



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 PATRICK CARLYLE)	Order Vacating Modification Order
BUTLER)	and Remanding
)	
)	Docket No. IBIA 15-020
)	
)	May 4, 2015

Edward J. Butler (Appellant), through his sister Patricia A. Eames, appealed to the Board of Indian Appeals (Board) from a Modification to Add and Distribute Omitted Property (Modification Order) entered on September 30, 2014, by Administrative Law Judge (ALJ) Thomas F. Gordon in the estate of Appellant and Patricia’s brother, Patrick Carlyle Butler (Decedent).¹ The Modification Order granted a petition from the Superintendent, Central California Agency (Superintendent), Bureau of Indian Affairs (BIA), to modify Decedent’s estate inventory to include additional trust interests in California Public Domain Allotment No. 50H S28 (Sally Soeall Allotment or Allotment).

The inventory report submitted with BIA’s modification request indicated that the property to be added and distributed consisted of a 1/27 interest that Decedent had received from his mother, Myrtle Lewis Butler (Myrtle), and a 1/972 interest that Decedent had received from Calvin Carl Lewis (Calvin). The interest received from Calvin was inherited by Decedent pursuant to the American Indian Probate Reform Act (AIPRA), *see* 25 U.S.C. § 2206(a)(2)(D)(iii)(V) (inheritance by co-owners). The ALJ ordered that the additional property, a collective 37/972 interest, be distributed to the sole heir of Decedent’s less-than-5% trust real property interests, his oldest son Mark James, as set forth in the decision probating Decedent’s estate. *See* Decision, June 29, 2011, at 3 (Administrative Record (AR) Tab 11); 25 U.S.C. § 2206(a)(2)(D)(iii)(I) (single heir rule).

We vacate the Modification Order because, on further review, BIA acknowledges that the 1/27 interest derived from Myrtle was improperly included in the inventory report and thus was erroneously included in the Modification Order. We remand the case to

¹ Decedent was also known as Patric Carlyle Butler and was a Chukchansi (Picayune Rancheria) Indian. His probate is assigned Probate No. P000068337IP in the Department of the Interior’s probate tracking system, ProTrac.

permit the Probate Hearings Division (PHD) to issue a new and corrected order. But we also instruct PHD, before issuing a new order, to consider whether Calvin's probate case—the source of the remaining 1/972 interest—should be reopened, because it is unclear why the final decision in that case did not address the joint tenancy interest held by Decedent and Appellant in the Allotment when Calvin died.

Background

In the 2011 Decision, the ALJ explained that Decedent's interest in the Sally Soeall Allotment was not included in the estate inventory because Decedent had previously conveyed his interest, which he had obtained from Myrtle, to Appellant as a joint tenant with right of survivorship. Decision at 2; *see* Deed to Restricted Indian Land, Approved Feb. 25, 1999 (AR Tab 27). The Decision explained that the interest that Decedent held in the Sally Soeall Allotment had terminated upon his death, was held by Appellant as the surviving joint tenant, and thus was not part of Decedent's estate. Decision at 4.

In his appeal to the Board, Appellant sought clarification that the Modification Order did not affect or “revoke” the interest that Appellant received as the surviving joint tenant, or if it did so, to have the Board set aside the order. Upon receipt and review of the record for the case, the Board determined that an explanation and supplementation of the record by BIA's Pacific Land Title and Records Office (LTRO) was necessary to determine whether the Modification Order was correct. *See* Order for Pacific Region LTRO to Supplement Record and Request for Chain-Of-Title Explanation, Mar. 20, 2015, at 2-3.

In response, the LTRO advised the Board that the inventory report accompanying BIA's modification request erroneously included the 1/27 interest derived from Myrtle, which in fact was part of the interest that Decedent had conveyed to Appellant in joint tenancy.² Thus, BIA recognizes that the 1/27 interest did not belong to Decedent upon his death and that the Modification Order is incorrect in this respect.

The LTRO also reports that the only remaining interest in Decedent's inventory should be the 1/972 interest in the Allotment inherited by Decedent from Calvin. Attached to the LTRO's report is a copy of a Final Decision on Reopening in the estate of Calvin Carl Lewis, Probate No. P000046454IP, dated July 21, 2010 (Decision on Reopening).

² Decedent originally acquired a 1/18 interest in the Allotment by deed from Myrtle in 1981, but he subsequently conveyed a 1/54 interest to Patricia, retaining a 2/27 interest, which was the subject of his subsequent conveyance to Appellant in joint tenancy. *See* Deed from Myrtle to Decedent, Feb. 10, 1981 (AR Tab 10); Letter from Patricia to Board, Apr. 19, 2015.

The Decision on Reopening determined that Calvin held a less-than-5% interest in the Allotment, and that because there were no eligible heirs under AIPRA, and there was no tribe with jurisdiction over the Allotment, Calvin's interest passed in equal shares to 42 co-owners of the Allotment. The list of co-owners includes the estate of Decedent, and the Decision on Reopening determined that Decedent's estate was entitled to a 1/42 share of Calvin's 7/162 interest ($1/42 \times 7/162 = 1/972$). The list of co-owners does not include Appellant, although he and Decedent held their interest in the Allotment in joint tenancy.

In response to the Board's order seeking an explanation from BIA, Appellant submitted a letter to the Board suggesting that the 1/972 interest inherited from Calvin should possibly have passed to Decedent and Appellant in joint tenancy, and thus to Appellant as the surviving joint tenant. Letter from Patricia to Board, Apr. 19, 2015.³

Discussion

It is readily apparent from BIA's report that the 1/27 interest derived from Myrtle was incorrectly included in the inventory report and incorrectly incorporated in the Modification Order. Therefore, the Modification Order must be vacated and corrected, as requested by BIA in its report to the Board.

With respect to the 1/972 interest derived from Calvin, BIA's report and the supplemental materials clearly document the source of that interest, i.e., the Decision on Reopening in Calvin's estate. Thus, BIA's inventory report showing Decedent's ownership of a 1/972 interest in the Allotment is fully consistent with the Decision on Reopening. What is unclear, however, is why, in Calvin's probate, the 1/972 interest was determined to pass in full to Decedent, omitting Appellant entirely, when both Decedent and Appellant held a single joint tenancy interest in the Allotment at the time of Calvin's death. As noted, in this appeal Appellant has suggested that the interest should have passed to Decedent and Appellant as joint tenants, and in joint tenancy, such that the entire interest would have passed to Appellant as the surviving joint tenant.

Calvin's probate is outside the scope of these appeal proceedings, and outside the scope of the modification proceedings in Decedent's estate. However, because there may be a continuing question about whether the 1/972 interest derived from Calvin was properly determined to pass in full to Decedent's estate, and the nature of the title that

³ Neither Patricia's letter nor BIA's report were served on other interested parties, but given our disposition of the appeal, analogous to a voluntary remand based on BIA's admission of error regarding the 1/27 interest, we find it unnecessary to require completion of service. Both documents, however, should be made available to interested parties on remand.

passed, the Board remands the case with instructions for PHD to consider whether reopening Calvin's probate case may be appropriate before taking final action on BIA's request to modify the inventory of Decedent's estate.⁴

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 vacates the Modification Order in full and remands the case to PHD for further proceedings consistent with this decision.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

//original signed
Thomas A. Blaser
Administrative Judge

⁴ In so instructing, the Board expresses no opinion on the Final Order on Reopening or on whether reopening Calvin's probate case is appropriate.