



INTERIOR BOARD OF INDIAN APPEALS

Estate of Anthony J. Andreas, Jr.

60 IBIA 326 (05/19/2015)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ESTATE OF ANTHONY J. ANDREAS,) Order Affirming Denial of Rehearing
JR.)
) Docket No. IBIA 13-041
)
) May 19, 2015

Cheryl Rae Andreas (Appellant) appealed to the Board of Indian Appeals (Board) from an Order Denying Petition for Rehearing (Order Denying Rehearing) entered on December 6, 2012, by Administrative Law Judge (ALJ) Thomas F. Gordon in the estate of her father, Anthony J. Andreas, Jr. (Decedent).¹ The ALJ denied Appellant’s petition for rehearing from the ALJ’s July 25, 2012, initial probate Decision approving Decedent’s July 22, 1985, will (Will) over objections that the Will was a product of undue influence. Under the Will, Decedent’s surviving spouse, Sally Andreas (Sally), and their daughter, Adriana Andreas (Adriana), share the income from Decedent’s trust property for life. Adriana receives ownership of the property, subject to Sally’s share of income. Decedent’s four children from his first marriage are named contingent beneficiaries, but the contingent devises did not become effective and thus those children were disinherited.

On appeal, Appellant argues that the ALJ erred in determining that she failed to show the Will was a product of undue influence by Sally, and erred in declining to reach the merits of her other argument that Decedent wished to change the Will, but that, through undue influence, Sally prevented Decedent from doing so. Appellant seeks to have the Will invalidated and to have a 1968 will probated instead, under which Decedent’s five children would share in his trust estate.

We conclude that Appellant has not met her burden to show error in the Order Denying Rehearing. Appellant does not demonstrate that undue influence should be presumed in this case, nor that the Will was a product of undue influence. And, Appellant does not persuade us that the ALJ erred in declining to consider, for lack of jurisdiction, Appellant’s claim that Sally prevented Decedent from changing his Will. We therefore affirm the Order Denying Rehearing.

¹ Decedent, also known as Biff Andreas, was a Cahuilla Mission (Agua Caliente Band) Indian. His probate is assigned No. P000079319IP in the Department of the Interior’s probate tracking system, ProTrac.

Background

Decedent died on July 7, 2009, in Banning, California. Certificate of Death, July 22, 2009 (Administrative Record (AR) Tab 15). Decedent was survived by a number of family members, including his second wife, Sally; their daughter, Adriana; other children of Sally; and his first wife, Anthia Andreas or Morris (Anthia), and their four children—Appellant, Anthony Joseph Andreas III (Anthony), Paula Andreas (Paula), and Michelle Andreas (Michelle). OHA-7 Form, Data for Heirship Finding and Family History, Nov. 3, 2010 (OHA-7) (AR Tab 14). At the time of his death, Decedent owned interests in trust or restricted properties located on the Agua Caliente, Augustine, Morongo, and Torres-Martinez Reservations. *See* Inventory of Decedents Report, Oct. 14, 2010 (AR Tab 7). There were also income-producing leases on Decedent’s property. *Id.* at 10. Thus, although Decedent’s Individual Indian Money (IIM) account contained nothing at the time of his death, there were funds in the account at the time of the probate hearings for Decedent’s trust estate. IIM Account Statements, Nov. 3, 2010 (AR Tab 16).

The ALJ held an initial probate hearing on December 13, 2010, and received three wills into evidence. Decedent’s first will, signed in February 1962, gave his then-wife, Anthia, a life estate in specified trust property, and the remainder to their first child, Anthony. 1962 Will, Feb. 15, 1962, 1-3 (AR Tab 8). Decedent’s second will, signed in December 1968 (1968 Will), gave Anthia a life estate in all of his trust lands, and the remainder to their three children at the time (Anthony, Paula, and Appellant), and any after-born children, to share equally. 1968 Will, Dec. 21, 1968, at 2 (AR Tab 11). Anthia left Decedent in 1979, and their divorce was finalized in February 1983. Supplemental (Supp.) Hearing Transcript (Tr.), Mar. 12, 2012, at 181, 184 (AR Tab 52); Final Judgment of Dissolution of Marriage, Feb. 22, 1983 (AR Tab 12). Adriana was born in 1981, and Sally married Decedent in June 1983. Supp. Hearing Tr. at 309; OHA-7 at 1.

Approximately 2 years later, on July 22, 1985, Decedent executed his third and last Will, expressly revoking all previous wills, identifying each of his five children, and making devises of his trust property and the income generated from it. Will, July 22, 1985, at 1-2 (AR Tab 9). Specifically, Decedent gave “to my wife [Sally] and my daughter [Adriana], or to the survivor of them, in equal shares if they survive me by three days, all of my income from all of my above property . . . for the lifetimes of both my wife [Sally] and my daughter [Adriana], and thereafter to the survivor of them for that survivor’s lifetime.” *Id.* at 3-4. Additionally, Decedent devised to Adriana, if she survived him by 3 days, all of his trust property, subject to Sally’s right to income. *Id.* at 4. If Adriana failed to survive Decedent by 3 days, then his property would pass instead to his four older children in equal shares per stirpes by right of representation. *Id.* There is no dispute that, in the more than 20 years between the Will’s execution and Decedent’s death in 2009, he did not make another will.

After the ALJ received the wills into evidence, Appellant, who was represented by counsel, contested the last Will on the grounds that Decedent did not truly intend to execute the Will and effectively disinherit his four oldest children, “in favor of his new child,” and only did so as a result of undue influence by Sally. Initial Hearing Tr., Dec. 13, 2010, at 29-30 (AR Tab 53).² Appellant asserted that Decedent was “particularly susceptible” to undue influence as a result of alcoholism and drug use, as well as bitterness over the divorce and perception that the four older children were not “on his side.”³ *Id.* at 30, 41, 48. Anthony also contested the Will, pro se.⁴ *Id.* at 42. Anthony agreed that the divorce was “awful” as each parent forced the children to choose a “team.” *Id.* at 36. Anthony stated that because Decedent believed the four oldest children were against him, he “can see why [Decedent] lashed out and . . . wrote this will [I]t makes perfect sense.” *Id.* at 36-37. Anthony and Appellant asserted that, later on, Decedent’s feelings toward the four oldest children softened. *Id.* at 37-38, 41. Sally, through counsel, disputed the allegations of undue influence, and asserted that Decedent stopped drinking altogether in 1990 and had 20 years of sobriety to re-write his will, but did not do so. *Id.* at 50.

At a supplemental hearing held on March 12, 2012, the ALJ received additional testimony regarding the making and execution of the Will, which was self-proved. *See* Will, Attachment (self-proving affidavit). The will scrivener, Art Bunce, Esq., described the process as follows: Decedent knew Mr. Bunce, contacted him, and requested that he prepare a will. Supp. Hearing Tr. at 7, 16. Mr. Bunce drafted a will, consulted with Decedent on the draft, and made revisions according to Decedent’s instructions. *Id.* at 8-10. Decedent went to Mr. Bunce’s office on July 22, 1985, to execute the Will, and was accompanied by Sally. *Id.* at 10. Mr. Bunce testified that Sally never contacted him regarding the Will, and that she did not say anything about a will prior to or during the Will’s execution. *Id.* at 11-13. Mr. Bunce further testified that Decedent did not appear to be under the influence of alcohol or drugs, and that Decedent appeared to be in his right mind—or Mr. Bunce would not have proceeded with the Will’s execution. *Id.* at 11-12. Decedent arranged for his friend, Donna Silvas, to witness the Will. *Id.* at 11. The second

² The record contains an erroneous cover page for the transcript of the initial probate hearing. A corrected version of this cover page has been docketed.

³ Appellant’s attorney further explained that her challenge to the Will was based primarily on Decedent’s alcoholism and other factors making Decedent more susceptible to Sally’s influence, rather than lack of testamentary capacity. Initial Hearing Tr. at 49. On appeal, Appellant does challenge the ALJ’s conclusion that Decedent possessed testamentary capacity at the time of the Will’s execution. *See* Decision, July 25, 2012, at 6 (AR Tab 6).

⁴ After the ALJ issued the initial probate Decision approving the Will, Anthony did not pursue his challenge.

will witness was Mr. Bunce's law clerk. *Id.* And, the notary was Mr. Bunce's secretary. *Id.* at 14. Mr. Bunce testified that several years after the Will's execution, he asked Decedent if he would like to make any changes to his Will, and Decedent stated that he would not. *Id.* at 13.

Sally testified that: She had no role in Decedent's business matters nor in the making or execution of the Will; Sally drove with Decedent to Mr. Bunce's office, but they did not discuss the Will during their drive; Sally also did not discuss the Will with Mr. Bunce; Decedent was sober when he executed the Will; and Sally did not learn the contents of the Will until that evening, when Decedent told her that he left everything to Adriana. *Id.* at 325-28, 331-32, 402. Adriana testified that, when she was a little girl, Decedent told her while they were walking around the Andreas Ranch property in Palm Springs that "one day all this will be yours." *Id.* at 415.

The ALJ also heard additional testimony, summarized below, regarding Decedent's state of mind and relationships with family members before and in the years after the Will's execution, and allegations that, in the years after the Will's execution, Decedent told various people that he wanted all five of his children to receive his property.

Anthia testified that, after she left Decedent in 1979, their children lived with Decedent "off and on," and participated in his wedding to Sally. *Id.* at 180-81. Paula testified that she subsequently became estranged from Decedent in the early 1980s for approximately 10 years.⁵ *Id.* at 76. Appellant stated that she and Sally did not get along, and that after Appellant moved in with her mother for the last time in 1982 or 1983, Sally prevented her from speaking with Decedent, although she continued to meet him in public places. *Id.* at 125-26, 130-42, 164-65. Sally acknowledged that after a confrontation with Appellant, she told Appellant not to call the home she shared with Decedent, but testified that she did not prevent Appellant from seeing Decedent. *Id.* at 343-44. Anthony testified that he was estranged from Decedent throughout 1985 and until around 1989. *Id.* at 275-76. Anthony also stated that after he had children, he began visiting Decedent and continued to do so until Decedent's death, and never had difficulty getting in touch with him. *Id.* at 271, 281.

Regarding the allegations that Decedent wished for all five children to receive his property upon his death, Anthony testified that when, in 2002, he asked to buy an acre from Decedent on which to build a house, Decedent responded "not to worry about it and just wait." *Id.* at 269. MaryAnn Andreas, a relative of Decedent, testified that she had

⁵ Neither Paula nor Michelle—who appeared at the initial hearing but did not testify at the supplemental hearing—sought rehearing or participated in this appeal.

several conversations with Decedent during 2005 to 2008 regarding her desire to purchase properties from him. *Id.* at 38-39. She stated that when she offered to buy Decedent's land on the Morongo Reservation for a nominal price, Decedent declined because he was going to leave it to Anthony. *Id.* at 30-31, 37-38, 42, 46. And, when she sought to purchase his land on the Augustine Reservation, Decedent responded that "he wanted that for his kids . . . [p]lural." *Id.* at 33-35, 41, 44.

Decedent's medical records submitted during the supplemental hearing indicated that he had a history of alcohol and drug abuse, ending in 1989 or 1990, and that since becoming sober his relationships had improved and he was in a "[v]ery happy marriage." Mental Health History Form, Mar. 20, 1995, at 1, 3 (AR Tab 21). In 1991, Decedent suffered a stroke, and in 1995, he began having difficulty walking due to diabetes and sought treatment for panic attacks over his health and fear of losing his independence. *Id.* at 4; Consultation Request and Report Form, Mar. 20, 1995 (AR Tab 21). He eventually became reliant on a wheel chair. Despite his failing health, Decedent remained active, participating in cultural events, consulting on archeological projects, and spreading Cahuilla bird songs. *See* Supp. Hearing Tr. at 94-103, 107-15.

At the conclusion of the supplemental hearing, the ALJ solicited supplemental briefing, including on whether he should consider Appellant's argument that Sally, through undue influence, *prevented* Decedent from changing the Will, so as to invalidate the Will. Supp. Hearing Tr. at 411.

In her post-hearing brief, Appellant argued that "because [the American Indian Probate Reform Act (AIPRA)]⁶ and [Board] cases are silent on the issue," the ALJ should look to the law in other jurisdictions that have afforded relief based "not upon what the testator did, but, rather, . . . based upon a claim that egregious acts by others have prevented the decedent from executing a new will or from revoking an old one." Appellant's Post-Hearing Br., Apr. 9, 2012, at 5 (AR Tab 37) (quoting *Allen v. Hall*, 139 F.3d 716, 718 (9th Cir. 1998)) (internal quotation marks omitted). Appellant argued:

⁶ In 2004, Congress enacted AIPRA, 25 U.S.C. § 2206, as a set of amendments to the Indian Land Consolidation Act, 25 U.S.C. § 2201 *et seq.* AIPRA established a uniform Federal probate code for Indian trust estates and is intended, *inter alia*, to address the difficulty for estate planning caused by the application of different state probate laws to different trust and restricted real property interests. AIPRA, Pub. L. No. 108-374, § 2, 118 Stat. 1773 (2004).

In this case, the evidence presented at trial demonstrated that [Decedent] intended to leave his property to *all* of his children by the statements he made to various individuals to that effect, but that because of Sally's obvious efforts to alienate and isolate him from his biological children with Anthia, he was simply never able to change his 1985 will to reflect his true intentions.

Id. at 6.

Sally and Adriana argued that, under Board precedent, “[t]he doctrine of undue influence is not applicable to later efforts to prevent a decedent from changing a will because the crucial time to determine a decedent’s state of mind is the day the will is executed.” Post-Hearing Br. of Sally and Adriana, Apr. 9, 2012, at 3 (AR Tab 38). They further argued that, even if a testator wanted to execute a new will or stated an intention to leave property to a certain beneficiary, “intent alone cannot be sufficient to create, alter or revoke . . . an existing will.” *Id.* (citations omitted). In closing, they argued that the ALJ “has no authority to disapprove an existing will based upon allegations that the decedent intended to do something different.” *Id.* (citation omitted).

In his initial probate Decision, the ALJ found that the Will met the threshold legal requirements for a valid Indian will as it is in writing, dated, signed by Decedent, and attested by two disinterested witnesses. Decision at 6 (citing 25 C.F.R. §§ 15.3, 15.4). Turning to Appellant’s argument that the Will was procured through undue influence, the ALJ concluded that Appellant had not shown that undue influence should be presumed and that she failed to meet her burden to demonstrate actual undue influence. *Id.* The ALJ reasoned that while Sally was present at the time the Will was executed, there was no evidence that she actively participated in the preparation or execution of the Will. *Id.* The ALJ also considered that, while Decedent might have disinherited his four oldest children as a result of undue influence, changes in Decedent’s life could explain the disinheritance as well—including estrangement from at least some of the children in 1985, or a desire to provide for Sally and Adriana. *Id.* And, the ALJ explained that, even if Sally had some influence over the terms of the Will, “[n]ot all influence one person may have over another is ‘undue’ influence.” *Id.*

Finally, the ALJ declined to consider the merits of Appellant’s other argument that Decedent intended to change his Will and Sally prevented him from doing so. The ALJ agreed with Sally and Adriana that—even if Appellant’s allegations were true—he lacked authority to invalidate the Will on those grounds. *Id.* at 7. The ALJ reasoned that he could not direct the distribution of Decedent’s trust estate based on his conclusions about Decedent’s intent, unless that intent is expressed in a valid will. *Id.* The ALJ explained:

The policy behind this rule is clear. In a probate case, the decedent cannot testify about the decedent's own intent or desires with regard to the distribution of the decedent's estate. Any attempt to draw conclusions about the decedent's intent, without the benefit of a written will, would necessarily involve a great deal of speculation, often based on the testimony of witnesses who are interested in the outcome, and who may have conflicting accounts about what the decedent said and when. Under those circumstances, the danger would be great that a decision would be based not on what the decedent actually wanted, but on the decisionmaker's own subjective views of fairness.

Id.

The ALJ further explained that Appellant appeared to be relying on a tort action generally referred to as "intentional interference with an expected inheritance," and that California had recently recognized the tort in *Beckwith v. Dahl*, 205 Cal. App. 4th 1039 (2012). Decision at 7. But the ALJ found that he lacked jurisdiction to hear or decide a cause of action sounding in tort, as his forum was not a court of general jurisdiction. *Id.* (citing 43 C.F.R. § 30.120 (What authority does the judge have in probate cases?)). Accordingly, the ALJ declined to consider the merits of Appellant's final argument, approved the Will, and ordered that Decedent's estate be distributed in accordance with the Will. *Id.* at 8.

Appellant petitioned for rehearing on the grounds that the evidence presented at the hearings supports Appellant's position that Sally unduly influenced Decedent in executing the Will; that, after Decedent executed the Will, he told various individuals that he intended to leave his property to all of his children; and that, through undue influence, Sally prevented Decedent from executing a subsequent will. Petition for Rehearing, Aug. 22, 2012, at 1-2 (AR Tab 4). Appellant's petition, which consisted of a single paragraph, did not specifically identify any evidence that the ALJ allegedly failed to consider. *See id.*

The ALJ denied Appellant's petition, explaining that he had addressed each of Appellant's arguments in his Decision, and reaffirming his reasoning for approving the Will over Appellant's objections. Order Denying Rehearing at 2-3 (AR Tab 3).

Appellant appealed to the Board and filed an opening brief. Sally filed an answer brief and Appellant replied.

Discussion

I. Standard of Review

We review a probate judge's factual determinations to assess whether they are supported by substantial evidence. *Estate of Sarah Stewart Sings Good*, 57 IBIA 65, 71-72 (2013). We review the probate judge's legal determinations and the sufficiency of the evidence *de novo*. *Id.* at 72. Appellant bears the burden of showing error in the Order Denying Rehearing. *See Estate of Dominic Orin Stevens, Sr.*, 55 IBIA 53, 62 (2012).

II. Analysis

On appeal, Appellant again argues that Sally unduly influenced Decedent in procuring the Will, and that he desired to change the Will but was prevented from doing so through the undue influence of Sally. Opening Br., May 17, 2013, at 3-5; Reply Br., July 23, 2013, at 1-2. These arguments fail for the same reasons articulated by the ALJ: Appellant has not shown that the elements of presumptive undue influence are satisfied or that the Will is a product of undue influence. Nor are we persuaded that the ALJ erred in refusing to consider the merits of Appellant's allegations that Sally prevented Decedent from executing a new will.

A. Presumptive Undue Influence

A will contestant bears the burden of showing undue influence, unless a presumption of undue influence applies, in which case the burden shifts to the will proponent to show that the testator was not subjected to undue influence. *Estate of Theresa Underwood Dick*, 50 IBIA 279, 300-01 (2009). A presumption of undue influence only arises when: "(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 confidence was the principal beneficiary under the will." *Estate of George Fishbird*, 40 IBIA 167, 169 (2004) (emphasis added). What is more, the will proponent may rebut the presumption by showing that an "objective, independent person thoroughly discussed the effect of the will with the testator." *Estate of Jessee Pawnee*, 15 IBIA 64, 69 (1986).

Appellant contends that a presumption of undue influence arose because "[i]t was only after [Decedent] married Sally that he disinherited his older children and left everything to Adriana and Sally." Opening Br. at 4. Appellant declares that "[f]rom this it can be deduced that all prongs of the presumption of undue influence exist." *Id.* We disagree. An opponent of a will must show that all three elements of presumptive undue influence are met. *See Estate of Clayton Donald Mountain Pocket*, 54 IBIA 236, 240 (2012) (holding that the presumption may not be applied based on the "totality of circumstances,"

without facts to support each element); *cf. Estate of Margerate Arline Glenn*, 50 IBIA 5, 30 (2009) (holding that it would be improper to “upset the directive in a will solely for the reason that one child benefits more than others or some are disinherited,” where the will opponent did not show that the testator lacked particular elements of testamentary capacity). We agree with the ALJ that Appellant failed to establish that presumptive undue influence is applicable here. *See* Order Denying Rehearing at 2; Decision at 6. Sally’s mere presence during the execution of the Will aside, there is no evidence that she was an active participant in the preparation of the Will, and the record shows instead that Decedent prepared the Will in consultation with his attorney, Mr. Bunce. *See supra* at 328. Thus, we need not address the two remaining elements of presumptive undue influence.

B. Actual Undue Influence

Because a presumption of undue influence was not supported, Appellant bore the burden of establishing actual undue influence by showing, by a preponderance of the evidence, that: “(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 [his] mind and actions; (3) such a person did exert influence upon Decedent of a nature calculated to induce or coerce [him] to make a will contrary to [his] own desires; and (4) the will is contrary to Decedent’s desires.” *Estate of Sings Good*, 57 IBIA at 77. Appellant argues that: Decedent did not become sober until approximately 1990; Decedent’s health then rapidly deteriorated and he “became increasingly dependent on Sally for his care”; Sally “increasingly isolated” Decedent from other family members and friends; Decedent “had no reason” to disinherit his older children; and Decedent made statements to various individuals after he executed the Will that he intended to leave his property to all of his children. Opening Br. at 3-4.

With respect to Appellant’s argument that Sally unduly influenced Decedent in executing the Will, we agree with the ALJ that, at most, Appellant established that Sally had the opportunity to influence Decedent. *See* Order Denying Rehearing at 2; Decision at 6. And, we have previously rejected the notion that a showing of opportunity to influence a testator is sufficient to demonstrate actual undue influence. *Estate of Stevens*, 55 IBIA at 68; *Estate of Drucilla (Trucilla) W. Pickard*, 50 IBIA 82, 94 (2009). Appellant’s allegations focus on Decedent’s purported statements, in the years after he executed the Will in 1985, that he intended to leave property to his older children, and his deteriorating health after 1990. Those matters are scarcely relevant to whether Decedent was subject to undue influence at the time he executed the Will.⁷ Moreover, as the ALJ found, there are several

⁷ Further, we have consistently held that intent, standing alone, is insufficient to revoke or create a valid Indian will. *Estate of Alfred Chalepah, Sr.*, 51 IBIA 148, 149 (2010)

(continued...)

possible explanations for Decedent’s decision to disinherit the children from his first marriage, other than undue influence. Among the possible explanations, various witnesses described Decedent’s bitterness over the divorce, and Anthony, who was estranged from Decedent in 1985, stated that he could “see why [Decedent] lashed out and . . . wrote this [W]ill.” Initial Hearing Tr. at 36-37. Paula, who was also estranged from Decedent at the time, supposed that Decedent had disinherited the four children due to the “animosity” between Decedent and Anthia, stating “he did this on the [W]ill because he doesn’t want my mom to have anything, any part of it.” *Id.* at 58; Supp. Hearing Tr. at 76. Accordingly, Appellant failed to meet her burden to show that the Will was most likely a product of undue influence.

C. Undue Influence in the Prevention of Changes to the Will

Lastly, Appellant contends that the ALJ erred in refusing to consider and rule upon her argument that Sally prevented Decedent from changing his Will. As we understand Appellant’s position on appeal, the ALJ erroneously “h[e]ld that undue influence may only exist in the creation of a will.” Opening Br. at 5; *see id.* at 4 (Appellant appears to contend that the ALJ held that “undue influence could not be considered in making the determination of whether one was prevented from creating a new will”); *see also* Reply Br. at 2 (arguing that “the principal should exist, that undue influence can extend beyond the mere making of a will”). Appellant argues that, “[a]s recognized in [the] seminal California decision of *Beckwith v. Dahl* . . . ‘whether or not the decedent changed his mind is a question of fact necessary to prove an element of the tort and is not a reason to refuse to recognize the existence of the tort altogether.’” Reply Br. at 1 (quoting *Beckwith*, 205 Cal. App. 4th at 1054).

The flaw in Appellant’s position is that the ALJ did not hold that undue influence could never support any type of claim that a testator was prevented from changing his will. The ALJ stated that Appellant’s allegations, “if proven, may give rise to a tort claim” under California law. Order Denying Rehearing at 3 (footnote omitted). The ALJ correctly refused to consider the merits of Appellant’s allegations, for lack of jurisdiction to consider

(...continued)

(“[E]vidence of a decedent’s intent cannot serve as a substitute for a properly executed will.”); *Estate of Edith Walker Brown*, 43 IBIA 221, 227 (2006) (“It is immaterial whether [the d]ecedent desired to execute a new will—intent alone is not sufficient to create, alter, or revoke an Indian will.”). Thus, even assuming that Decedent’s post-Will statements could be construed as intent to revoke the Will or create a new will giving his property to all of his children, the statements were not a substitute for actual revocation of the Will or a valid new will.

such a tort claim. *See id.*; Decision at 7. The Office of Hearings and Appeals (OHA) is not a court of general jurisdiction, and neither the ALJ nor the Board has jurisdiction to consider tort claims or award damages. *See* 43 C.F.R. § 30.120; *Welk Park North, d.b.a. Welk Resort Group, Lawrence Welk Desert Oasis v. Acting Sacramento Area Director*, 29 IBIA 213, 219 (1996) (stating that the Board lacks authority to award money damages against any party). We note—without expressing any view on the soundness of the tort of intentional interference with an expected inheritance, which is recognized in some states—that it is premised on the lack of an adequate remedy at probate, due to the stringent requirements imposed on a will contest to protect a decedent’s testamentary intent. *See Beckwith*, 205 Cal. App. 4th at 1050-56 (tracing the recent development of the tort); *see also* 25 C.F.R. § 15.4 (requiring that an Indian will be in writing and attested by two disinterested adult witnesses, among other requirements). Thus, OHA is not the forum to consider Appellant’s allegation that, through undue influence, Sally prevented Decedent from changing his Will.

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 December 6, 2012, Order Denying Rehearing.

I concur:

// original signed
Thomas A. Blaser
Administrative Judge

//original signed
Robert E. Hall
Administrative Judge