INTERIOR BOARD OF INDIAN APPEALS

Estate of Wilfred R. Greywind

61 IBIA 12 (06/09/2015)

United States Department of the Interior

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

ESTATE OF WILFRED R. GREYWIND	)	Order Affirming Decision in Part and Reversing in Part
	)	
	)	Docket No. IBIA 13-083
	)	
	)	June 9, 2015

Esperanza M. Touche (Appellant) appealed to the Board of Indian Appeals (Board) from an Order Granting Reopening and Modifying Decision (Reopening Order) entered on March 22, 2013, by Indian Probate Judge (IPJ) Albert C. Jones, in the estate of Appellant's biological half-brother, Wilfred R. Greywind (Decedent).[1] In response to a request for clarification from the Bureau of Indian Affairs (BIA), the IPJ reopened and modified his original May 27, 2011, decision (Decision) in Decedent's probate case, to reaffirm his conclusion in the Decision that because Decedent had been adopted out and had no legally cognizable relatives who were heirs under the American Indian Probate Reform Act (AIPRA), all of Decedent's trust real property passed to the Spirit Lake Sioux Tribe (Tribe) as the tribal heir, *see* 25 U.S.C. §§ 2206(a)(2)(B)(v), 2206(a)(2)(D)(iii)(IV). On his own motion, however, the IPJ reversed his original decision with respect to Decedent's trust personalty, concluding that instead of passing to the Tribe under AIPRA, it passed to Decedent's nieces, nephews, and great-nieces under North Dakota law.

Appellant contends that the IPJ erred in not recognizing her as Decedent's sibling, and argues that she, and other biological siblings of Decedent—not the Tribe or the extended relatives—are entitled to inherit his estate.

We affirm the Reopening Order with respect to the Tribe's inheritance of Decedent's trust real property. The IPJ correctly concluded that under AIPRA, Decedent's adoption means that his biological siblings are not legally recognized as his siblings, and thus they cannot inherit as his siblings. Because Decedent died unmarried and was not survived by any relatives who would inherit under AIPRA, the Tribe inherits all of Decedent's trust real property.

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[1] Decedent was a Spirit Lake Sioux. His probate case is assigned No. P000076390IP in the Department of the Interior's probate tracking system, ProTrac.

We reverse the Reopening Order in part, however, because the IPJ erred in concluding that the Tribe does not also inherit Decedent's trust personalty. Contrary to the IPJ's conclusion, AIPRA, not state law, governs the inheritance of Decedent's trust personalty, as we recently explained in *Estate of Robert Lawrence Wourinen*, 59 IBIA 314 (2015). Under AIPRA, the Tribe inherits Decedent's trust personalty.

Background

Decedent died intestate (i.e., without a will) in 2009, and thus his estate is subject to the rules of inheritance found in AIPRA. *See Estate of Reginald Paul Walkingsky*, 52 IBIA 233, 233 n.1 (2010); 25 U.S.C. § 2206(a) (AIPRA's rules of intestate succession). At probate hearings held by the IPJ, three of Decedent's biological half-siblings testified that Decedent was adopted at birth by Joseph Greywind and Mary Jane Jackson Greywind.[2] *See* Transcript of Hearing, Sept. 1, 2009, at 5-6, 10 (AR Tab 40) (testimony of Patrick Sigerty and Brenda Touche); Transcript of Hearing, May 26, 2010, at 3-4 (AR Tab 21) (testimony of Roberta Ott). Decedent was never married, never had children, and his adoptive parents and adoptive siblings predeceased him. Decedent was survived by numerous individuals who are his biological half-siblings through their mother Mary Esther, including Appellant.

Decedent's inventory of trust real property consists of interests in various allotments located on the Spirit Lake Reservation, some constituting less than a 5% interest in the respective allotment, others constituting a 5% or greater interest in the respective allotment. On the date of death, Decedent also had trust personalty consisting of money in two Individual Indian Money accounts.

In his original probate decision, the IPJ found that Decedent had been survived by several biological siblings, including Appellant, but he also stated that under AIPRA, an adopted child is not considered the child or issue of the natural parents. Decision at 1-2 (citing 25 U.S.C. § 2206(j)(2)(B)(iii)(I)). In determining Decedent's heirs for his interests in trust real property constituting less than 5% of the respective parcel, the IPJ explained that in the absence of a surviving child, grandchild or great-grandchild, the Tribe inherited all of Decedent's less-than-5% interests, as the tribe with jurisdiction over the property, and thus he decreed that the Tribe inherited such interests. *Id*. at 2-3 (citing 25 U.S.C. § 2206(a)(2)(D)(iii)(IV) (descent of less-than-5% fractional interests)).

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[2] Decedent's biological mother was Mary Esther Greywind Landers (Mary Esther). *See* Transcript of Hearing, Sept. 1, 2009, at 3, 5-6 (AR Tab 40) (testimony of Patrick Sigerty and Brenda Touche). Mary Jane Jackson Greywind was also the adoptive mother of Mary Esther, who also predeceased Decedent. *Id*. at 5-6, 10 (testimony of Patrick Sigerty and Brenda Touche).

Citing the same provision of AIPRA, the IPJ also decreed, without further explanation, that Decedent's 5%-or-greater trust real property interests, and his trust personalty, also pass to the Tribe as the heir. *Id*. at 3.

Subsequently, the BIA Superintendent of the Fort Totten Agency petitioned to reopen Decedent's probate case, seeking clarification concerning the distribution of Decedent's trust personalty and 5%-or-greater trust real property interests. Petition for Reopening, Aug. 25, 2011 (AR Tab 12). Documents accompanying the petition indicate that individuals within the Office of the Special Trustee (OST) believed that the IPJ had cited the wrong statutory provision with respect to the inheritance of trust personalty and the 5%-or-greater real property interests, even though the Decision itself clearly stated that the Tribe inherited all of Decedent's trust property. *See* Email from Donovan to Toledo, Aug. 22, 2011 ("We just wanted to ensure none of the siblings (adoptive or biological) would inherit the [5%-or-greater real property] and/or [trust personalty]") (AR Tab 12); Email from Demarce to Bonet, Aug. 24, 2011 ("The [Decision] states that everything should go to the Tribe. [OST] want[s] a modification because they feel the wrong regulation[] was cited.") (AR Tab 12).

In response to the petition, the IPJ issued the Reopening Order. The IPJ reaffirmed his conclusion that the Tribe inherited all of Decedent's trust real property interests, although he found that he had made an error by citing the incorrect provision in AIPRA with respect to the Tribe's inheritance of Decedent's 5%-or-greater real property interests. Reopening Order at 2 (correcting citation to refer to 25 U.S.C. § 2206(a)(2)(B)(v)). In reaffirming and clarifying his conclusion, the IPJ addressed what he characterized as some confusion about the status of biological versus adoptive siblings. He stated that under AIPRA, a child who is adopted away from a natural parent is no longer considered a child of that parent. *Id*. (citing 25 U.S.C. § 2206(j)(2)(B)(iii)(I)). In this case, as explained by the IPJ, when Decedent was adopted away from Mary Esther by his grandparents, Joseph Greywind and Mary Jackson, his *legal relationship* to his biological siblings changed to that of an uncle. *Id*. Thus, because Decedent's biological siblings were no longer his "siblings" as a matter of law under AIPRA, they did not inherit under AIPRA, and the trust real property passed to the Tribe as the tribe with jurisdiction over the property. *Id*.

With respect to Decedent's trust personalty, however, the IPJ concluded that the Decision had been incorrect in determining that the Tribe was the heir. The IPJ found that AIPRA was "silent" as to how trust personalty should be distributed in this case, and he concluded that he should "fall back to state law" because AIPRA "does not apply." *Id*. at 2, 4. The IPJ then determined that under North Dakota law, Decedent's nieces, nephews, and great-nieces inherited his trust personalty. *Id*. at 5-6.

Appellant appealed to the Board, arguing that she is a sister of Decedent, not his niece. Appellant suggests that as Decedent's biological sibling, she meets the definition of "eligible heir" found in AIPRA, and thus is entitled to inherit as his sibling.[3] Opening Brief, Jan. 13, 2014. Appellant apparently contends that she and Decedent's other biological siblings are entitled to inherit Decedent's trust real property and trust personal property, not the Tribe or the "extended family." Letter from Appellant to Board, Sept. 12, 2014.

Discussion

I. Standard of Review

Appellant's challenges to the IPJ's determinations regarding the descent of Decedent's trust real property and trust personalty raise questions of law, which the Board reviews *de novo*. *Estate of Clayton Donald Mountain Pocket*, 54 IBIA 236, 240 (2012).

II. Decedent's Trust Real Property

We affirm the Reopening Order with respect to the IPJ's determination that Decedent's biological siblings are not heirs and that his trust real property interests are inherited by the Tribe as the tribe with jurisdiction over the interests. As we explained in a previous case, in language that applies equally here:

> AIPRA expressly provides that because Decedent was adopted, he "shall not be considered the *child or issue* of his natural parents," [25 U.S.C.] § 2206(j)(2)(B)(iii)(I) . . . , with an exception that is not relevant to Decedent. In the present case, Decedent's adoption severed any legally cognizable parent-child (or parent-issue) relationship between Decedent and his natural [mother], and thus precluded him from being a "sibling" to [Appellant and Decedent's other biological siblings] for purposes of applying AIPRA. As a result, they are not Decedent's surviving "siblings" under AIPRA.

Estate of Mountain Pocket, 54 IBIA at 237; *see also id*. at 242-44 (explaining AIPRA's provision regarding adopted children). As we also explained in that case, the definition of "eligible heir," with its reference to "siblings," does not change the outcome because

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[3] The definition of "eligible heir" in AIPRA refers to "half siblings by blood." 25 U.S.C. § 2201(9).

Appellant is not, *as a matter of law*, Decedent's "sibling," even though she undisputedly is his biological sibling:

> As the Board noted in *Estate of Reginald Paul Walkingsky*, 52 IBIA 233, 235 (2010), "the substantive rules of descent are not found in the definition of 'eligible heir,' but in [§ 2206(a)]." And in order to determine who is a "sibling" under § 2206(a)(2)(B)(iv), we must apply the terms of § 2206(j)(2)(B)(iii), which determines under what circumstances an adopted out person, in this case Decedent, will or will not be considered the child or issue of his natural parents.

Id. at 244. When Decedent was adopted, he became the child of his adoptive parents, and was no longer, as a matter of law under AIPRA, the child of Mary Esther, and thus Decedent and Appellant no longer shared a legal "parent" and were no longer "siblings."[4] *See id*. at 243 ("the 'sibling' relationship requires that individuals share at least one common parent).

III. Decedent's Trust Personalty

We reverse the Reopening Order with respect to the disposition of Decedent's trust personalty because the IPJ erroneously concluded that AIPRA did not apply to Decedent's trust personalty and incorrectly concluded that state law did apply. In finding that state law should apply to Decedent's trust personalty, the IPJ's analysis tracks closely with that contained in another probate decision that we recently reversed. *See Wourinen*, 59 IBIA at 315-21. For the same reasons set forth in *Wourinen*, we reverse the Reopening Order on this issue and reinstate the Decision, in which the IPJ correctly concluded that the Tribe inherits Decedent's trust personalty, although he incorrectly cited 25 U.S.C. § 2206(a)(2)(D)(iii)(IV) (applicable to tribal inheritance of less-than-5% real property interests), instead of 25 U.S.C. § 2206(a)(2)(B)(v) (applicable to tribal inheritance of trust personalty).

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[4] In an enclosure with a letter in support of Appellant's appeal, another biological sibling of Decedent, Roberta Ott, asserts that "[t]he supposed adoptions papers do not exist or were never questioned." Note, June 28, 2013 (enclosed with Letter from Ott to Board, July 6, 2013). No party sought rehearing or reopening on the IPJ's finding in the Decision that Decedent was legally adopted, and that issue is outside the scope of this appeal. 43 C.F.R. § 4.318. We note that at the probate hearing, Ott and two of her siblings testified that Decedent had been adopted. *See supra* at 13.

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 Reopening Order with respect to the inheritance of Decedent's trust real property, reverses the Reopening Order with respect to the inheritance of Decedent's trust personalty, and reinstates the portion of the Decision concluding that the Tribe inherits Decedent's trust personalty.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

//original signed
Thomas A. Blaser
Administrative Judge