



INTERIOR BOARD OF INDIAN APPEALS

Estate of Leroy Charles Dennison

61 IBIA 66 (06/30/2015)



# 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 LEROY CHARLES	)	Order Affirming Denial of Rehearing
DENNISON	)	
	)	Docket No. IBIA 13-065
	)	
	)	June 30, 2015

Linda Lee Christensen (Appellant) appealed to the Board of Indian Appeals (Board) from an Order Denying Rehearing entered on March 13, 2013, by Indian Probate Judge (IPJ) John R. Payne in the estate of her biological father, Leroy Charles Dennison (Decedent), a Spokane Indian.<sup>1</sup> The IPJ denied Appellant’s petition for rehearing from the IPJ’s September 27, 2012, Decision approving Decedent’s 2001 will (Will), which left Decedent’s Indian trust estate to his step-daughter Trudy Marie Botten (Trudy). In the hearings held for the probate of Decedent’s trust estate, Appellant had argued that the Will was invalid because its execution was not properly witnessed, Decedent lacked testamentary capacity, and the Will was a product of undue influence. After the IPJ approved the Will, as grounds for rehearing, Appellant argued only that she felt “the decision was unjust.” Appellant did not explain why rehearing should be granted based on any factual or legal error in the Decision, or based on any newly discovered evidence. *See* 43 C.F.R. § 30.238.

In this appeal from the Order Denying Rehearing, Appellant repeats the arguments she made at the hearings that the Will was not properly witnessed and that Trudy perjured her testimony, and offers new evidence, without explaining why Appellant did not present any arguments or new evidence to the IPJ with her petition for rehearing. Appellant does not argue that the IPJ committed any error in the Order Denying Rehearing, in which he concluded that the petition for rehearing should be denied pursuant to 43 C.F.R. § 30.240 for failure to show any factual or legal error in the Decision. Because Appellant does not meet her burden on appeal to show error in the Order Denying Rehearing, we affirm the IPJ’s denial of rehearing.

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<sup>1</sup> Decedent was also known as Lee Charles Dennison. Decedent’s probate is assigned No. P000022586IP in the Department of the Interior’s probate tracking system, ProTrac.

## Background

Decedent died on December 22, 2002, owning interests in trust or restricted real property and funds in an Individual Indian Money (IIM) account. OHA-7 Form, Data for Heirship Finding and Family History, Apr. 2, 2009, at 1 (OHA-7) (Administrative Record (AR) Tab 4); Inventory of Decedents Report, Jan. 14, 2004 (AR Tab 5); IIM Account Statement, Jan. 4, 2011 (AR Tab 12). Decedent, who was not married at the time of his death, fathered five children with multiple partners or spouses. OHA-7 at 1.

The Probate Hearings Division held four hearings for the probate of Decedent's trust estate. The initial hearing was conducted by Administrative Law Judge (ALJ) Steven Lynch. The second hearing was held by ALJ Thomas Gordon. The third and fourth hearings were conducted by IPJ Payne.

Six wills were received into evidence: two 1974 wills, a 1975 will, a 1978 will, a 1984 will, and the 2001 Will. In his last Will, executed on November 16, 2001, Decedent devised his trust estate to his "step-daughter" Trudy.<sup>2</sup> Will art. V (AR Tab 3).

The testamentary scheme in Decedent's 2001 Will is distinctly different from his five prior wills. In his earlier wills, however, Decedent either favored or disinherited certain individuals at different times.

Appellant and her sisters, Sharlene Rae Ahmad-Gamache and Kathy D. Bland, contested the Will, arguing that the Will was invalid because one of the two witnesses to its execution was Trudy's sister, Linda Kieffer, who was not a "disinterested" witness;<sup>3</sup> that Decedent lacked testamentary capacity at the time the Will was executed; and that the Will was a product of undue influence by Trudy, who, they alleged, had perjured herself.

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<sup>2</sup> Before and after his marriage to Appellant's mother, Lois Mae Hallgarth, Decedent was apparently married to Pearl McCoy, the mother of his first child. Second Hearing Transcript (Tr.), August 18, 2009, at 12 (AR Tab 10). During Decedent's second marriage to Pearl, in the early 1960s, several of her children from a previous marriage—including Trudy—lived with Decedent as his step-children. Third Hearing Tr., June 22, 2012, at 37 (AR Tab 9).

<sup>3</sup> Section 15.4 of 25 C.F.R. provides that, in order for a will devising Indian trust or restricted property to be valid, the testator must, among other requirements, have the will "attested by two disinterested adult witnesses." 25 C.F.R. § 15.4.

In his Decision, the IPJ reviewed and rejected the Will contestants' arguments and evidence, approved the Will, and ordered that Decedent's trust estate be distributed to Trudy. Decision (AR Tab 3).

Within the time period for seeking rehearing, Appellant filed a letter with the IPJ "appealing" the Decision, which the IPJ interpreted as a petition for rehearing, and in which Appellant stated only that she felt "the decision was unjust." Petition for Rehearing, Oct. 17, 2012 (AR Tab 2). Appellant attached, without explanation, a pharmacy record of Decedent's medications that was already contained in the administrative record. *Compare id.*, attachment, *with* Response to Order for Medical Records, July 27, 2012 (AR Tab 7). The IPJ denied rehearing pursuant to 43 C.F.R. § 30.240 on the grounds that Appellant had not met her burden to demonstrate error in the Decision. Order Denying Rehearing, Mar. 13, 2013, at 1-2 (AR Tab 2).

Appellant appealed to the Board and included arguments and new evidence with her notice of appeal. Appellant also filed an opening brief. No other briefs were filed in this case.

### Discussion

Aggrieved individuals are afforded the opportunity to seek rehearing in an Indian probate proceeding on "proper grounds," i.e., grounds that appear to "show merit." 43 C.F.R. § 30.240; *Estate of Rachel Nahdayaka Poco*, 54 IBIA 248, 251 (2012). When Appellant sought rehearing from the IPJ, it was her burden to either identify newly discovered evidence or allege specific and concise grounds for rehearing, such as a material error of fact or law in the Decision. *See* 43 C.F.R. § 30.238(b) (petition based on newly discovered evidence), (c) (petition alleging specific and concise grounds for rehearing). A petition for rehearing that does not show proper grounds for rehearing "will" be denied. *Id.* § 30.240; *Estate of Sarah Stewart Sings Good*, 57 IBIA 65, 73 (2013).

In this appeal from the IPJ's denial of rehearing, Appellant bears the burden of showing error in the Order Denying Rehearing. *See Estate of Dominic Orin Stevens, Sr.*, 55 IBIA 53, 62 (2012). Unless some manifest error or injustice exists, the Board's scope of review is limited to reviewing those issues brought before the probate judge on rehearing. 43 C.F.R. § 4.318 (scope of the Board's review ordinarily is limited to those issues raised before the probate judge on rehearing or reopening); *Estate of Stevens*, 55 IBIA at 62. Therefore, we ordinarily will not consider allegations of error or evidence that could have been, but were not, presented to the probate judge. *Estate of William Fox*, 60 IBIA 16, 19 (2015) ("Precedent of long standing directs that newly discovered evidence shall be presented [to the probate judge] and will not be considered on an appeal.") (alteration in

original) (quoting *Estate of Mitchell Robert Quaempts*, 6 IBIA 10, 15 (1977)); *Estate of Edward Teddy Heavyrunner*, 59 IBIA 338, 346 (2015).

In her notice of appeal and opening brief, Appellant reiterates several of the arguments that she raised in the probate hearings—but did not raise in her petition for rehearing—and also presents new evidence without explaining why it was never presented to the IPJ. Because Appellant’s petition for rehearing merely expressed disagreement with the Decision, and thus plainly failed to show proper grounds for rehearing, *see Estate of Sings Good*, 57 IBIA at 72-74, we affirm the Order Denying Rehearing.

Even if we were to consider the arguments and evidence that Appellant failed to present to the IPJ in seeking rehearing, we would find no error, let alone manifest error, in the IPJ’s decision. The IPJ’s decision is thorough and well-reasoned. Moreover, the IPJ had an opportunity to hear and observe the demeanor of Trudy and other witnesses, which the Board cannot do on appeal, and he explicitly weighed the testimony. Nothing presented by Appellant on appeal provides any grounds to set aside the Decision.

### 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 IPJ’s March 13, 2013, Order Denying Rehearing.

I concur:

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// original signed  
Thomas A. Blaser  
Administrative Judge

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//original signed  
Steven K. Linscheid  
Chief Administrative Judge