



INTERIOR BOARD OF INDIAN APPEALS

Estate of Nelson J. Wallace, Sr.

61 IBIA 348 (10/30/2015)

Petition for reconsideration denied:

62 IBIA 29

Second petition for reconsideration dismissed:

62 IBIA 54

Related Board case:

64 IBIA 43



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

ESTATE OF NELSON J. WALLACE,)	Order Docketing and Dismissing
SR.)	Appeal
)	
)	Docket No. IBIA 15-100
)	
)	October 30, 2015

Gregory Lynn Wallace (Appellant)¹ appealed to the Board of Indian Appeals (Board) in response to an Order Reopening Estate to Modify Inventory and Deny Paternity Challenge (Modification Order), which was entered on June 25, 2015, by Indian Probate Judge (IPJ) Albert C. Jones, in the estate of Nelson J. Wallace, Sr. (Decedent).² The Modification Order granted a request by the Crow Agency Superintendent, Bureau of Indian Affairs, to add interests in trust or restricted property to the estate inventory. The Modification Order denied a separate petition for reopening filed by one of Decedent’s children, Barry Hogan, who challenged the paternity of Decedent’s daughter, Lee Ann Pretty On Top. In the original probate Decision entered on October 27, 2014, the IPJ determined that Decedent died intestate (i.e., without a will); that he was survived by a common law wife and three children; and that two other children—Appellant and Nelson—were adopted out. The Decision concluded that, under the American Indian Probate Reform Act (AIPRA), 25 U.S.C. § 2201 *et seq.*, Appellant, as an adopted-out child, is not considered the child of Decedent for purposes of inheritance. In this appeal, Appellant asserts that, “as a blood relation, [he] is an heir.” Letter from Appellant to Board, received Oct. 5, 2015, at 2-3. We docket but dismiss the appeal because the issue presented is outside the scope of the IPJ’s Modification Order and, thus, outside the scope of our review in an appeal from that order.

¹ Appellant uses his birth name and is also known by his adoptive name, Gregory Brady. Appellant’s notice of appeal also appears to identify his brother, Nelson J. Wallace, Jr. or Nelson Brady (Nelson), as an appellant. However, Nelson did not sign the notice of appeal or otherwise indicate that he authorized Appellant to pursue an appeal on his behalf. Therefore, we do not include Nelson as an appellant in this appeal. Even if he had signed the notice of appeal, it would not alter our decision.

² Decedent was a Crow Indian. His probate is assigned Probate No. P000111697IP in the Department of the Interior’s probate tracking system, ProTrac.

Upon receipt of the appeal, the Board issued an order to show cause (OSC) why this appeal should not be dismissed for lack of standing or as outside the scope of the Modification Order. *See* Pre-Docketing Notice, Order for Appellant to Serve IPJ and Interested Parties, and Order for Appellant to Show Cause, Aug. 20, 2015; 43 C.F.R. § 4.318 (scope of review). The Board explained that the Modification Order added property to Decedent’s estate inventory and distributed it to the individuals who were determined in the 2014 Decision to be Decedent’s heirs, and thus it appeared that Appellant was not adversely affected by the Modification Order itself and was raising an issue outside the scope of the Modification Order. Appellant responded to the OSC, but he does not allege any error in the Modification Order, nor does he argue that when the IPJ issued the Modification Order, he reopened any matters in the Decision. Instead, Appellant’s complaint is that he should be included as an heir.

The Board has jurisdiction to hear appeals from orders on petitions for rehearing, orders on petitions to reopen, decisions on the purchase of a decedent’s trust estate, and decisions modifying an estate inventory. 43 C.F.R. § 4.320. Thus, any appeal to the Board necessarily is limited at this time to an appeal from the IPJ’s decision to modify the 2014 Decision to add property to the inventory of Decedent’s estate, and to distribute the property in accordance with the Decision. Appellant provides no basis for us to conclude that his appeal is within the scope of review for an appeal from the Modification Order, or that we otherwise would have jurisdiction to address his complaint. Therefore, his appeal must be dismissed. *See Estate of Beverly Ann Vernwald*, 52 IBIA 350, 351 (2010) (because appellant challenged the original decision and not the modification order, his appeal was dismissed); *Estate of Caroline Davis*, 51 IBIA 101 (2010) (challenge to original probate decision was not within the scope of an appeal from the modification order); *Estate of Irma Ross*, 51 IBIA 21 (2009) (same).³

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 docketed but dismisses this appeal.

I concur:

// original signed
Thomas A. Blaser
Administrative Judge

//original signed
Steven K. Linscheid
Chief Administrative Judge

³ We express no opinion on whether Appellant has grounds to support reopening. Any such petition must “set forth fully” all grounds for reopening and must be filed with the IPJ and acted upon by the IPJ. 43 C.F.R. § 30.243; *see Estate of Selwyn Wade Drum*, 56 IBIA 50, 51 (2012) (“The Board does not have original jurisdiction to reopen an estate.”).