



INTERIOR BOARD OF INDIAN APPEALS

Estate of Louis R. Boyer

62 IBIA 9 (11/18/2015)



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 LOUIS R. BOYER)	Order Docketing and Dismissing
)	Appeal
)	
)	Docket No. IBIA 15-115
)	
)	November 18, 2015

Maria Boyer-Jensen (Appellant) appealed to the Board of Indian Appeals (Board) from a Modification Order to Include Omitted Property (Modification Order) entered on August 20, 2015, by Indian Probate Judge (IPJ) Albert C. Jones in the estate of Appellant’s father, Louis R. Boyer (Decedent), deceased Turtle Mountain Chippewa Indian, Probate No. P000085757IP.¹ The IPJ ordered that an interest in real property added to the estate, in an allotment that was devised in Decedent’s will, be distributed to the devisees as provided in the IPJ’s original probate decision, dated January 31, 2012, approving the will. Appellant, who was omitted from Decedent’s will, argues that she and other siblings who were omitted from the will should be included as beneficiaries to Decedent’s estate. We dismiss the appeal because a challenge to the approval of Decedent’s will is outside the scope of the Modification Order, which did not reopen that issue, and because Appellant may not directly appeal to the Board from the original probate decision.

On receipt of the appeal, the Board ordered Appellant to complete service of her notice of appeal on the interested parties as required by 43 C.F.R. §§ 4.310(b) and 4.323, and to notify the Board that she had done so.² In addition, because it appeared that Appellant was seeking to raise an issue that was outside the scope of the Modification Order, or improperly attempting to appeal directly from the original probate decision, the Board ordered Appellant to show cause (i.e., explain) why her appeal should not be

¹ The Modification Order was issued after the Bureau of Indian Affairs (BIA) requested that the estate inventory be modified to add and distribute an additional .0008136925 (minerals) interest in Allotment 224 M600, Turtle Mountain Public Domain (Fort Belknap), in the State of Montana. A memorandum accompanying BIA’s request indicates that Decedent inherited the additional interest from the Estate of Leroy J. Poitra.

² Appellant complied with that order.

dismissed. Pre-Docketing Notice, Order for Appellant to Complete Service on the Interested Parties and Order for Appellant to Show Cause (OSC), Sept. 28, 2015, at 2-4.

In response to the OSC, Appellant asserts, without more, that her explanation was detailed in her notice of appeal, which “included all supporting documentation as to why those listed should be included in the action.” Letter from Appellant to Board, Oct. 27, 2015. But Appellant’s notice of appeal, in substance, sought to challenge the distribution of Decedent’s estate based upon his will, which was approved in the original probate decision.³ As the Board explained in the OSC, the Board does not have jurisdiction to review directly an initial probate decision determining heirs or beneficiaries; a party must first exhaust remedies with the probate judge by seeking rehearing or reopening. *See* 43 C.F.R. § 4.320; *Estate of Thomas Eugene Iron*, 58 IBIA 123, 123 n.2 (2013); *see also* 43 C.F.R. § 30.238 (rehearing), *id.* § 30.243 (reopening). And where, as here, a probate judge’s modification order simply accepts the addition of property to a decedent’s estate and orders that it be distributed pursuant to the terms of a prior, and final, probate decision, the initial probate decision is not within the scope of an appeal to the Board from the modification order. *See* 43 C.F.R. § 4.318 (scope of review); *Estate of Caroline Davis*, 51 IBIA 101, 101 (2010) (docketing and dismissing appeals); *Estate of Irma Ross*, 51 IBIA 21, 21 (2009) (same). Appellant has not demonstrated that her appeal, seeking to revisit the distribution of Decedent’s estate according to his will, is properly before the Board.

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
Steven K. Linscheid
Chief Administrative Judge

//original signed
Thomas A. Blaser
Administrative Judge

³ Appellant states that she and her siblings who were omitted from the will should be included as heirs to their father’s property. In the original probate proceedings, Appellant objected to Decedent’s will, but the probate judge found that she did not provide any evidence to support her objection. *See* Decision, Jan. 31, 2012, at 2.