



INTERIOR BOARD OF INDIAN APPEALS

Estate of Paul J. Bernal

62 IBIA 11 (11/19/2015)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ESTATE OF PAUL J. BERNAL)	Order Reversing in Part Final Decision
)	on Reopening
)	
)	Docket Nos. IBIA 14-057
)	14-058
)	
)	November 19, 2015

Norman C. Joseph Bernal and Antoinette Hopper (collectively, Appellants) appealed to the Board of Indian Appeals (Board) from a Final Decision on Reopening (Reopening Order) entered on January 14, 2014, by Indian Probate Judge (IPJ) John R. Payne in the estate of Paul J. Bernal (Decedent).¹ The Reopening Order, in part, modified an October 29, 2012, Summary Order Determining Heirs and Decree of Distribution (Decision) to add the estate of Byron Red (Red) as an heir to Decedent, on the basis that Red was a son of Decedent’s predeceased brother, Anthony Bernal (Anthony).

Appellants, who are children of Anthony, contend that the evidence relied on by the IPJ to add Red’s estate as an heir was legally insufficient. We agree. Red’s death certificate lists Anthony as his father, but the administrative record contains no evidence corroborating this statement. We conclude that the death certificate, by itself, is not sufficient evidence that Red was Anthony’s son. Thus, the Board reverses the portion of the Reopening Order that added Red’s estate as an heir to Decedent.

Background

Decedent died intestate (i.e., without a will) on July 16, 2003, in Taos, New Mexico. Decision, Oct. 29, 2012, at 1-2 (unnumbered).² Decedent was never married, had no children, and was predeceased by his parents. Data for Heirship Finding and Family History (OHA-7), Nov. 7, 2011, at 1.

¹ Decedent was a Taos Pueblo – New Mexico Indian. His probate is assigned Probate No. P000089449IP in the Department of the Interior’s probate tracking system, ProTrac.

² Because the Administrative Record (AR) does not include organizational tabs or other marked sections, we have not included AR citations.

Decedent's trust estate was processed summarily, without a formal hearing, because it consisted entirely of funds in an Individual Indian Money (IIM) account totaling \$37.70 on the date of Decedent's death. *See* 43 C.F.R. § 30.200; Decision at 1 (unnumbered). In the Decision, the Attorney Decision Maker applied the law of the State of New Mexico to distribute the funds in Decedent's IIM account. Decision at 1 (unnumbered). Relevant to this appeal, she concluded that Decedent's heirs included Anthony's children, specifically, Appellants, Mary A. Moody, and Edwina Dee Holgate. *Id.* at 2 (unnumbered). The Decision did not address Red.

A few months after the issuance of the Decision, on February 11, 2013, the Southwest Regional Office, Bureau of Indian Affairs (BIA), filed a petition for reopening with respect to the Decision's finding that the estate of Pabla Bernal (Pabla), Decedent's sister, was an heir. Petition for Reopening, Feb. 11, 2013. The petition asserted that Pabla died as a minor and without issue, prior to Decedent's death, and thus Pabla's estate should be removed as an heir. *Id.*

Upon receipt of the petition for reopening, the IPJ issued a notice of the petition to interested parties and an order for BIA to show cause. Notice of Petition for Reopening and Order to Show Cause (OSC), July 9, 2013. After the IPJ discussed the petition concerning Pabla, he pointed out an inconsistency regarding Red's status. *Id.* at 2. The IPJ noted that Red was included on the OHA-7 form for Decedent's estate, apparently as a natural child of Anthony, however, Red was not included on the OHA-7 form compiled for the estate of Maria Bernal, who was Anthony and Decedent's mother, and Red's putative grandmother. *See id.* The IPJ stated that it appeared Red had a stepfather, but that there was no indication Red was adopted, and if not, he was potentially an heir to Decedent. *Id.* at 2-3. The IPJ ordered BIA to provide additional information in support of its petition concerning Pabla. *Id.* at 3. He also asked BIA to address whether Red's estate should be added as an heir to Decedent, with supporting documentation. *Id.*

As relevant to this appeal, BIA responded that Red should be added as an heir. Memorandum from Legal Administrative Specialist to Office of Hearings and Appeals, Aug. 16, 2013. In support, BIA submitted a copy of Red's death certificate, which lists Anthony as his father. *See id.*, Attachment (Attach.) A (Death Certificate). BIA also submitted a copy of Red's certificate of tribal enrollment in the Southern Ute Indian Tribe, and a copy of Red's birth certificate, which lists his father as unknown.³ *See id.*, Attach. B & C (Certificate of Enrollment, July 30, 2013; Birth Certificate).

³ It is unclear whether BIA served its response on Appellants, who did not file a reply.

On January 14, 2014, the IPJ issued the Reopening Order, which modified the Decision to add Red's estate as an heir to Decedent. The IPJ found, based on the information provided by BIA, that Red was Anthony's son. Reopening Order at 1. The IPJ also removed Pabla's estate as an heir, finding that Pabla predeceased Decedent and had no children, or at least no children who survived Decedent. *Id.* at 1.

On appeal, Appellants argue that the evidence contained in the record does not establish that Anthony is Red's father, and thus the IPJ erred in adding Red's estate as an heir to Decedent.⁴ See Notices of Appeal, received Feb. 18, 2014.

Standard of Review

The Board reviews challenges to factual determinations by the probate judge to determine whether the factual determinations are supported by substantial evidence. *Estate of Samuel Johnson Aimsback*, 45 IBIA 298, 303 (2007). We review legal determinations and the sufficiency of the evidence *de novo*. *Estate of Dominic Orin Stevens, Sr.*, 55 IBIA 53, 62 (2012).

Discussion

To establish paternity in Indian probate cases, the standard of proof is a preponderance of the evidence. *Estate of Edwin Melvin Long Solider*, 52 IBIA 239, 241 n.5 (2010); *Estate of Anthony "Tony" Henry Ross*, 44 IBIA 113, 120 (2007). The evidence relied upon must also be probative and sufficient to support the finding. Because the administrative record does not contain sufficient evidence to sustain the IPJ's finding that Red was Anthony's son, we reverse the Reopening Order in part.

BIA submitted three documents as evidence of paternity: a record of Red's tribal enrollment, his birth certificate, and his death certificate. The enrollment record states that Red is a member of the Southern Ute Indian Tribe, which according to his birth certificate is his mother's tribe. The enrollment record does not support a finding of paternity. The birth certificate lists Red's father as unknown, and thus adds nothing. As Appellants point out, the record does not contain any evidence that Anthony acknowledged Red as his son, and there is no evidence that paternity was established in any prior court proceeding. See Notices of Appeal. Nor is there any evidence that Red's mother and Anthony were ever married, such that paternity might be presumed. See *Estate of Floyd Bill*, 60 IBIA 136, 140

⁴ No party has challenged the Reopening Order's removal of Pabla's estate as an heir. Therefore, we address that portion of the Reopening Order no further.

n.6 (2015). Accordingly, Red's death certificate, which identifies Anthony as Red's father, is the only probative evidence of paternity.

In previous cases, the Board has held that a birth certificate containing an alleged father's name without other corroborating evidence is insufficient to establish paternity. *See id.* at 140-41 (altered birth certificate was insufficient to demonstrate paternity when there was no record of any evidence used to support the alteration); *Estate of Thomas Jefferson Boe*, 56 IBIA 15, 27 (2012) (birth certificate was some evidence of paternity, but it and other evidence did not constitute a preponderance of the evidence). The Board has also held that the testimony of one individual, such as the child's mother, is not sufficient to prove paternity when the putative father takes no action consistent with paternity during his lifetime. *Estate of Emerson Eckiwaudah*, 27 IBIA 245, 252 (1995); *see also Estate of Darrell Leon Thomas*, 61 IBIA 175, 177 (2015) (tribal court order relying solely on affidavit from an appellant's mother would not be sufficient to determine paternity).

Here, we conclude that Red's death certificate, standing alone, does not prove paternity. Red's spouse provided the information for the certificate, and there is nothing in the administrative record to corroborate the information she provided or even explain why she held the view that Red was Anthony's son. Because the record does not contain sufficient evidence to sustain the IPJ's finding of paternity, we reverse the portion of the Reopening Order that added Red's estate as an heir to Decedent.⁵

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 reverses in part the IPJ's January 14, 2014, Final Decision on Reopening.

I concur:

// original signed
Thomas A. Blaser
Administrative Judge

//original signed
Steven K. Linscheid
Chief Administrative Judge

⁵ Appellants suggest that death certificates should not be used to establish paternity. *See Hopper's Notice of Appeal*. We do not adopt that position. A death certificate may be used, along with other evidence, to demonstrate paternity or maternity. Alternatively, there may be cases where the parent in question is the informant for the death certificate and thus the death certificate may provide stronger evidence of the parental relationship.