INTERIOR BOARD OF INDIAN APPEALS

In The Matter of the Will and Trusts of Charles A. Rector

62 IBIA 119 (01/22/2016)

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

IN THE MATTER OF THE WILL AND TRUSTS OF CHARLES A. RECTOR	)	Order Docketing and Dismissing Appeal
	)	
	)	Docket No. IBIA 16-033
	)	
	)	January 22, 2016

On January 19, 2016, the Board of Indian Appeals (Board) received from the Special Attorney, Tulsa Field Solicitor's Office, a notice of appeal filed by Karen L. Rector-Redeagle (Appellant). Appellant seeks review of a December 1, 2015, decision (Decision) of the Osage Agency Superintendent (Superintendent), Bureau of Indian Affairs (BIA), approving the Osage will dated April 15, 2010 (Will), and inter vivos trust dated September 29, 2011 (Trust),[1] of Charles A. Rector (Decedent), deceased unalloted Osage, Hearing No. H-2012-383. Appellant only appeals from the portion of the Superintendent's decision that approves the Trust for the distribution of Decedent's estate, and not from the Superintendent's approval of the Will.

The Superintendent requests that the Board remand this matter for issuance of a new decision giving separate appeal rights applicable to the decision approving the Will on one hand and the decision approving the Trust on the other hand. Notice of Appeal and Request for Remand at 2. The basis for the request is that the Decision contains appeal instructions advising that any appeal must be filed pursuant to 25 C.F.R. § 17.14, which governs appeals to the Board from action on wills of Osage Indians, and does not advise that an appeal from the approval of the Trust must be filed pursuant to 25 C.F.R. Part 2, which are the regulations that govern administrative appeals from BIA decisions, *inter alia*, to approve Osage inter vivos trusts. *See Chouteau*, 34 IBIA at 61 (holding that there is a

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[1] The Trust was approved during Decedent's lifetime by the Superintendent on October 3, 2011, apparently without notice at that time to interested parties. *See* Special Attorney's Recommendation to Superintendent, Nov. 30, 2015, at 1 (attachment to Notice of Appeal and Request for Remand, Jan. 15, 2016). Where a superintendent approves an Osage inter vivos trust and does not notify interested parties at that time, an interested party's right of appeal is tolled and thus may be exercised after the settlor's death. *Chouteau v. Acting Muskogee Area Director*, 34 IBIA 57, 61 (1999) (citing 25 C.F.R. § 2.7).

right of appeal under 25 C.F.R. Part 2 from a superintendent's decision to approve an Osage inter vivos trust). Under 25 C.F.R. § 2.9(a), an appeal from a superintendent's decision must be filed with the superintendent and copied on all known interested parties and the regional director who will decide the appeal—in this case the Eastern Oklahoma Regional Director.

Because the Board lacks original jurisdiction to consider an appeal from a superintendent's decision which is subject to appeal to a higher BIA official, 43 C.F.R. § 4.331(a), the Board lacks jurisdiction to "remand" this matter for issuance of a new decision, and instead must dismiss the appeal.[2]

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 dockets but dismisses the appeal.

I concur:

// original signed	//original signed
Thomas A. Blaser	Steven K. Linscheid
Administrative Judge	Chief Administrative Judge

[2] While BIA may elect to issue a new decision with correct appeal instructions, the Board notes, without expressing any view on the merits of the Decision itself, that BIA can alternatively maintain the Decision and simply issue correct appeal instructions to interested parties. *See* 25 C.F.R. § 2.7(b) ("[f]ailure to give such notice shall not affect the validity of the decision or action but the time to file a notice of appeal . . . shall not begin to run until notice has been given").