



INTERIOR BOARD OF INDIAN APPEALS

Estate of Patricia Marie Manahan

62 IBIA 150 (02/03/2016)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ESTATE OF PATRICIA MARIE) Order Affirming Decision
MANAHAN)
) Docket No. IBIA 14-120
)
) February 3, 2016

Richard Livesay (Appellant) appealed to the Board of Indian Appeals (Board) from an Order Denying Rehearing, entered on July 31, 2014, by Indian Probate Judge (IPJ) Mary P. Thorstenson in the estate of Patricia Marie Manahan (Decedent), Appellant’s sister and a Sisseton-Wahpeton Oyate Indian.¹ Appellant challenges the IPJ’s conclusion that Decedent’s spouse, children, and the children of her deceased son, none of whom are enrolled with the Sisseton-Wahpeton Oyate Tribe (Tribe), are entitled to life estates in trust real property interests owned by Decedent on the Tribe’s Lake Traverse Reservation (Reservation) at the time of her death. Instead, Appellant maintains that only heirs who are also Tribal members, such as Appellant, may inherit real property interests on the Reservation. We conclude that the IPJ correctly interpreted applicable law and we affirm her Order Denying Rehearing.

Background

Decedent died on August 19, 2012, and did not have a will. She was survived by her non-Indian spouse, Dock Cornelius Manahan, and three children (Sheila Watson, Arthur Manahan, and Roxanne Manahan). A fourth child, Patrick Manahan, died prior to Decedent, and his two children, Patrick Manahan II and Alize Manahan, survived Decedent. None of Decedent’s children or the children of her deceased son are members of the Tribe. Decedent also was survived by four siblings—Juan Flores, Jr., Lisa Livesay, Cheryl Livesay, and Appellant—all of whom are enrolled with the Tribe.

When she died, Decedent owned, *inter alia*, small interests in various allotments on the Reservation, the disposition of which is at issue in this appeal. At the time of the IPJ’s

¹ The probate number assigned to Decedent’s case in the Department of the Interior’s probate tracking system, ProTrac, is No. P000108259IP.

decision, Decedent's largest ownership interest was an 11/864 (or approximately 1.3%) interest in Allotment 761.²

In her Decision, issued May 29, 2014, the IPJ applied the Sisseton-Wahpeton Sioux Act (Act), Pub. L. No. 98-513, 98 Stat. 2411 (1984), and awarded a life estate in the allotment interests to Decedent's widower, their three living children, and the two children of their deceased son;³ the remainder interests in these allotments were awarded in equal shares to Decedent's four surviving siblings, including Appellant. Appellant sought rehearing on the grounds that Decedent's spouse and issue are ineligible to receive interests in Tribal lands because they are not Tribal members. The IPJ reviewed the relevant law and concluded that she had not committed error in her Decision. Therefore, on July 31, 2014, the IPJ denied the petition for rehearing. This appeal followed.

Statutory Framework

This appeal is governed by the Act, of which several sections are pertinent to this appeal. First, § 2(a) of the Act provides that, *subject to the provisions in § 4*, only the Tribe and its enrolled members may inherit an interest in trust or restricted lands on the Reservation. Second, § 3(a) identifies those family members who are eligible to inherit land interests on the Reservation when a decedent dies without a will and specifies the order in which they may inherit as well as the share that each heir shall receive. In relevant part, § 3(a) provides:

(1) one-half of the interest [in trust or restricted lands on the Reservation] shall descend to the surviving spouse and the other one-half shall descend in equal shares to the children of the decedent and to the issue of any deceased child of the decedent by right of representation;

...

² Subsequently, additional land interests on the Reservation may have been added to Decedent's estate as the result of probate decisions entered in the estate of Decedent's brother, Patrick Flores. *See Estate of Patrick Michael Flores*, Probate No. P000092530IP. Any such additions to Decedent's estate should pass to the heirs in accordance with the IPJ's decision in Decedent's estate.

³ The life estates were awarded as follows: Dock received a 1/2 interest in Decedent's land interests; Sheila, Arthur, and Roxanne each received a 1/8 interest in their mother's land interests; and Patrick II and Alize each received a 1/16 interest in their grandmother's land interests.

(5) if there is no surviving spouse, and no surviving children or issue of any child, and no surviving parent, the interest shall descend equally to the brothers and sisters of the decedent.

The third relevant provision of the Act is found in § 4, and provides:

(b) Notwithstanding the provisions of sections 2 and 3 . . . wherever any person dies possessed of any interest in trust or restricted land within the reservation and the [Decedent dies without a will], the nonmember . . . surviving spouse, nonmember children, and the nonmember issue of any children of the decedent shall be entitled to take only a life estate in any interest provided in section 3 of this Act.

Standard of Review

Where the facts are undisputed, as they are here, and the issue raised is a question of law—are Decedent’s widower, children, and grandchildren, who are non-Tribal members, eligible to inherit a life estate in land interests owned by Decedent on the Reservation—we review the legal issue *de novo*. *Estate of Joseph Alexander Harrison*, 61 IBIA 238, 242 (2015). On appeal, Appellant has the burden of showing error in the IPJ’s Order Denying Rehearing. *Id.* Ambiguous, incomplete, or speculative assertions are insufficient to meet this burden. *Id.*

Discussion

Appellant raises several arguments in support of his contention that Decedent’s widower, children, and grandchildren are not entitled to any land interests owned by Decedent on the Reservation.⁴ First, he contends that the Act itself precludes non-Tribal

⁴ We discuss the arguments raised in Appellant’s notice of appeal, which he served on the interested parties after being ordered to do so by the Board. However, we do not consider Appellant’s brief, dated Mar. 22, 2015, because we have received no assurance from Appellant that he provided a copy of his brief to any interested party. The Board informed Appellant twice of his responsibility to do so. First, we provided Appellant with a copy of the regulations that require him (1) to provide each interested party a copy of his filings with the Board and (2) to notify the Board that he has done so. *See* 43 C.F.R. §§ 4.310(b), 4.311(a) (provided to Appellant with the Board’s Pre-Docketing Notice and Order for Appellant to Serve IPJ and Interested Parties, dated Aug. 27, 2014). Second, the Board’s own instructions to Appellant specifically informed him of these duties. *See* Pre-Docketing Notice at 2. Therefore, we do not consider the arguments raised in

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members from owning an interest in trust or restricted lands on the Reservation. Appellant is not entirely correct: Persons who are not Tribal members *may* under certain circumstances receive a life estate interest in lands on the Reservation. *See* Act, § 4(a)&(b). As set forth above at 152 and pertinent to the facts before us, § 4(b) expressly permits a Tribal member’s surviving non-member spouse, non-member children, and non-member grandchildren to inherit the Tribal member’s land interests on the Reservation but only for their lifetime. *See Estate of Oscar White*, 40 IBIA 306, 307-09 (2005). Therefore, we conclude that the IPJ correctly determined that Decedent’s widower and their issue are eligible to receive life estates in Decedent’s land interests on the Reservation.

A “life estate” is a limited ownership interest that, here, lasts only for the lifetime of each of the heirs receiving a life estate interest. *See, e.g.*, 25 C.F.R. §§ 162.101 (“Life estate means an interest in Indian land that is limited, in duration, to the life of the [person] holding the interest...”), 179.2 (“*Life estate* means an interest in property held for only the duration of a designated person’s life...”). When the heir dies, the life estate dies with the heir, 25 C.F.R. § 179.4, and that land interest passes as a “remainder” interest to the heir(s) designated in the probate order to receive the remainder interest; the life estate interest does not become part of the probate estate of the life estate heir. For example, under the terms of the IPJ’s Decision, Dock will receive—for his lifetime only—1/2 of Decedent’s interests in trust and restricted lands on the Reservation. When Dock dies, that 1/2 interest in Decedent’s Reservation land interests automatically expires and will then be divided equally among Decedent’s surviving siblings, *i.e.*, Appellant, Lisa, Cheryl, and Juan. That is, upon Dock’s death, each of these four individuals shall receive 1/4 interest in the 1/2 remainder interest (*i.e.*, each of the siblings will receive a 1/8 interest in that interest owned by Decedent) and the remainder heirs may sell, devise, or gift that remainder interest.⁵ On the other hand, Dock (and each of the life estate heirs) cannot sell or give away any ownership interest that extends beyond his death in the inherited Reservation land interests and Dock cannot devise any of these interests because they expire at his death.⁶

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Appellant’s brief, except to observe here that they would not alter our decision in this appeal.

⁵ For example, at the time her estate was probated, Decedent owned an 11/864 interest in Allotment 761. *See supra* at 151. Dock’s life estate interest is 11/1728 (0.64%) in Allotment 761. Upon Dock’s death, Appellant will receive an 11/6912 (0.16%) interest in Allotment 761, as will Lisa, Cheryl, and Juan.

⁶ We express no opinion on whether these life estate interests may be sold or given away, in whole or in part, by the life estate heirs so long as any such conveyance expressly expires upon the death of the heir selling or giving away the interest.

Next, Appellant refers us to a modification that added Appellant and his sisters Lisa and Cheryl as heirs to the estate of their brother, Patrick Flores, *see* Modification, *Estate of Flores*, Sept. 25, 2013, and suggests that the IPJ’s decision in Decedent’s estate should not be inconsistent with the Modification.⁷ It is not. In the Modification, the interest awarded to Appellant is a *remainder* interest because, in Flores’s probate, a life estate in all of his land interests on the Reservation went to Flores’s daughter, Elizabeth Flores, who is not a member of the Tribe. Decision, *Estate of Flores*, Sept. 18, 2012 (Administrative Record Tab 7). Our decision today, upholding the IPJ’s decision, is consistent with the Modification entered in Flores’s estate.

Finally, Appellant expresses concern that the IPJ’s decision somehow affects or conflicts with “the Indian Trust Settlement out of Washington D.C.” Notice of Appeal at 2 (unnumbered), Aug. 15, 2014. We presume that Appellant refers to the settlement in the *Cobell* litigation.⁸ However, Appellant bears the burden of explaining how the IPJ’s decision will affect or conflict with the settlement and he bears the burden of producing relevant evidence in support of his contentions. He has not done so, and we are unaware of how the IPJ’s decision could affect or conflict with the settlement of the *Cobell* litigation.

We thus conclude that Appellant has not met his burden of convincing us that the IPJ’s Order Denying Rehearing is in error, and we affirm.

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 July 31, 2014, Order Denying Rehearing.

I concur:

// original signed
Debora G. Luther
Senior Administrative Judge

//original signed
Robert E. Hall
Administrative Judge

⁷ Appellant did not provide the Board with a copy of the Modification. However, the Board obtained a copy and has added it to the record on appeal.

⁸ *See, e.g., Cobell v. Jewell*, 802 F.3d 12, 16-19 (D.C. Cir. 2015) (discussing the history of this lengthy litigation as well as its settlement).