



INTERIOR BOARD OF INDIAN APPEALS

Estate of Anthony Seymour Arkeketa

62 IBIA 260 (03/09/2016)

The ALJ ordered the distribution of Decedent’s trust property pursuant to Article 2 of the will. *Id.* at 2-4. In particular, the ALJ ordered the distribution of Decedent’s interests in two allotments to Toria, with a life estate reserved to Laura; another allotment to Charles; and the “[r]esidue[] ... of [a]ll the [D]ecedent’s remaining trust property” to Appellants as joint tenants with a right of survivorship. *Id.*

The language of the residuary clause in Article 2 of the will governs Decedent’s “interests in other real estate.” Article 3 of the will, to which the Decision did not refer, is entitled, “Distribution of the Residue of the Estate,” and bequeaths “all of the residue and remainder” of Decedent’s estate to Toria.

In January 2014, Appellants filed their petition to reopen Decedent’s estate, contending that anticipated or actual settlement proceeds from the *Cobell* litigation are trust property governed by the remaining-trust-property language in the Decision. Appellants sought an order modifying Decedent’s estate to add the settlement proceeds to the property inventory and distributing the same to Appellants or, alternatively, an order otherwise determining the heirs specifically for the settlement proceeds. Laura, as Decedent’s executrix, filed a motion to dismiss the petition, arguing that the *Cobell* proceeds are not trust property, but that regardless, they are personalty, and thus subject to Article 3 of the will. Appellants opposed the motion to dismiss.

The ALJ responded to the petition and to the motion with an order to show cause. *See* Notice of Petition to Reopen and Order to Show Cause (OSC), July 7, 2014. He proposed to deny the petition to reopen as premature insofar as it sought to add anticipated settlement funds to Decedent’s trust estate because (even assuming that the funds could be characterized as trust assets) there was no evidence before him either of an amount due Decedent or that Decedent had been found to be an eligible class member. However, the ALJ proposed to modify the Decision to reflect that, pursuant to Decedent’s will, the rest and residue of any trust *real* property interests should descend to Appellants and the rest and residue of any trust *personalty* should descend to Toria. OSC at 3-4.

In response to the OSC, Appellants produced evidence showing that Decedent’s estate was a member of the *Cobell* class and confirmed that on May 20, 2013, a sum certain had already been paid from the *Cobell* settlement funds to Decedent’s spouse, as the executrix of his estate. *See* Appellants’ Response to the OSC, Aug. 15, 2014, at Exhibit 1 (email from the *Cobell* Indian Trust Claims Administrator³ to Appellants’ counsel, Aug. 5,

³ “Indian Trust Claims Administrator” refers to a private, non-government firm, which the Board understands is the Garden City Group, LLC. *See* Order Granting Unopposed Motion to Modify Distribution of Settlement Proceeds at 1, *Cobell v. Salazar*,

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2014). Appellants argued that the settlement proceeds are trust property because the litigation was prompted by the alleged failure of the Department to make an accurate accounting of funds in IIM trust accounts. Since trust funds in IIM accounts derive, *inter alia*, from trust real property, Appellants argued that the settlement funds should be characterized as, and “remain,” trust property and, therefore, subject to probate by the Department. Also, for the first time, Appellants sought leave to file a claim against Decedent’s estate for their “labor and efforts” in perfecting a claim on behalf of Decedent’s estate in the *Cobell* litigation. Appellants agreed to waive their claim if the ALJ granted them the requested relief.

The ALJ disagreed with Appellants. In his Order Denying Reopening, the ALJ explained that Federal law defines trust property for purposes of the Department’s probate authority, citing 25 U.S.C. § 2206(b)(3)(A) and 43 C.F.R. § 30.101 (definitions of “trust personalty” and “estate”); *see also id.* (definition of “trust property”).⁴ He further explained that the settlement funds are paid from a private bank and do not pass through an IIM account except in certain circumstances not relevant to Decedent or his estate. He further denied Appellants’ request to file a claim for fees because it was not filed before the conclusion of the first hearing, citing 43 C.F.R. § 30.140(a). Finally, the ALJ modified the Decision to clarify that, under Article 2 of the will, only residual trust real property interests descend to Appellants and any residual trust personalty would descend to Toria pursuant to Article 3.

This appeal followed. Appellants filed an opening brief to which Laura and Toria filed an opposition. Appellants filed a reply brief.

Discussion

We affirm the ALJ’s Order Denying Reopening. These settlement funds do not fall within the definition of trust property and, therefore, the ALJ properly declined to modify Decedent’s Federal trust estate inventory to include funds distributed to his estate from the

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No. 96-CV-01285 (TFH) (*Cobell*) (D.D.C. June 19, 2013) (*Cobell* Order) (copy added to the record).

⁴ The Department’s probate regulations expressly limit the definition of “estate” to a decedent’s *trust* estate, *i.e.*, trust and restricted property. 43 C.F.R. § 30.101. Indian decedents who own trust and non-trust property have, in effect, two estates: the trust “estate,” governed by Federal law and probated by the Department, and the non-trust estate, subject to state or tribal probate. *See Estate of Marvin Lee Tissidimit*, 51 IBIA 211, 212 (2010).

Cobell settlement. In addition, the ALJ's modification of his Decision is consistent with Decedent's will, and he did not exceed his jurisdiction or abuse his discretion in clarifying his original decision. Finally, the ALJ correctly concluded that Appellants are barred from submitting a claim against Decedent's estate as any claim would be untimely.

I. Standard of Review

It is Appellants' burden to show error in the decision appealed. *Estate of Patricia Marie Manahan*, 62 IBIA 150, 152 (2016). On appeal, we review legal issues *de novo* and factual determinations are reviewed to determine whether they are supported by the record. *See Estate of Bertha Mae Tabbytite*, 57 IBIA 80, 83 (2013). We may affirm the decision on any grounds set forth in the decision or supported by the record. *Id.*

II. Cobell Settlement Funds

Appellants argue vigorously that the settlement funds paid or owed to Decedent's estate derive exclusively from his trust real property. They contend that once an asset becomes a trust asset, that asset does not lose its trust status even though the character of the asset itself may change. Appellants miss the point. A trust asset undoubtedly may be converted to a different form and still be subject to a trust. It does not follow, however, that the proceeds from a damages claim against the trustee, paid to the beneficiary or its representative, remain held in trust by the trustee even if allegedly derived from the trust. In the present case, the *Cobell* funds are governed by the settlement. And the Settlement Agreement clearly and unequivocally provides that the settlement funds paid by the United States to the class members are to be deposited in a private "Qualified Bank," not into IIM accounts. Thus, these funds are not assets probated by the Department.

The American Indian Probate Reform Act includes a precise definition of the "trust personalty" that is subject to probate by the Department: "all funds and securities of any kind which are held in trust in an [IIM] account or otherwise supervised by the Secretary [of the Interior]." 25 U.S.C. § 2206(b)(3)(A);⁵ *see also* 25 C.F.R. § 15.2 (same definition of "trust personalty"); 43 C.F.R. § 30.101 (same). The settlement funds are subject to the supervision of plaintiffs' counsel and the Court, not the Secretary. Indeed, as the ALJ remarked, the Settlement Agreement expressly states that the Secretary "**shall have no role** in . . . the distribution of [the settlement funds]." Decision at 3 (quoting Settlement Agreement, Dec. 7, 2009, at 25, § E(1)(g) (emphasis added by ALJ) (copy added to the record)).

⁵ Subsection (b) of 25 U.S.C. § 2206 was rewritten—and § (b)(3)(A) was added—in 2004. *See* Pub. L. No. 108-374, 118 Stat. 1773, 1779 (2004).

Appellants also argue that the *Cobell* funds are “judgment funds” within the meaning of 25 C.F.R. § 87.10(d) and our decision in *Hohman v. Acting Rocky Mountain Regional Director*, 52 IBIA 245 (2010). Appellants err. Our decision in *Hohman* addressed the distribution of funds payable to the estate of an Indian decedent from a judgment or settlement entered by the Court of Federal Claims. Similarly, Part 87 of 25 C.F.R. applies solely to funds awarded in the Court of Federal Claims. *See* 25 C.F.R. § 87.2; *see also* 25 U.S.C. § 1401 *et seq.* (Indian Tribal Judgment Funds Use or Distribution Act).⁶ Unlike the underlying case in *Hohman*, the *Cobell* case was litigated in Federal district court, which is a distinctly different court than the Court of Federal Claims, *comp.* 28 U.S.C. § 1330 *et seq.*, *with id.* § 1491 *et seq.* Thus, the regulations at Part 87 have no applicability to the distribution of the *Cobell* settlement funds, which are governed by a settlement agreement that was expressly ratified by Congress. *See* Pub. L. No. 111-291, 124 Stat. 3064, 3066 § (c)(1) (2010).

We agree with the ALJ that any settlement funds from the *Cobell* litigation that may be due Decedent or his estate are not trust property, and thus not subject to probate by the Department.

III. The ALJ’s Order Denying Reopening to Modify the Decision

Appellants argue that the ALJ, having concluded that the *Cobell* settlement funds are not subject to probate by the Department, could not have had authority to modify his Decision to specify that Appellants are entitled to any rest and residue of trust real property in Decedent’s estate and that Toria is entitled to any rest and residue of trust personalty in the estate. We disagree. Pursuant to 43 C.F.R. § 30.243(a)(1), the ALJ has authority to reopen an estate on his own motion to correct factual and legal errors in the original decision. Here, although the ALJ concluded that no additional property was to be added to the estate inventory, the Distribution Decision needed to be modified to clarify that the residuary clause in Article 2 of the will applied only to interests in real property and thus, for purposes of the ALJ’s order, applied only to trust real property. For clarification, he added that any trust personalty should be governed by Article 3 of the will. He did not exceed his jurisdiction in reopening this issue *sua sponte* nor did he abuse his discretion in addressing the disposition of both trust real property and trust personalty under the will, even if no trust personalty is in Decedent’s estate.

⁶ In 1992, the name of the claims court was changed to the United States Court of Federal Claims. Pub. L. No. 102-572, 106 Stat. 4516 (1992). Subsection 87.2 has not yet been amended to reflect the change in the court’s name.

IV. Quantum Meruit Claim

Appellants seek to be compensated for their “labor and efforts” in perfecting the claim filed in *Cobell* on behalf of Decedent’s estate and, thus, seek leave to submit a claim against Decedent’s estate. As the ALJ explained, such a claim would be time-barred. As set forth in 25 C.F.R. § 15.304 and 43 C.F.R. § 30.140, claims must be filed in formal probate proceedings, as Decedent’s was, prior to the conclusion of the first hearing.⁷ Here, the first hearing in Decedent’s estate concluded *at the latest* on May 25, 2011.⁸ Because Appellants did not seek to submit a claim until January 2014, it is nearly 3 years too late and is time-barred.

Appellants argue that our decision in *Estate of Tabbytite*, 57 IBIA at 85, provides otherwise. Appellants are mistaken. *Estate of Tabbytite* considered regulations that were in effect in 2004. *See Estate of Tabbytite*, 57 IBIA at 80 n.4. In 2008, the regulations were amended with respect to the time of filing of claims against the estate of an Indian decedent. *See* 73 Fed. Reg. 67278, 67282 (25 C.F.R. § 15.304), 67294 (43 C.F.R. § 30.140) (Nov. 13, 2008). The comments to the regulations reinforce the firm and fixed nature of the deadline for submitting claims against the estate, observing that there is no legal right to submit claims against an Indian estate that exists independent of the regulations. *Id.* at 67267.

In addition to amending the regulations for submitting claims, the regulations governing reopening a closed estate also were amended. When we decided *Estate of Tabbytite*, the regulations for reopening a closed estate provided that “[a] person claiming *an interest* in an estate” could seek reopening within 3 years of the final probate decision if s/he had no actual or constructive notice of the hearing for the estate. 43 C.F.R. § 4.242(a) (2004) (emphasis added). The amended regulations make clear that reopening is solely for the correction of factual and legal errors. *See* 43 C.F.R. § 30.243(a)(3). For this additional reason, we reject Appellants’ argument.

⁷ A “formal probate proceeding” is defined as “a proceeding, conducted by a judge, in which evidence is obtained through the testimony of witnesses and the receipt of relevant documents.” 43 C.F.R. § 30.101.

⁸ There were two hearings held in Decedent’s estate, with the first being held on March 30, 2011. Because Appellants failed to submit any claim or even mention the possibility of a claim in 2011, we need not determine whether the May 25th hearing was a continuation of the March 30th hearing and, thus, part of the “first hearing” within the meaning of §§ 15.304 and 30.140.

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 September 19, 2014, Order Denying Petition to Reopen and Order of Modification.

I concur:

// original signed
Debora G. Luther
Senior Administrative Judge

//original signed
Steven K. Linscheid
Chief Administrative Judge