INTERIOR BOARD OF INDIAN APPEALS

Estate of Ruth E. Igkurak

62 IBIA 342 (03/30/2016)

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ESTATE OF RUTH E. IGKURAK	)	Order Setting Aside Denial of
	)	Reopening and Remanding
	)	
	)	Docket No. IBIA 15-013
	)	
	)	March 30, 2016

In this appeal to the Board of Indian Appeals (Board) brought by the Association of Village Council Presidents (AVCP), we set aside the September 15, 2014, Order Denying Reopening entered by Administrative Law Judge (ALJ) James Yellowtail in the Estate of Ruth E. Igkurak (Decedent) and remand this matter for further consideration.[1] Reopening of Decedent's estate was sought by the Bureau of Indian Affairs (BIA) for the purpose of adding omitted heirs.[2] When the ALJ received no response to his order to BIA to perfect its petition to reopen by providing documentation for the omitted heirs or otherwise show cause, the ALJ denied reopening. Now, on appeal, AVCP produces the birth certificates and other documents for the omitted heirs. Since the documents sought by the ALJ are now part of the record, we set aside the denial of reopening and remand this matter.

Background

Decedent, an Alaska Native, died on July 19, 2008. She did not leave a will. Decedent was survived by 11 of her 16 children and several grandchildren. In due course,

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[1] Decedent's probate case was assigned number P000071088IP in the Department of the Interior's electronic probate system, ProTrac.

[2] AVCP filed its own petition, dated June 11, 2013, to reopen Decedent's estate for the same reason. Its petition was addressed to BIA with a copy to the Office of Hearings and Appeals (OHA). It begins with "[t]he [AVCP] petitions the Office of Hearings and Appeals to reopen [Decedent's estate]." *See* Petition from AVCP to BIA, June 11, 2013 (copy received by OHA added to the record). It appears that the Probate Hearings Division (PHD), which received AVCP's petition, elected not to act on this petition either because it was addressed to BIA or because BIA petitioned to reopen Decedent's estate shortly thereafter.

probate materials were provided for Decedent to Indian Probate Judge (IPJ) Michael J. Stancampiano in preparation for a hearing in Decedent's estate. The materials identified the family members who survived Decedent and who would likely be her legal heirs. Minnie Igkurak Miller was listed as a prior deceased daughter who left no surviving issue.

The IPJ held a probate hearing on December 8, 2010, that was attended by Decedent's daughter, Martha Ray, Decedent's son, Benjamin Igkurak, and a granddaughter, Mykel Mapel. Transcript, Dec. 8, 2010 (Administrative Record (AR) 1). At the hearing, the IPJ specifically asked if Minnie had died without having any children. Martha informed the IPJ that Minnie had four boys, one of whom also died before Decedent. Benjamin and Martha testified that Minnie also had an adopted daughter. None of this testimony was disputed.[3] The IPJ then requested that Martha send a "listing" to AVCP concerning Minnie's children.[4] *Id.* The IPJ did not ask Martha to send a copy to him or to PHD or to BIA.

Martha followed through: She sent an undated, typed letter to AVCP that states, "Here are the names of Minnie Miller's children (daughter of [Decedent])," and lists each of the children—Kenneth, Trent, Curtis, Anna, and John—and the village where they resided (except for John, who predeceased Decedent). Letter from Martha Ray, undated (AR 2). Martha also included Decedent's probate case number. The letter is stamped "received" by AVCP on December 17, 2010. *Id.* Nothing in the record indicates that the letter was provided to the IPJ.

On January 13, 2011, the IPJ issued a final probate decision in which he identified Decedent's heirs. No mention is made in the decision of Minnie or of any children she may have had. There is no indication that a copy of this decision was sent to the individuals identified as Minnie's children. On January 21, 2011, presumably after AVCP received its copy of the IPJ's decision, AVCP apparently notified OHA of Martha's letter. *See* email from Samantha Epchook, AVCP, to "OHA-VA,"[5] Jan. 21, 2011.

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[3] On the October 2014 revised Data for Heirship Finding and Family History (OHA-7 form) is a typed note indicating that Anna's adoption was finalized several years after Minnie's death. Her birth certificate, issued in October 2014, does not list a mother.

[4] It appears that AVCP prepared the probate materials for the ALJ, so we presume that AVCP is under contract with BIA to provide probate preparation services.

[5] "OHA-VA" presumably refers to the Office of Hearings and Appeals in Arlington, Virginia. We cannot determine who would have received the email and what action, if any, occurred in response to the email.

Well over 2 years later, BIA sought to reopen Decedent's estate to add Kenneth, Trent, Curtis, and Anna as omitted heirs of Decedent's estate. BIA stated that it "received notification from [AVCP]" that the children were "inadvertently excluded" from the IPJ's decision. Petition for Reopening, June 17, 2013 (AR 3). The petition states that the probate decision is attached along with "other documents believed to be relevant to the consideration of this petition." *Id.* There appear to be no documents attached to BIA's petition. AR 3.[6]

In response to the petition, the ALJ issued an OSC on July 10, 2014, finding the petition to be unsupported by evidence and ordering BIA, as the party seeking reopening, either to provide him with a copy of Martha's letter along with birth certificates or other evidence showing that Minnie was the mother of Kenneth, Trent, Curtis, and Anna, or to show cause why its petition should not be denied. The OSC demanded that BIA respond within 30 calendar days and if BIA failed to comply, the ALJ would deny the petition to reopen Decedent's estate. A copy of the OSC was sent to AVCP, BIA, and to Kenneth, Trent, Curtis, and Anna.

BIA did not respond to the OSC nor did AVCP or any other party.

On September 15, 2014, after receiving no response to his OSC, the ALJ issued his Order Denying Reopening.

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[6] All parties responsible for the probate record in this matter—PHD and BIA—must take greater care in maintaining documents that are part of the record and in preparing the record on appeal. Multiple errors were made: the ALJ's Order to Show Cause (OSC), *see infra*, refers to two documents that were not in the record (the email from Samantha Epchook and a 2013 revised OHA-7, copies of which were obtained by the Board and added to the record); and the Board is unable to determine what attachments accompanied (or did not accompany) any given document because numerous documents appear under each of only five tabs (identified in the table of contents as (1) Transcript, (2) Pre[-]Docket Notice, (3) Order Denying Reopening, (4) Decision, and (5) Notice of Initial Hearing), rather than separate tabs, in chronological order, for individual documents *with their attachments or enclosures* (if a document states that there are attachments but none were received, that fact should be noted on the table of contents or on the document itself). At the Board's request, BIA did send a revised table of contents, which has been added to the record. In addition, PHD received a petition to reopen Decedent's estate from AVCP that was not acted on or included in this record. *See supra* n.2. These errors do not assist the administration of Indian and Native Alaskan probates.

This appeal, filed by AVCP, followed. Accompanying AVCP's appeal are copies of birth certificates for Kenneth, Trent, Curtis, and Anna and related documents.

Discussion

It is unclear to the Board why no one responded to the ALJ's OSC, which certainly made it clear that the petition would be denied if a response was not received.[7] At a minimum, Martha's letter could have been provided to the ALJ by either BIA or by AVCP along with information concerning the efforts that apparently were underway to obtain the birth certificates and a request for additional time to respond to the OSC.

Because it is undisputed that the ALJ did *not* receive a response to his OSC, his Order Denying Reopening is not in error. AVCP does not claim that it is. The ALJ easily may have surmised that BIA could not provide the necessary documentation or otherwise chose not to pursue the petition. However, because we have now been presented with copies of the birth certificates of Kenneth, Trent, Curtis, and Anna, along with a copy of John's death certificate, we exercise our inherent authority, pursuant to 43 C.F.R. § 4.318, to set aside the denial of reopening and remand this matter for further consideration in light of the evidence presented. *See Estate of Margerate Arline Glenn*, 50 IBIA 5, 31 (2009).

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 sets aside the September 15, 2014, Order Denying Reopening and we remand this matter to the Probate Hearings Division for further consideration.

I concur:

// original signed	//original signed
Debora G. Luther	Robert E. Hall
Senior Administrative Judge	Administrative Judge

[7] According to the record, BIA received the OSC on July 14, 2014; AVCP received it on July 16, 2014. *See* AR 3 (BIA's copy of the OSC); attachment to AVCP's Notice of Appeal, Oct. 15, 2014 (AVCP's copy of the OSC).