INTERIOR BOARD OF INDIAN APPEALS

Estate of David L. Moran

63 IBIA 1 (04/05/2016)

Dismissing Petition for Reconsideration of:
62 IBIA 180

# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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| ESTATE OF DAVID L. MORAN | ) | Order Dismissing Petition for |
| | ) | Reconsideration |
| | ) | |
| | ) | Docket No. IBIA 14-123-1 |
| | ) | |
| | ) | April 5, 2016 |

Certain grandchildren of David L. Moran (Decedent)—Shane C. Moran, Shannon A. Moran, Sharlotte L. Cayko, and Sharlene E. Gjermundson (collectively, Appellants)—seek reconsideration of the February 17, 2016, decision of the Board of Indian Appeals (Board) in which we affirmed a decision by an Indian probate judge (IPJ) clarifying the probate decision entered in Decedent's estate. We dismiss the petition for reconsideration as untimely. Assuming it were timely, we would deny reconsideration as Appellants fail to raise any new basis for us to reconsider our decision.

Reconsideration, if sought, "must be filed with the Board within 30 days from the date of [a decision by the Board]." 43 C.F.R. § 4.315(a); *see Estate of Selwyn Wade Drum*, 60 IBIA 30, 30 (2015). The Board received Appellants' petition on March 21, 2016; the time for filing elapsed on March 18, 2016, which was the date on which Appellants apparently gave their petition to their courier, Federal Express, to deliver. *See* Certificate of Service (petition was sent via Federal Express to the Board on March 18, 2016). As set forth in 43 C.F.R. § 4.310(a)(1), when the petition is personally delivered, the date of filing is the date of personal delivery. We have consistently held that when a party utilizes Federal Express (or similar courier services) to deliver documents to the Board, those documents are deemed filed on the day of delivery to the Board and not the day the documents are received by the courier service. *See Estate of Barney Perkins*, 60 IBIA 81, 82 (2015); *Confederated Tribes and Bands of the Yakama Nation v. Northwest Regional Director*, 56 IBIA 176, 181-82 (2013); *Valley Center - Pauma Unified School District v. Pacific Regional Director*, 53 IBIA 155, 159 (2011); *Estate of Mary Louise Medina*, 51 IBIA 255, 256 (2010); *David J. Tsosie v. Acting Navajo Regional Director*, 42 IBIA 131, 132 (2006); *see also Estate of John Kenneth Flood*, 51 IBIA 225, 226 (2010) (delivery by United Parcel Service).

Here, Appellants chose to utilize a courier service to deliver their petition for reconsideration to the Board. The petition was received by the Board on March 21, 2016,

3 days after the time for seeking reconsideration had lapsed. Therefore, the petition is untimely and we dismiss for lack of jurisdiction.

Even if the petition were timely, we would deny reconsideration. We ordinarily grant such petitions only upon a showing of extraordinary circumstances, *see* 43 C.F.R. § 4.315(a), which we do not find present here. Appellants protest that their due process rights have been denied because neither the Bureau of Indian Affairs (BIA) nor the IPJ served BIA's petition to reopen on them and, thus, they did not file a brief when this matter was before the IPJ. Appellants err. Had the IPJ found merit in BIA's petition and, therefore, saw a reasonable probability that the challenged probate decision could be altered as a result of an argument raised in the petition, Appellants would have received notice and an opportunity to brief the issues. *See* 43 C.F.R. § 30.244(b).[1] Moreover, Appellants may still file their own petition to reopen Decedent's estate pursuant to 43 C.F.R. § 30.243(a)(3).[2]

Additionally, to the extent that Appellants argue that the Board failed to consider certain arguments raised by Appellants on appeal that were not raised by BIA or decided by the IPJ, Appellants err. Ordinarily, an appellant's appeal is limited to the issues raised by the petitioning party. *See* 43 C.F.R. § 4.318. We stated that we declined to exercise our plenary authority to consider these new issues. *See* 62 IBIA at 186. Even if the petition for reconsideration were timely, the Board still would not see any reason to exercise its plenary authority under § 4.318 to consider new issues raised by Appellants in their appeal.

One additional assertion by Appellants merits mention. Appellants contend that the IPJ did, in fact, reopen Decedent's estate. Although the IPJ titled his order as an "Order Reopening Estate," this label is not controlling. In fact, he did not reopen the estate. The IPJ attempted to assist BIA's understanding of the underlying probate decision through his clarification; he repeatedly asserted that the underlying probate decision was "clear," even "very clear," *see* Order Reopening Estate to Clarify Decision at 2; and, as Appellants concede, he made no change to the underlying decision, *see* Petition for Reconsideration at 8 ("the IPJ primarily reiterated what the original decision said"). An estate is "reopened"

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[1] Our decisions in *Estate of George Laverne Francis*, 54 IBIA 149 (2011), and *Estate of Melissa Heminger*, 53 IBIA 241 (2011), are not to the contrary despite Appellants' argument. In both cases, the probate judges issued decisions that substantively changed the underlying probate decisions and did so without affording notice to interested parties of the reopening of the decedents' estates and affording an opportunity to brief the issues.

[2] Appellants argue that their "fundamental due process" rights were denied. Here, there was no deprivation of rights because the probate decision in Decedent's estate remains unchanged.

upon a finding that a substantive error of fact or law has occurred in the underlying decision that merits correction. Here, the IPJ found none.[3]

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 dismisses Appellant's petition for reconsideration as untimely.

I concur:

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| Debora G. Luther | Thomas A. Blaser |
| Senior Administrative Judge | Administrative Judge |

[3] To the extent that the estate was reopened to correct Decedent's identification number as a result of BIA's second petition to reopen the estate, this correction fits more neatly into the category of clerical errors for which BIA is authorized to issue an administrative correction, *see* 25 C.F.R. § 150.7(b)(3), rather than the category of factual or legal error that would result in manifest injustice if an estate were not reopened, 43 C.F.R. § 30.243(a)(2)(ii). Thus, we do not view this "reopening" as either necessary or substantive.