



INTERIOR BOARD OF INDIAN APPEALS

Estate of Joycel Woychik

63 IBIA 23 (04/21/2016)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
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ESTATE OF JOYCEL WOYCHIK            )     Order Affirming Decision  
  )       
  )     Docket No. IBIA 15-053  
  )       
  )     April 21, 2016

Mark Woychik (Appellant) appeals to the Board of Indian Appeals (Board) from the December 4, 2014, Order Denying Request for Rehearing (Order Denying Rehearing) entered by Administrative Law Judge (ALJ) Richard J. Hough in the estate of Appellant’s father, Joycel Woychik (Decedent).<sup>1</sup> Appellant desires to have his father’s trust real property interest pass to Appellant and his siblings instead of passing to their now-deceased, non-Indian mother (Decedent’s spouse), since the land interest necessarily passes out of trust and becomes a fee interest upon transfer to a non-Indian.

We affirm the ALJ’s decision. As the ALJ noted, we are bound by the statutes governing the succession of property upon the death of an Indian decedent who dies without a written will.

### Facts

Decedent, a Lake Superior Chippewa (Bad River Band) Indian, died on July 5, 2003, in Wisconsin. He did not leave a written will. Survivors included Decedent’s wife, Celestine White Woychik, and their six children—Cheryl Woychik Logic, Appellant, Joy Woychik Falvey, Teresa Woychik Walker, Timothy Woychik, and Rachael Woychik Seger. Celestine passed away in 2008 prior to any probate proceedings for Decedent’s Indian trust assets.

Decedent owned an undivided 0.0000076208 (1/131220) interest in Allotment No. 26-S, a parcel of land consisting of 73.55 acres on the Bad River Reservation in Ashland County, Wisconsin. Decedent inherited this interest from his mother, Emerald

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<sup>1</sup> The probate of Decedent’s estate was assigned case number P000105475IP in Protrac, which is the Department of the Interior’s electronic tracking system for Indian probates.

Woychik, who died in 2002.<sup>2</sup> Decedent also apparently had an Individual Indian Money (IIM) account.

On April 9, 2014, a hearing was held in Decedent's estate in Milwaukee, Wisconsin. One month prior to the hearing, notice of the hearing was sent to each of Decedent's children, including Appellant, accompanied by a full sheet of information concerning the hearing itself, such as the nature of the testimony to be received, and the rights of persons to be present and to be represented by counsel, if they so desire. The notice also advised that interested parties could participate in the hearing by telephone instead of by personal appearance. No family members appeared at the hearing, either in person or by telephone.

The ALJ issued his Decision on April 29, 2014, and awarded all of Decedent's Indian trust property to Celestine pursuant to Wis. Stat. Ann. § 852.01(1)(a)(1).<sup>3</sup> The ALJ also noted that the interest received by Celestine would pass in fee status because it could not be established that she was Indian.<sup>4</sup>

Decedent's children submitted a joint petition for rehearing in which they asserted that their father told them that he desired his trust real property interests to pass to his direct descendants and not to his spouse. They also asserted that they did not attend the hearing because they understood that the purpose of the hearing was simply to confirm that their father was deceased.

The ALJ denied rehearing on December 4, 2014, explaining that he was bound to apply Wisconsin intestacy laws and that he lacked authority to honor any verbal wishes that Decedent may have expressed. Appellant has now appealed the denial of rehearing.

### Discussion

We affirm the ALJ's Order Denying Rehearing. The law in effect at the time of Decedent's death requires, in the absence of a will, that Indian trust property pass in

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<sup>2</sup> Probate commenced for Emerald's Indian estate in 2007 and was decided in 2008.

<sup>3</sup> Even though Celestine had already passed away by the time of the proceedings in Decedent's estate, Decedent's undivided ownership interest in Allotment No. 26-S nevertheless becomes part of her estate and subject to whatever proceedings may be appropriate under state law. *Cf. Estate of Pansy Jeanette (Sparkman) Oyler*, 16 IBIA 45, 47 (1988) (the Department of the Interior has no authority to probate estates consisting of fee simple interests in land).

<sup>4</sup> Appellant does not dispute Celestine's non-Indian status.

accordance with the intestacy laws of the state in which the real property is located and in accordance with the intestacy laws of the state where the decedent was domiciled with respect to personal property. It is undisputed that Decedent left no written will and that Decedent's trust real property interest as well as his domicile were both in Wisconsin. Therefore, the ALJ properly applied the law of the state of Wisconsin to both Decedent's trust real property (an interest in Allotment No. 26-S) and his trust personal property (IIM account). The result is *not* a taking of property, but the passing of title to the property from the United States on behalf of Decedent to Decedent's surviving spouse, Celestine. In the eyes of the law, it matters not that Celestine had died by the time Decedent's estate was probated: Property is deemed to pass to the heir who was alive at the time of Decedent's death, not to those heir(s) alive at the time of probate. See *Smartlowit v. Northwest Regional Director*, 50 IBIA 98, 106 (2009), and cases cited therein.

Appellant argues that instead of applying the laws of intestacy of Wisconsin, the ALJ should have given effect to Decedent's verbal wishes, which were that his children should receive his interest in the allotment rather than his spouse. As the ALJ explained, there is no authority for probate judges to give effect to oral wills. Federal law has long held that wills by Indians will be honored so long as they are in writing and attested by two witnesses. See 25 U.S.C. § 373 (trust assets may be disposed by will); 43 C.F.R. § 4.260 (2003) (requirements for valid will); *id.* § 30.101 (definition of "will") (2015); *Estate of Teresa Mitchell*, 25 IBIA 88, 93 (1993), *aff'd sub nom.*, *Mitchell v. Bureau of Land Management*, CIVS-90-1159 MLS/EM (E.D. Cal. June 13, 1995) (copy added to the record). Oral wills are not recognized for the transfer of trust or restricted property. *Estate of Baz Nip Pah*, 22 IBIA 72, 74 (1992). As we explained in *Estate of James John Scott*, 40 IBIA 152, 156 n.3 (2004),

[w]hen a person dies without a will, the government—through statutes—determines the rules for inheritance of a decedent's property based on certain generalized presumptions about how individuals might be expected to want their property distributed. *Cf. Estate of Sam A. Simeon*, 15 IBIA 135, 137-38 (1987) (law makes assumptions for intestate succession). Admittedly, the statutory rules for inheritance will not necessarily conform with what a decedent's wishes would in fact have been in a given case, or even what some might consider the "fairest" way to distribute a particular estate. Because the individual died without making a will that could have carried out his or her actual wishes, the rules of intestate succession are the [state] legislature's judgment of the "fairest" way to distribute the property of intestate decedents.

Appellant also claims that "giving" Decedent's interest in Allotment No. 26-S to Decedent's surviving spouse violates the United States' trust responsibility and constitutes

“a backdoor grab of [Appellant’s] rights in the *Cobell v. Salazar* lawsuit.”<sup>5</sup> Notice of Appeal. Jan. 8, 2015, at 1. Appellant also objects to the ALJ’s reliance on the Board’s decision in *Ballard v. Acting Eastern Oklahoma Regional Director*, 35 IBIA 216 (2000), arguing that it is irrelevant and does not “trump” trust law.

As explained above and in accordance with Federal law, the interest owned by Decedent in Allotment No. 26-S passed by application of Wisconsin state law to Decedent’s surviving spouse. The Federal law requiring the application of state law to the probate of Indian trust estates, 25 U.S.C. § 348, 24 Stat. 389, had been in effect since 1887, well before the *Cobell* litigation.<sup>6</sup> Because Celestine’s Indian ancestry could not be verified, the interest passes in fee; the United States does not retain any ownership of the interest. The Board’s decision in *Ballard* was cited as support for the ALJ’s assertion that he did not have equitable authority as an administrative law judge to ignore a duly promulgated statute or regulation; the decision does not address trust law or the government’s trust responsibility.

Appellant also directs our attention to the Act of “June 25, 1910 (36 Stat. 269) Section 3” and to the Supreme Court’s decision in *Tooahnippah v. Hickel*, 397 U.S. 598, 613 (1970), Notice of Appeal at 1, neither of which has any applicability here. Section 3 of the Act of June 25, 1910, which is found at 36 Stat. 856,<sup>7</sup> is codified at 25 U.S.C. § 408 and

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<sup>5</sup> 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).

<sup>6</sup> Shortly before Decedent’s death, Congress enacted comprehensive legislation to govern the descent and distribution of trust estates for Indians dying on or after June 20, 2006. See 25 U.S.C. § 2201 *et seq.*; *Estate of John Fredericks, Jr.*, 57 IBIA 204, 211 (2013). If Decedent had died *after* June 20, 2006, Celestine would have received a life estate in Decedent’s interest in Allotment No. 26-S, and the interest would have remained in trust status if the remainderman—the person who would receive the interest upon Celestine’s death—were an eligible heir. See 25 U.S.C. § 2206(a)(2)(D)(ii)&(iii). Under this law, Decedent’s interest in the allotment would *not* pass to all of Decedent’s children, only to the eldest child and only if s/he were an “eligible heir,” as defined by § 2201(9).

<sup>7</sup> The following language, quoted from Appellant’s Notice of Appeal, is generally found at 36 Stat. 856, not 36 Stat. 269:

Indian allotments or rights, titles, or interests in allotments may be surrendered by the allotted for the benefit of his or her children to whom no allotment of land has been made. The secretary of the interior must approve the formal relinquishment. The secretary will then cause the relinquished estate to be allotted to the children. These allotments are subject to the same conditions as they were prior to the relinquishment.

governs the relinquishment by the Indian owner of an interest in trust land in favor of the Indian's children. However, any relinquishment is expressly subject to the requirements prescribed by the Secretary of the Interior. *Id.* Such requirements are found at 25 C.F.R. §§ 152.23-152.25, and a written application must be submitted therefor. Appellant maintains that his father orally told his children that he wanted them to have his trust real property interest, which is insufficient to transfer an interest in trust real property. *See Estate of Baz Nip Pah, supra.*

Appellant cites *Tooahnippah* for the proposition that “any ‘conveyance’” of trust real property or “contract[] affecting that land” has no legal effect and is “null and void,” and potentially subjects the perpetrator to criminal sanctions. Notice of Appeal at 1. The only “conveyance” that has occurred here is a post-death transfer of Decedent’s trust interests to his heir, Celestine, which (as seen in *Tooahnippah*) is authorized upon the death of an Indian who dies possessed of trust property. The *Tooahnippah* decision addressed the approval of an Indian decedent’s *written* will and his intent—as expressed in that will—to leave his trust property to the decedent’s niece and her children upon his death instead of his own daughter. The Supreme Court held that the devise in the will to the niece and her family was entitled to approval and, consequently, the devisees were entitled to have the property distributed to them. In contrast, Decedent did not leave a written will. For that reason, *Tooahnippah* is inapplicable here.

The Board is not unsympathetic to Appellant’s position. Assuming that any one or all of Celestine’s children are her heirs for purposes of inheriting this fractional interest in Allotment No. 26-S, the heir(s) may be eligible to petition BIA to have their interest(s) returned to trust status. *See* 25 C.F.R. Part 151. But, with respect to the probate of Decedent’s estate and for the reasons set forth above, we affirm the ALJ’s Order Denying Request for Rehearing.

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 December 4, 2014, Order Denying Request for Rehearing.

I concur:

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// original signed  
Debora G. Luther  
Senior Administrative Judge

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//original signed  
Robert E. Hall  
Administrative Judge