INTERIOR BOARD OF INDIAN APPEALS

Estate of Velven Drew Snake

63 IBIA 167 (06/08/2016)

# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
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| ESTATE OF VELVEN DREW SNAKE | ) | Order Dismissing Appeal in Part and |
| | ) | Reversing in Part Order Denying |
| | ) | Rehearing |
| | ) | |
| | ) | Docket No. IBIA 15-037 |
| | ) | |
| | ) | June 8, 2016 |

The Bureau of Indian Affairs (BIA) appealed to the Board of Indian Appeals (Board) from an October 31, 2014, Order Denying Rehearing in Part and Granting Rehearing in Part and Correcting Decision (Order Denying Rehearing) entered by Administrative Law Judge (ALJ) Larry M. Donovan in the estate of Velven Drew Snake (Decedent).[1] The ALJ denied rehearing of his determination that Jeffrey Snake,[2] a child adopted by Decedent, was eligible to inherit a remainder interest in trust land interests owned by Decedent and in which Decedent's widow received a life estate. The ALJ modified his original decision, in which he identified Jeffrey as non-Indian, "to change the 'Indian' status of Jeffrey . . . from 'No' to 'Yes,'" indicating a change from non-Indian to Indian. Order Denying Rehearing at 7.

In its appeal, BIA maintained both that Jeffrey was not Indian within the meaning of the American Indian Probate Reform Act of 2004 (AIPRA), 25 U.S.C. § 2201 *et seq.*, and was not an "eligible heir" as defined in AIPRA. The Board issued an Order to Show Cause (OSC) to BIA and interested parties why the ALJ's Order Denying Rehearing should not be affirmed, albeit on alternate grounds, after taking official notice, *see* 43 C.F.R. § 4.24(b), of records from *In the Matter of the Estate of Luella I. Schwenke, aka Luella Iona Chapman/Dunbar*, Probate No. P000098838IP. In response to the Board's OSC, BIA no longer maintains that Jeffrey is not an "eligible heir" under AIPRA but continues to contend that he is not "Indian" as defined for Indian probate purposes. We agree with BIA that the record does not support a finding that Jeffrey satisfies AIPRA's definition of "Indian," *see* 25 U.S.C. § 2201(2), and therefore reverse the ALJ's Order

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[1] The probate number assigned to Decedent's case in the Department of the Interior's probate tracking system, ProTrac, is No. P000085832IP.

[2] Jeffrey is also referred to as Jeffrey Wade Pierce-Metteer in the Order Denying Rehearing.

Denying Rehearing as to this modification of his initial decision. We dismiss the remainder of the appeal as moot since BIA no longer maintains that Jeffrey is not an "eligible heir."[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 the appeal in part as moot and reverses in part the Order Denying Rehearing in Part and Granting Rehearing in Part and Correcting Decision, entered on October 31, 2014.

I concur:

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

[3] The ALJ had determined Jeffrey to be eligible to inherit from Decedent based on Decedent's adoption of Jeffrey and based upon decisions by the Board that pre-date AIPRA; the ALJ did not consider whether Jeffrey was an "eligible heir" under AIPRA. In our OSC, we provided an opportunity to BIA and other interested parties to review documents from *Estate of Schwenke*, which appeared to show Jeffrey to be "a lineal descendant within 2 degrees of consanguinity of an Indian," *see* 25 U.S.C. § 2201(9)(B), through his biological paternal grandfather, who was both a member of the Blackfeet Tribe and Luella Schwenke's son. As a lineal descendant within 2 degrees of consanguinity of an "Indian," as defined in AIPRA, *see id.* § 2201(2)(A), Jeffrey would be an "eligible heir" to inherit from Decedent. Only BIA responded to the OSC, and BIA now concurs that Jeffrey is an "eligible heir."