INTERIOR BOARD OF INDIAN APPEALS

Estate of Melvin LaFontaine

63 IBIA 213 (07/08/2016)

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ESTATE OF MELVIN LAFONTAINE	)	Order Affirming Decision
	)	
	)	Docket No. IBIA 15-048
	)	
	)	July 8, 2016

To reopen a probate case, a party seeking reopening must show that an error was made in the initial probate decision. 43 C.F.R. § 4.242 (2007); § 30.243 (2013). Despite the revision to the Indian probate regulations, this requirement has remained unchanged. Similarly, on appeal to the Board of Indian Appeals (Board) from an order on a petition to reopen, a party must show that an error was made in that order. 43 C.F.R. § 4.322(a). Here, Appellant Michael LaFontaine failed to identify any error in the November 14, 2014, Order Denying Reopening by Indian Probate Judge (IPJ) Albert C. Jones in the estate of Appellant's father, Melvin LaFontaine (Decedent).[1] Appellant argues only that he received outdated regulations from the Bureau of Indian Affairs (BIA) for seeking reopening and he does not assert any error in the Order Denying Reopening, which addressed the merits of his arguments, nor does he explain why the outcome should or would be different if he had been provided with the current regulations. Therefore, we affirm the decision below.

Background

Decedent, a Turtle Mountain Chippewa Indian, died without a will in 2001, prior to the enactment in 2004 of the American Indian Probate Reform Act, 25 U.S.C. § 2201 *et seq*. He was survived by his widow, Debra, and by three children—Rebecca LaFontaine, Appellant, and Thomas LaFontaine. IPJ P. Diane Johnson determined that the distribution of Decedent's estate passed pursuant to the substantive probate laws of the states where his trust land interests were located, namely Montana and North Dakota. *See* Order Determining Heirs and Decree of Distribution (Decree), Jan. 28, 2005, at 2 (Administrative Record (AR) 13). Pursuant to the laws of those two states, Decedent's trust property passed entirely by intestacy to his widow, Debra. *Id*. The Decree explained that because Debra is non-Indian, the trust land interests would pass out of trust when they

[1] In the probate tracking system maintained by the Department of the Interior (Department), Decedent's probate has had two case numbers: GP-304-0741 and, more recently, P000002997IP.

transferred to Debra and become unrestricted (fee) interests. *Id*. The Decree further explained that once the property interests were transferred to Debra, they would "become[] subject to the jurisdiction of the state where the land is located." *Id.*

Appellant apparently understands that his father's various interests in trust lands passed to Debra and that, in doing so, they were no longer held in trust. In his petition to reopen Decedent's estate, Appellant explained that Debra, who is Appellant's mother, died in 2010, and he asserted that the land should be re-designated as trust land and given to him. Petition to Reopen at 2, 4 (AR 11). He stated that "the State where the lands are located[] retained jurisdiction or otherwise seized the trust lands." *Id.* at 3. He maintained that this action by the State is antithetical to "the government's position in the preservation of the sovereign Indian Nation." *Id.*

On November 14, 2014, IPJ Jones rejected Appellant's arguments and upheld the Decree in his Order Denying Reopening. Judge Jones acknowledged that he was uncertain whether the fee patents had already issued for Decedent's interests, which would affect his jurisdiction to rule on Appellant's reopening petition, and he proceeded to the merits of Appellant's petition. He explained that, because Appellant's parents were married at the time of Decedent's death, IPJ Johnson had concluded that Appellant's mother inherited Decedent's trust estate. Judge Jones also explained that Debra inherited Decedent's interests in fee but that if the fee patent had not yet issued and if an erroneous heirship determination had been made, it would be possible to enter a correction. However, Judge Jones held that Appellant did not put forth any basis for the judge to conclude that the heirship determination was incorrect.

Appellant timely appealed the Order Denying Reopening to the Board. He argues that he was unaware of the proceedings to probate Decedent's estate and did not receive notice of the proceedings or the Decree. He maintains that he requested assistance from BIA to reopen Decedent's estate and that BIA gave him a copy of outdated regulations for seeking reopening. Appellant believes he has been penalized for not meeting the current standard for reopening closed estates because the regulations that were sent to him by BIA were incorrect.

Discussion

In seeking to reopen Decedent's estate, it was Appellant's responsibility and burden to identify error in the Decree. The arguments that Appellant raised in his petition were duly considered by IPJ Jones in the Order Denying Reopening, and Appellant does not argue that there is any error in that order in his appeal to the Board. He maintains only that he was given outdated regulations, but the regulations governing the reopening of closed estates did not change in any material respect that adversely affected Appellant.

More importantly, Appellant does not show how the outdated regulations affected the Order Denying Reopening nor does he argue that he would have done anything different in his petition to reopen had he been provided with the correct regulations. Therefore, we affirm the Order Denying Reopening.

Appellant is correct that BIA gave him outdated regulations for seeking reopening, namely 43 C.F.R. § 4.242. The regulations governing Indian probate procedures were revised and renumbered in 2008 to appear at 43 C.F.R. Part 30, and the regulations governing reopening are now found at §§ 30.243-30.246. However, in material respects the old and new regulations remain unchanged: Petitioners must set forth "[a]ll grounds for the reopening . . . fully." 43 C.F.R. § 4.242(b) (2007); *see also id*. § 30.243(b) (2013) ("All grounds for reopening must be set forth fully in the petition"). Both the old and the new regulations required petitioners to attach all relevant evidence, including affidavits, if challenging a factual error. *Id.* § 4.242(b) (2007); *id.* § 30.243(c) (2013). Finally, for petitions filed more than 3 years after the date of the original decision, both regulations required petitioners to show that a manifest injustice will occur if the asserted error remained uncorrected. *Id.* § 4.242(i) (2007); *id.* § 30.243(a)(3)(ii) (2013).

In his petition to reopen, Appellant challenged the Decree and IPJ Jones duly considered and addressed Appellant's arguments on their merits. Judge Jones held that Appellant's arguments failed to meet the standard for reopening a closed estate. On appeal to the Board, Appellant argues that he did not realize that BIA gave him outdated instructions for seeking reopening. But this argument does not aid Appellant because he does not show how BIA's error affected or impacted the Order Denying Reopening nor does he inform us how he might have presented his petition differently had he had the current regulation. Ultimately, both the former and the current regulations required, at a minimum, that Appellant show us where there is error in the probate judge's decision. Appellant did not do so.

In essence, Appellant sought "equitable" relief in his petition to reopen. He maintained that, since Debra is no longer living, the IPJ could somehow bypass probate proceedings in Debra's estate (or conduct probate proceedings for her estate) and have Decedent's trust property reassigned to him and re-designated as trust property. Judge Jones correctly concluded that Appellant had not stated any grounds for reopening. The judge lacks jurisdiction to enter any relief that would bypass Debra's estate and he lacks jurisdiction to probate Debra's estate. *See Estate of Isgrigg Towendolly*, 50 IBIA 206, 215 (2009); *Estate of Robert Henry Moran, Sr.*, 44 IBIA 245, 245 n.2 (2007). Instead, Debra's estate would be subject to probate in state court. *Estate of St. Ann Hauge*, 60 IBIA 158, 160 n.6 (2015). If the trust interests inherited by Debra are in her estate and if Appellant inherited all or a part of them from the probate of her estate, he may then seek assistance from BIA to have the interests returned to trust status.

To the extent that Appellant maintains that probate law passes Indian lands into the hands of non-Indians and thus these laws defeat the purpose of establishing trust lands for the benefit of Indians, we note that the probate judge's function is to apply and enforce the laws enacted by Congress and, in appropriate instances, by state legislatures. He did not have authority to overturn the law, rewrite the law, disregard the law, or apply a different law. *See Estate of Hauge*, 60 IBIA at 160 (no authority to disregard Federal law); *Estate of Cyprian Buisson*, 53 IBIA 103, 110 (2011) (we are required to follow the laws enacted by Congress).

We conclude that Appellant fails to identify any error in the IPJ's Order Denying Reopening, but simply disagrees with the result. It is not enough to disagree with the decision or to proffer bare assertions. *Estate of Edward Teddy Heavyrunner*, 59 IBIA 338, 346 (2015). An appellant's burden is to provide a written statement of specific factual or legal error(s) in the challenged decision. 43 C.F.R. § 4.322(a); *Defoe v. Acting Midwest Regional Director*, 58 IBIA 1, 7 (2013).

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 November 14, 2014, Order Denying Rehearing.

I concur:

// original signed
Debora G. Luther
Senior Administrative Judge

//original signed
Steven K. Linscheid
Chief Administrative Judge