INTERIOR BOARD OF INDIAN APPEALS

Estate of Betty Jean Two Bear

63 IBIA 251 (07/20/2016)

Related Decision:

Petition for Director Review-Petition Denied by Director, Office of Hearings and Appeals, in *Estate of Betty Jean Two Bear,* 50 OHA 181 (2016)

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
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ESTATE OF BETTY JEAN TWO BEAR	)	Order Docketing Appeal and
	)	Affirming Denial of Rehearing
	)	
	)	Docket No. IBIA 16-066
	)	
	)	July 20, 2016

Grady Pederson Two Bear (Appellant)[1] appealed to the Board of Indian Appeals (Board) from an April 21, 2016, Order Denying Rehearing issued by Indian Probate Judge (IPJ) Mary P. Thorstenson in the estate of Betty Jean Two Bear (Decedent),[2] who died testate on September 2, 2013. The Order Denying Rehearing denied petitions for rehearing submitted by Betty Eberlein, Clyde Eberlein, and Appellant challenging the IPJ's approval of Decedent's will.[3] In the Decision, the IPJ also found that Decedent's parental rights to Theresa Pederson and Appellant were terminated and that both children were adopted out. In her Order Denying Rehearing, the IPJ held that, under the American Indian Probate Reform Act (AIPRA) of 2004, 25 U.S.C. § 2201 *et seq.*, Appellant, as an adopted-out child, would not be able to inherit from Decedent if her will were declared invalid, and therefore lacked standing to seek rehearing. The IPJ also held that Appellant's bare and unexplained allegations of a "conspiracy to defraud" did not allege proper grounds for rehearing.

Upon receipt of the appeal, the Board ordered Appellant to submit an original signed notice of appeal, as required by 43 C.F.R. § 4.323(a), and to complete service of the

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[1] Based on documentation included with Appellant's notice of appeal, he is also known as Grady Dean Pederson, Grady Dean Eberlein, Grady Two Bear, and Sonia Two Bear.

[2] Decedent, an Oglala Sioux Indian, was also known as Betty Jean Surrounded in Woods, Betty Jane Two Bear, and Lizzie Yankton. The probate number assigned to Decedent's case in the Department of the Interior's probate tracking system, ProTrac, is No. P000118130IP.

[3] *See* Decision, Feb. 24, 2016. The Decision approved Decedent's will and ordered that Decedent's trust estate be distributed to Decedent's daughter, Myrtle Julie Kentsler-Riddle, as the sole named beneficiary in the will.

notice on the IPJ and interested parties, as required by 43 C.F.R. §§ 4.310(b) and 4.323. Pre-Docketing Notice and Orders, May 16, 2016, at 2. Although Appellant responded to the Board's order by submitting some new documents, and resubmitting some documents included with his notice of appeal, Appellant did not submit any documents with an original signature nor did he provide a statement that he complied with the order to complete service. Thus, the appeal would be suitable for summary dismissal. But because the Board also ordered Appellant to show cause (OSC) why it should not summarily affirm the Order Denying Rehearing, *see id.* at 3-4, and Appellant fails to allege error by the IPJ—and indeed confirms the IPJ's critical findings—we summarily affirm the Order Denying Rehearing.

In order to have standing to seek rehearing, an appellant must be an "interested party" whose own interest could be adversely affected by the probate decision. *See* 43 C.F.R. §§ 30.237, 30.238(a). Under the probate regulations, as relevant here, the term "interested party" includes a "potential or actual heir." *Id.* § 30.101 (definition of "interested party"). In seeking rehearing, Appellant contended that Decedent's will should be set aside, in which case Decedent's estate would pass to her heirs.

The IPJ quoted the relevant provision of AIPRA, Order Denying Rehearing at 2, that when determining the inheritance rights of adopted-out children, "*an adopted person shall not be considered the child or issue of his natural parents*, except in distributing the estate of a natural kin, other than the natural parent, who has maintained a family relationship with the adopted person." 25 U.S.C. § 2206(j)(2)(B)(iii)(I) (emphasis added). The IPJ found that, for the purpose of probating Decedent's trust estate, Appellant is not considered a child and eligible heir of Decedent, *see id.* § 2201(9) (definition of "eligible heir"), because Decedent's parental rights to Appellant were terminated on November 17, 1970, and Appellant was adopted out on January 26, 1972. Order Denying Rehearing at 2; Decision at 2.[4]

The IPJ's findings were supported by Appellant's notice of appeal. In his notice, Appellant acknowledged that he was given up for adoption. Notice of Appeal, May 9, 2016, at 3 (unnumbered). Appellant also enclosed documentation verifying that he was adopted out on January 26, 1972, including an adoption order signed by a state court judge. *Id.*, Enclosure (Findings and Order for Judgment in Adoption Proceedings, *In Re Grady Dean Pederson*, DPW #142497 (Juv. Ct., Murray County, Minn., Jan. 26, 1972)).

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[4] The Decision contains a typographical error ("November 11, 17, 1970"); the Order Denying Rehearing identifies the date as November 17, 1970.

In his response to the Board's OSC, Appellant contends that a fraud and conspiracy exist to commit genocide against Native Americans, and that the Board has an obligation to stop a "crime" that is being committed. To the extent Appellant intends to argue that his adoption was illegal, neither the IPJ nor the Board would have authority to set aside the state adoption decree. *See Estate of Charles David Wood*, 58 IBIA 135, 138 (2013).

Therefore, based on the evidence submitted by Appellant with his notice of appeal, we affirm the IPJ's finding that Appellant was adopted out. And the IPJ correctly concluded that under AIPRA, Appellant is not considered an heir of Decedent, he would not be able to inherit from Decedent even if her will were declared invalid, and he consequently lacked standing to seek rehearing. *See Estate of Jerome Hummingbird*, 55 IBIA 210, *recon. denied*, 55 IBIA 246 (2012) (affirming dismissal of petition for rehearing because the appellant lacked standing to challenge the distribution of the decedent's estate as a result of the appellant's adoption by another family).

Moreover, separate from the issue of standing, Appellant does not show that the IPJ erred in holding that Appellant provided no grounds for granting rehearing. The IPJ quoted the pertinent requirements of the probate regulations, *see* Order Denying Rehearing at 2-3, that Appellant's petition for rehearing needed to "state specifically and concisely the grounds on which it is based" and, if the petition is based on newly discovered evidence, "stat[e] fully the content of the new evidence . . . and . . . the reasons for the failure to discover and present that evidence at the hearings held before the issuance of the decision." 43 C.F.R. § 30.238(b) & (c). Appellant's allegations of fraud, conspiracy, and genocide, relating to the history of United States relations with Native Americans, did not provide grounds for rehearing from the IPJ's approval of Decedent's will. Therefore, we conclude that the IPJ also correctly held that Appellant did not allege proper grounds for rehearing.

Conclusion

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 April 21, 2016, Order Denying Rehearing.

I concur:

// original signed	//original signed
Thomas A. Blaser	Steven K. Linscheid
Administrative Judge	Chief Administrative Judge