INTERIOR BOARD OF INDIAN APPEALS

Estate of Martha Edith Rattling Leaf

63 IBIA 318 (09/09/2016)

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ESTATE OF MARTHA EDITH RATTLING LEAF	)	Order Affirming Decision
	)	
	)	Docket No. IBIA 15-113
	)	
	)	September 9, 2016

Inheritance rights are fixed at the time of death.[1] When Martha Edith Rattling Leaf (Decedent)[2] died in 2000, Federal law incorporated the inheritance laws of the state in which an Indian decedent's property was located,[3] which in Decedent's case was South Dakota. Applying South Dakota law, Attorney Decision Maker Diane M. Zephier determined that Decedent's surviving spouse, Cleveland Clairmont, Sr. (Cleveland), inherited all of her estate. Subsequently, Administrative Law Judge (ALJ) Larry M. Donovan reopened Decedent's estate to describe more fully South Dakota law as applicable to Decedent's estate, although in practical effect it appears that Cleveland continues to be the sole beneficiary.[4]

Appellant Delores J. Simmons, Decedent's daughter, appealed to the Board of Indian Appeals (Board) from the ALJ's Reopening Order, arguing that because Cleveland is

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[1] *Estate of Samuel R. Boyd*, 43 IBIA 11, 20 (2006).

[2] Decedent, who was also known as Martha Clairmont, was a Rosebud Sioux. Her probate was assigned Probate No. P000004378IP in the Department of the Interior's probate tracking system, Pro-Trac.

[3] *See* 25 U.S.C. § 348 (2000).

[4] *See* Modification to Add Omitted Heirs and Distribute Estate Property, Aug. 25, 2015, *amended by* Clarification Order, Sept. 22, 2015 (collectively Reopening Order). The Reopening Order amended the Order Determining Heirs and Decree of Distribution, issued December 20, 2006, which determined that Cleveland was entitled to "all" of Decedent's estate. Under the Reopening Order, Cleveland is entitled to the first $100,000 in Decedent's estate, and thereafter the estate would be distributed among Cleveland, Decedent's children (including Appellant), and children of a predeceased child of Decedent. The record indicates that the value of Decedent's trust estate—land and money—was less than $10,000. *See* Administrative Record 23.

no longer living, Decedent's estate should be distributed to her and the other living heirs named in the Reopening Order.[5]

We affirm the ALJ's Reopening Order because Cleveland's inheritance rights vested at the time Decedent died. As a rule, "the right to the succession of the property of a decedent is vested at his or her death." 23 Am. Jur. 2d Descent and Distribution §14 (2016); *see also Estate of Boyd*, 43 IBIA at 21 n.12 (estate is fixed at the time of death). Cleveland's right to inherit the first $100,000—in this case, apparently all—of Decedent's estate vested upon Decedent's death. Cleveland's subsequent death provided no basis for the ALJ to redistribute Cleveland's share to Appellant and other named heirs who were living at the time of the ALJ's order.[6] Instead, property that Cleveland inherited from Decedent and owned by him at the time of his death became part of his estate, to be distributed according to the probate laws and regulations that apply to his estate.

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 Reopening Order.

I concur:

// original signed	//original signed
Steven K. Linscheid	Robert E. Hall
Chief Administrative Judge	Administrative Judge

[5] Appellant makes the same argument to exclude her brother James K. Standing Soldier, who also is no longer living, and is one of the named heirs of assets exceeding the first $100,000, *see supra* note 4. Our discussion of Appellant's argument, with respect to Cleveland's share, would apply equally to James's share, if Decedent's estate had exceeded the threshold to trigger inheritance by the additional heirs.

[6] Considering that the practical effect of both the original probate decision and the Reopening Order appears to be the same, it is unclear on what basis the ALJ concluded that the standard for reopening the estate was satisfied. *See* 43 C.F.R. § 30.243(a) (reopening after 3 years requires showing of manifest injustice).