



INTERIOR BOARD OF INDIAN APPEALS

Yolanda Chormicle Rogers v. Acting Deputy Assistant Secretary -
Indian Affairs (Operations)

13 IBIA 247 (09/13/1985)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

YOLANDA CHORMICLE ROGERS

v.

ACTING DEPUTY ASSISTANT SECRETARY--INDIAN AFFAIRS (OPERATIONS)

IBIA 85-15-A

Decided September 13, 1985

Appeal from a decision of the Acting Deputy Assistant Secretary--Indian Affairs (Operations) denying additional disbursements to the natural mother from the individual Indian money accounts of her minor sons for their support and welfare in the absence of an approved disbursement plan under 25 CFR 115.4.

Affirmed.

1. Indians : Financial Matters: Individual Indian Money Accounts

Disbursements from a minor's Individual Indian Money account may be made in accordance with a plan, approved by the Secretary, showing that the funds will be expended in accordance with the best interests of the minor.

APPEARANCES: Glenn B. Neumeyer, Esq., Las Cruces, New Mexico, for appellant.

OPINION BY CHIEF ADMINISTRATIVE JUDGE PARRETTE

On January 2, 1985, the Board of Indian Appeals (Board) received a notice of appeal and brief from Yolanda Chormicle Rogers (appellant), a non-Indian. Appellant sought review of a November 7, 1984, decision by the Acting Deputy Assistant Secretary-- Indian Affairs (Operations) (appellee) upholding an August 17, 1983, decision of the Palm Springs Office (PSO), Bureau of Indian Affairs (BIA). The PSO denied appellant's requests that all current income from trust properties inherited by her two minor Indian sons from the estate of her deceased Indian husband, Donald Patrick Chormicle (decedent), be released to her; that income previously advanced from the estate for home improvements not be charged to her; and that all accumulated prior income be made available to her upon request. On December 30, 1983, the PSO decision was upheld by the Acting Area Director, BIA Sacramento Area Office (Area Director), and appellee's decision followed. For the reasons set forth herein, appellee's decision is affirmed.

Background

The August 17, 1983, PSO decision recites that it is based upon 2 days of discussions among appellant; her present husband, Richard Rogers (Rogers); her attorneys, Glenn B. Neumeyer (Neumeyer), and Norman E. Todd; and PSO

officials. It notes that appellant has a one-third life estate interest in decedent's trust lands and will continue to receive the income from those lands, and that PSO has paid and will continue to pay one-half of decedent's estate income monthly for the support of her sons, James and Richard Chormicle. The decision sets forth no dollar amounts or reasons for the denial of appellant's request, except to note that the foregoing discussions involved an April 26, 1983, letter from Neumeyer to PSO. 1/

Decedent, Palm Springs Allottee No. 81, died intestate on September 17, 1974, when James was 5 years old and Richard was 2-1/2. A Departmental order determining decedent's heirs gave appellant a one-third interest in decedent's Indian trust property. Appellant asked for rehearing so that she could disclaim her interest in favor of her children. The final order, dated December 16, 1976, gave her a life estate in one-third of the property's income. The property itself remained in trust with BIA for James and Richard.

The record contains an October 26, 1982, letter from PSO to appellant that refers to a recent visit and suggests that her income payments be made directly to her so that she might have more control over her budget. In addition, PSO proposed that she receive a specific portion of her children's income for their support, and another \$10,000 for house repair and maintenance. 2/ PSO also requested that the title to the house be placed in joint tenancy in her and the boys' names only, to protect their interest in the property. The previous arrangement, according to the October 26 letter, was that if the house were sold, money expended from the boys' funds would be reimbursed. On November 16, 1982, Neumeyer replied to this letter, proposing that PSO pay appellant one-half of the boys' income, and agreeing to PSO's joint tenancy request.

Four months later, on March 25, 1983, PSO wrote to appellant acknowledging her visit 2 days earlier, confirming previous correspondence, noting that expenditures for house renovations now totaled \$75,809.20, and again requesting that the boys' names be added to the title on the house as joint tenants to "settle [appellant's] obligations to their estates for this sum." The letter also stated that other advances to appellant out of the boys' income now totaled \$49,672.30 and were "a continuing indebtedness to the boys' estates." Appellant was asked to sign and return a copy of the PSO letter if it expressed her understanding of the agreements the parties had previously reached.

On March 29, 1983, PSO responded to appellant's request for a schedule of the payments making up her one-third interest in the land leases. These payments totaled approximately \$44,500 in 1983, but presumably would increase substantially because of existing lease provisions regarding minimum and percentage rents. 3/

1/ This letter, which is included in the administrative record, states that Neumeyer had advised appellant to request all of the income from the estate for family maintenance and well-being.

2/ It appears that \$49,000 had previously been disbursed for that purpose.

3/ Based upon these specified rents to appellant, total rents for 1983 would have been approximately \$133,500. One-half of the boys' interest would amount to \$44,500, for a total household income, excluding Rogers' income, of approximately \$89,000.

On April 26, 1983, Neumeyer submitted a bill to PSO for past and future services to appellant totaling \$7,837.50, including tax. The bill was accompanied by a letter from appellant stating that she felt the bill was fair and reasonable and in her and the children's best interest. ^{4/} These documents were accompanied by the four-page letter previously mentioned. The letter acknowledged PSO's request that the house be placed in joint tenancy with the boys, but argued that BIA's solution was too simplistic and would relegate Rogers to "a sort of handyman status in his own home, a servant with no say-so in his own life with Yolanda and the children." Neumeyer similarly objected to tying appellant down to only one-half of the income from the boys' estates, for reasons "both practical and emotional." He went on to assert that the value of the boys' estate was now over \$2 million; they were thus very wealthy; they would inherit still more money from the estate of their great-aunt who had recently died; they would also inherit from their grandmother; and their estates would probably amount to \$2 million each by the time they became adults.

Neumeyer also mentioned appellant's desire to provide the boys with quality educations, the cost of travel to and from the boys' schools, and expenses for trips, tours, and vacations that would broaden their horizons. He, therefore, had advised appellant that she should request all of the boys' income for the family's present use, but should acknowledge that such an arrangement would "always be subject to modification, or reversal, if she handles the funds irresponsibly."

PSO construed this letter as a request for a waiver of the regulations found in 25 CFR 115.4, which require the presentation of a plan, approved by the Secretary, for the disbursement of a minor's Individual Indian Money account funds. On May 10, 1983, PSO asked the Area Director for guidance in the matter. By memorandum dated May 20, the Area Director replied that the cited regulation provided broad latitude to enable a minor's funds to be disbursed "to provide for their expenses, education, and other uses that might be justified in a plan of distribution as provided therein."

Consequently, PSO wrote to Neumeyer on May 25, 1983, as follows:

This responds more fully to your letter of April 26, 1983. Certainly no one could disagree with the process of reasoning which you present in connection with the matter of providing funds for Richard and James Chormicle. Nor are we unmindful of the fine job that Yolanda and Richard are doing in providing the home atmosphere in which the boys can grow and mature.

But no matter how much we might be moved by the situation and want to help, the bottom line is that it is not ours to give other than as provided by statutes and regulations. Those regulations provide that funds of a minor may be disbursed for his support, health, education or welfare to his parents. The disbursements for those items fairly well equate to one half of the income, which was the basis of the proposal set forth in our letter of March 25, 1983.

^{4/} The record does not indicate whether this bill was ever paid.

Further meetings among appellant, her attorneys, and PSO were held on August 15 and 16, 1983, but on August 17 PSO issued its final decision letter refusing to approve the April 26, 1983, proposal, and indicating that the one-half share of the boys' funds then being paid was all that had been justified for their support, health, education, and welfare in accordance with 25 CFR 115.4(a). Upon appeal, both the Area Director and appellee upheld PSO on essentially the same grounds, the latter pointing out that exceptions were possible only under a plan approved by the Secretary, and that such a plan had never been submitted. The present appeal followed.

Discussion and Conclusions

In his brief on appeal to this Board, Neumeyer criticizes appellee's requirement of a "rigid plan for the rearing and training of minor children" as "bureaucratic nonsense" and "patently impossible." He says that appellant's "plan" is to rear the children in the manner, and according to the standard, in which they would have been reared had their father lived. He asserts, in essence, that the full income is needed so that the mother (appellant) will be able to give the children travel, education, vacations, and an appreciation for the arts and the social amenities, and to teach them how to manage their financial affairs.

The applicable regulation, 25 CFR 115.4, provides:

Funds, other than a per capita share of judgment funds which exceeds \$100 in total amount at the time actual payment is made, including the investment income accruing thereto, of a minor may be disbursed in such amounts deemed necessary in the best interest of the minor for the minor's support, health, education, or welfare to parents, legal guardians, fiduciaries, or to persons having the control and custody of the minor under plans approved by the Secretary, or the minor directly, upon such conditions as the Secretary may prescribe. The Secretary will require modification of an approved plan whenever deemed in the best interest of the minor.

[1] Under this regulation, the test for the disbursement of funds belonging to a minor is whether such disbursement is in the best interest of the minor and is in accordance with a plan approved by the Secretary. The Secretary will require modifications in the plan when deemed in the best interest of the minor. In the instant case, PSO decided that disbursement of one-half of the income to which the two minor boys are entitled was appropriate. The Area Director recognized there was broad latitude in disbursing the funds, but noted that any change in the plan must be approved by the Secretary. This statement was affirmed by appellee.

As noted originally by PSO, a waiver of section 115.4 would be possible under 25 CFR 1.2, which states in pertinent part:

Notwithstanding any limitations contained in the regulations of this Chapter, the Secretary retains the power to waive or make exceptions to his regulations as found in Chapter I of Title 25 of the Code of Federal Regulations in all cases where permitted by law and the Secretary finds that such waiver or exception is in the best interest of the Indians.

Thus, both sections 115.4 and 1.2 of 25 CFR require a showing that the best interest of the Indian will be furthered by the action taken.

Here, appellant has made no attempt to show how she intends to use the additional money she seeks. Instead, she makes only generalized statements about schools, travel, and vacations. The BIA has indicated that it believes the money already being disbursed from the boys' accounts is sufficient to cover these expenses. The BIA has a trust responsibility to ensure that these funds are expended in the boys' best interests. Without the presentation of a plan sufficiently detailed to show that the intended disposition of the funds is in the boys' best interest, BIA does not have authority to disburse them. The requirement that appellant show that more than \$44,500 is required annually for the types of things she mentions is not "bureaucratic nonsense," but rather is the fulfillment of the trustee's responsibility to the trust beneficiary.

Similarly, BIA does not have authority to approve a waiver of the requirement for a plan without a showing that such a waiver is in the boys' best interest. Because neither showing has been made, or even attempted, BIA property refused to disburse additional funds from the boys' accounts. ^{5/}

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the November 7, 1984, decision of the Acting Deputy Assistant Secretary--Indian Affairs (Operations) is affirmed. This decision is without prejudice to appellant's rights to file a plan for the disbursement of the boys' funds in the future.

//original signed
Bernard V. Parrette
Chief Administrative Judge

We concur:

//original signed
Jerry Muskrat
Administrative Judge

//original signed
Anne Poindexter Lewis
Administrative Judge

^{5/} The Board is aware that a surviving natural mother is often considered a favorite of the law. See, e.g., Cleveland Clinic Foundation v. Humphreys, 97 F.2d 849 (6th Cir.), cert. denied, 305 U.S. 628 (1938); Annot., 121 A.L.R. 176 (1939); 59 Am. Jur. 2d Parent and Child, §§ 77-78 (1971). This concept, developed in the context of general legal theory, is not entirely applicable to the situation presented here, in which BIA has a statutory responsibility to act as the minors' trustee.