



INTERIOR BOARD OF INDIAN APPEALS

Estate of Vincent Victorio Natalish, Jr.

5 IBIA 1 (01/19/1976)



United States Department of the Interior

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

ESTATE OF VINCENT VICTORIO NATALISH, JR.

IBIA 75-64

Decided January 19, 1976

Appeal from Administrative Law Judge's order denying a petition for rehearing.

Affirmed and dismissed.

1. Indian Probate: Wills: Unnatural Will

The fact that an Indian Testator believes he has no heir and that his property would escheat to the state should he die intestate does not affect a devise under his will.

2. Indian Probate: Wills: Generally

There is no statute or regulation that would disqualify a non-Indian, as such, as devisee of real property located on the Kiowa-Comanche-Apache Indian Reservation in Oklahoma.

APPEARANCES: Nicklas, Parrish, Saenz, and Wade, by W. F. Parrish, Jr., Esq., for Appellee. Appellants, pro se.

OPINION BY ADMINISTRATIVE JUDGE SABAGH

Appellants, Lorraine LaBarre Horton and Lydia Frances Lamansky, are second cousins and heirs at law of the decedent who would have inherited one-half of his estate had he died intestate.

Decedent made a will dated October 23, 1972, in which he made appellee, Harry Wainland, a non-Indian, devisee of all the trust or restricted property of the decedent as listed in the inventory of the Anadarko Indian Agency. At the time of the making of the will the appellants did not know of the existence of the decedent and the decedent was unaware that he had any surviving

heirs at law to inherit his estate and the will was made under the belief that should he die intestate, his property would escheat to the state. The appellee who is beneficiary of the will had been a friend of the decedent for many years. The will was made in New York State and was admitted to probate in the surrogate court of New York. The probate that is the cause of this appeal is described by the appellee's attorney as being ancillary.

Administrative Law Judge John F. Curran approved decedent's will and ordered that decedent's trust and restricted property be distributed to the appellee as devisee of such property named in the will.

The appeal to this Board rests essentially on two points. First, that decedent was unaware of his having any heirs to inherit his estate at the time he made his will, and second, that from the standpoint of Indian heritage, it would be better if the decedent's trust property were to be inherited by an heir of Indian blood rather than being devised to a non-Indian.

[1] It is elementary that a testator has the right to make a will according to his own desires, subject only to statutory restrictions. To speculate after his death that this testator would have devised his property to certain unknown heirs had he known of their existence would, if given legal effect, defeat testator's right to make a will according to his own desires. The fact that an Indian testator believes he has no heir and that his property would escheat to the state should he die intestate, does not affect a devise under his will.

Section 373 of Title 25 of the United States Code permits an Indian who has an interest in trust or restricted property "to dispose of such property by will in accordance with regulations prescribed by the Secretary of the Interior." There is nothing in this general section on wills that would in any way limit a devise to an heir of the testator or to a person of Indian blood.

[2] The Board is unaware of any statute or regulation that would disqualify a non-Indian, as such, as devisee of trust or restricted property located on the Kiowa-Comanche-Apache Indian Reservation of Oklahoma.

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the order denying petition for rehearing issued February 27, 1975, by John F. Curran, Administrative Law Judge, be, and the same is hereby, AFFIRMED, and the appeal herein is DISMISSED.

This decision is final for the Department.

Done at Arlington, Virginia.

//original signed
Mitchell J. Sabagh
Administrative Judge

I concur:

//original signed
Alexander H. Wilson
Administrative Judge