



INTERIOR BOARD OF INDIAN APPEALS

Estate of Charles Red Breath Bear

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United States Department of the Interior

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

ESTATE OF CHARLES RED BREATH BEAR

IBIA 76-TQ-5

Decided February 14, 1977

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

Denied.

1. Indian Probate: Compromise Settlement: Generally--Indian Probate: Determination of Heirs by Waiver or Agreement: Generally

Absent approval by an authorized representative of the Secretary of the Interior a document purporting to constitute a primary devisee's relinquishment of her inherited interest of a deceased Indian's trust estate can be given no effect. Nor can such an instrument be the basis for a compromise settlement pursuant to 43 CFR 4.207 when the primary devisee disavows the alleged agreement before the Administrative Law Judge.

APPEARANCES: Agnes Red Breath Bear Iron Elk, Gladys Red Breath Bear Two Bulls and Pearl Red Breath Bear Lakota, appellants, assisted by Walter Lakota.

OPINION BY ADMINISTRATIVE JUDGE HORTON

This is an appeal from an order denying petitions for rehearing entered by Administrative Law Judge Garry V. Fisher on July 15, 1976. Charles Red Breath Bear, deceased Oglala Sioux allottee No. 7551, died testate on October 29, 1973. He was survived by four daughters, who, in the absence of a valid last will and testament of the deceased, would be entitled to equal one-fourth shares in decedent's trust estate. Decedent's will, dated February 1, 1966, devised the bulk of his estate to Myrtle Red Breath Bear Johnson, appellee herein. Appellants are the other three daughters of the testator who received lesser interests from the will.

Appellants allege that Judge Fisher erred in refusing to give effect to an alleged family settlement agreement or written compromise signed by testator's four daughters on January 22, 1974. In the alternative, appellants allege the evidence establishes that decedent lacked requisite mental capacity to execute a will in 1966 and that the same should therefore be declared invalid.

Based on a complete review of the record on appeal the Board is satisfied that Judge Fisher's order denying petitions for rehearing and his April 12, 1976 order approving will were proper.

[1] The written document signed by Myrtle Red Breath Bear Johnson in which she states her willingness for her sisters to share equally in the estate of their deceased father is not binding on her. Absent approval by an authorized representative of the Secretary of the Interior, it has consistently been held that such an instrument cannot constitute a relinquishment of inherited interest in a deceased Indian's trust estate. Estate of Maggie Weipah (Weipa) (Maggie George), IA-1409 (July 5, 1966). Nor does the record reflect that the document in question constitutes a compromise settlement by the parties pursuant to 43 CFR 4.207. As stated by Judge Fisher in his original order: “* * * Myrtle Johnson is cognizant of the effect of compromise of her rights under the will, refuses to so compromise, and disavows the agreement.” Order, p. 2. 1/

Appellants' other ground of appeal is their claim that the testator was too old and sick at the time his will was prepared for him to have understood the nature of his actions. It is further alleged that the testator could not have understood the will because it was not prepared in his native tongue. These allegations were raised at the probate hearing and Judge Fisher addressed them

1/ We point out however that our ruling on the ineffectiveness of the document dated January 22, 1974, does not preclude Myrtle Red Breath Bear Johnson from requesting approval in the future from the Secretary of the Interior or his duly authorized representative for the conveyance of any of her inherited interest on the Pine Ridge Reservation to her sisters. See 25 U.S.C. § 483 which applies to rights of individual Indian owners of land encompassed by the terms of the Indian Reorganization Act.

thoroughly in his April 12, 1976 decision. From our independent review of the record, we find his conclusions on these points to be supported by substantial evidence. With respect to testator's mental capacity Judge Fisher concluded: "Charles Red Breath Bear, though elderly and enfeebled with the ravages of tuberculosis, was, on February 1, 1966, a rational man, contemplating the possible effect of his illness, was aware of the scope and extent of his assets and consciously formulated disposition of those assets in his last will and testament." Order, p. 5. The order approving will also explains that two disinterested persons who assisted testator in preparing his will understood the spoken Sioux language. Order, p. 3.

Appellants offered no newly discovered evidence in support of their petitions for rehearing or any compelling argument to suggest that the order approving will was in error. As with their petitions for rehearing, the present appeal merely argues questions of fact originally determined and disagrees with conclusions based thereon.

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 appeal of Agnes Red Breath Bear Iron Elk, Gladys Red Breath Bear Two Bulls and Pearl Red Breath Bear Lakota from Administrative Law Judge Garry V. Fisher's July 15, 1976 Order Denying Petitions for Rehearing, be, and the same is, hereby DENIED.

This decision is final for the Department.

Done at Arlington, Virginia.

//original signed
Wm. Philip Horton
Administrative Judge

We concur:

//original signed
Alexander H. Wilson
Chief Administrative Judge

//original signed
Mitchell J. Sabagh
Administrative Judge