



INTERIOR BOARD OF INDIAN APPEALS

Estate of Alexander Joseph Williams

6 IBIA 132 (08/02/1977)

Judicial review of this case:

Vacated & remanded, *Barr v. Andrus*, No. C77-671V (W.D. Wash. Feb. 1, 1980)



# United States Department of the Interior

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

## ESTATE OF ALEXANDER JOSEPH WILLIAMS

IBIA 77-34

Decided August 2, 1977

Appeal from an Administrative Law Judge's decision affirming order determining heirs after rehearing.

Reversed and remanded.

1. Indian Probate: Evidence: Conflicting Testimony

An Administrative Law Judge's findings based on that part of the evidence which printed words do not preserve, such as demeanor and conduct of witnesses, are not ordinarily reviewable. This case however turns on interpretation of documentary evidence and affidavits which this panel is equally qualified to evaluate on appeal.

2. Indian Probate: Evidence: Generally

Department rules of evidence permit consideration of affidavits or other evidence not ordinarily admissible under the generally accepted rules of evidence. When a crucial witness who stands to gain nothing from the outcome of an estate is prevented from personally appearing at a hearing for reasons of health, her sworn testimony by way of affidavit should be given due consideration. Here, such an affidavit was also bolstered by other probative evidence.

3. Indian Probate: Generally

Omitted Indian heirs are entitled to an order showing their relationship to decedent as a matter of protecting their heritage, regardless of the de minimis value of the estate.

APPEARANCES: Thor P. Ulvestad, Esq., for appellants; Sidney J. Strong, Esq., for appellees.

OPINION BY ADMINISTRATIVE JUDGE HORTON

Doris Willoughby, Edna Noonan and Helen Harvey, appellants herein, claim to be daughters of Alexander Joseph Williams, deceased unallotted Snoqualmie 130-3086, who died intestate on December 13, 1970.

A probate hearing was held in this estate on April 26, 1976, at Tacoma, Washington, with Administrative Law Judge Robert C. Snashall presiding. An order determining heirs was entered by Judge Snashall on May 19, 1976, by which one-half of decedent's trust estate was distributed to 10 children in equal shares and one-half to the estate of his subsequently deceased spouse, Dorothy Williams.

Appellants were not notified of the hearing to determine heirs and upon a proper petition were allowed a rehearing on December 13, 1976. Ms. Karen Perret, Seattle Indian Center Legal Services, represented appellants at the hearing. They are represented on appeal by Mr. Thor P. Ulvestad, Seattle, Washington. Appellees were represented by Sidney J. Strong, Seattle, Washington, who remains their counsel on appeal.

Among other evidence, appellants produced at the rehearing two notarized statements signed by their mother, Juanita Carpenter, first spouse of the deceased, which state that Alexander Williams was the father of appellants. 1/ Appellants' mother was not present at the rehearing for reasons of health (Tr. of Reh., p. 7). 2/ Also received into evidence were copies of delayed birth certificates for appellants prepared in the 1950's which identify their father as the decedent; family history charts apparently prepared by Bureau of Indian Affairs' officials which show appellants' father to be the decedent, and tribal enrollment papers for one of appellants dated 1959 which show decedent to be her father. 3/

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1/ The sworn statements are dated December 10 and December 13, 1976. In addition to foundations made by appellants, the handwriting was identified as that of appellants' mother by Emma Sweet, appellants' older sister, who appeared as a witness for appellees.

2/ In her December 10 affidavit Mrs. Carpenter described her ailment as follows: "I have a main nerve problem at the base of my head and I cannot take on any problems which would cause me to be upset. I get terrible sensation pains all over my body \* \* \*."

3/ The application for enrollment of appellant Doris Willoughby into the Snoqualmie Tribe, based in part on her father being the decedent, was co-signed by decedent's brother.

Evidence introduced by the appellees consisted essentially of the following: 1) a state divorce decree dated October 24, 1938, between the deceased and Juanita Carpenter which awarded custody of Emma Williams (Juanita's oldest daughter and an appellee herein) to her, with no mention made of any other children being involved in the proceeding, and 2) records of baptism for appellants, which took place in 1940, which identify their father as Edward Strickland, whom Juanita Carpenter married subsequent to her divorce from Alexander Williams in 1938.

Testimony was taken from Emma Williams, appellants' sister whose paternity by the decedent was uncontested, but her statements seem to neither confirm nor dismiss the possibility that Alexander Williams fathered appellants.

By order dated January 6, 1977, Judge Snashall affirmed his original findings. The order emphasizes that the 1938 divorce decree refutes appellants' claim that the decedent was their father.

[1] An Administrative Law Judge's findings based on that part of the evidence which printed words do not preserve, such as demeanor and conduct of witnesses, are not ordinarily reviewable. See Estate of Effie Kushinwy (Cushingway), IA-1374 (June 21, 1966). This case however turns on interpretation of documentary evidence and affidavits which this panel is equally qualified to evaluate on appeal.

As stated previously, Judge Snashall rested his findings on an interpretation of two records, most notably the state divorce decree between decedent and appellants' mother. We have reviewed the 1938 divorce decree thoroughly. In our opinion there is no indication that the county court inquired (nor in this case was it necessary to inquire) into the number of children belonging to decedent and Juanita Carpenter. Although the decree awarded Mrs. Carpenter exclusive custody "of her child Emma," plus \$15 per month in child support, appellants' mother explained by affidavit that she did not advise the county court of her other daughters fathered by decedent because, unlike Emma, they were already in her custody. 4/

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4/ Specifically, Juanita Carpenter explained the divorce decree as follows in her affidavit dated December 13, 1976:

"That upon my divorce from Alexander Joseph Williams, the child Emma was living with her father, and I wished to have her returned to me permanently. I therefore asked to be granted custody of Emma as part of my divorce settlement. My other children, Edna, Doris and Helen, were already living with me at the time, and I did not realize there was any reason to ask for formal custody. Being under emotional stress at the time, I did not even want to bring their names up; I felt that keeping them in the background would protect them. I just wanted to get my daughter Emma back with me so Edna, Doris and Helen are not mentioned in the divorce papers."

It is apparent that the sworn statements of Juanita Carpenter are significant. Judge Snashall described her as a necessary witness in this type of proceeding” (Tr. of Reh. p. 8) and counsel for appellees acknowledged that “the only living person with actual knowledge of the paternity of the appellants is their mother \* \* \*” (Brief in Opposition to appeal, p. 1).

[2] The record presents no evidence which in any way precludes a full consideration of the testimony offered by Juanita Carpenter by way of her sworn affidavits. Although live testimony from appellants' mother, subject to cross-examination, would have contributed to a full and complete hearing, Department rules of evidence permit consideration of "affidavits, or other evidence not ordinarily admissible under the generally accepted rules of evidence \* \* \*" 43 CFR 4.232(b). Where, as here, affiant's health prevented her personal appearance at the hearing, and because she stands to gain nothing from the outcome of this estate, her testimony by way of affidavit should be given due consideration. In addition, her affidavits were bolstered by other probative evidence. Nor is it in contradiction of appellants' claim that in 1940, while appellants were between the ages of 5 to 9, they were baptized under the name of Strickland. Their mother had just married Edward Strickland in 1938. As stated by Mrs. Carpenter: "None of my children mentioned above was legally adopted by Edward Strickland. All of them, including Emma, used his name for the sake of convenience, since there was a stigma attached to divorce at the time." Affidavit of December 13, 1976.

[3] This is not a case by which appellants will reap pecuniary fortunes through a favorable decision. By modification order dated February 14, 1977, the appraised value of decedent's trust estate was listed as \$273.86. Appellant Helen Harvey observed in her notice of appeal that there was more involved "than a matter of the estate, but also it questions our heritage. This is very important to us to just let it go. This is our birth right." Appellant Doris Willoughby made the following summation at the rehearing: "We are not trying to be emotional or to bring about any hard feelings but we want to establish once and for all that we are daughters of Alexander Joseph Williams and believe that we have done that" (Tr. of Reh. p. 17). This Board agrees.

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 entered by Administrative Law Judge Robert C. Snashall on January 6, 1977, affirming his order determining heirs dated May 19, 1976, be, and the same is hereby REVERSED. IT IS HEREBY FURTHER ORDERED that this case be REMANDED to Administrative Law Judge Snashall for immediate issuance of all necessary orders or decrees required to

ensure that appellants Doris Willoughby, Edna Noonan and Helen Harvey are named as daughters of the deceased, Alexander Joseph Williams, and that they share in his estate as heirs at law.

This decision is final for the Department.

Done at Arlington, Virginia.

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Wm. Philip Horton  
Administrative Judge

We concur:

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//original signed  
Alexander H. Wilson  
Chief Administrative Judge

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//original signed  
Mitchell J. Sabagh  
Administrative Judge