



INTERIOR BOARD OF INDIAN APPEALS

Estate of Tennyson B. Saupitty

6 IBIA 140 (09/02/1977)



United States Department of the Interior

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

ESTATE OF TENNYSON B. SAUPITTY

IBIA 77-54

Decided September 2, 1977

Decision on a petition to reopen.

Granted.

1. Indian Probate: Reopening: Generally

It is permissible to reopen an estate on grounds that such action will possibly lead to petitioners' enrollment in the tribe and therefore correction of a manifest injustice.

2. Indian Probate: Reopening: Generally

It is incumbent on the Department to redistribute interests in trust land in the course of reopening estates when such redistribution is possible as failure to do so would be in violation of the Secretary's trust responsibility to heirs of allotted land.

APPEARANCES: Naomi Whitewolf Lyles and Carolyn Whitewolf Wallen, petitioners, pro se.

OPINION BY ADMINISTRATIVE JUDGE HORTON

A Recommendation to Reopen Case dated July 29, 1977, was submitted to this office by Administrative Law Judge Jack M. Short in accordance with 43 CFR 4.242(h). Judge Short has suggested that the estate of Tennyson B. Saupitty, which has been closed since 1955, be now reopened for the limited purpose of redetermining decedent's heirs at law "without disturbing the distribution of his estate."

Judge Short's recommendation was made in response to a petition to reopen the above estate filed by Naomi Whitewolf Lyles and her daughter, Carolyn Whitewolf Wallen (petitioners). The Board allowed interested parties until August 29, 1977, within which to file statements in support of or in opposition to the recommended reopening.

The facts reported to the Board by the Administrative Law Judge, which have not been contested by any interested parties, clearly show that a manifest injustice can possibly be corrected through reopening the subject estate. Briefly stated, the facts referred to are as follows:

Petitioner Naomi Whitewolf Lyles was found to be a daughter of Tennyson Saupitty in the Estate of Tah-Quint-Ter-Up (William Saupitty), Probate No. H-189-64. William Saupitty was the father of Tennyson. Findings made in the estate of William Saupitty also show Geneva Lois Pahdocony Bridges to be a daughter of Tennyson Saupitty. The foregoing findings are contrary to heirship determinations made in the estate of Tennyson Saupitty. More recently, in the Estate of Te-Nits-A-Wife-Per, aka Susie (Takawana) Ahdosy, decided March 25, 1977, it was held that notwithstanding the record of heirship declared in the estate of Tennyson Saupitty, the evidence is convincing that Geneva Lois Pahdocony Bridges is the daughter of Tennyson Saupitty.

In addition to the conflicting determinations listed above, petitioners have furnished the Board with purported affidavits from Vivian Saupitty Gooday, sister of Tennyson Saupitty, and Maude Blevins, grandmother of Naomi Whitewolf Lyles, which state that the decedent herein, Tennyson Saupitty, claimed Naomi Whitewolf Lyles as his daughter. Geneva Lois Pahdocony Bridges filed a statement supporting petitioners' claim on August 15, 1977.

Petitioners seek reopening of the Tennyson Saupitty estate primarily to establish their quantum of Comanche Indian blood as well as that of other family members. In this regard, the administrative record contains a decision by the Acting Deputy Commissioner of Indian Affairs, dated June 20, 1977, in which the Commissioner's office refuses to increase from 1/2 to 4/4 the degree of Comanche Indian blood established for Naomi Whitewolf Lyles as a result of the heirship determinations made in the Tennyson Saupitty estate. Among other things, the above administrative decision states:

The Area Director of the Anadarko Area Office has forwarded for a final determination your request for an increase in the degree of Comanche Indian blood shown for you in the records from 1/2 to 4/4 degree.

You base your claim to a higher degree of Comanche Indian blood on affidavits and statements attesting that your father was Tennyson Saupitty.

The probate records do not support your claim that you are the child of Tennyson Saupitty. Tennyson Saupitty's estate was probated and his heirs were found to be his wife and a son, Lans Lemarr Saupitty. Witnesses were questioned as to Tennyson Saupitty's relationship to you. From the records and testimony you were not found to be his child. * * *

We are bound by the findings of the Probate Examiner as to the heirs of Tennyson Saupitty. Unless the findings in that case are amended you cannot claim Comanche Indian blood from Tennyson Saupitty. We must, therefore, deny your request for an increase in the degree of Comanche Indian blood shown for you in the records.

We understand that a petition has been filed for the reopening of Tennyson Saupitty's probate findings. If as a result of a review of the probate you are found to be the child of Tennyson Saupitty, we shall be happy to reconsider this decision.

There is no doubt that if the Department committed error in probating the estate of Tennyson Saupitty by omitting Naomi Whitewolf Lyles as an heir of the deceased contrary to the evidence and other probate records, such omission may of itself be just cause for reopening an estate closed for a long period. See, e.g., Estate of Oscar Bubuna Deloria, 5 IBIA 34 (decided February 26, 1976), in which we held that an estate closed for 13 years could be reopened pursuant to 43 CFR 4.242(h), notwithstanding that the estate was no longer intact, so as to protect an omitted heir if additional property of the deceased is later discovered and, further, to promote a consistent heirship record within the Department. More recently, we have stated that omitted Indian heirs are entitled to an order showing their relationship to the deceased as a matter of protecting their heritage. Estate of Alexander Joseph Williams, 6 IBIA 132 (decided August 2, 1977).

[1] In the case at hand, not only are the objectives found in the Deloria and Williams estates satisfied, but petitioners also stand to obtain correction of a final enrollment-related determination made by the Bureau of Indian Affairs on the basis of the Department's probate of the Tennyson Saupitty estate. We believe such purpose to be a permissible basis for reopening an estate when to do so, as here, may prevent a manifest injustice.

[2] With respect to Judge Short's recommendation that decedent's estate be reopened "without disturbing the, distribution of his estate," we interpret this proposed restriction to be conditioned on the apparent administrative impossibility of correcting titles to land which have been established for a long time--in this case, over 20 years. If it is the case, however, upon finding a probate error as prescribed under 43 CFR 4.242(h), that there exists a reasonable possibility for correction of interests in the Tennyson Saupitty estate, it would be incumbent on the Department to do so in the course of its reopening. This duty attaches as a result of the Secretary's trust responsibility to Indian heirs of allotted land and it is a duty which cannot be ignored on the basis of any waiver volunteered by petitioners. Accordingly, the Administrative Law Judge should ascertain at the hearing following reopening whether it is possible to redistribute decedent's estate if indeed the petitioners are found to be his heirs at law.

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Affairs by the Secretary of the Interior, 43 CFR 4.1, the petition to reopen the estate of Tennyson B. Saupitty filed by Naomi Whitewolf Lyles and Carolyn Whitewolf Wallen is hereby GRANTED. This matter is therefore REFERRED to the Administrative Law Judge in Tulsa, Oklahoma, for whatever action or proceeding he deems appropriate in the matter consistent with this opinion.

Done at Arlington, Virginia.

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Wm. Philip Horton
Administrative Judge

We concur:

//original signed

Alexander H. Wilson
Chief Administrative Judge

//original signed

Mitchell J. Sabagh
Administrative Judge