



INTERIOR BOARD OF INDIAN APPEALS

Estate of Katie Crossguns

10 IBIA 141 (10/14/1982)



United States Department of the Interior

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

ESTATE OF KATIE CROSSGUNS

IBIA 82-10

Decided October 14, 1982

Appeal from denial of petition for reopening (Indian Probate No. IP BI 64A 82).

Affirmed.

1. Indian Probate: Reopening: Standing to Petition for Reopening

Because the Department's regulations authorize the reopening of estates closed for more than 3 years, a petition filed pursuant to 43 CFR 4.242(h) cannot be summarily dismissed for untimeliness.

2. Indian Probate: Reopening: Generally

The Board has frequently held that petitions to reopen closed estates require compelling proof that delay in requesting relief has not been occasioned by lack of diligence on the part of the petitioning parties.

3. Indian Probate: Guardian Ad litem: Generally--Indian Probate: Notice of Hearing: Generally

When a party in interest was a minor at the time of the probate proceeding at issue, he cannot deny notice of said proceedings when notice was given to a guardian ad litem on his behalf and the guardian ad litem appointed by the Examiner of Inheritance, now Administrative Law Judge, appeared at the hearing on his behalf and was present at every stage of the hearing.

4. Indian Probate: Notice of Hearing: Jurisdictional--Indian Probate:
Reopening: Standing to Petition for Reopening

A party who has received actual notice of a probate hearing lacks standing to file a petition to reopen.

APPEARANCES: Robert A. Clark, Esq., Browning, Montana, for appellant.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HORTON

On January 26, 1982, Clyde Francis Crossguns (appellant) filed a notice of appeal from a December 8, 1981, order issued by Administrative Law Judge Keith L. Burrowes denying his petition for reopening of the estate of Katie Crossguns. The denial affirmed the order determining heirs of January 20, 1964, by Examiner of Inheritance Frances C. Elge.

Background

Katie Crossguns (decedent), an unallotted Blackfeet, was born on April 3, 1928, and died intestate on March 11, 1963. She bore four children, three of whom were living at the time of her death, viz., Clyde Francis Crossguns, born April 19, 1949; Myrna Rose Crossguns, born June 5, 1954; and Deanna Kay Crossguns, born January 8, 1957. All were minors at the time of Katie Crossguns' death and the hearing to determine her heirs.

Decedent lived with Samuel Daniels, an unallotted Cree, from 1953 until at least 1956. During this time, they had three children, only two of whom, Myrna Rose and Deanna Kay, were living at the time of decedent's death and probate hearing. A son, Samuel Duane Crossguns, lived from February 3 until February 13, 1956. Appellant was decedent's illegitimate son from a prior relationship.

The probate hearing for decedent's estate was held on August 27, 1963. Samuel Daniels testified that he and Katie Crossguns were married by common law, they considered themselves husband and wife, decedent used his name, they lived together from May 1953 until 1958, that they never obtained a divorce, and had three children (Samuel Duane, Myrna Rose, and Deanna Kay). Joseph Garber, a welfare officer at the Blackfeet Indian Agency and guardian ad litem at the hearing for Myrna Rose, Deanna Kay, and Clyde Francis, testified that, to the best of his knowledge, Daniels' testimony was correct as reflected by his records and those at the Blackfeet Indian Agency. The examiner, therefore, determined that Katie Crossguns' heirs were Samuel Daniels, Clyde Francis Crossguns, Myrna Rose Crossguns, and Deanna Kay Crossguns. Pursuant to Montana State law, their respective shares in her estate were determined to be one-third, two-ninths, two-ninths, and two-ninths. See 25 U.S.C. §§ 348, 372 (1976).

Samuel Daniels died on June 22, 1968. At his probate hearing on June 10, 1969, it was established that, subsequent to his common law relationship with Katie Crossguns, he entered into a similar relationship with

Alves M. Jones Bird in 1956. Daniels and Alves Bird had five children, 1/ all of whom were living and minors at the time of the Daniels probate hearing. On September 17, 1969, the examiner ordered Samuel Daniels' estate to be distributed to Alves J. Bird Daniels, as his common law wife (one-third), and to each of his seven surviving children (two-twenty firsts each). This distribution included both Myrna Rose Crossguns and Deanna Kay Crossguns.

On October 27, 1981, appellant petitioned, pro se, to have the estate of his mother, Katie Crossguns, reopened. He alleged that Samuel Daniels was incorrectly found to have been decedent's common law husband and, therefore, Daniels was not entitled to share in the previous distribution of her estate. He further alleged that he and his sisters were effectively unrepresented at the probate hearing. The Administrative Law Judge denied the petition by order dated December 8, 1981. This appeal followed.

Discussion and Conclusion

[1] Appellant's petition requests that his mother's estate be reopened after 18 years. Accordingly, we are here concerned with a petition for reopening filed more than 3 years from the closing of an estate, a matter governed by the provisions of 43 CFR 4.242(h). At the outset, the Board notes that a petition for reopening under this provision cannot be summarily dismissed for untimeliness. See Estate of Josephine Bright Fowler, 8 IBIA 201 (1980). 2/

[2] Appellant, who was 14 years old at the time of decedent's probate hearing, is now 33 years old. He attained his majority in 1970. He did not file his petition for reopening until October 27, 1981, after he "became curious about [his] mother's probate in the summer of 1980" (Appellant's Brief, Exh. A). The Board has frequently held that petitions to reopen closed estates require compelling proof that delay in requesting relief has not been occasioned by lack of diligence on the part of the petitioning parties. Estate of Annie Bear, 5 IBIA 149 (1976). See also Estate of Walter George and Minnie Racehorse George Snipe, 9 IBIA 20, 23 (1981). Appellant has failed to satisfy the above criterion. 3/

1/ Alves Bird testified that her oldest daughter, Roberta, was also Samuel's child but that birth records indicated paternity by Victor Bird.

2/ In this regard it was in error for the Administrative Law Judge to find that a petition for reopening "may be filed within a period of 3 years from the date of the final decision * * * but not thereafter." The foregoing standard applies only to petitions for reopening filed under 43 CFR 4.242(a), which prescribes less stringent standards for approval than petitions filed under 43 CFR 4.242(h). Procedures for petitions filed more than 3 years after an estate is closed are governed by 43 CFR 4.242(h).

3/ The only other statement by appellant which possibly bears upon his delay is that it took "quite some time" to obtain a copy of the final order in the

Assuming, arguendo, that the petitioner had been diligent in his efforts to seek relief, he failed to prove that he had no actual notice of the original proceeding as required by 43 CFR 4.242(h). The administrative record reflects that the examiner of inheritance caused a Notice of Hearing to Determine Heirs or Probate Will to be posted in accordance with 43 CFR 4.211(a) and that Mrs. Pearl Babineau was sent a notice as guardian ad litem for the minor children, Clyde Francis, Myrna Rose, and Deanna Kay. The record also shows that, at the hearing on August 27, 1963, the examiner of inheritance requested, and received, consent from Mr. Joseph Garber to act as guardian ad litem for Clyde, Myrna, and Deanna, and to represent their interests at the hearing.

[3, 4] Where notice has been given to a guardian ad litem on behalf of minor children, and the guardian ad litem appointed by the examiner of inheritance appeared at the hearing on their behalf and was present at every stage of the hearing, notice of the proceedings cannot be denied by a minor so represented. See Estate of Alice Cornelia White Hat/Red Feather, 2 IBIA 217, 81 I.D. 143 (1974). Accordingly, we find that actual notice of the probate hearing was provided to the appellant and, therefore, he has no standing to file a petition to reopen. See Estate of Ella Ashbough Randall Genereaux, 5 IBIA 248 (1976). 4/

Appellant asserts that the appointed guardian ad litem failed to properly represent his interests. He alleges that Mr. Garber “did not know too much” about the relationship between decedent and Samuel Daniels but fails to indicate how this evidences poor representation. Regardless of how well Mr. Garber performed at the hearing, the record reflects that the examiner asked pertinent questions of the witnesses. This is consistent with established policy of the Department that the examiner shoulders an additional burden when parties proceed without representation by counsel. Such a role was properly fulfilled in this case by the examiner.

fn. 3 (continued)

Samuel Daniels’ estate. The appellant’s premise for reopening is his belief that his mother, Katie Crossguns, was never married to Samuel Daniels. The death of Samuel Daniels at least 10 years after his relationship with decedent was concluded is not a circumstance which excuses appellant from diligently questioning his mother’s marriage to Mr. Daniels.

4/ As later concluded in this opinion, the Board rejects appellant’s claim that his interests were not adequately represented at the hearing. The Board, therefore, is not presented with the question whether the notice requirements of 43 CFR 4.242(h) should be strictly applied to a case in which a party can show that his guardian ad litem failed to appear at the hearing, or, in appearing, grossly mishandled the case. Pursuant to 43 CFR 4.320, the Board “may exercise the inherent authority of the Secretary to correct a manifest injustice or error where appropriate.”

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the order of December 8, 1981, denying petition for reopening is affirmed. This decision is final for the Department.

//original signed
Wm. Philip Horton
Chief Administrative Judge

We concur:

//original signed
Franklin D. Arness
Administrative Judge

//original signed
Jerry Muskrat
Administrative Judge