



INTERIOR BOARD OF INDIAN APPEALS

Estate of Joseph No Runner

17 IBIA 124 (05/15/1989)



# United States Department of the Interior

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

## ESTATE OF JOSEPH NO RUNNER

IBIA 88-39

Decided May 15, 1989

Appeal from an order denying rehearing issued by Administrative Law Judge Keith L. Burrowes in Indian Probate IP BI 345A-86.

Affirmed.

1. Indian Probate: Adoption: Generally

Under Chapter 3, section 8, of the Blackfeet Tribal Law and Order Code of 1967, adoption decrees entered by a Montana State court in 1967 involving Blackfeet tribal members will be recognized by the Department of the Interior in determining the heirs of a deceased tribal member.

APPEARANCES: Donald G. Kittson, Esq., Browning, Montana, for appellant.

### OPINION BY CHIEF ADMINISTRATIVE JUDGE LYNN

On September 15, 1988, the Board of Indian Appeals (Board) received a notice of appeal from Thomas No Runner (appellant), seeking review of a July 14, 1988, order denying rehearing issued by Administrative Law Judge Keith L. Burrowes in the estate of Joseph No Runner (decendent). For the reasons discussed below, the Board affirms that decision.

#### Background

Decendent, 201-A03189 of the Blackfeet Indian Reservation in the State of Montana, was born on February 2, 1913, and died on September 26, 1985. A hearing to probate his trust or restricted estate was held before Judge Burrowes on May 5, 1987. Evidence submitted at the hearing showed that decendent had executed and revoked several wills during his lifetime. The most recent will, dated April 16, 1984, specifically stating that it was a partial will covering only the property listed, devised the surface estate in one allotment to Thomas Joseph Night Gun, a.k.a. Thomas Big Spring, decendent's nephew-in-law. There was no residuary clause in this will. The second most recent will, dated October 18, 1983, had been specifically revoked by a written instrument dated April 10, 1984.

Evidence introduced at the hearing showed that decedent was survived by one natural child, appellant. <sup>1/</sup> Other evidence indicated that decedent had adopted three children: Helen JoAnne No Runner, a.k.a. Helen JoAnne Heavy Runner (adoption decree dated December 20, 1967, from the District Court of the Ninth Judicial District of the State of Montana, County of Glacier); Anna Mae No Runner, a.k.a. Anna Mae Heavy Runner (adoption decree dated May 10, 1967, from the District Court of the Ninth Judicial District of the State of Montana, County of Glacier); and Harvey Nelson No Runner, a.k.a. Harvey Nelson Heavy Runner (adoption decree dated July 26, 1982, from the Blackfeet Tribal Court). Appellant challenged the adoptions of Helen and Anna on the grounds that the Montana State court lacked jurisdiction to enter the adoption decrees.

In his March 14, 1988, order approving will, Judge Burrowes held that decedent's estate, except for the devise to Thomas Joseph Night Gun, should be distributed to decedent's intestate heirs. Judge Burrowes further determined that those heirs were appellant and all three adopted children.

Appellant filed a petition for rehearing, again arguing that the two State court adoption decrees were void for lack of jurisdiction. Judge Burrowes denied rehearing in an order dated July 14, 1988.

Appellant's appeal from this order was received by the Board on September 15, 1988. Only appellant filed a brief on appeal.

#### Discussion and Conclusions

On appeal, as before Judge Burrowes, appellant raises only one issue: the validity of the two State court adoption decrees. <sup>2/</sup> Appellant argues that at the time the State court decrees were entered, all parties to the decrees were enrolled members of the Blackfeet Indian Tribe, residing within the exterior boundaries of the Blackfeet Indian Reservation. He further states that when the State adoption decrees were entered, "the Blackfeet Tribal Court existed and was an available forum for adoption proceedings concerning enrolled members of the Blackfeet Tribe who resided on the Blackfeet Indian Reservation" (Opening Brief at 2). Consequently, appellant asserts, the State court lacked jurisdiction to enter the adoption decrees. In support of his position, appellant cites Fisher v. District Court, 424 U.S. 382 (1976); Kennerly v. District Court, 400 U.S. 423 (1971); Williams v. Lee, 358 U.S. 217 (1959); In the Matter of the Adoption

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<sup>1/</sup> A second natural child, Herbert Joseph No Runner, died as an infant.

<sup>2/</sup> The Board has independent authority to determine whether a state court had jurisdiction in deciding whether or not to recognize an adoption decree entered by that court for the purpose of determining the heirs of a deceased Indian. The Board's decision pertains solely to the determination of heirs; the Board does not have authority to overturn a state court decision. Lane v. United States ex rel. Mickadiet, 241 U.S. 201, 210 (1916); Estate of James Howling Crane, Sr., 12 IBIA 209 (1984); Estate of James Werny Pekah, 11 IBIA 237 (1983).

of Buehl, 87 Wash.2d 649, 555 P.2d 1334 (1976); Article VI, sections 1(k) and 1(o) of the Blackfeet Tribal Constitution; and Chapter 7, section 7, of the Blackfeet Law and Order Code of 1967 (code). <sup>3/</sup>

The Supreme Court has stated that "[e]ssentially, absent governing Acts of Congress, the question has always been whether the state action infringed on the right of reservation Indians to make their own laws and be ruled by them." Williams, 358 U.S. at 220; accord, Fisher, supra. The Court has, accordingly, struck down attempts by state courts to assert jurisdiction over reservation Indians when there is a tribal forum with jurisdiction over the type of case at issue.

In Fisher, the Supreme Court considered an adoption proceeding initiated in State court concerning a Northern Cheyenne infant. The Court found that the State had jurisdiction over adoptions involving Northern Cheyenne tribal members before 1935. In 1935 the tribe adopted a constitution and bylaws under the provisions of section 16 of the Indian Reorganization Act, 25 U.S.C. § 476 (1982), a statute the Court characterized as "specifically intended to encourage Indian tribes to revitalize their self-government." Fisher, 424 U.S. at 387. The Court further found that the Northern Cheyenne tribe had established a tribal court and granted it jurisdiction over adoptions among tribal members.

[1] The Blackfeet Tribe similarly adopted a constitution in 1935. There is no evidence, however, that at that time it established a tribal court with jurisdiction over adoptions of tribal members. Instead, Chapter 3 of the code, which deals with domestic relations, provides in section 8: "All members of the Blackfeet Indian Tribe shall hereafter be

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<sup>3/</sup> Article VI of the Blackfeet Constitution enumerates the powers of the tribal council. Section 1(k) states that the Council may

"promulgate ordinances for the purposes of safeguarding the peace and safety of residents of the Blackfeet Indian Reservation, and \* \* \* establish minor courts for the adjudication of claim or disputes arising amongst the members of the Tribe, and for the trial and punishment of members of the Tribe charged with the commission of offenses set forth in such ordinances." Section 1(o) allows the Council "[t]o provide for the appointment of guardians for minors and mental incompetents, by ordinances or resolutions, subject to the approval of the Secretary of the Interior." (Emphasis added to show language quoted by appellant.)

Chapter 7 of the code establishes a juvenile court. Section 7 of Chapter 7 describes the general authority of the juvenile court as including the power to "make such orders for the commitment, custody, and care of the juvenile and take such other actions as it may deem advisable and appropriate in the interests of the juvenile and the interests of the Tribe." (Emphasis added to show language quoted by appellant.)

governed by State law and subject to State Jurisdiction with respect to adoptions hereafter consummated." 4/

The Board finds that in 1967 adoption proceedings involving Blackfeet tribal members were governed by Chapter 3, section 8, of the code. Decedent followed tribal law in submitting to the jurisdiction of the State court and obtaining adoption decrees from that court for Helen and Anna. 5/ Under these circumstances, the exercise of jurisdiction by the State court could not infringe on the right of the Blackfeet Tribe to make its own laws and be governed by them.

The Board further finds that, to whatever extent later court cases can be read as holding that the Montana State court did not have jurisdiction over these adoptions, 6/ it is inappropriate to apply those decisions retroactively, after the death of the adoptive parent, in order to invalidate adoptions that were believed to be valid under tribal and State law by both the court and the parties-in-interest at the time they were consummated. 7/ Smith v. Muskogee Area Director, Bureau of Indian Affairs, 16 IBIA 153 (1988).

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4/ The code was amended by Ordinance No. 44, Dec. 13, 1974, after the State court adoption decrees at issue in this case. The ordinance stated:

"The Blackfeet Tribal Law and Order Code of 1967, as amended, is a Code written by the Blackfeet Tribe to be administered within the exterior boundaries of the Blackfeet Reservation of Montana, and under no conditions does the State of Montana have jurisdiction over this Code, and further that any [provision] now in the Blackfeet Law and Order Code of 1967, as amended, relating to concurrent jurisdiction with said State of Montana, be deleted and such language shall be of no further force or effect."

5/ In contrast, note that in 1982, decedent adopted Harvey through the Blackfeet Tribal Court.

6/ The Board finds that the later cases cited by appellant are distinguishable from the present case. The distinction between this case and Fisher has already been discussed. Kennerly involved a civil action in debt involving Blackfeet tribal members residing on the reservation. Tribal jurisdiction over this type of case is specifically addressed in Chapter 2 of the code. Buehl concerned the interpretation of the jurisdiction of the Blackfeet juvenile court under Chapter 7, section 7, of the code. The infant in Buehl was a ward of the Blackfeet juvenile court, temporarily off the reservation, when adoption proceedings were initiated in a Washington State court.

7/ This case is also distinguishable from the Board's decision in Estate of James Wermey Pukah, 13 IBIA 264 (1985), in which the Board declined to recognize an Oklahoma adoption decree. In contrast to the present case, the Comanche Tribe had not enacted a tribal law dealing with the question of adoption involving tribal members, thereby recognizing state court jurisdiction.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the July 14, 1988, decision of Judge Burrowes is affirmed.

//original signed

Kathryn A. Lynn  
Chief Administrative Judge

I concur:

//original signed

Anita Vogt  
Administrative Judge