INTERIOR BOARD OF INDIAN APPEALS

Estate of Henry Beavert

18 IBIA 73 (12/08/1989)

United States Department of the Interior

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

ESTATE OF HENRY BEAVERT

IBIA 89-22 Decided December 8, 1989

Appeal from an order denying rehearing issued by Administrative Law Judge William E. Hammett in Indian Probate IP PO 29L 87.

Affirmed.

1. Attorneys--Indian Probate: Representation

An individual in an Indian probate proceeding without an attorney is still required to raise all issues and arguments at the hearing.

APPEARANCES: George M. Martin, Esq., Yakima, Washington, for appellant; William C. Murphy, Esq., Toppenish, Washington, for respondents.

OPINION BY CHIEF ADMINISTRATIVE JUDGE LYNN

On April 3, 1989, the Board of Indian Appeals (Board) received a copy of a notice of appeal from Virginia Beavert (appellant), seeking review of a January 17, 1989, order denying rehearing issued by Administrative Law Judge William E. Hammett in the estate of Henry Beavert (decedent). The copy of the notice of appeal was forwarded to the Board by Judge Hammett, with whom the original had been filed. 1/ For the reasons discussed below, the Board affirms that decision.

Background

Decedent, Yakima No. 124-A2917, was born on May 25, 1893, and died on October 30, 1986. A hearing to probate his trust property was held on June 24, 1987, by Administrative Law Judge Robert C. Snashall. Appellant, Beavert, and Morrison were present at that hearing. 2/ A self-proved

---

1/ On Apr. 25, 1989, the Board received a letter from counsel for Columbus Beavert (Beavert) and Sandra Morrison (Morrison) suggesting that the notice of appeal was not timely filed. By order of May 11, 1989, the Board determined that the appeal was timely filed.

2/ Appellant is decedent's daughter by one marriage; Beavert is decedent's son and Morrison his granddaughter through a second marriage.

Indian will, dated October 5, 1982, was admitted at the hearing. No objections to this will were raised, although appellant questioned certain child support payments she alleged decedent had been required by tribal court order to pay on her behalf. 3/ Under decedent's will, all of his trust property was left to appellant, Beavert, and Morrison's mother, Christine Beavert, who predeceased decedent. The smallest share of decedent's trust property was left to appellant.

Judge Snashall retired before issuing a decision in this case. Therefore, by order dated July 12, 1988, Judge Hammett issued an order approving decedent's will. Appellant filed a timely petition for rehearing based upon alleged newly discovered evidence that decedent's will had been procured through duress and/or undue influence or that decedent was not aware of the contents of the will. The petition was accompanied by an affidavit from Teresa Pierre, who indicated she served as a housekeeper, nurse, and driver for decedent. Pierre stated she was living in decedent's house in early October 1982 and decedent was forced to prepare the October 1982 will by Beavert, who had repeatedly assaulted decedent over other issues. She further stated decedent told her on several occasions that the document prepared did not dispose of his property in accordance with his wishes.

Beavert and Morrison submitted affidavits in opposition to the petition for rehearing. Both parties disputed the allegations in Pierre's affidavit, stating that Pierre was not residing in decedent's house at the time the will was prepared, Beavert was not present when the will was executed, and the will was executed in accordance with decedent's expressed wishes. Furthermore, they stated decedent did not indicate to them that the will did not express his desires. A third affidavit from Rose Yettonia John, a friend of decedent, stated Beavert never assaulted decedent and decedent never indicated that the will did not express his desires or had been dictated to him by Beavert.

Judge Hammett reviewed the materials submitted and determined that the preponderance of the credible evidence indicated decedent had testamentary capacity and was not acting under undue influence when he executed his will. Accordingly, by order dated January 17, 1989, Judge Hammett denied rehearing.

On May 11, 1989, the Board docketed appellant's appeal and issued a determination that the appeal had been timely filed. Pursuant to the briefing schedule established in that order, briefs were filed by appellant and by Beavert and Morrison.

3/ Appellant was born to decedent and Ellen Saluskin on Nov. 11, 1921. The Data for Heirship Finding and Family History information furnished to Judge Snashall by the Bureau of Indian Affairs indicates that appellant's parents were divorced, apparently by Indian custom, in 1920. Decedent remarried in 1923. The record does not contain copies of any tribal court decisions concerning child support for appellant.

Discussion and Conclusions

On appeal appellant alleges she was denied due process because Judge Snashall did not permit her to present all of her arguments and evidence against the validity of decedent's will. In support of this argument appellant contends that at the hearing she made a preliminary statement on the issue of support money, was told that such a claim was not properly raised in the probate proceeding, and was thereafter precluded from testifying further.

Appellant was not represented by counsel at the original hearing. Because of this fact, Judge Snashall was under a greater obligation to ensure that the record was fully developed. See, e.g., Estate of Blanche Russell (Hosay), 18 IBIA 40, 46 (1989), and cases cited therein. The Judge was not, however, required to anticipate what issues appellant might have raised or to discover additional legal arguments or evidence that might have been beneficial to her case, but which she did not mention. Estate of Wesley Emmett Anton, 12 IBIA 139, 142 (1984); Estate of Eugene Patrick Dupuis, 11 IBIA 11, 13 n. 1 (1982).

The transcript of the hearing before Judge Snashall shows that appellant raised the issue of payments she alleged decedent was to have made for her support, apparently when decedent and appellant's mother separated in 1920. Judge Snashall informed her he had no authority over such a claim. There is no indication that the Judge prevented her from testifying further. Appellant did not indicate she wished to raise any other issue, even when Judge Snashall asked if anyone had any other questions.

[1] The rules of practice before the Department of the Interior specifically recognize the right of an individual to represent him or herself. See 43 CFR 1.3(b)(3). The fact that a person appears in a probate proceeding without counsel does not mean that any decision rendered in the proceeding will not be binding upon that person, or that the person need not raise all of his or her issues or arguments at the hearing. Estate of Ralph James (Elmer) Hail, 12 IBIA 62, 65 n.2 (1983). Appellant failed to question the validity of the will during the hearing and cannot now raise that issue.

Furthermore, even if the Board were to reach the issues she raises on appeal, appellant would not prevail. The preponderance of the evidence in the record indicates that decedent was not unduly influenced in the execution of his will, contrary to appellant's allegation. Additionally, even if decedent had stated an intention to leave certain property to appellant, intent alone has never been held sufficient to create, alter, or revoke an Indian will. Because decedent took no action to change his will, the Department has no authority to disapprove his will based upon appellant's allegations concerning what he intended to do. Estate of Ella Sarah Case Barnes, 17 IBIA 72, 76 (1989), and cases cited therein.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the January 17, 1989, decision of Judge Hammett is affirmed.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

I concur:

//original signed
Anita Vogt
Administrative Judge