



INTERIOR BOARD OF INDIAN APPEALS

Estate of Matthew Pumpkinseed

25 IBIA 98 (01/04/1994)



# United States Department of the Interior

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

## ESTATE OF MATTHEW PUMPKINSEED

IBIA 93-85

Decided January 4, 1994

Appeal from an order denying rehearing issued by Administrative Law Judge Robert A. Yetman in Indian Probate IP RC 351Z 92-93.

Affirmed in part, vacated and remanded in part.

1. Indian Probate: Secretary's Authority: Generally--Indian Probate: Tribal Courts

The Department of the Interior is not bound by tribal court decisions in determining the heirs of a deceased Indian, but rather has the authority and responsibility to make an independent determination of the decedent's heirs. A tribal court decision may be accepted as evidence of heirship.

APPEARANCES: Thomas J. Van Norman, Esq., Robert J. Golten, Esq., and Marlon D. Sherman, Student Attorney, Boulder, Colorado, for appellant.

### OPINION BY CHIEF ADMINISTRATIVE JUDGE LYNN

Appellant Susie M. Pumpkinseed seeks review of a March 17, 1993, order denying rehearing issued by Administrative Law Judge Robert A. Yetman in the estate of Matthew Pumpkinseed (decedent). The denial of rehearing let stand an October 19, 1992, order determining decedent's heirs issued by Administrative Law Judge Elmer T. Nitzschke. 1/ For the reasons discussed below, the Board of Indian Appeals (Board) affirms those orders in part, and vacates and remands them in part.

Decedent, Oglala Sioux Unallottee 17927, died intestate on July 17, 1991. On June 9, 1992, Judge Nitzschke held a hearing in Denver, Colorado, to probate decedent's trust or restricted estate. Appellant appeared at that hearing and presented evidence indicating that she was decedent's wife, and had had four children with him: Ted, Geneva, Floyd, and Susie. Uncontested evidence indicated that decedent had two children, Pauline and

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1/ Judge Nitzschke retired before the petition for rehearing was filed.

Christine, from a relationship with Catherine Addison. Also present at the hearing was Edgerton Nez, who alleged that decedent was the father of her son, Dana. Evidence was introduced showing that Edgerton, who is Navajo and resides on the Navajo Reservation, filed two paternity suits against decedent in Navajo Tribal Court. Appellant opposed Edgerton's claim.

Judge Nitzschke held a second hearing in Eagle Butte, South Dakota, on July 1, 1992. The only witness present at that hearing was Alta Delores Pumpkin Seed, who alleged that she was decedent's surviving spouse. Alta presented a marriage license in support of her claim.

Following the hearings, Edgerton submitted five affidavits to Judge Nitzschke. 2/ In one of her affidavits, Doris, a sister of decedent, indicated that decedent had two other children, Mateo (Mato) Eagle Hawk and Jessica Eagle Hawk (deceased), whose mother was Delores Faye Eagle Hawk.

On October 19, 1992, Judge Nitzschke issued an order in which he held that decedent's heirs were appellant, as his surviving spouse; and his children, Pauline, Christine, Ted, Geneva, Floyd, Susie, Dana, and Mato. He found that decedent's marriage to Alta was null and void because decedent was legally married to appellant at the time he attempted to marry Alta. The Judge acknowledged that evidence concerning paternity of Dana was conflicting, and indicated that his decision was based in part on witness credibility and on Edgerton's affidavits. He stated that “[i]n reviewing the Petition and Order entered by the Navajo Tribal Court I do not find it binding as to the issue of the paternity of Dana Nez. There is no indication that a hearing was held or evidence presented on Dana’s paternity.” (Order at 2). In regard to Mato, Judge Nitzschke stated:

According to the affidavit of decedent's sister, Doris Pumpkin Seed, decedent also had two children from a relationship with Delores Faye Eagle Hawk. One of these children, Mato, born May 1, 1986, survived the decedent. This information was verified informally with Ms. Eagle Hawk. This relationship occurred while the decedent was living in Rapid City, South Dakota during the years 1984-1986. \* \* \* I find that Mato Eagle Hawk was the son of decedent, and is listed herein as an heir at law.

(Order at 3).

Appellant petitioned for rehearing of the determination that decedent was the father of Dana and Mato. Concerning paternity of Dana, appellant contended that Judge Nitzschke had failed to give proper deference to the Navajo Tribal Court order, which she alleged had been entered after a full hearing. In support of this position, she presented a letter written by a Navajo Tribal Court Advocate when Edgerton filed the second paternity suit,

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2/ The affiants were Vallie White Bull, Charlotte Tsosie, Doris Pumpkin Seed, and Susan Louise Mesteth Esparza. Doris submitted two affidavits.

which argued that the second suit should be dismissed as res judicata because a full hearing had been held in the first suit on June 12, 1974, with a finding that Edgerton had failed to prove her case. She also objected to the Judge's reliance on affidavits submitted after the conclusion of the hearing. Appellant further contended that she had been denied an opportunity to contest the paternity of Mato, because all of the evidence concerning him was collected by the Judge after the conclusion of the hearings.

Judge Yetman denied rehearing on March 17, 1993. Appellant appealed from that decision. Only appellant filed a brief on appeal.

#### Discussion and Conclusions

Under 25 U.S.C. § 372 (1988 and Supps.), the Secretary of the Interior is vested with authority to determine the heirs of Indians dying intestate and possessed of trust property, subject to review in the Federal court system. In exercising that authority, the Secretary applies state laws of descent and distribution to determine the identity of the decedent's heirs at law. 25 U.S.C. § 348 (1988).

In Estate of James Howling Crane, Sr., 12 IBIA 209, 211 (1984), the Board held that

under 25 U.S.C. §§ 372-373 (1976), [1/] the Department \* \* \* has been entrusted with the responsibility of determining the heirs to Indian trust property, and consequently has full authority to make an independent determination of heirs. Under appropriate circumstances, this authority includes the power to reject the findings or conclusions of a state court. Lane v. United States, 241 U.S. 201 (1916); Estate of James Werny Pukah, 11 IBIA 237 (1983); Weiser v. Portland Area Director, 9 IBIA 76, 78 n.1 (1981). However, a state court decision is at least evidence which may be considered in reaching an heirship determination, and in some cases may directly affect the Department's determination. Ruff [v. Portland Area Director], 11 IBIA 267, 273 n.12 (1983)].

In Howling Crane the Administrative Law Judge gave full faith and credit to an Oklahoma State court order naming Howling Crane as the father of two dependent and neglected children. The Board held that it was error to give the state court order full faith and credit, but that the state proceeding was persuasive evidence on the issue of paternity.

Appellant here contends that the Judges should have given full faith and credit to the Navajo Tribal Court order, or should have found it dispositive on the basis of res judicata, comity, or other lesser grounds. Section 373 concerns probate of testate cases.

She contends that the order is a final, unappealed, determination that decedent was not Dana's father. Appellant cites Iowa Mutual Life Insurance Cos. v. LaPlante, 480 U.S. 9 (1987), and National Farmers Union Insurance Co. v. Crow Tribe, 471 U.S. 845 (1985), in support of her argument that tribal courts should be given deference because of the Federal trust responsibility toward Indian tribal governments, the Federal policy to promote tribal court systems, and the doctrine of exhaustion of tribal remedies.

[1] The Board cannot accept this argument. Initially, it is the Secretary, not the tribal court, that is given the responsibility to determine the heirs to the trust property of a deceased Indian. The orders of a tribal court, like the orders of a state court, are merely evidence in a Departmental probate proceeding. Neither of the cases appellant cites concerned inheritance of trust property. Furthermore, as appellant notes, the Federal policy toward tribal courts is based on the concepts of tribal sovereignty and self-determination. The determination of the heirs to trust property is peculiarly a Federal concern, based as it is in the trust responsibility owed to an individual Indian for whom the United States holds property in trust status.

Secondly, the particular tribal court actions at issue here are not sufficiently documented to be even persuasive evidence. The most persuasive document from the tribal court concerning the first paternity suit is a notice that a hearing was scheduled for June 12, 1974. The proof of service of this notice is not completed. There is no transcript of a hearing, or findings of fact and conclusions of law by the first Tribal Court Judge. The only information in the probate record indicating that a hearing was actually held comes from a letter written by a Tribal Court Advocate in support of decedent against the position advanced by Edgerton, and an affidavit from appellant submitted with her brief on appeal. <sup>4/</sup> Although the second suit was dismissed, that fact simply is not sufficient to support any conclusions about the first suit.

Therefore, the Board holds that the Judges did not err in refusing to give full faith and credit to the Tribal court order, or to determine on the basis of that order that decedent was not Dana's father.

However, Judge Nitzschke's decision indicates that he relied at least in part on the affidavits submitted by Charlotte Tsosie, Doris Pumpkin Seed, and Susan Esparza in reaching his conclusion that decedent was Dana's father. The Board cannot determine whether Judge Nitzschke would have reached the same conclusion without the affidavits. Because the affidavits were submitted to the Judge after the conclusion of the

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<sup>4/</sup> Another affidavit attached to appellant's notice of appeal indicates that a hearing was held. However, although it appears that this affidavit is from appellant, it is not signed and does not identify the affiant by name.

hearings, appellant had no opportunity to question the affiants, and the Judge had no opportunity to observe their demeanor. 5/

Furthermore, no evidence was taken at either hearing concerning the possibility that decedent was Mato's father. The inclusion of Mato as a child of decedent was based on a reference made in an affidavit submitted after the hearings, which was "verified informally" by the Judge's talking with Mato's mother. No documentation of any such conversation was placed in the probate record. The record thus contains no evidence other than the affidavit supporting a paternity determination. 6/

The Board holds that appellant was denied the opportunity to examine all of the witnesses providing evidence relating to the paternity of Dana and Mato. It, therefore, vacates that part of the order determining heirs finding decedent to be the father of Dana and Mato, and remands the case for further consideration of the paternity issues only. As part of the rehearing as to Dana, any additional evidence that can be located concerning the Navajo Tribal Court paternity proceedings can be admitted. 7/

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5/ With her notice of appeal, appellant submitted three affidavits, signed by seven persons. Although the address of only one affiant is given, it appears that the affiants are Navajos and resided in the same community as decedent and appellant. The affidavits each indicate that the affiant knew decedent and appellant, considered them married, and knew of no other woman with whom decedent had sexual relations. Appellant does not address these affidavits in her brief.

Even if the Board were to consider these affidavits as further evidence relating to Dana's paternity, and were to assume that people in the community were unaware that decedent might be having sexual relations with another woman, the lack of such knowledge within the community is extremely slight evidence as to whether or not decedent was Dana's father. Nevertheless, this is information that can be submitted through witness testimony at the rehearing ordered below.

6/ The record contains a "Data for Heirship Finding and Family History" form. This form is completed by the Bureau of Indian Affairs and furnished to the Administrative Law Judge. Under the section "Children," Mato and Jessica are listed as decedent's children. However, their names and information relating to them are clearly in a different typeface than the rest of the material on the form. The Board assumes that, following usual practice, Judge Nitzschke added the names when he determined that they were decedent's children. Mato and Jessica were not listed in the "Illegitimate Children" section of the form, although Christine, Pauline, and Dana were.

7/ Appellant raises other "miscellaneous" objections. She asks that the record be clarified to show that Clarence and Eva Pumpkin Seed were decedent's adoptive, rather than biological, parents. To the extent this clarification makes any difference the record does show that decedent was adopted.

Appellant wants the record to reflect that she and decedent lived together as common law husband and wife since May 6, 1973, and later

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the March 17, 1993, decision of Judge Yetman and October 19, 1992, decision of Judge Nitzschke are affirmed in part, and vacated and remanded in part.

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//original signed  
Kathryn A. Lynn  
Chief Administrative Judge

I concur:

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//original signed  
Anita Vogt  
Administrative Judge

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fn. 7 (continued)

solemnized their marriage. The only fact relevant in this probate proceeding is that decedent and appellant were legally married at the time of his death.

Appellant wants the record to show that decedent was present at the birth of their first child. There is no testimony concerning this birth in the record, and whether or not decedent was present is irrelevant to the decision.

Appellant objects that the credibility of Edgerton's witnesses was suspect given the fact that they were related to Edgerton. Determination of witness credibility is the job of the Judge, not appellant.

Appellant objects that Edgerton did not have a blood test taken to establish paternity. There is no statute or regulation governing Indian probate that requires a blood test to determine paternity. In the absence of such a requirement, and under the circumstances of this case, no adverse inference can be drawn from the fact that a blood test was not taken.

Appellant objects to statements made in the affidavits submitted by Edgerton. These objections can be addressed in the rehearing ordered.

Appellant objects to the affidavit submitted by Vallie White Bull, and certain testimony given by Alta Pumpkin Seed. This affidavit and testimony, which do not address the paternity of either Dana or Mato, were not relied on for any purpose.

Appellant asks that Alta be ordered not to use the name Pumpkin Seed and that the record be corrected to show Alta's name to be Dupree. The Board lacks authority to issue the requested order. Furthermore, the record will reflect the name given by the witness, not the name appellant wants the witness to use.

Appellant asks that decedent's enrollment number be corrected from OSU-17927 to OSU-17929. OSU-17927 is the number shown in all of the information furnished by the Bureau of Indian Affairs. If this number is incorrect, it can be corrected on rehearing.