



INTERIOR BOARD OF INDIAN APPEALS

Estate of Santana Nailor

30 IBIA 150 (12/16/1996)



United States Department of the Interior

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

ESTATE OF SANTANA NAILOR : Order Docketing and Dismissing Appeal
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: Docket No. IBIA 97-16
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:
: December 16, 1996

Appellants Gerald G. Nailor and Nancy N. Salazar sought review of an August 29, 1996, order issued by Administrative Law Judge Patricia McDonald. The order reopened the estate of Santana Nailor (decedent), and redetermined her heirs. IP GA 13G 79, IP AL 182L 94 (Reopening).

Decedent's estate was probated in 1980. By order of April 23, 1980, Judge McDonald found that decedent's heirs were Gerald Nailor, Nancy Salazar and Gwendolyn Gail Nailor. Gerald Nailor and Nancy Salazar are decedent's children. Gwendolyn Nailor was decedent's granddaughter, the daughter of decedent's predeceased daughter Elsie Joyce Nailor.

In a July 17, 1996, order to show cause, Judge McDonald notified appellants and other interested parties of the filing of a petition for reopening by the Superintendent, Northern Pueblos Agency, Bureau of Indian Affairs (Superintendent). As pertinent to this appeal, the order stated:

By petition received April 14, 1994, the Superintendent * * * notified this office that the grandchild [Gwendolyn Nailor], who is now deceased, was actually adopted by others during the lifetime of her mother and grandmother and therefore should not have inherited. Also, the children of a prior deceased son, Alfred Nailor, were omitted as heirs to this estate. * * *

It appears that:

1. Ellen Marie Norman aka Gwendolyn Gail Nailor was adopted on July 10, 1966 by order of the Oklahoma County Court; therefore, she was not eligible to inherit in this estate pursuant to NMSA 40-7-15 and 45-21-09, nor through a deceased natural parent from a natural grandparent, Commerce Bank & Trust v. Brady, 95 N.M. 412, 622 P.2d 1032 (1981).

2. Nuna Nailor and Arron Nailor are children of decedent's son, Alfred Nailor, but were not included as heirs to this estate.

3. A manifest injustice has occurred which can be corrected by changing the record of title to the restricted property that belonged to [decedent]. This would result in each grandchild receiving a 1/6 share.

4. Gerald G. Nailor and Nancy Salazar's shares remain unchanged.

The Judge gave interested parties, including appellants, an opportunity to show why the probate should not be reopened to delete Gwendolyn Nailor as an heir, and to add Nuna Nailor and Arron Nailor as heirs. Stating that no responses had been received, on August 29, 1996, Judge McDonald redetermined decedent's heirs and their respective shares in the estate to be: Gerald Nailor, 2/6; Nancy Salazar, 2/6; Nuna Nailor, 1/6; and Arron Nailor, 1/6.

Appellants appealed from this decision.

By order dated October 22, 1996, the Board noted:

In their notice of appeal, appellants state only that they "are aggrieved by the final decision" issued by Judge McDonald. There is no evidence that appellants' shares in decedent's estate were reduced, and the Judge specifically stated that their shares remained unchanged. Appellants are given until November 18, 1996, to show how they are aggrieved by the August 29, 1996, decision. Failure to respond to this order, or to show cause will result in the dismissal of this appeal.

The Board has not received a response to its order.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal from Judge McDonald's August 29, 1996, order is docketed and dismissed.

//original signed

Kathryn A. Lynn
Chief Administrative Judge

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Anita Vogt
Administrative Judge