



INTERIOR BOARD OF INDIAN APPEALS

Estate of Theresa Smith

30 IBIA 228 (03/06/1997)

Related Board case:
27 IBIA 260



United States Department of the Interior

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

ESTATE OF THERESA SMITH : Order Affirming Decision
:
: Docket No. IBIA 96-58
:
: March 6, 1997

This is an appeal from a February 28, 1996, order approving will issued in the estate of Theresa Smith (decendent), IP SA 364N 94, by Administrative Law Judge William E. Hammett. For the reasons discussed below, the Board affirms Judge Hammett's order.

Appellant Olinga Smith, decendent's adopted daughter, was the sole beneficiary under a will executed by decendent on December 14, 1976. By order issued on September 21, 1994, Judge Hammett approved the 1976 will. Decendent's son, George Urovak, Sr., sought rehearing on the grounds that decendent had executed a later will. However, Urovak failed to produce a later will and, on January 31, 1995, Judge Hammett denied rehearing.

On March 14, 1995, Judge Hammett was advised by an attorney with Alaska Legal Services that decendent had executed a will on February 10, 1983, and that the will was in the custody of the Superior Court, Fourth Judicial District, Bethel, Alaska. Judge Hammett requested that the Superior Court release the will to him, and the Court did so. On March 20, 1995, Judge Hammett withdrew his September 21, 1994, and January 31, 1995, orders and advised the parties that a hearing would be scheduled for the purpose of considering the newly discovered will. ^{1/}

The hearing was held on May 9, 1995. Although notice of the hearing was sent to her, appellant did not attend. On February 28, 1996, Judge Hammett issued an order approving decendent's 1983 will and holding that, under that will, decendent's entire trust and restricted estate passed to her grandson, Timothy Urovak.

In her appeal to the Board, appellant alleges that George Urovak, Sr., exercised undue influence over decendent at the time the 1983 will was executed. She requests that another hearing be held so that her allegation can be considered. She fails to explain, however, why she neither attended

^{1/} Urovak filed an appeal with the Board from the January, 1995, order denying rehearing. He included with his notice of appeal a copy of the Mar. 20, 1995, order withdrawing the Jan. 31, 1995, order. On Mar. 30, 1996, the Board dismissed Urovak's appeal as premature. Estate of Theresa Smith, 27 IBIA 260 (1995).

the May 9, 1995, hearing nor raised the issue of undue influence when this case was pending before Judge Hammett.

The Board has a well-established practice of declining to consider issues raised for the first time on appeal. E.g., Estate of Rufus Ricker, Jr., 29 IBIA 56 (1996), and cases cited therein. The Board follows that practice here and declines to consider appellant's allegation of undue influence.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, Judge Hammett's February 28, 1996, order approving will is affirmed.

//original signed

Anita Vogt
Administrative Judge

//original signed

Kathryn A. Lynn
Chief Administrative Judge