



INTERIOR BOARD OF INDIAN APPEALS

In the Matter of the Will of Emanuel Mal Revard

37 IBIA 52 (11/14/2001)



## United States Department of the Interior

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

IN THE MATTER OF THE WILL OF : Order Affirming Superintendent's Order  
EMANUEL MAL REVARD :  
: Docket No. IBIA 01-106  
:  
: November 14, 2001

This is an appeal from a February 14, 2001, order of the Acting Superintendent, Osage Agency, Bureau of Indian Affairs (Superintendent; BIA), denying the motion of James M. Revard (Appellant) to reopen Departmental proceedings concerning the will of Emanuel Mal Revard (Decedent), Osage Allottee 1751. For the reasons discussed below, the Board affirms the Superintendent's order.

Decedent died testate on April 11, 1983, owning a 1.20000 Osage headright interest. His will provided in paragraph 5:

I give, devise, and bequeath all the rest, residue and remainder of my estate, including any and all Osage Indian Headright interests, to my Wife [Opal Estella Revard], if she survives me for One Hundred Eighty (180) days. If my Wife does not survive me for One Hundred Eighty (180) days, I give the residue of my estate including any and all Osage Indian Headright interests to my son, [Appellant], if he survives me for that period.

Pursuant to 25 C.F.R. Part 17, the Field Solicitor, Pawhuska, conducted hearings concerning Decedent's will. Following completion of the hearings, he recommended to the Superintendent that Decedent's will be approved. The Field Solicitor's memorandum, dated July 20, 1984, stated at page 5:

I find that by virtue of the Act of October 21, 1978, [Pub. L. No. 95-496, 92 Stat. 1660,] § 7 \* \* \*, Opal Estella Revard is prohibited from receiving more than a life estate in the 1.20000 Osage headright interest since she does not possess Osage Indian blood, and the remainder therein vests in [Decedent's] heirs of Osage Indian blood.

The Superintendent approved the will in accordance with the Field Solicitor's memorandum.

Decedent's will was then probated in the District Court for Osage County, Oklahoma. On April 1, 1985, the Court issued an order stating at page 4:

That the said OPAL ESTELLA REVARD is awarded a life estate in and to the 1.20000 Osage Headright Interest and upon her death, said Osage Headright Interest to vest in [Decedent's] Osage heirs, to wit: JOSEPH REVARD, a/k/a BOCKIUS, son, (1/4); CHETOPA REVARD, a/k/a BOCKIUS, son, (1/4); [Appellant], son, (1/4); CHERYL LYNN REVARD, granddaughter, (1/8); and LORI LEE REVARD, granddaughter, (1/8), children of decedent's deceased child CHARLES REVARD. [1/]

Opal Revard died on December 3, 1997, thus terminating her life estate. On August 31, 1999, Appellant moved to reopen the 1984 Departmental proceedings, contending that, pursuant to the terms of Decedent's will, he should receive the full interest in Decedent's headright.

In January 2001, the Special Attorney, Office of the Tulsa Field Solicitor, recommended that the Superintendent deny the motion to reopen. In his memorandum to the Superintendent, the Special Attorney analyzed the issues and concluded that the will had been correctly interpreted in the original proceeding and that, even if it had not been correctly interpreted, reopening of the 1984 proceedings was precluded under controlling law. Relying on the conclusions reached in the Special Attorney's memorandum, the Superintendent denied the motion to reopen on February 14, 2001.

On appeal to the Board, Appellant makes the same arguments he made before the Superintendent. The Board finds his arguments no more persuasive than did the Special Attorney and the Superintendent.

Before the Superintendent, Appellant contended that "paragraph Five of [Decedent's will] is perfectly clear as to [Decedent's] intent to leave the entire remainder interest in the Osage headright to [Appellant]." Appellant's Motion to Reopen at 2.

Concerning that contention, the Special Attorney concluded:

[U]nder the clear wording of the will, [Appellant] is the residuary taker only if Opal Revard failed to survive the decedent by 180 days. That event did not happen. While it may have been the intent of [Decedent] that [Appellant] take any interest not devised to Opal Revard, nevertheless, under the plain wording of the Fifth Paragraph, [Appellant] would not take the residu[e] because Opal

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1/ On May 8, 1985, the Court issued an Order Nunc Pro Tunc, correcting the name "Charles Revard" to "Marvin Revard."

survived for more than 180 days. Thus, it appears that, notwithstanding the arguments of [Appellant], he is not the residuary taker under the will.

Special Attorney's Memorandum at 3.

In his brief on appeal, Appellant again contends that paragraph 5 is clear as to Decedent's intent to devise the residue of his estate to Appellant. See Appellant's Appeal Brief at 2. However, as the Special Attorney observed, paragraph 5 plainly states that Appellant was to receive the "residue of [Decedent's] estate including any and all Osage Indian Headright interests" only if Opal Revard did not survive Decedent for 180 days.

Thus, assuming it were appropriate to reach the merits of this matter (a premise the Board rejects below), Appellant would be required to show that, despite the plain language of paragraph 5, Decedent intended a result different than the one described by that language. Appellant has made no effort whatsoever to make such a showing. Accordingly, he has failed to show error in the Superintendent's decision insofar as that decision concerned the interpretation of paragraph 5 of Decedent's will.

Appellant argues that there is precedent for reopening this case. For this argument, he cites Maurer v. Muskogee Area Director, 17 IBIA 129 (1989), appeal dismissed, Maurer v. Secretary of the Interior, No. 89-C-494-E (D. N. Okla. Mar. 15, 1991); Estate of Lillie Morrell Burkhardt, IA-T-27, 3 IBIA 284 (1974), and Estate of William Bigheart, Jr., IA-T-21 (Supp.), 3 IBIA 293 (1969).

In Maurer, the Board recognized that, under Departmental precedent, reopening of an Osage will case is authorized where the will has been approved under a mistake of fact. 2/ Burkhardt and Bigheart are two in a line of Departmental decisions in Osage will cases which have described the principles followed in determining whether a case will be reopened. Those decisions make it clear that reopening is an extraordinary remedy and is authorized only in limited circumstances, such as where fraud has been committed or where the original proceedings were not conducted in the manner required by statute and regulation. Burkhardt at 4,

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2/ Maurer was an administrative appeal rather than an appeal from a Superintendent's order under 25 C.F.R. Part 17, Action on Wills of Osage Indians. At the time Maurer was decided, authority to decide appeals under 25 C.F.R. Part 17 was vested in the Department's Solicitor's Office, rather than the Board. In Maurer, therefore, the Board exercised only limited jurisdiction. See 17 IBIA at 132.

On Mar. 16, 1992, responsibility for disposition of appeals in Osage will approval matters was transferred to the Board. See Departmental Manual (DM) Release 2937. For reasons no longer clear, a few pre-1992 Solicitor's Office decisions in Osage will matters (including Burkhardt and Bigheart) were included in Volume 3 of the Board's decisions.

3 IBIA at 288; Bigheart at 4-5, 3 IBIA at 297-98. See also Estate of Joseph Cannon, IA-T-19 (Supp.) at 3-5 (1969); Estate of Ellen Fitzpatrick, IA-T-5 (Supp.) at 8-9 (1968).

Appellant cites no Departmental decisions, and the Board is aware of none, that would support reopening in this case. Appellant does not allege fraud or mistake of fact. Nor does he allege that there was any defect in the proceedings before the Superintendent. Rather, his only allegation is that the Superintendent erred in his interpretation of Decedent's will.

Appellant does not contend that he was unaware of the Superintendent's 1984 decision at the time it was issued. Nor does he offer any reason for his failure to appeal that decision under 25 C.F.R. § 17.14.

Appellant's time to appeal under 25 C.F.R. § 17.14 has long since expired. Reopening is not available to him for the purpose of reviving his right to appeal a legal conclusion reached by the Superintendent in 1984.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, DM Release 2937, Mar. 16, 1992, the Superintendent's February 14, 2001, order is affirmed.

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//original signed

Anita Vogt  
Administrative Judge

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//original signed

Kathryn A. Lynn  
Chief Administrative Judge