



INTERIOR BOARD OF INDIAN APPEALS

Estate of Jesse Jay Kirn

41 IBIA 113 (07/06/2005)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ESTATE OF JESSE JAY KIRN, SR. : Order Adopting Recommended
: Decision
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: Docket No. IBIA 03-109
:
:
: July 6, 2005

This is an appeal from an April 15, 2003, Recommended Decision Confirming Inventory issued by Administrative Law Judge Robert G. Holt in the estate of Jesse Jay Kirn, Sr. (Decedent), Probate No. RM-206-0087. ^{1/} Appellant Thomas H. Kirn is Decedent's son. For the reasons discussed below, the Board adopts Judge Holt's recommended decision.

Decedent died on January 19, 2002, having executed a will on March 22, 2001, in which he devised his entire estate to his wife Ramona. The will also included a provision concerning the division of his trust real property in the event Ramona predeceased him. In that provision, Decedent listed several properties and specified which were to go to each of his four children: Jesse, Jr., Rhonda, Russell, and Appellant. The provision did not go into effect because Ramona was still living at Decedent's death.

At the initial hearing in Decedent's estate, held by Judge Holt on November 5, 2002, Appellant and Rhonda challenged the estate inventory, contending that Decedent intended to distribute his trust real property to his children through gift deeds, which should have been approved.

Acting under the Board's standing order in Estate of Douglas Leonard Ducheneaux, 13 IBIA 169 (1985), Judge Holt held a supplemental hearing on February 4, 2003, to take evidence concerning the estate inventory. At the hearing, Appellant and Rhonda stated that they were seeking retroactive approval of the gift deeds. They were opposed by Jesse, Jr., Russell, and Ramona, who stated that they did not want the gift deeds approved.

^{1/} In the same Apr. 15, 2003, document, Judge Holt issued a Decision Distributing Estate, in which he approved Decedent's will. That decision has not been appealed.

With respect to the evidence adduced at the supplemental hearing, Judge Holt's recommended decision states in part:

At the request of Ramona * * *, Sandra [2/] went to Decedent's residence on November 16, 2001 to help prepare some gift deed applications. Other family members were present and they had a color coded print out showing tracts of land which were to be gift deeded to Decedent's children. This color coded document was not given to Sandra and has not been admitted into evidence. Sandra took notes from the document. Ramona filled out the gift deed applications and Decedent signed them. * * * Because numerous allotments were involved Sandra told Ramona to write the phrase "various allotments" in the space for the land descriptions.

After the meeting in Decedent's home, on November 19, 2001, Sandra, in accordance with BIA procedure, requested a Title Status Report ("TSR") from the Regional Land Titles and Records Office in Billings, Montana. The TSR would confirm Decedent's ownership of the property to be gifted and is required by BIA procedure before a gift deed can be approved. Sandra also prepared draft deeds for Decedent to sign after the TSR was received. The BIA computers were shut off pursuant to an order in the Cobell v. Norton litigation on December 5, 2001, the TSRs were never received and Decedent never reviewed or signed the deeds. Decedent died on January 19, 2002.

On February 6, 2002, after Decedent died, Ramona and Russell came [to] the realty office at Fort Peck Agency and reviewed the draft deeds and several notes were made on the deeds. Sandra speculated that Ramona may have wanted to continue the gift deed process in her own right after Decedent's probate was completed.

Another BIA employee, Brandon Williamson ("Brandon"), did not testify but submitted a statement * * *. Brandon accompanied Sandra to Decedent's residence on November 16, 2001. His statement substantially confirms Sandra's. He added the additional details that Decedent had difficulty moving around and remained in the living room while Sandra took notes on the various property descriptions and Ramona filled out the applications in

2/ Sandra Yellow Hammer, a Realty Assistant at the Fort Peck Agency, Bureau of Indian Affairs (BIA).

the dining room. He also observed Decedent as using oxygen. When the applications were filled out Decedent came into the room to review and sign them.

* * * * *

Having observed the demeanor of the witnesses and judged their credibility and having considered all of the evidence submitted, the undersigned finds that the totality of the circumstances surrounding the preparation and processing of the gift deeds does not demonstrate that they should be approved. The most serious defect is the lack of property descriptions on the applications. The evidence showed that a complex series of transactions was contemplated. In some situations use of the phrase “various allotments” combined with the notes taken by a BIA employee may have been adequate to provide a reasonable description. However the evidence showed that Decedent did not take an active part in the discussions when the property allocations were made among the various children. Decedent essentially signed blank applications and allowed his family to divide his property. This also may have been an acceptable procedure if Decedent also had the opportunity to verify his intentions when he later reviewed and signed the Deeds and the Affidavits * * * that did contain the property descriptions. However, Decedent never accomplished this step because he died before it could be accomplished.

April 15, 2003, Recommended Decision at 3-4. Judge Holt concluded that “without specific property descriptions the applications for gift deed signed by the Decedent were inadequate to clearly show his intentions.” Id. at 4. He therefore recommended that the gift deed applications not be approved retroactively and that the estate inventory not be modified.

On appeal to the Board, Appellant argues: “All of the facts of this case support the contention that [Decedent] * * * intended to gift deed his property to his four children.” Appellant’s Opening Brief at 6. He compares this case to Estate of Mary Dorcas Gooday, 35 IBIA 79 (2000), and argues: “Clearly focusing heavily on [Gooday’s] intent, the Board found that her gift deed should be approved [retroactively]. This case is quite similar.” Id.

In fact, this case differs markedly from Gooday. In Gooday, there was no question as to what property Gooday intended to include in her gift deed and no question as to the intended recipient. This case is far more complex, because Decedent owned several tracts which he evidently intended to divide among his four children.

As Judge Holt noted, property descriptions were missing from the gift deed applications, which were the only documents Decedent signed. Thus the applications

themselves are not sufficient to show what property Decedent intended to gift deed to each of his children. Further, the circumstances surrounding preparation of the applications were not such that Decedent's intent was made clear beyond dispute. ^{3/} Finally, there was disagreement within the family as to whether the draft deeds accurately reflected Decedent's intent, as is evident from the testimony at the February 4, 2003, hearing. Ramona and Russell testified that there were errors in the draft deeds, and Russell testified that he and Ramona made changes on the draft deeds to reflect what they believed Decedent's intent to be. Tr. of Feb. 4, 2003, hearing at 98-99 (Ramona's testimony); id. at 85-87, 90 (Russell's testimony). Rhonda, although supporting approval of the gift deeds, testified that there were discrepancies in property descriptions concerning mineral rights. Id. at 72, 76-82.

Appellant's notice of appeal reflects his continued disagreement with Ramona and Russell concerning Decedent's intent. In handwritten notes included with his notice of appeal, he alleges that Ramona and Russell tampered with the draft deeds following Decedent's death. In one note, he alleges that "[t]hey put a 4 way split on land. [Decedent] didn't want." ^{4/} The actions Appellant construes as tampering are undoubtedly the actions Russell's testimony described as corrections reflecting Ramona's and his understanding of Decedent's intent.

Plainly, the fact that Decedent's family members do not agree concerning Decedent's intent is strong support for Judge Holt's decision.

^{3/} With his opening brief, Appellant submits affidavits from Rhonda and himself, both dated Oct. 2, 2003, in which he attempts to submit new evidence concerning preparation of the gift deed applications. The Board ordinarily does not consider evidence presented for the first time on appeal. See Edwards v. Rocky Mountain Regional Director, 41 IBIA 77, 80 (2005), and cases cited therein. In this case, where Appellant had ample opportunity to present his evidence at the hearing before Judge Holt, there is absolutely no reason for the Board to depart from its usual practice.

^{4/} This statement appears in a handwritten note included with the copy of his notice of appeal Appellant sent to Judge Holt. In a similar handwritten note included with the notice of appeal Appellant filed with the Board, he stated: "They [Ramona and Russell] wanted 4 way split on land. [Decedent] didn't approve this deed applications show this."

It is not clear that Appellant sent any versions of these handwritten notes to the other interested parties, although he did serve his notice of appeal on the other parties after being ordered by the Board to do so.

The Board has reviewed the entire record and finds that it amply supports Judge Holt's Recommended Decision Confirming Inventory. The Board therefore adopts the Judge's recommended decision and directs that Decedent's estate be distributed in accordance with his April 15, 2003, Decision Distributing Estate. This order is issued under authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1.

I concur:

// original signed
Anita Vogt
Senior Administrative Judge

// original signed
Steven K. Linscheid
Chief Administrative Judge