



INTERIOR BOARD OF INDIAN APPEALS

Estate of Phillip Quaempts

41 IBIA 252 (09/28/2005)

Judicial review of this case:

Reversed and remanded, *Senator v. United States*,  
No. CV-05-3105-RHW (E. D. Wash. Feb. 26, 2010)

On remand:

52 IBIA 348



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
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ESTATE OF PHILLIP QUAEMPTS : Order Affirming Decision  
:   
: Docket No. IBIA 03-140  
:   
: September 28, 2005

This is an appeal from a July 15, 2003, order denying rehearing by Administrative Law Judge William E. Hammett (ALJ) in the estate of Phillip Quaempts (Decedent), deceased Yakama Indian, Probate No. IP SA 197 N 98. That order let stand the ALJ's August 9, 2001, order determining heirs. That order determined that Appellant, Johanna Senator, who was Decedent's companion for 16 years prior to his death, was not Decedent's surviving spouse and thus was not an heir to his trust property. For the reasons stated below, the Board of Indian Appeals (Board) affirms the ALJ's denial of rehearing and his August 9, 2001, order determining heirs.

## Background

Decedent died intestate on March 2, 1996, at Toppenish, Washington. The ALJ held hearings on August 21, 1998, and September 22, 1999, to determine the heirs and settle the trust estate of Decedent. In briefing and testimony, Appellant claimed that she was Decedent's legal spouse by Indian custom marriage, and that Decedent was divorced from his prior spouse, Bernadine Napyer Quaempts, also by Indian custom. 1/ In the alternative, Appellant requested that, should she not be determined to be an heir of Decedent, she be granted a life estate in the home on an allotment owned by Decedent in which she and Decedent had resided for the 16 years prior to his death.

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1/ It appears to be undisputed that Ms. Quaempts married Decedent in November 1973 and separated from him permanently, with no intent to reunite, in May 1980. Appellant claims to have married Decedent in November 1980, at which time they had a religious ceremony with lighting of candles in a Shaker church on the Yakama Reservation. Appellant claims that the ceremony was according to tradition and constituted an Indian custom marriage.

Appellant also filed a creditor claim for reimbursement of various loan payments and other expenditures she had made, allegedly on Decedent's behalf. Prior to the hearings, Appellant identified \$59,763.92 in expenses and was awaiting an accounting from Yakama National Tribal Enterprises as to additional payments made by Appellant on loans held by or jointly with Decedent. After the hearings but prior to the ALJ's decision, Yakama Nation Tribal Enterprises provided the court with the requested accounting, which identified total additional payments by Appellant in the amount of \$8,021.73.

On August 9, 2001, the ALJ issued an Order Determining Heirs. In that order, the ALJ determined that Ms. Quaempts, rather than Appellant, was Decedent's surviving spouse for inheritance purposes. The ALJ concluded that, for the purposes of the probate forum, Decedent had not divorced Ms. Quaempts. The ALJ concluded that neither Washington State law nor the Yakama Nation's code recognizes Indian custom divorce. Finally, the ALJ noted that the Yakama code provides that a marriage is invalid "where either party is lawfully married to another living spouse unless the former marriage has been legally annulled or dissolved." Order at 2 (citing Revised Yakama Code (R.Y.C.) Section 22.01.11). Thus, the ALJ determined that even if an Indian custom marriage between Appellant and Decedent could otherwise be recognized, such recognition would be barred because Decedent was still legally married to Ms. Quaempts. Based on this analysis, the ALJ determined that, for the purposes of the probate forum, Ms. Quaempts was Decedent's spouse and an heir to his estate. 2/

With respect to Appellant's alternative request for a life estate in the property on which she had resided with Decedent, the ALJ concluded that he had no authority to order the creation of a life estate, which could be accomplished only voluntarily by the heirs. With respect to Appellant's monetary claims, the ALJ allowed \$5,974.95 to reimburse Appellant for certain expenses agreed to by the heirs. The ALJ disallowed entirely the amount sought by Appellant for reimbursement of loan payments. The ALJ found that it was difficult to assess which loans yielded funds that accrued to Decedent's sole benefit and that Appellant therefore failed to establish any part of her claim based on loan payments made. In addition, with respect to loan payments made for home improvements, the ALJ found that Appellant benefitted from those payments because she had lived in the home for many years.

Appellant filed a timely petition for rehearing. The petition argued that the ALJ erred as a matter of law in determining that Ms. Quaempts was not divorced from Decedent. The petition advanced a new argument that, under Washington State law, Decedent's marriage to Ms. Quaempts could be recognized as "defunct" without a formal divorce. The petition also purported to present new and material evidence regarding the existence of the Indian custom

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2/ The order also determined that six living children and a grandchild were heirs to Decedent's estate.

marriage of Appellant and the Indian custom divorce of Ms. Quaempts in the form of a third-party affidavit attesting to Decedent's intent to divorce Ms. Quaempts and marry Appellant as well as business and tax documents identifying Decedent and Appellant as husband and wife. Finally, the petition argued that the order's denial of Appellant's claims for reimbursement of loan payments disregarded or minimized the fact that many of the payments were made from Appellant's Individual Indian Money (IIM) account.

On July 15, 2003, the ALJ issued the Order Denying Petitions for Rehearing. <sup>3/</sup> The ALJ concluded that the Washington State cases pertaining to "defunct" marriage addressed only the question of whether a long separation and other circumstances caused community property to become individual property and did not address the question whether a long separation constituted a divorce. The ALJ further concluded that the cases relied on by Appellant suggested that the short time that Decedent and Ms. Quaempts had been separated at the time of Appellant's alleged marriage — approximately six months — would not establish a defunct marriage under Washington law in any event. The ALJ also concluded that the purported "new evidence" proffered by Appellant did not affect the ALJ's determination that, under the terms of the Yakama code, Appellant was not married to Decedent at the time of his death. The ALJ did not address the issue of Appellant's creditor claims.

Appellant filed a timely appeal to the Board. Appellant incorporated an opening brief into her notice of appeal. No other parties have submitted filings to the Board.

#### Discussion

In probate proceedings, marital status is determined by the laws of the jurisdiction in which the relationship was created. Estate of Paul Greenwood, 38 IBIA 121, 122 (2002); Estate of Henry Frank Racine, 13 IBIA 69, 71 (1985). Here, Appellant claims to be married under Yakama tribal law and thus whether she is Decedent's legal spouse is determined under Yakama law. The burden is on Appellant to prove that she married Decedent in an Indian custom marriage. See Estates of Clara Seltice Sherwood and Annie Eulopsen (Big Tom) Big Smoke Sherwood, 14 IBIA 238, 239 n.2 (1986).

The relevant Yakama code provisions on marriage and divorce have existed in their current form since 1977, prior to the time that Appellant claims to have married Decedent. The code provides two mechanisms by which a valid marriage may be constituted. A valid marriage may result by the issuance of a marriage license by the Tribal Court or other lawful

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<sup>3/</sup> Decedent's daughter and an heir to the estate, Dora Quaempts, also filed a petition for rehearing regarding the award of monetary claims to Appellant and alleging that Appellant improperly continued to occupy the home on one of Decedent's allotments. The ALJ denied this petition, which is not relevant to the issues on appeal.

issuing agency and execution of a written contract by both parties to the marriage. In the alternative, the code provides that

Tribal custom marriages consummated after the effective date of this Code shall be recognized as legal and binding if they are duly recorded within the records of the Tribal Court by signing of a Marriage Register maintained by the Clerk of the Court, and each party must sign such Register within five (5) days of the Tribal custom marriage ceremony.

Revised Yakama Code § 22.01.05(3). Appellant contends that she and Decedent were married by Indian custom in a religious, candle-lighting ceremony held in a Shaker church in November 1980. Appellant concedes, however, that she and Decedent did not sign a marriage register.

The Yakama Tribal Court, in a related case, treated the registration requirement as mandatory. That case involved a petition filed by the Appellant here, Johanna Senator, to be appointed as the administrator of the portion of Decedent's estate under the jurisdiction of the Yakama Tribal Court. Appellant had based her petition on her claim that she was the "traditional wife" of Decedent. The Yakama Tribal Court denied the petition based in part on a finding that "there was no Tribal Custom Marriage registered with the Tribal Courts [as] codified in R.Y.C. 22.01.05 subsection (3)." See Order regarding Petition for Letters of Administration, In Re: The Estate of Phillip Kuneki Quaempts, Case No. 0-96-8 (Yak. Tr. Ct., July 30, 1996).

The Board concludes that Appellant's claim to have married Decedent fails because Appellant and Decedent failed to sign the marriage register as required by the Yakama code. Appellant argues that the failure to sign the marriage register cannot be considered to bar recognition of her marriage because the record shows that no such register exists and that it appears that no party has ever sought to sign the register. The Board's role here, however, is to apply the law of the jurisdiction under which the marriage is claimed to occur, and under that law, Appellant was not validly married to Decedent.

Appellant argues that, despite her and Decedent's failure to register their marriage with the Tribal Court, the marriage may be recognized pursuant to R.Y.C. § 2.02.07, which grants Tribal Court judges the power "[t]o recognize Yakima Tribal customs and traditions when deciding cases and applicable law." While this provision may permit the Tribal Court to recognize customs not incorporated into the Yakama code, we do not view this provision to permit the Board to ignore an express limitation placed on such customs in the code. Thus, we

see no basis to deviate from the express requirement in the Yakama code that Indian custom marriages must be properly registered to be deemed valid. 4/

Appellant's reliance on evidence that certain entities identified Appellant and Decedent as husband and wife for business or tax purposes does not provide proof that they had a valid marriage under Yakama Tribal law. The ALJ correctly determined that this did not constitute new evidence relevant to the case. There is little doubt from the record that Appellant and Decedent were considered to be husband and wife by themselves, their friends and acquaintances, lenders, and others. However, the Board finds that they were not married in the eyes of the law. The Board thus affirms the ALJ's determination that Appellant is not an heir to Decedent's estate.

With respect to her creditor claims, Appellant makes three arguments. First, Appellant reiterates the argument made in her petition for rehearing that she is entitled to reimbursement for debts paid from her IIM account because they were paid from that account. If Appellant means to assert this as proof that she, not Decedent, actually made the payments, that adds no force to her case because the ALJ did not question whether she in fact made the payments. If Appellant means to suggest that creditor claims based on payments from an IIM account have some greater claim against an estate, the Board is unaware of any such authority and Appellant provides no support for such a proposition.

Second, Appellant states that she does not challenge the finding that she is entitled to the amount of \$5,974.95 as an allowed creditor claim, but states that she "paid from her timber and land sale account on Phillips behalf for the mortgage on the house in the amount of approximately \$4,000." Opening Brief at 6. Neither the "Itemized Statement" of claims submitted by Appellant nor the "accounting" submitted by Yakama Nation Tribal Enterprises, which provided the basis for Appellant's claims in the initial proceedings, identify a claim for reimbursement of such a payment. The probate rules that were applicable to this probate required all claims to be submitted prior to the conclusion of the first hearing. See 43 C.F.R. § 4.250(a) (2000). In addition, the Board ordinarily does not consider arguments or evidence raised for the first time on appeal. Todd O'Bryan v. Acting Great Plains Regional Director, 41 IBIA 119, 130 (2005). Accordingly, the Board declines to consider this claim for a previously unspecified payment.

Finally, Appellant argues, without explanation, that "[t]he amount of payments by Ms. Senator for the benefit of decedent in the amount of \$8,021.73 should also be allowed per the record." Opening Brief at 6. The ALJ denied this claim because Appellant had not established

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4/ Because we hold that Appellant cannot otherwise establish that she had a valid marriage with Decedent, we need not and do not reach the question whether Ms. Quaempts' marriage to Decedent was terminated by Indian custom divorce.

which, if any, of the payments made were for the sole benefit of Decedent. This is a question of fact that is for the ALJ, as the finder of fact, to determine. The burden is on the creditor to prove the claim. See Estate of Neola Agnes Gardner Lion Shows, 2 IBIA 16, 21 (1973). Appellant provides no argument or citation to the record to show why the ALJ was wrong. The accounting provided by Yakama National Tribal Enterprises does not identify what the loan payments are for, and the Board sees no evidence in the record that would have enabled the ALJ to make such a determination. We see no reason to disturb the ALJ's finding that Appellant did not establish that the payments were made solely for decedent's benefit. The Board thus affirms the ALJ's denial of these creditor claims.

#### Conclusion

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board affirms the ALJ's July 15, 2003, Order Denying Petition for Rehearing and the August 9, 1998 Order Determining Heirs.

I concur:

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// original signed  
Katherine J. Barton  
Acting Administrative Judge

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// original signed  
Steven K. Linscheid  
Chief Administrative Judge