



INTERIOR BOARD OF INDIAN APPEALS

Estate of Mary Anne Wesho Leonard Shegonee

43 IBIA 185 (07/06/2006)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ESTATE OF MARY ANNE WESHO : Order Affirming Decision
LEONARD SHEGONEE :
: Docket No. IBIA 04-156
:
: July 6, 2006

Faith M. Leonard-Morris (Appellant), pro se, seeks review of a September 10, 2004 Order Denying Petition for Reopening issued by Administrative Law Judge David A. Clapp in the Estate of Mary Anne Wesho Leonard Shegonee (Decedent) 1/, deceased Menominee Indian (Probate No. IP TC 330 S 99). Appellant is Decedent's daughter. For the reasons discussed below, the Interior Board of Indian Appeals (Board) affirms the September 10, 2004 order.

Factual and Procedural Background

Decedent was born on May 7, 1936 and died on August 15, 1985 at Cranmoor, Wisconsin. Administrative Law Judge Frederick W. Lambrecht conducted a probate hearing on May 23, 2000. One witness, Theresa Gourd, testified to verify certain information related to family history and heirship. 2/

On December 13, 2000, Judge Lambrecht issued an Order Determining Heirs and Decree of Distribution, finding that at the date of her death, Decedent did not own any trust or restricted property, but that at the time her estate was submitted for probate, Decedent owned an Individual Indian Money Account with a cash balance of \$3,031.60, plus accruing interest. Judge Lambrecht also determined that Decedent did not have a will and that no claims had been filed against her estate. Judge Lambrecht determined that Decedent's heirs, under Wisconsin law, were her husband, William Shegonee (Shegonee),

1/ The Board's interim orders in this case incorrectly spelled Decedent's name as "Shegonne." The probate record indicates that the correct spelling is "Shegonee."

2/ Theresa Gourd apparently helped raise two of Decedent's grandchildren after their father, one of Decedent's sons, died.

who had died in 1994, and her eight children by Marvin Leonard Sr., Decedent's first husband. Decedent's property, therefore, was to be distributed to Shegonee (1/3), and to her children, including Appellant (2/24 each).

On February 3, 2003, Judge Lambrecht issued an Order Dismissing Case from Docket. According to the Order, on April 27, 2001, Appellant had faxed a request to reopen Decedent's estate "because [Appellant] needed time to obtain a disclaimer that was signed [by] William Shegonee." The order stated that the reason for dismissing the case was that "after numerous attempts to obtain [the disclaimer signed by Shegonee], the document has not been produced."

On July 2, 2004, Appellant sent a letter addressed to Judge Lambrecht, asking again to "reopen [her] deceased mother's estate." Appellant apologized "for the delay in getting a certified copy of the disclaimer of share, signed by William Shegonee on August 26, 1985." Enclosed with Appellant's letter was a copy of a Disclaimer of Share, apparently signed by Shegonee and entered by the Marathon County (Wisconsin) Circuit Court in the state probate proceeding for Decedent's estate. The disclaimer stated:

I, William Shegonee, hereby disclaim any and all interest I have in the estate of Mary Ann Shegonee, which rights I would have as a surviving widower and I consent to the appointment of Faith Leonard as Personal Representative, to serve without bond.

I have been fully advised of the share to which I am entitled, but the decedent and I have been separated for approximately one year and she is my second wife and all of the issue of the deceased are not my children but are children of the deceased, Mary Ann Shegonee.

On September 10, 2004, Judge Clapp, to whom the case had been assigned, issued an Order Denying Petition for Reopening. In his decision, Judge Clapp found that on three separate occasions in 2001 and 2002, requests had been made to Appellant to submit the "Disclaimer of Share." Judge Clapp concluded that denial was appropriate because Appellant "offers no explanation in her petition for the substantial and unexplained period of time in which she failed to pursue her claim." Sept. 10, 2004 Order at 1. Judge Clapp further explained that "because of the substantial interest of Indian heirs and devisees in the finality of Indian probate decisions affecting their property rights, it is equitable to require a petitioner to act on his or her rights within a reasonable time after he or she knows or should know of them." Id.

Appellant appealed Judge Clapp's order to the Board. The Board scheduled briefing and advised Appellant that "[t]he filing of an opening brief is not required under the Board's regulations, and Appellant may choose to rely on the information in the record and the notice of appeal." May 17, 2005 Order at 1. The Board also advised Appellant, however, that she was responsible for proving error in the decision under appeal.

No briefs were filed.

Discussion

Reopening of Indian probate estates that have been closed for more than three years is governed by 43 C.F.R. § 4.242, which at the time of Appellant's July 2, 2004 request and Judge Clapp's decision, provided for reopening "only upon a showing that a manifest injustice will occur; that a reasonable possibility exists for correction of the error; that the petitioner had no actual notice of the original proceedings; and that petitioner was not on the reservation or otherwise in the vicinity at any time while the public notices were posted." 43 C.F.R. § 4.242(h) (2004). ^{3/}

In addition, under long-standing Departmental practice, a person seeking reopening must also show that she exercised due diligence in pursuing her claim. See Estate of Francis Rock, 38 IBIA 297, 298 (2003), and cases cited therein; Estate of George Dragswolf, Jr., 30 IBIA 188, 196 (1997). The Board has found that an appellant has satisfied the due diligence requirement, and allowed reopening, when the petition for reopening was filed as soon as the petitioner learned of potential rights to participate in the estate, or when the petitioner showed that any delay in filing the petition resulted from reasonable attempts to gather information concerning the merits of the case. Estate of Woody Albert, 14 IBIA 223, 228 (1986) (citing Estate of Wilma Florence First Youngman, 10 IBIA 3 (1982) and Estate of Jason Crane, 12 IBIA 165 (1984)).

Here, Appellant's notice of appeal, on which she relies, states in its entirety:

I am notifying you that I wish to give notice of filing a formal appeal based on the enclosed Disclaimer of Share File No. 85PR signed by William Shegonee dated August 26, 1985. Also a copy of the Marathon County probate order. Mr. Shegonee's estate should not be entitled to any monies

^{3/} In 2005, the probate provisions of 43 C.F.R. Part 4 were amended to reflect an organizational change in the Department. Section 4.242 was amended, but not changed in substance. See 43 C.F.R. § 4.242(i).

from my mother's estate. There were extenuating circumstances also in obtaining a copy of the signed disclaimer of share which will be addressed in the formal appeal. 4/

We conclude that Appellant fails to justify reopening Decedent's estate for two reasons. First, although Appellant apparently first indicated to Judge Lambrecht in April 2001 that she wished to seek reopening of Decedent's estate, she then waited three more years, until July 2004, to produce the disclaimer signed by Shegonee and again to request reopening. Because the record indicates that Appellant had actual notice of the original probate hearing, however, it does not appear that Appellant could have met the threshold requirement set forth in section 4.242 for reopening an estate closed for more than three years. 5/

Second, although she apologized "for the delay" in her July 2004 request for reopening, Appellant offered no explanation for the delay, and certainly provided no evidence that the delay occurred due to her reasonable attempts to gather information. When Appellant filed her notice of appeal with the Board, she again offered no explanation of the "extenuating circumstances" that resulted in the three year gap between her initial request for reopening and her production of the Shegonee disclaimer. There is therefore no evidence that Appellant exercised due diligence in pursuing her claim.

Because Appellant had notice of the original proceeding and because there is no evidence that she exercised due diligence in pursuing her claim, we conclude that Judge Clapp correctly denied Appellant's petition for reopening.

4/ Attached to Appellant's notice of appeal were also documents concerning the portion of Decedent's estate that was probated by the State of Wisconsin.

5/ Even with respect to her April 2001 request for reopening, because Appellant received actual notice of the original probate hearing, she would not have met the threshold requirement under then-existing subsection 4.242(a) (governing reopening of an estate within three years of closing) to request reopening of Decedent's estate.

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 September 10, 2004 Order Denying Petition for Reopening.

I concur:

// original signed
Amy B. Sosin
Acting Administrative Judge

// original signed
Steven K. Linscheid
Chief Administrative Judge