



INTERIOR BOARD OF INDIAN APPEALS

Estate of Donald E. Blevins

44 IBIA 33 (12/12/2006)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ESTATE OF DONALD E. BLEVINS : Order Docketing and Dismissing
: Appeal
:
: Docket No. IBIA 06-115
:
: December 12, 2006

Appellant Rebecca Blevins seeks review of a July 25, 2006 order denying rehearing entered by Indian Probate Judge M.J. Stancampiano (IPJ) in the estate of Donald E. Blevins (Decedent), deceased Umatilla Indian, Probate No. IP NW-143-0050. The order denying rehearing left in place a May 22, 2006 order determining heirs, which concluded that under Oregon laws on intestate succession Decedent's sole heir was his father, Lee Blevins. Appellant, a niece of Decedent, had sought rehearing on the grounds that she believed Decedent may have had children who are his legal heirs instead of Decedent's father. We conclude that Appellant has failed to demonstrate that she has standing to raise the claim for which she sought rehearing. Although Appellant now claims that she is entitled to inherit from Decedent through her father's estate, that claim was not raised below and is therefore outside the scope of this appeal. Consequently, we docket and dismiss this appeal.

As noted above, Appellant sought rehearing before the IPJ on the grounds that Decedent might have had children and that those children, rather than Decedent's father, are his lawful heirs. The IPJ denied rehearing. In her notice of appeal to the Board of Indian Appeals (Board), Appellant challenged that denial of rehearing on the grounds that she "believe[d] [Decedent] has children who are his legal heirs." Appellant stated that with time, she believed she could locate Decedent's children.

In order to have standing to participate in a probate proceeding, an individual must be an "interested party," as defined in 43 C.F.R. § 4.201. See Estate of Topsy Bill, 36 IBIA 138 (2001); see also 43 C.F.R. § 4.320(a). Relevant to these proceedings, the regulations define "interested party" to mean someone who is a "probable or actual heir." Id. § 4.201.

Appellant’s petition for rehearing and her appeal, however, were not premised on an assertion that she was a probable or actual heir but that others might be Decedent’s heirs. Because it appeared that, as Decedent’s niece, Appellant may not be an “interested party,” and therefore would lack standing to appeal the IPJ’s decision, the Board ordered Appellant to show that she has standing to bring this appeal.

In response, Appellant asserts that she “ha[s] not located [Decedent’s] children and they may never be located.” Oct. 13, 2006 Response from Appellant. She now contends, for the first time, that “[Decedent’s] estate should be combined with his brothers Richard Blevins and Charles Blevins estates,” based on the laws of the Confederated Tribes of the Umatilla Reservation and because Decedent’s father is non-Indian. *Id.* Appellant claims that she is an heir to Richard Blevins, her now-deceased father, and thus apparently contends that she satisfies the definition of an “interested party” because she is entitled to inherit from Decedent through her father’s estate. ^{1/}

It appears that Appellant may have abandoned her argument that Decedent’s lawful heirs are his (unidentified) children, in which case this issue would be moot. Even assuming, however, that Appellant did not intend to abandon this argument, we conclude that Appellant has failed to demonstrate that she has standing to raise this issue. Because she claims no right of heirship under this claim, but seeks only to assert the interests of third parties, she does not fall within the definition of interested party with respect to this claim, and her interests were not affected by the IPJ’s denial of rehearing. Even if Appellant were to prevail in her argument that Decedent fathered children and that the estate should have been distributed to those children, Appellant would not be affected by such a determination. See *Estate of Joseph Noel Simpson*, 36 IBIA 67 (2001) (appellant lacked standing where he was not adversely affected and did not stand to gain or lose by a modification of the decision).

With respect to the new claim that she now seeks to assert — that Decedent’s estate should have been distributed in part to her father, Richard Blevins, from whom she claims a right of inheritance — we need not decide whether Appellant fits within the definition of “interested party” because Appellant raises this argument for the first time on appeal. The Board has a well-established rule of declining to consider arguments raised for the first time on appeal. *Estate of Helen Hesuse*, 41 IBIA 324, 327 (2005). Appellant’s sole argument in her petition for rehearing was that Decedent had children and that the “children can be located and the correct heirs can be named.” Appellant’s Petition for Rehearing at 1.

^{1/} Decedent died on April 2, 1979. Richard Blevins died in 1985. It is unclear from the record whether a decision has been entered in Richard Blevins’s estate.

Appellant's new argument is outside the scope of her petition for rehearing and therefore is outside the proper scope of this appeal, and we decline to consider it.

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 docketed this appeal, but dismisses it for lack of jurisdiction over Appellant's appeal from the denial of rehearing, the only matter properly within the scope of this appeal.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debora G. Luther
Administrative Judge