



INTERIOR BOARD OF INDIAN APPEALS

Estate of Lyle T. Callous Leg

46 IBIA 205 (01/25/2008)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

ESTATE OF LYLE T. CALLOUS LEG) Order Affirming Decision
)
) Docket No. IBIA 08-21
)
) January 25, 2008

Appellant Vivian Delgado, on behalf of her adopted daughter, Malici Sewa Delgado, appealed to the Board of Indian Appeals (Board) from an October 25, 2007, Order Denying Rehearing, which let stand a July 20, 2007, Order Determining Heirs and Decree of Distribution (Order Determining Heirs), in the estate of Lyle T. Callous Leg (Decedent), deceased Standing Rock Sioux Indian, Probate No. P 0000 35695 IP. For purposes of this decision, we accept it as undisputed that Malici is the biological daughter of Decedent.

The Order Determining Heirs concluded that because Malici had been adopted out, she was precluded from inheriting Decedent's interests in trust or restricted property on the Standing Rock Reservation, under section 3(c) of the Standing Rock Heirship Act (Standing Rock Act), Pub. L. No. 96-274, 94 Stat. 537, 538. We docket this appeal, but summarily affirm the Order Denying Rehearing because the tribal court adoption decree expressly recites that the court had terminated the parental rights of Malici's biological parents, and the Standing Rock Act specifically provides that "a child may not inherit by intestate succession from . . . a parent whose parental rights with respect to said child have been terminated pursuant to lawful authority." *Id.*

Background

On March 11, 1993, Decedent and Sando Cutler, as parents of a child expected to be born later that month, signed forms in which each consented to relinquish custody and to place the child for adoption.¹ On June 19, 1995, the Standing Rock Sioux Tribal Court entered an adoption decree through which Appellant adopted Malici, described in the court

¹ Each expressly acknowledged having been notified of his or her rights under the Indian Child Welfare Act, 25 U.S.C. §§ 1901, et seq., and the Standing Rock Sioux Tribal Code, and of the right to revoke the consent.

order as Malisci² Sewa Cutler, born March 30, 1993.³ The adoption decree recited that the tribal court had “previously terminated the parental rights of the biological parents of said minor child on November 25, 1994.” Decree of Adoption at 1. As noted earlier, for purposes of these proceedings it is undisputed that Decedent was the biological father of Malici.⁴

Decedent died intestate on December 27, 2005, owning interests in trust or restricted property located on the Standing Rock Reservation. The Order Determining Heirs, issued by Indian Probate Judge P. Diane Johnson, concluded that Malici’s adoption meant that she was precluded by section 3(c) of the Standing Rock Act from inheriting Decedent’s trust property on the Standing Rock Reservation.

Appellant filed a petition for rehearing, with which she submitted the adoption consent forms signed by Decedent and Cutler and the adoption decree. In her petition for rehearing, Appellant asserted that Malici was an “inheritor by birth,” that Malici “deserves full consideration of her heirship,” and that Decedent was Malici’s natural father, who had been identified prior to Malici’s adoption.⁵ Petition for Rehearing at 2. The petition was considered by Indian Probate Judge Albert C. Jones, who concluded that it did not allege any ground for rehearing because under the Standing Rock Act legally adopted children cannot inherit from their natural parents. Judge Jones therefore denied rehearing.

² This spelling is used in the tribal court order and several other documents. Appellant uses the spelling “Malici.”

³ Appellant states that in 1992, she was approached by Cutler and Decedent to consider the adoption.

⁴ The adoption decree also provided that Malici “shall, from and after the date of [the] Decree be deemed and taken to be the child of [Appellant] . . . and . . . deemed as respects all legal consequences and incidents of the natural relation of parent and child, . . . the same as if [Malici] had been born to [Appellant].” Decree of Adoption at 2.

⁵ In her order, Judge Johnson had stated that Malici’s natural mother had placed her for adoption “before [Decedent’s] paternity could be established.” Order Determining Heirs at 1. The consent forms submitted by Appellant apparently were intended as proof that Decedent’s paternity had, contrary to that statement, been established before Malici was adopted. As noted in our discussion, the legally relevant event was the termination of Decedent’s parental rights, and not the date that his paternity was established.

Appellant then appealed to the Board. After reviewing her notice of appeal, the Board issued an order for Appellant to show cause why Judge Jones's order should not be summarily affirmed because it appeared that the only issue was a question of law: whether the Standing Rock Act precludes Malici from inheriting from Decedent. In the show cause order, the Board noted that the tribal court adoption decree specifically stated that the parental rights of Malici's biological parents had been terminated on November 25, 1994. Thus, it appeared that, under these circumstances, section 3(c) of the Standing Rock Act clearly precludes Malici from inheriting from Decedent, and that the order denying rehearing was correct.

The Board received a response from Appellant on January 7, 2008. Appellant acknowledges the language of the Standing Rock Act, and does not dispute the statement in the tribal court adoption decree that the court had previously terminated the parental rights of Malici's biological parents. Instead, Appellant seeks relief on the grounds that until she received and reviewed a copy of the Standing Rock Act (a copy of which the Board provided with its show cause order), she had not understood that Malici's "inheritance was terminated" by the adoption proceedings, and she never intended the adoption relationship to terminate Malici's rights or inheritance. Response to Board's Show Cause Order at 1. Appellant argues that due process required that she be informed, at the time of the adoption, of the adverse consequences for Malici's rights of inheritance, and that the failure to give her such notice constitutes grounds to set aside the Order Denying Rehearing and to recognize Malici as Decedent's heir.

Discussion

Section 3(c) of the Standing Rock Act provides that "a child may not inherit by intestate succession from . . . a parent whose parental rights with respect to said child have been terminated pursuant to lawful authority." It is undisputed in these proceedings, and the evidence shows, that the tribal court terminated Decedent's parental rights as Malici's father. It was the termination of those parental rights — done with the apparent express consent of Decedent — that is the relevant legal event for purposes of the Standing Rock Act. Once Decedent's parental rights with respect to Malici were terminated on November 25, 1994, the Standing Rock Act prevented her from becoming entitled to inherit from Decedent through intestate succession.⁶

⁶ The Standing Rock Act only applies to inheritance by intestate succession. If Decedent had intended to pass his property to Malici, it was within his authority to do so by executing a valid will.

Although the termination of Decedent's parental rights was the operative legal event for purposes of the Standing Rock Act, even if we assume that the termination was done as part of the adoption proceedings, Appellant's assertion that she was not advised of and did not understand the specific potential legal consequences of those proceedings does not provide a basis for the Board to set aside the Order Denying Rehearing. The Standing Rock Act clearly provides that a child may not inherit from a parent whose parental rights have been terminated by lawful authority, and Appellant has provided us with no basis to question that the tribal court's order that terminated Decedent's parental rights was not done pursuant to lawful authority. While Appellant may not have known all of the potential consequences of the tribal court proceedings, the Board lacks authority to ignore, or make exceptions to, Federal statutes. See *Crow Tribe of Montana v. Montana State Director, Bureau of Land Management*, 31 IBIA 16, 30 (1997); *Bitz v. Acting Billings Area Director*, 24 IBIA 10 (1993).

Because Decedent's parental rights with respect to Malici were terminated by tribal court order, we conclude that she was not eligible to inherit Decedent's interests located on the Standing Rock Reservation under section 3(c) of the Standing Rock Act.⁷

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 October 25, 2007, Order Denying Rehearing.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debora G. Luther
Administrative Judge

⁷ Appellant also argues that the order denying rehearing should be set aside because she followed unwritten traditional tribal laws, customs, and practices regarding adoption, which she apparently contends are recognized by or provide a foundation for the Standing Rock Constitution. The Standing Rock Act is a Federal law applicable to trust property on the Standing Rock Reservation, which the Board is required to apply. We express no opinion on the relevance, if any, of tribal law to any other rights that Malici may have or claim as the biological daughter of Decedent.