



INTERIOR BOARD OF INDIAN APPEALS

Estate of Elena Kate Belcourt

47 IBIA 235 (09/26/2008)



Dakota (Three Affiliated Tribes). Her father is an enrolled member of the Blackfeet Tribe of Montana.

Elena Kate was married in Two Medicine, Montana, on July 4, 1999, to Little Plume, an enrolled member of the Blackfeet Tribe. The couple lived for a short time in Missoula, Montana. According to her family members, Elena Kate and Little Plume separated on April 2, 2000, after they had a fight that allegedly ended in domestic violence. Elena Kate pursued charges against Little Plume leading to an arrest warrant. University of Montana Police Offense Report, Apr. 2, 2000. According to Belcourt family members, Little Plume left Missoula to return to the Blackfeet Indian Reservation and the couple did not see each other again. According to her parents, Elena Kate moved to Billings, Montana, “a couple weeks” after the incident, or by May 1, 2000, and resided with her family until her death.

Elena Kate was murdered on January 26, 2001, at the age of 21, in Billings. Little Plume had no involvement in the murder and nothing in the record suggests he bears any responsibility for events surrounding it. Elena Kate was buried in Montana. The record indicates that the Three Affiliated Tribes paid \$4,000 towards funeral services from a wake fund on application by Cheryl Belcourt.

Elena Kate died intestate without issue. Her nontrust assets were probated in the Montana Thirteenth Judicial District, Yellowstone County. The District Judge issued an Order of Intestacy, Determination of Heirs, and Appointment of Personal Representative, Probate No. DP-03-022, on February 26, 2003 (Feb. 26, 2003, Local Court Order of Intestacy). The District Judge found that Elena Kate was survived by her spouse and her two parents, and appointed the parents as co-personal representatives of the estate. *Id.*

Belcourt had an IIM account valued on the date of her death at \$18,583.77, which grew to over \$23,000 by April 2005. Accordingly, her trust estate was subject to probate by the Office of Hearings and Appeals (OHA). On September 3, 2003, the Fort Berthold Agency, Bureau of Indian Affairs (BIA), issued a letter to Cheryl Belcourt asking her to complete a Statement of Family History form. In an enclosure, the Agency noted Elena Kate’s marriage to Little Plume. The record does not contain a response or Belcourt Statement of Family History.

BIA also sent a copy of the Statement of Family History form to Little Plume on February 14, 2005, and requested him to complete it. On February 16, 2005, Little Plume signed a Statement of Family History, responding in appropriate blanks on the form that he and Elena Kate were married but not divorced. He also identified her siblings and parents. Little Plume listed his address at a post office box in Browning, Montana.

On March 2, 2005, OHA issued a Notice of OHA Docketing Official to members of Elena Kate's family, and to Little Plume at his address of record in Browning. On April 4, 2005, the IPJ issued a Combined Notice of Hearing (Notice) to determine heirs for five decedents including Elena Kate. Under 43 C.F.R. § 4.216(a)(1), this Notice was posted at five different locations in the State of North Dakota. The Notice identified Little Plume as a party of interest and it was mailed to him using a correct post office box number, but addressed to *Billings*, rather than *Browning*, Montana. All OHA notices issued thereafter to Little Plume, including by this Board, were sent to the wrong city, and the record contains no evidence that he received any notices or decisions concerning the probate after the March 2 Notice of Docketing Official. *See* 43 C.F.R. § 4.22(b) and (d) (service made on service address provided by interested party).

The hearing to probate Elena Kate's trust estate took place on April 26, 2005. Her parents, several siblings, and aunts and grandmother (Belcourt family) appeared at the hearing, represented by counsel. Little Plume was not present.

The Belcourt family's position was that Little Plume should not be considered to be Elena Kate's heir. They contended that, despite the fact that at the time of her death Elena Kate remained married by law, Little Plume's alleged "repeated abuse" and Elena Kate's actions constituted repudiation of the marriage under tribal custom, which should have the same effect as a divorce. In support of this contention, the family members set forth written statements and testimony at the hearing. Transcript of Hearing, Apr. 26, 2005 (Tr.).

Family members testified that the marriage was a "sham," *id.* at 17, and that Elena Kate reconsidered the decision to marry on her wedding day. Affidavit of Lola Belcourt, Elena Kate's aunt, May 3, 2005 (Lola Affidavit). Family members alleged that after Elena Kate and Little Plume split in April 2000, they learned that she had been abused by him on more than one occasion.<sup>2</sup> They testified that Little Plume's family removed personal items from the apartment the couple shared after he left Missoula. Tr. at 10; Lola Affidavit, at 3.

The family testified that Elena Kate no longer considered herself married. According to her mother, Elena Kate "threw her ring in the river, declared herself to be divorced, and left him because of all that abuse." Tr. at 8. Cheryl asserted that this act was consistent with the divorce custom of the Three Affiliated Tribes, and Gordon Belcourt testified that her actions would be consistent with Blackfeet tribal divorce. *Id.* at 8-10; *see also* Joint

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<sup>2</sup> Family members "didn't know about [any abuse] at the time" but "found out about it afterwards" when the couple split up. Tr. at 4-6, 16. Though Lola Belcourt's affidavit discusses several incidents, she testified that she witnessed Elena Kate being struck on one occasion by Little Plume. Lola Affidavit, at 2.

Declaration of Gordon and Cheryl Belcourt, Nov. 29, 2005, at ¶ 6; *see also* ¶ 4 (a “woman who is subject to such abuse may reject her husband and declare the marriage ended”). Elena Kate’s sister Annie testified that Elena Kate reassumed the Belcourt family name, and “didn’t have the time to be on this planet to file for divorce.” Tr. at 9. After her death, the family discovered a copy of divorce papers they believe were filled out by Elena Kate, and the record includes a draft Petition for Dissolution of Marriage on a form of the Montana Fourth District Judicial Court, Missoula County, identifying Missoula as the place of residence. Though Gordon Belcourt testified that Elena Kate “filed divorce papers,” Tr. at 10, the record does not indicate that papers were filed in a court of law. *Id.* at 26-27.

The family testified that Little Plume resided with another woman after the separation and, after that woman was killed in a car accident, moved in with a third woman. Tr. at 21; Hearing Memorandum, Family of Elena Kate Belcourt (Hearing Memorandum), Apr. 26, 2005, at 2. Cheryl Belcourt testified that this would constitute dissolution of the marriage in her community. Tr. at 9.

During her lifetime, Elena Kate and her family were unaware of the IIM account in her name, and the Belcourt family learned of its existence the summer after her death. Tr. at 24. According to Elena Kate’s grandmother, Alameda (Almeda) Baker, the IIM account was established by the Three Affiliated Tribes as a result of a “tribal settlement of some kind,” but Elena Kate was never notified that it was available to her when she turned 18. Tr. at 12.<sup>3</sup> Baker testified that the family should be awarded the IIM account because of costs and expenses they incurred for the funeral and because they have “suffered a terrible loss” as a result of Elena Kate’s death. *Id.* at 18.<sup>4</sup>

In support of their complaint that Little Plume should not be viewed as a spouse, the family described a scene surrounding Elena Kate’s wake and funeral, in which Little Plume instituted a proceeding in Blackfeet Tribal Court seeking custody of Elena Kate’s body to “have his own funeral.” Tr. at 11. The family reports that the Tribal Court rejected that motion. Gordon represents that Elena Kate would have been in danger from Little Plume’s family had she entered Browning, and that Little Plume’s effort to bury Elena Kate was “a political and a power move on his part and his family just to make us suffer more . . . .” *Id.* at 10, 19; *see also* at 19-20 (testimony of Cheryl Belcourt).

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<sup>3</sup> As an elder in the Three Affiliated Tribes, Baker also testified that tribal custom once allowed a couple to part and “go on to another partner,” but that this was no longer true. Tr. at 12.

<sup>4</sup> Nothing in the record indicates that a claim was submitted against the estate for the payment of funeral or burial expenses. *See* 43 C.F.R. § 4.250.

In their Hearing Memorandum, the Belcourt family urged Judge Johnson to conclude that Elena Kate was divorced in accordance with tribal custom and therefore that Little Plume is not an heir. Hearing Memorandum at 5-7, *citing Estate of Clara Seltice Sherwood and Annie Eulopsen (Big Tom) Big Smoke Sherwood*, 14 IBIA 238 (1986); *Estate of Matthew Cook*, 9 IBIA 52 (1981); *Estate of Harold Humpty*, 7 IBIA 118 (1979); *Estate of Theodore Shockto*, 2 IBIA 224 (1974). Conceding that the Law and Order Code of the Blackfeet Tribe adopts the laws of the State of Montana regarding divorces and rejects Indian tribal custom, the Belcourt family contended that this aspect of the Law and Order Code is inconsistent with a portion of the Family Code of the Blackfeet Tribe, which recognizes the importance of tradition to child-rearing and family guidance. *Id.* at 6-7.

Judge Johnson rejected the Belcourt family's contentions in her Order Determining Heirs. She concluded that the IIM funds must pass to Little Plume as Elena Kate's widower pursuant to Montana law. Order Determining Heirs at 1-2, *citing* Mont. Code Ann. § 72-2-112(2). Attached to and incorporated into this Order was a "Memorandum of Law" analyzing whether Indian custom divorce would qualify as a valid divorce for probate purposes under laws of the State of Montana, the Blackfeet Tribal Law and Order Code, or the Code of the Laws of the Three Affiliated Tribes. Order Determining Heirs at 3. The Memorandum of Law answered these questions in the negative.

Judge Johnson explained that, by the laws of all three jurisdictions, divorce requires a judgment of a court of competent jurisdiction and divorce by tribal custom is no longer recognized. Order Determining Heirs at 3, 6-7, 8-9.<sup>5</sup> Applying the "most significant contacts" test and the "creation of the relationship" test for purposes of determining choice of law, *see Estate of Richard Doyle Two Bulls*, 11 IBIA 77, 79 (1983), the IPJ concluded that the laws of either Montana or the Blackfeet Tribe would control, but in either case Elena Kate would not be considered divorced. Order Determining Heirs at 9-10. Accordingly, she concluded that, as Elena Kate's spouse, Little Plume is an heir eligible to inherit Indian trust property. *Id.*

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<sup>5</sup> The IPJ quoted (1) the Montana Code at §§ 40-4-104(b) and 40-4-105, which requires a determination of a court of law following a petition for divorce; (2) the Blackfeet Tribal Law and Order Code, Chapter 3, § 2, which states: "All divorces must be consummated in accordance with the State Law of Montana. Indian customs divorces are from this time on illegal and will not be recognized as lawful divorces on the Blackfeet Reservation"; and (3) Chapter 5-05-01 of the Code of the Laws of the Three Affiliated Tribes, in which "Dissolution of Marriage" occurs "only" by death of a spouse or "[b]y a judgment of a court of competent jurisdiction decreeing a divorce of the parties."

In considering whether or how to divide the IIM account among Elena Kate's spouse and parents, the IPJ cited Montana law, which distributes the "first \$200,000" of an intestate estate to a decedent's surviving spouse "if no descendant of the decedent survives the decedent but a parent of the decedent survives the decedent." Order Determining Heirs at 10, *citing* Mont. Code Ann. § 72-2-112(2). As Elena Kate's IIM account was significantly less than \$200,000, the IPJ found that Little Plume is the only heir to receive the distribution. Judge Johnson concluded her Memorandum of Law portion of the Order Determining Heirs as follows: "In light of the *great tragedy this family endured as a result of the conduct of their daughter's husband*, it is clearly understandable that for the parents of the decedent, there has been no justice rendered either to their daughter, or unto themselves as parents." Order Determining Heirs at 10 (emphasis added).

On November 28, 2005, the Belcourt family submitted a timely Petition for Rehearing pursuant to 43 C.F.R. § 4.241. Based upon the last sentence of the Order, they argued that the IPJ recognized her conclusion to be unjust. Brief in Support of Petition for Rehearing at 2. Rejecting the laws of Montana and the Blackfeet Tribe, the family asserted that the IPJ should have followed the laws of the Three Affiliated Tribes, though the family did not contest Judge Johnson's conclusion that its law does not recognize tribal custom divorce. *Id.* at 3-4. They argued that the IPJ should have made an "independent judgment of heirship" and rejected the finding set forth in the Feb. 26, 2003, Local Court Order of Intestacy that Little Plume was an heir. *Id.* at 4. They cited Board precedent for the conclusion that "[Indian] custom divorce" should be considered here notwithstanding current tribal law. *Id.* at 5. Finally, the family objects on due process grounds to the IPJ's consideration of the Statement of Family History submitted by Little Plume, citing the following statement from the Memorandum of Law, *id.* at 5: "Little Plume maintains that at no time did he and the decedent obtain a divorce . . . ." Brief in Support of Petition for Rehearing at 5.

Judge Johnson rejected the family's arguments. Order Denying Petition for Rehearing, July 31, 2006, at 1-2. She denied anything improper in considering Little Plume's Statement of Family History. She explained that he contended that he and Elena Kate were married, which the family does not dispute, and not divorced. *Id.* at 2. Noting that it was the family's burden to prove a divorce and that the family had full notice of this burden, she explained that a court decree would be required to demonstrate that a divorce had occurred. *Id.* Without such proof, she denied the petition for rehearing.

The family appealed to the Board and submitted a Brief. Appellants argue, first, that the IPJ erred because Little Plume had not filed a "claim" under 43 C.F.R. § 4.250 and therefore is not entitled to an award. Brief at 3. They assert that if he did file a claim, the IPJ was not entitled to consider it if the family was not notified of its existence. *Id.* at

3-4. Second, they assert that the failure of the IPJ to provide the family a copy of the Statement of Family History filled out by Little Plume constitutes a due process violation. *Id.* at 4. Third, the Belcourt family argues that under 43 C.F.R. § 4.202, Judge Johnson bore a “duty to make an ‘independent determination of heirs’.” Citing her comment regarding the “great tragedy this family endured,” Memorandum of Law attached to IPJ Order Determining Heirs at 10, Appellants argue that the “comment reflects a total abdication of the duty to make an independent heirship determination.” Brief at 4. Fourth, the family argues that the IIM account must pass according to the law of the state where property is located, which according to them is North Dakota. Brief at 5, citing *Estate of Samuel R. Boyd*, 43 IBIA 11, 20 (2006). They argue that Montana law is irrelevant because the IIM account is intangible personal property, rather than real property and, therefore, that *Estate of Richard Doyle Two Bulls*, 11 IBIA at 77, should not apply. Brief at 9. Fifth, the family asserts that tribal custom divorce should be considered where no state interest is implicated. *Id.* at 6-7 and cases cited. No other briefs were filed.<sup>6</sup>

## Discussion

### I. Standing

The “Belcourt family” does not have standing to pursue this appeal. Departmental regulations ensure that an appellant challenging a decision on a petition for rehearing must be an “interested party.” 43 C.F.R. § 4.320(a); *see, e.g., Estate of Donald E. Blevins*, 44 IBIA 33 (2006) (participation in probate proceedings by “interested party” as defined in 43 C.F.R. § 4.201). An interested party is defined in section 4.201 to include, for purposes relevant here, a “probable or actual heir” or a “beneficiary under a will.” 43 C.F.R. § 4.201 (subparts (1) and (2), definition of “*interested party*”). Elena Kate’s various family members may have a strong personal interest in ensuring that her IIM account be properly distributed, but this is not the kind of interest that brings the collective individuals within the purview of 43 C.F.R. § 4.201 or 43 C.F.R. § 4.320(a). *See Estate of Elvina Shay*, 44 IBIA 133, 135 (2007) (relative who was not a probable or actual heir under the laws of intestacy was not an interested party).

Gordon and Cheryl Belcourt are interested parties as defined in 43 C.F.R. § 4.201. At a minimum, under Montana’s law of intestacy, Elena Kate’s parents would be heirs with rights to receive her estate if she were divorced, Mont. Code Ann. § 72-2-113(1)(b), or to receive any portion of her estate in excess a minimum value of \$200,000, *id.* § 72-2-112(2). Accordingly, we need not look to other jurisdictions to conclude that Elena Kate’s parents

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<sup>6</sup> The Belcourt family served Little Plume’s copy by sending it to BIA in Fort Totten, North Dakota.

have standing to pursue this appeal under 43 C.F.R. § 4.201. The remaining Belcourt family members have not shown that they have standing under the laws of any jurisdiction. Therefore, we proceed to address the appeal as one properly pursued by her parents.

## II. The Belcourts' Five Arguments

### A. Little Plume's Failure to Assert a "Claim" Against the Estate

We reject the Belcourts' charges that the IPJ committed error by recognizing Little Plume as an heir when, according to them, he filed no claim under 43 C.F.R. § 4.250. According to Appellants, in the absence of such a "claim," Little Plume's interest is barred and the IPJ was prohibited from considering any such claim absent notification of it to the family. *Id.* at 3-4. These arguments misconstrue the regulations. "Claims" need only be filed by creditors, not by heirs. *See* 43 C.F.R. § 4.250 Caption ("Filing and proof of creditor claims"). Appellants' argument is also undercut by the Belcourts' own assertion that the IPJ bore the obligation to determine heirs. Brief at 4, citing 43 C.F.R. § 4.202.

As the Belcourts necessarily recognize, OHA's duty in this probate is to "[d]etermine the heirs of any Indian who dies intestate possessed of trust property." 43 C.F.R. § 4.202(c)(1). Judge Johnson determined that Little Plume, as Elena Kate's husband, was an heir as defined at 43 C.F.R. § 4.201 (definition of "*heir*"). There is no duty or responsibility to submit a "claim" in order to be an heir. To the contrary, to disclaim an inheritance, an heir must file a signed "declaration of renunciation." 43 C.F.R. § 4.208. Judge Johnson did not determine that Little Plume was a "creditor" against the estate, nor could she have done so in the absence of a claim submitted by him. *See* 43 C.F.R. § 4.201 (definition of "*creditor*" as one who "submits a claim for payment from a decedent's estate").

Nor do we find any evidence that the IPJ committed any impropriety with respect to Little Plume's Statement of Family History. To the extent Appellants assert error on the part of OHA in allowing Little Plume to submit a Statement of Family History, they are mistaken. This form is part of BIA's required information-gathering process for probate proceedings. *See* 25 C.F.R. § 15.104-.105 (upon notification of the death of an Indian with trust property, BIA "will initiate the process to collect necessary documentation"). The form is not to be confused with a claim form submitted by creditors seeking recompense from the decedent's estate for purchases or services under 43 C.F.R. § 4.250. BIA mailed letters to Cheryl Belcourt and Little Plume asking for their Statements of Family History. That BIA did so was based on information, which included some supplied by the Belcourts (including the marriage license), Tr. at 5; 8-9, and Gordon Belcourt's statements as "informant" on the certificate of death, identifying Little Plume. BIA

committed no error in requesting that the Statement of Family History forms be completed and the IPJ committed no error in considering them.

#### B. Due Process Violation.

For the reasons just stated, Appellants' due process argument must fail. They claim that their due process rights were violated when the IPJ failed to provide the family a copy of Little Plume's "Statement of Family History," leaving any potential "claim" submitted by Little Plume "outside the hearing Appellants attended." Brief at 4. The Belcourts misstate the facts and the law of due process. As noted above, Little Plume submitted no claim and thus the IPJ had none to consider. And, while it is true that service on interested parties is an elementary aspect of due process, *Estate of Ruby Maldonado*, 36 IBIA 267 (2001), Appellants can identify no information provided by Little Plume of which they were unaware. The only disputed "statement" on Little Plume's Statement of Family History is in his response to the form question about divorce, that there was "none." It is the absence of record evidence of a legally-recognized divorce that shifted the burden to the Belcourts to establish that the couple divorced in accordance with the law of the appropriate jurisdiction. The Belcourts clearly understood this burden as they offered testimony and written statements concerning tribal custom divorce and provided draft divorce papers assertedly written by Elena Kate. Their burden arose, even without Little Plume's Statement of Family History, when the Belcourts provided a copy of the couple's marriage license and certificate, Tr. at 5, and when, as early as 2003, BIA's enclosures sent to Cheryl Belcourt listed Little Plume as Elena Kate's husband and the Feb. 26, 2003, Local Court Order of Intestacy listed him as an heir. Appellants thus cannot claim a lack of notice of the issue, of their burden, or of their opportunity to meet it at the hearing. In fact, Belcourt family members fully testified and speculated about Little Plume in his absence. They cite nothing else that they might have offered armed with the fact that Little Plume had responded to BIA's request for information.

Moreover, a due process argument would only favor Little Plume. He was afforded no notice of the hearing, decision, or appeal.<sup>7</sup> In his absence, the testimony of the Belcourt family regarding Little Plume's intentions or beliefs falls into the evidentiary category of

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<sup>7</sup> We cannot determine that Little Plume had constructive notice of the hearing when BIA posted a public notice of hearing in five locations in North Dakota, yet Elena Kate's family residence, the couple's joint residence, and Little Plume's subsequent residence were all in Montana. 43 C.F.R. § 4.216(a)(1). BIA plainly did not comply with the notice requirements of 43 C.F.R. § 4.217(a)(4) to "inform all persons having an interest in the estate . . . to be present at the hearing," when it served the potential heir in a different town than he listed as his address of record. *See also* 43 C.F.R. § 4.22(d) (service address).

hearsay. A due process issue would thus arise from any factual finding as to Little Plume's state of mind rendered in the absence of notification to him of an opportunity to rebut it.

### C. OHA's Duty to Determine Heirs.

We similarly reject Appellants' assertion that Judge Johnson failed in her "duty to make an 'independent determination of heirs,'" 43 C.F.R. § 4.202, and find that she properly executed that legal obligation. The Belcourts' only explanation for their assertion is their citation to Judge Johnson's final comment in the incorporated Memorandum of Law, quoted above. Because Little Plume was not served with notice of the hearing, he was given no opportunity to appear and refute the allegations which apparently informed her view. *See* 43 C.F.R. § 4.217(a)(4). To the extent the IPJ's conclusion that the "great tragedy this family endured" was at Little Plume's hands implies that he was responsible for Elena Kate's death, record evidence refutes such an inference. In any event, in the absence of evidence establishing that Elena Kate and Little Plume had legally divorced, the IPJ properly determined that Little Plume was Elena Kate's heir. The sentence does not change the fact that legal divorce was not established.

### D. The Proper Law to Apply for Distribution of the IIM Account.

We cannot agree with Appellants that Judge Johnson applied the law of the wrong jurisdiction in distributing the IIM account. For the first time on appeal, Appellants argue that the funds in Elena Kate's IIM account should be distributed according to the law of North Dakota because they "were clearly located at the Fort Berthold Reservation." Brief at 5. The Belcourt family did not raise this argument before the IPJ. As we understand it, the Belcourts now contend that, even if Little Plume was an heir, Judge Johnson improperly applied § 72-2-112(2) of the Montana Code in distributing the account. Setting aside that this argument is improperly raised for the first time on appeal, Appellants do not explain what law they believe should be applied or how it would benefit them.<sup>8</sup>

Appellants misconstrue *Estate of Boyd*, 43 IBIA 11. Appellants properly note that we held there that trust property must pass according to the law of the state where property is

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<sup>8</sup> We proceed to address the argument briefly, despite Appellants failure to raise it before, because it could be argued that they may not have understood the consequences of choosing one jurisdiction's laws over another's on distribution, given their urging that the couple be seen to be divorced by tribal custom. Nonetheless, section 30.1-04-02 (2-102) ("Share of spouse") of the North Dakota Uniform Probate Code, like the Montana Code, would distribute the first \$200,000 of an intestate estate to the spouse if the remaining heirs of the decedent are the parents.

located. 43 IBIA at 20. But they misunderstand our holding to the extent that they argue that the “location” of an IIM account is the same as that of the Tribe through which the IIM account was established. Brief at 5. To the contrary, *Boyd*’s holding stated:

[W]e must next determine where Decedent’s IIM account was located.

An IIM account is best characterized as “intangible” personal property — *i.e.*, “property [that] has no intrinsic and marketable value, but is merely the representative or evidence of value, such as certificate of stocks, bonds, promissory notes, copyrights, and franchises.” Black’s Law Dictionary 809 (6th ed. 1990). The United States Supreme Court has ruled that intangible personal property is found “at the domicile of its owner.” *Delaware v. New York*, 507 U.S. 490, 503 (1993) (quoting *Texas v. New Jersey*, 379 U.S. 674, 680 n.10 (1965)). Therefore, applying the rule stated in [25 U.S.C. §] 373, and consistent with the Supreme Court’s ruling, *IIM account funds that are part of the estate of a decedent would pass in accordance with the law of the state where the decedent was domiciled.*

43 IBIA at 20-21 (footnotes omitted; emphasis added). There being no question that Elena Kate was domiciled in Montana, the Belcourts’ argument that *Boyd* compels a different outcome than the one adopted by Judge Johnson is unsupported.

And the Belcourts’ argument, Brief at 9, that the IPJ misapplied the Board’s decision in *Estate of Two Bulls*, 11 IBIA at 77, to the distribution of the IIM account is unfounded. Judge Johnson applied the tests for domicile established in the *Two Bulls* case for the purpose of deciding the choice of law in determining the status of Elena Kate’s relationship with Little Plume. The IPJ did not apply that test for purposes of deciding how to distribute the IIM account among heirs when it was determined that the decedent’s heirs included a spouse and parents. That question is properly controlled by the *Boyd* case.

To the extent the Belcourts ask this Board to revisit Judge Johnson’s application of the tests in *Two Bulls*, we find no reason to do so. The notion that she improperly looked to Montana law is unfounded in a situation in which (a) the family concedes that the Decedent resided in Montana; (b) the family prevailed on a Montana court to determine intestacy for non-trust assets; and (c) the Draft Petition for Dissolution, which Appellants cite as evidence that “Elena commenced proceedings to dissolve her marriage under state law,” Brief at 8, was on a form to be filed in a state court subject to Montana law.

But even if we might otherwise reconsider the IPJ’s application of the *Two Bulls* test to determine the appropriate law to answer whether Elena Kate was divorced, we do not do

so here where Judge Johnson demonstrated that under any of the potential choices of law, the same outcome would apply. The Belcourts do not contend, let alone show, that the IPJ's analysis of the laws of the State of Montana, the Blackfeet Tribe, or the Three Affiliated Tribes with respect to recognition of divorce was erroneous. We do not undertake to reconsider her application of the test in *Two Bulls* when doing so would have no practical effect on the outcome.

#### E. Application of Tribal Custom

Any jurisdiction relevant here would reject the notion that a divorce between Elena Kate and Little Plume can be shown by tribal custom. While the precedent cited by Appellants affirms their assertion that the Board has looked to tribal custom to determine marriage status in the past, the precedent could not change the IPJ's conclusion in this appeal because those cases considered tribal custom only if followed by the relevant sovereign tribe. In *Estate of Cook*, 9 IBIA at 57-59, the Board reversed because there was no evidence presented concerning tribal custom marriage. Citing *Cohen, Handbook of Federal Indian Law*, the Board explained that it looks to the laws of the relevant tribe to determine tribal custom. 9 IBIA at 58. Similarly, in *Estates of Sherwood*, 14 IBIA at 239 n.1, the Board remanded the matter for a determination of the elements of tribal custom that must be shown, as established in *Cook*, because it was not clear which tribe's law applied or whether tribal custom divorce had been abolished at the time of separation. *Id.* In *Estate of Harold Humpty*, 7 IBIA at 124-26, the Board reiterated that application of Indian custom divorce depends on "whether it was an accepted and recognized custom of the tribe involved" and is an element of sovereignty. Finally, in *Estate of Phillip Quaempt*, 41 IBIA 252, 255 (2005), the Board rejected arguments based on tribal custom where there was no evidence that those claiming tribal custom marriage had complied with the laws of the Yakama Tribe requiring such marriages to be registered. Here, the Belcourts present no dispute that the Blackfeet Tribe and the Three Affiliated Tribes exercised their sovereign authority by adopting laws abolishing tribal custom divorce.<sup>9</sup> This precedent therefore provides no basis for revisiting Judge Johnson's conclusion.<sup>10</sup>

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<sup>9</sup> In their Hearing Memorandum, the family argued that the divorce term of the Blackfeet Tribal Law and Order Code violated family law provisions of the same Code. The IPJ correctly declined to construe one part of a tribal code to invalidate another portion of it.

<sup>10</sup> Moreover, even if we agreed with Appellants to accept tribal custom divorce, the evidence relied on by the Belcourts would not suffice to prove "custom" divorce of a party who was not served with notice of the hearing.

### 3. Manifest Injustice.

We address a final point which was generated by the IPJ's remarks regarding Little Plume's part in the tragedy of Elena Kate's death. Based upon this assertion, and the fact that the IPJ accepted the asserted facts and hearsay as true, the family not unreasonably interpreted the Judge as believing that her own legal ruling was itself unjust. The IPJ's construction was reflected in the Belcourts' presentation of facts in its Brief on appeal.

For these reasons, we have reviewed the record carefully to determine whether it reflects that a manifest error has occurred. This Board may exercise its inherent authority to correct such error or to prevent manifest injustice. 43 C.F.R. § 4.318. While we have reviewed the record carefully with this question in mind, we do not find such injustice here.

Clearly, the Belcourt family has suffered. Though Little Plume was not involved in Elena Kate's death, the discovery that their daughter had an IIM account, never known to her during her life but transferred to Little Plume on her death, appears unfair to the Belcourts. That the family knew that the couple separated after an incident of alleged domestic violence only compounds their collective frustration.

That the IPJ empathized with the family does not mean, however, that a manifest error has occurred such that she could have or that we can change the application of the laws of Montana or of either of two tribes. The laws of the relevant jurisdictions recognize marriage until it is dissolved in a court of law. The IPJ properly followed such laws.

### 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, and for the reasons discussed in the decision, we affirm the July 31, 2006, Order Denying Petition for Rehearing.

I concur:

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// original signed  
Lisa Hemmer  
Administrative Judge\*

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// original signed  
Debora G. Luther  
Administrative Judge

\*Interior Board of Land Appeals, sitting by designation.