



INTERIOR BOARD OF INDIAN APPEALS

Estate of Dennis John Lambie

49 IBIA 24 (03/24/2009)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ESTATE OF DENNIS JOHN)	Order Vacating Modification Order
LAMBIE)	and Remanding
)	
)	Docket No. IBIA 09-057
)	
)	March 24, 2009

On February 25, 2009, the Board of Indian Appeals (Board) received a letter from Verna F. Lambie (Appellant), stating that she is declining to accept as an heir an interest in certain trust property in the estate of Dennis John Lambie (Decedent), deceased Standing Rock Sioux Indian, Probate No. P 0000 27531 IP. Appellant is the non-Indian surviving spouse of Decedent, and the property — a 1/9720 interest in Allotment No. 423 on the Pine Ridge Sioux Reservation — was ordered distributed to Appellant with no prior notice to her.¹ The property was omitted from the original Order Determining Heirs issued for Decedent’s trust estate in 2006, and in October of 2008, the Bureau of Indian Affairs (BIA) requested a modification order so that the omitted property could be distributed to Decedent’s heirs in accordance with South Dakota laws of intestate succession.² On January 27, 2009, Indian Probate Judge (IPJ) Albert C. Jones entered a Modification Order to Include Omitted Property, Nunc pro tunc (Modification Order).

No notice was provided to Decedent’s heirs that BIA had identified additional property in Decedent’s estate and had requested modification of the Order Determining Heirs to distribute this omitted property. Thus, Appellant had no opportunity to contact the IPJ to express an intent to renounce her interest in the Pine Ridge property and be given an opportunity to submit a proper renunciation. In her submission to the Board,

¹ As a non-Indian, Appellant would take the property in fee, rather than in trust.

² Decedent died intestate on January 14, 2005. The Order Determining Heirs, issued on October 5, 2006, addressed Decedent’s trust or restricted real property interests governed by Montana law (IIM account) and by Federal law (Standing Rock Reservation trust real property interests and post-death income derived from it). The Pine Ridge property is located in the State of South Dakota, and its disposition is thus governed by South Dakota laws of intestate succession.

Appellant does not contest the substance of the Modification Order — that she is entitled to the property — but instead seeks to decline to accept the interest and suggests that it should be distributed to Decedent’s two children, Rocky James Lambie and Michelle Mittie.

The lack of notice to Appellant of the omitted property, and of BIA’s requested modification, precluded Appellant from exercising her right to renounce her interest in the property before the modification order was issued. Upon receipt of that order, Appellant promptly sought to decline to accept the interest by filing a notice with the Board, consistent with the appeal rights accompanying the IPJ’s modification order and within the 30-day time period allowed for an appeal. Under the circumstances, we conclude that the most appropriate course is to vacate the Modification Order and remand the matter to allow the IPJ to consider Appellant’s notice declining to accept the Pine Ridge property.³

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 vacates the Modification Order of January 27, 2009, and remands the matter to the Probate Hearings Division for further proceedings.⁴

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debora G. Luther
Administrative Judge

³ Appellant’s notice to the Board did not conform to the requirements of a renunciation. However, had Appellant been provided an opportunity to express her intent to the IPJ, the Board expects that the IPJ would have allowed her a reasonable opportunity to execute and submit a proper signed and acknowledged renunciation.

Because we are remanding this matter to the probate judge to consider, in the first instance, Appellant’s expressed intent to decline to accept her interest in the property, we express no opinion on whether applicable law would permit the property to be distributed as suggested by Appellant. *Compare* 43 C.F.R. § 4.208 (2007) *with* 43 C.F.R. §§ 30.181 - 30.188, 73 Fed. Reg. 67,297 (Nov. 13, 2008).

⁴ We note that the Modification Order also requires correction because it erroneously refers to the Order Determining Heirs as dated “March 31, 2004,” rather than as dated October 5, 2006.