



INTERIOR BOARD OF INDIAN APPEALS

Estate of Stella M. Flute

52 IBIA 163 (10/20/2010)



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 STELLA M. FLUTE)	Order Affirming
)	Order Granting Rehearing
)	
)	Docket No. IBIA 10-083
)	
)	October 20, 2010

Torin F. Crowe (Appellant) has appealed to the Board of Indian Appeals (Board) from an Order Granting Rehearing (Order Granting Rehearing) entered on March 30, 2010, by Indian Probate Judge (IPJ) Ange Aunko Hamilton in the estate of Appellant's grandmother, Stella M. Flute¹ (Decedent), deceased Crow Creek Sioux Indian, Probate No. P000078357IP. Appellant is the sole beneficiary named in Decedent's will, which was approved by the IPJ in a December 23, 2009, decision (Decision). The IPJ granted a request for rehearing, filed by the Crow Creek Agency Superintendent, Bureau of Indian Affairs, to modify the Decision to limit Decedent's devise to Appellant of her trust property on the Sisseton-Wahpeton Oyate (Lake Traverse) Reservation to a life estate because Appellant is not a member of the Sisseton-Wahpeton Oyate Tribe (Tribe); the remainder interest would pass to the Tribe.² On her own motion, the IPJ also modified the Decision to make the devise of Decedent's interest(s) in trust property located on the Spirit Lake Reservation subject to a right of the Spirit Lake Tribe to purchase the interests within

¹ Decedent was also known as Stella Rencountre, a.k.a. Stella Pretty Sounding Flute, a.k.a. Estella Flute, a.k.a. Estella Mae Rencountre, a.k.a. Estella M. Rencountre.

² The governing statute for the devise and descent of trust property on the Sisseton-Wahpeton Reservation is the Act of October 19, 1984, Pub. L. No. 98-513, 98 Stat. 2411 (Sisseton-Wahpeton Act). In relevant part, the statute provides that only the Tribe or persons who are enrolled members of the tribe shall be entitled to receive by devise or descent any interest in trust or restricted property on the Tribe's reservation, except that certain individuals (including, in the present case, Appellant) are entitled to receive a life estate in such interests. *See id.* §§ 2(a) and 4(a).

2 years of the date of Decedent's death.³ We summarily affirm the Order Granting Rehearing because Appellant does not contend that the IPJ made any error in her decision.

Upon receipt of the appeal, the Board ordered Appellant to show cause why the IPJ's Order Granting Rehearing should not be summarily affirmed. The Board explained that the IPJ's modification of the Decision with respect to the Sisseton-Wahpeton property was based on one factual finding (that Appellant is not an enrolled member of the Tribe) and on one legal conclusion (that the Sisseton-Wahpeton Act limits the right of non-enrolled individual devisees to life estates in trust property on the Tribe's Reservation), both of which appeared to be correct. Similarly, because the IPJ's order appeared to be correct with respect to the Spirit Lake Tribe's statutory right to purchase Decedent's interests in property located on the Spirit Lake Reservation, the Board ordered Appellant to show cause why that portion of the Order Granting Rehearing should not be summarily affirmed as well.

In response to the Board's order, Appellant made no allegation that the Order Granting Rehearing contained any error of fact or law. Instead, Appellant responded to the Board by stating: "I do have blood line in the [Sisseton-Wahpeton] tribe and; do intend on changing my enrollment from the Crow Creek Sioux Tribe to Sisseton Wahpeton Oyate as soon as it is possible to do so." Appellant's Response at 1.⁴

Appellant bears the burden of showing that the Order Granting Rehearing was in error. *See Estate of Verna Mae Pepion Hill Hamilton*, 45 IBIA 58, 63 (2007) (citing *Estate of Samuel R. Boyd*, 43 IBIA 11, 15 (2006)). The Board gave Appellant the opportunity to explain the grounds on which Appellant contends that the IPJ erred in making her decision. Appellant's response to the Board's show cause order does not allege any factual or legal error in the Order Granting Rehearing. To the contrary, relevant to the Sisseton-Wahpeton property, Appellant concedes that he is not a member of the Sisseton-Wahpeton Tribe.

³ See Act of Jan. 12, 1983, Pub. L. No. 97-459, Title I, § 108.

⁴ The Board construed Appellant's response as effectively requesting a stay of these appeal proceedings in order to allow him an opportunity to seek to become enrolled as a member of the Tribe. The Tribe objected to a stay, expressing concern that in the past individuals have been allowed to enroll in the Tribe specifically for inheritance purposes, only to disenroll after inheriting Reservation property. The Tribe argues that allowing non-member Indians to enroll in the Tribe specifically for inheritance purposes undermines the purpose of the Sisseton-Wahpeton Act. Given the Tribe's objections to a stay, and the grounds for those objections, the Board declines to stay the appeal.

And Appellant does not contest the IPJ's modification of the Decision with respect to the Spirit Lake Reservation property. Because Appellant fails to satisfy his burden of showing error in the IPJ's decision, we summarily affirm the Order on Rehearing. *See Estate of Lizzie McBride Rhoan*, 46 IBIA 262, 264-65 (2008) (summarily affirming decision where appellant failed to allege any substantive error); *Estate of Esther Eleanor Trevino*, 40 IBIA 271, 272 (2005) (appellant who fails to allege error or to argue how a decision allegedly is in error fails to carry the burden of proof).

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 summarily affirms the IPJ's March 30, 2010, Order Granting Rehearing.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debora G. Luther
Administrative Judge