



INTERIOR BOARD OF INDIAN APPEALS

Estate of Andrew Gullik

53 IBIA 168 (05/04/2011)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
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ESTATE OF ANDREW GULLIK            )    Order Vacating Escheat Recommendation  
  )    In Part and Remanding  
  )      
  )    Docket No. IBIA 09-017  
  )      
  )    May 4, 2011

This matter comes before the Board of Indian Appeals (Board) for review of a recommendation from Indian Probate Judge Regina L. Sleater (IPJ) for the restricted Alaska Native allotment in the estate of Andrew Gullik (Decedent) (also known as Andrew Gulik, Gullick, or Gonnie), Probate No. P000015088IP, who died intestate and without heirs, to be declared to escheat to the United States, as provided by 25 U.S.C. § 373b. Section 373b provides a general rule that when an Indian dies intestate and without heirs, owning a restricted allotment or homestead on the public domain, the land escheats to the United States and reverts to the public domain. Section 373b also contains an exception to that rule, which states that if the Secretary of the Interior determines that the property is within or adjacent to an Indian community and may advantageously be used for Indian purposes, the Secretary is permitted, depending on the value of the decedent’s estate, to designate Indian beneficiaries for whom the land will be held in trust.<sup>1</sup>

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<sup>1</sup> Section 373b provides in relevant part:

If an Indian found to have died intestate without heirs was the holder of a restricted allotment or homestead or interest therein on the public domain, the land or interest therein and all accumulated rents, issues, and profits therefrom shall escheat to the United States . . . and the land shall become part of the public domain . . . *Provided*, That if the Secretary determines that the land involved lies within or adjacent to an Indian community and may be advantageously used for Indian purposes, the land or interest therein shall escheat to the United States to be held in trust for such needy Indians as the Secretary of the Interior may designate, where the value of the estate does not exceed \$50,000, and in case of estates exceeding said sum, such estates shall be held in trust by the United States for such Indians as the Congress may . . . designate . . . .

(continued...)

In the present case, the IPJ recommended that Decedent's allotment "escheat to the United States under 25 USC 373b." Decision, Sept. 3, 2008, at 2. The IPJ did not provide any more specific recommendation or discussion concerning the disposition of the property, nor did she include any findings in her decision on whether the property is within or adjacent to an Indian community, or what the value of Decedent's estate was when he died. A memorandum transmitting the Decision to the Board, signed by the IPJ's staff attorney, represents that the IPJ's office recommends that the property become part of the public domain and asserts, without discussion, that the property is not within or adjacent to an Indian community.

We vacate the Decision in part because although we agree that § 373b applies and that the property will "escheat to the United States," those determinations do not resolve the question of the ultimate disposition of the property. Section 373b provides for "escheat to the United States" regardless of whether the property becomes part of the public domain or may be designated to be held in trust for Indian beneficiaries. *See supra* note 1. The record is insufficient for us to accept the IPJ's apparent finding (or assumption) that the land is *not* within or adjacent to an Indian community, which would require that it become part of the public domain as a matter of law. Because we cannot determine on the present record whether the Secretary has any discretionary authority with respect to the disposition of Decedent's allotment, we vacate the Decision in part and remand the case to the Probate Hearings Division for further proceedings.

### **Background**

Decedent was an Aleut who was born on April 20, 1911, and died on July 22, 1979, in the State of Alaska. Decision at 1. After conducting a probate hearing, the IPJ issued the Decision, concluding that Decedent had died intestate and without heirs.<sup>2</sup> Notice of the

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<sup>1</sup>(...continued)

Prior to 1983, the cap on the Secretary's authority, for land within or adjacent to an Indian community, was \$2,000. *See Estate of Kim Nip Pah*, 43 IBIA 176, 177 n. 1 (2006).

<sup>2</sup> In determining that Decedent died without heirs, the IPJ found that Decedent had no identifiable family, and she relied, in part, upon testimony given at the hearing held in Decedent's estate on December 19, 2007, at King Salmon, Alaska, which indicated that Decedent had been orphaned, was found near the Kvichak River, and brought to Levelock, Alaska to live with an elder. *See id.*

A document purporting to be a copy of Decedent's Last Will and Testament was produced and the IPJ allowed a search for the original, but no original will was found and  
(continued...)

Decision was sent to potentially interested parties, and it advised them of their right to seek rehearing. No such petitions were filed, and therefore the IPJ's determination that Decedent had died intestate and without heirs became final and is not before the Board.<sup>3</sup> The IPJ also forwarded the matter to the Board, pursuant to 43 C.F.R. § 4.205(b) (2008), but without discussion, "for escheat to the United States" under § 373b. Decision at 2.

At the time of his death, the property in Decedent's estate totaled 159.94 acres, and is described as "HIS OWN PUBLIC DOMAIN ALLOTMENT[, ] Fanny Barr[, ] BLM AA-43708." Inventory and Appraisalment of Restricted Lands of Andrew Gullik - Deceased Alaska Native, dated September 13, 2005. The Inventory and Appraisalment estimated the value of Decedent's allotment as totaling \$160,000. *Id.*<sup>4</sup>

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<sup>2</sup>(...continued)

the IPJ concluded that the copy could not be approved. *Id.* at 1-2; *see also Estate of Dennis Calf Looking*, 52 IBIA 1, 1 (2010) ("In the absence of an original will, a copy of a properly executed will ordinarily may be approved only if the record establishes that the original is sufficiently accounted for to defeat the presumption that the original was destroyed by the testator with the intent to revoke it.") (citations omitted).

<sup>3</sup> In *Estate of Kin Nip Pah*, the Board held that in an escheat case, the probate judge's determination that an Indian decedent died without heirs is a decision that is subject to a petition for rehearing, which becomes final after the deadline expires for filing such a petition. *See* 43 IBIA at 182. On the other hand, even if no petition for rehearing is filed, the escheat recommendation itself did not, under former 43 C.F.R. § 4.205(b) (2008), become final. *See id.* Action by the Board was required under former § 4.205(b) for a final determination by the Department of the Interior (Department). *See id.* at 182-83. Upon receipt of the IPJ's recommendation in this case, the Board waited until the time period had expired for filing petitions for rehearing with the IPJ regarding her determination that Decedent died intestate and without heirs.

<sup>4</sup> Decedent's Native allotment consisted of two parcels. The Inventory and Appraisalment provides the legal descriptions and locations of the parcels and estimates their values as follows:

Native Land Allotment surveyed for the following land as described:

**Seward Meridian:**

Parcel A-Section 4, T. 13 S., R. 42 W., U.S. Survey No. 12204, containing 79.98 acres. Pursuant to Sec. 905[(c)] of the Alaska National Interest Lands

(continued...)

The IPJ's Decision, and accompanying record, were transmitted to the Board through a memorandum signed by the IPJ's staff attorney, which states that the IPJ's office recommends that the property become part of the public domain, and further states that the property is not within or adjacent to an Indian community, but provides no discussion and refers to no evidence regarding that assertion. *See* Memorandum from Cecilia LaCara, Attorney-Advisor, to Chief Administrative Judge, Sept. 2, 2008. As noted earlier, the Decision itself does not make a finding as to either the location of Decedent's allotment in relation to an Indian community, nor does it address the value of Decedent's estate. Apart from the legal description of the property, *see supra* note 4, the record accompanying the Decision contains no information about the location of the property.

### Discussion

We first address our jurisdiction over this matter. The IPJ's escheat recommendation was made when the regulations authorized and required probate judges to transmit escheat recommendations to the Board for final action. *See* 43 C.F.R. § 4.205(b) (2008). The Department's probate regulations were amended in December 2008, and now authorize probate judges to issue decisions in escheat matters. *See* 43 C.F.R. § 30.254. But that authority did not exist when the IPJ issued the Decision. And § 30.254 does not address the issue of jurisdiction with respect to escheat recommendations that are already pending

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<sup>4</sup>(...continued)

Con[se]rvation Act of December 2, 1980.

#### **No improvements.**

Native Allotment Estimated at: \$ 80,000.00

Native Land Allotment Certificated for the following land as described:

#### **Seward Meridian:**

Parcel B – Sections 2, 3, 10, and 11, T. 11 S., R. 41 W., U.S. Survey No. 12119, Alaska, containing 79.96 acres. Pursuant to the Act of May 17, 1906, as amended.

#### **No improvements.**

Native Allotment Estimated at: \$ 80,000.00

before the Board.<sup>5</sup> Because the Board’s jurisdiction attached to this case prior to the effective date of the revised regulations, and because § 30.254 does not divest the Board of jurisdiction, we conclude that the Board has jurisdiction over this pending escheat recommendation.

After review of the record, we conclude that the Decision must be vacated in part because the record is insufficient to sustain the IPJ’s apparent conclusion (at least as indicated by the transmittal memorandum) that the property is *not* within or adjacent to an Indian community, thus precluding any further consideration of whether the Secretary has any discretionary authority to exercise with respect to the property. *Cf. Estate of Johnny Frank Loamie*, 50 IBIA 152, 154-55 (2009) (upholding probate judge’s determination that property subject to § 373b was adjacent to an Indian community); *see generally Jefferson County, Oregon v. Northwest Regional Director*, 47 IBIA 187, 206 (2008) (discussing definition of “adjacent”). The record includes a legal description of the property, but it contains no information about the distance between Decedent’s allotment and the nearest Indian community(ies). Thus, we have no information in the record that would permit us to fill in the gap left by the Decision. Assuming that the transmittal memorandum accurately reflects a conclusion by the IPJ that Decedent’s allotment is not within or adjacent to an Indian community, and therefore § 373b *requires* that the property become part of the public domain, that conclusion presumes facts for which we find no support in the record. Therefore, a remand is necessary so that the probate judge may determine whether Decedent’s allotment shall become part of the public domain, or may be subject to the authority of the Secretary (or Congress) under § 373b to designate Indian beneficiaries.

The Decision also failed to address the value of Decedent’s estate, which could be relevant if the property is found to be within or adjacent to an Indian community. Again, we cannot fill in the gap by reviewing the record because we cannot determine whether the property valuations in the record are based on the value of Decedent’s allotment in 1979, or in 2005 when the inventory report was prepared. As we stated in *Estate of Loamie*, 50 IBIA at 155, “[t]he appropriate date for valuation of property in a probate matter is the date of Decedent’s death, and this holds true for estates subject to escheat under 25 U.S.C. [§] 373b,” citing *Estate of Kin Nip Pah*, 50 IBIA at 183. Thus, even if the property were

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<sup>5</sup> In that respect, § 30.254 differs from 43 C.F.R. § 30.128, which requires the referral to the Bureau of Indian Affairs (BIA) of inventory disputes that arise during probate, and which operated to divest the Board of jurisdiction over pending inventory disputes in a probate proceeding. Section § 30.128 provides that if an inventory dispute arises “during a probate proceeding,” the “OHA deciding official,” which includes the Board, must refer the matter to BIA. *See Estate of James Jones, Sr.*, 51 IBIA 132, 134-36 (2010).

determined to be within or adjacent to an Indian community, further clarification could be required as to the value of Decedent's estate in 1979, in order to determine whether the Secretary has discretionary authority to designate Indian beneficiaries.

### Conclusion

We cannot determine, based on the record, whether Decedent's allotment is within or adjacent to an Indian community, and if so, what the value of Decedent's estate was in 1979. Although we agree with the IPJ that § 373b applies, and that the allotment escheats to the United States, those determinations leave the final disposition of the property unresolved. The record is insufficient to determine whether the land must become part of the public domain or whether the Secretary has authority to designate Indian beneficiaries, and, if so, how that authority should be exercised. Thus, we remand the case to the Probate Hearings Division for further proceedings consistent with this decision.

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 Decision in part and remands the matter to the Probate Hearings Division for further proceedings.

I concur:

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// original signed  
Steven K. Linscheid  
Chief Administrative Judge

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// original signed  
Debora G. Luther  
Administrative Judge