



INTERIOR BOARD OF INDIAN APPEALS

Estate of Clayton Donald Mountain Pocket

54 IBIA 236 (02/07/2012)

Petition for reconsideration dismissed:

55 IBIA 99

Judicial review of this case:

Dismissed, *Larry Costa and Victor Singer v. United States*, No. CV-12-33-BLG-RFC-CSO
(D. Mont. Oct. 5, 2012)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ESTATE OF CLAYTON DONALD)	Order Reversing Decision in Part and
MOUNTAIN POCKET)	Giving Effect to Decision in
)	Remaining Part
)	
)	Docket Nos. IBIA 09-121
)	09-122
)	09-123
)	09-124
)	
)	February 7, 2012

Darrell Bear Cloud, Dana Bear Cloud Birdin Ground, Larry Bear Cloud, and Christina Bear Cloud (collectively, Appellants) appealed to the Board of Indian Appeals (Board) from an Order Denying Rehearings (Rehearing Order) entered by Indian Probate Judge (IPJ) Albert C. Jones in the estate of Appellants’ adoptive cousin, Clayton Donald Mountain Pocket (Decedent), deceased Crow Indian, Probate No. P000047331IP.¹ Appellants are beneficiaries of Decedent’s will, which the IPJ disapproved solely on the ground that a presumption of undue influence applied and had not been rebutted by Appellants. After disapproving the will, the IPJ concluded that, notwithstanding Decedent’s adoption, the surviving issue of Decedent’s natural parents — Larry Singer Costa, and Victor, Susie, and Martha Singer (collectively, the Singers) — remained his “siblings” and thus were entitled to inherit from Decedent under the American Indian Probate Reform Act of 2004 (AIPRA), *see* 25 U.S.C. § 2206(a).

We conclude that the IPJ erred in applying a presumption that Decedent’s will was the product of Darrell’s undue influence. In order for the presumption to apply, three elements must be present, one of which requires that Darrell be the principal beneficiary of the will. But Darrell receives only a one-ninth share in Decedent’s estate under the will, which does not make him the principal beneficiary. The IPJ should not have applied the presumption of undue influence, thereby imposing a burden on Appellants to rebut the

¹ The Rehearing Order was entered on June 26, 2009, and left in place the IPJ’s March 27, 2009, probate decision (Decision).

presumption. Instead, the IPJ should have left the burden on the opponents of the will to prove the existence of undue influence.

We also conclude that the IPJ erred in recognizing the Singers as Decedent's siblings under AIPRA. AIPRA expressly provides that because Decedent was adopted, he "shall not be considered the *child or issue* of his natural parents," *id.* § 2206(j)(2)(B)(iii)(I) (emphasis added), with an exception that is not relevant to Decedent. In the present case, Decedent's adoption severed any legally cognizable parent-child (or parent-issue) relationship between Decedent and his natural parents, and thus precluded him from being a "sibling" to the Singers, for purposes of applying AIPRA. As a result, they are not Decedent's surviving "siblings" under AIPRA.

Because our determination that the Singers are not Decedent's siblings precludes them from being actual or potential heirs to Decedent under AIPRA, they also lack standing to contest the will.² The only actual or potential heir to Decedent's estate is the Crow Tribe, which did not oppose the will. Thus, we reverse the erroneous portions of the IPJ's decision, we leave intact those portions in which the IPJ concluded that the requirements of a valid will were satisfied, and we find no basis to remand for further proceedings on the issue of undue influence.

Background

Decedent died on January 4, 2007, and it is undisputed that the disposition of his Indian trust estate is governed by AIPRA. Decedent's biological parents were Clifford Singer, Sr., and Pearl Big Shoulder. Clifford and Pearl had another son, Larry, who was adopted by Augustine and Anna Costa. Clifford and his second wife, Laura, had three additional children, Victor, Susie, and Martha. As noted earlier, we refer collectively to these four biological children of Clifford as the Singers.³

In 1965, Decedent was legally adopted by Joseph Mountain Pocket and Sadie Bear Cloud Mountain Pocket, both of whom predeceased Decedent. Decedent was their sole child. Appellants are Decedent's adoptive cousins, the children of Decedent's adoptive

² See 43 C.F.R. § 30.101 (definition of "interested party").

³ The legal relationship between Larry Singer Costa and Victor, Susie, and Martha Singer, is not at issue in this appeal, and we express no view on any issue concerning that relationship.

maternal aunt, Alice Bearcloud,⁴ and are part of the extended adoptive family in which Decedent was raised.

In 1995, Decedent executed a document that was handwritten by Darrell. The document provides for the disposition of Decedent's property and provides in relevant part: "1/3 to Larry Bear Cloud[,], 1/3 to Christina Bear Cloud who takes care of [Decedent,] and the rest to Darrell, Marilyn Dumont, [and] Dana Bear Cloud." Administrative Record (AR) Tab 2. The document bears the signature of two witnesses, Rose M. Main and Louis Messerly, Jr. *See id.*

At the probate of Decedent's estate, the document was offered by Darrell as Decedent's will. The document was contested by the Singers and by Decedent's adoptive paternal relatives, the latter of whom contended that the property had originated from the Mountain Pocket family and should be returned to that family.⁵ The Tribe did not make an appearance in the proceedings and has not contested the will.

The circumstances surrounding the creation of the document, and Decedent's intent, were the subject of extensive testimony before the IPJ and various findings by the IPJ. For purposes of the issues raised in this appeal, what is relevant is that the IPJ concluded that if the document was not the product of undue influence by Darrell, it satisfied the requirements of a valid will.

With respect to the undue influence issue, the IPJ recognized that there are three elements that must be established to find a presumption of undue influence: "(1) a confidential relationship existed; (2) the person in the confidential relationship actively participated in the preparation of the will; and (3) the person in the confidential relationship was the principal beneficiary under the will." Rehearing Order at 4 (quoting *Estate of Grace American Horse Tallbird*, 26 IBIA 87, 88 (1994)). The IPJ concluded that the presumption of undue influence applied because Darrell had a confidential relationship with Decedent, Darrell participated in drafting the will, and — as relevant to this appeal — Darrell and his siblings (Dana Bear Cloud Birdin Ground, Larry Bear Cloud, Christina Bear Cloud, and Marilyn Bear Cloud Dumont) are the will's only beneficiaries.

⁴ Documents in the record variously use the spellings "Bear Cloud," "BearCloud," and "Bearcloud."

⁵ The Mountain Pocket family members did not appeal from the IPJ's decision.

The IPJ found that even though Darrell, who receives a one-ninth share of Decedent's estate under the will, "was not the principal beneficiary, he and his siblings take the entire estate under the will." *Id.* The IPJ concluded that, considering the "totality of circumstances," a presumption of undue influence "clearly existed." *Id.* By finding that a presumption of undue influence applied, the IPJ imposed a burden on Appellants to rebut the presumption.

Under Board precedent, the presumption of undue influence can only be rebutted by showing that the testator received objective and independent advice. *See Estate of Theresa Underwood Dick*, 50 IBIA 279, 301 (2009). Appellants could not make that showing, and therefore the IPJ disapproved the will as the product of undue influence. Had the IPJ not applied the presumption of undue influence, the burden would have been on the will contestants to prove that the will was the product of undue influence. *See id.* at 300-301.

Having disapproved the will, the IPJ determined that Decedent's estate passed to his heirs pursuant to AIPRA's rules of intestate succession. For Decedent's interests in trust property that constituted less than a five percent interest of the entire undivided ownership in a parcel of land, the IPJ determined that the interests passed to the Tribe as heir. *See* 25 U.S.C. § 2206(a)(2)(D)(iii)(IV).⁶

For Decedent's remaining trust property, the IPJ concluded that the next-in-line heirs to Decedent under AIPRA were the Singers because they were Decedent's "surviving siblings" and were included in the definition of "eligible heirs". *See* Decision at 11 (quoting 25 U.S.C. § 2206(a)(2)(B)(iv) (inheritance by "surviving siblings who are eligible heirs")); *see also* 25 U.S.C. § 2201(9) (definition of "eligible heirs"). Although Larry⁷ had been adopted out, the IPJ found that Larry's adoption did not preclude him from inheriting from Decedent, based on an exception in AIPRA to its general rule severing the relationship between an adopted-out individual and his or her biological family.

Appellants appealed to the Board from the Rehearing Order, in which the IPJ rejected their arguments that the presumption of undue influence does not apply. On appeal, Appellants contend that the IPJ erred in applying the presumption of undue influence, and that the Singers lack standing to contest the will because Decedent's adoption

⁶ Section 2206(a) contains two paragraphs denominated as paragraph "(2)," the second of which follows paragraph (5). All references in this decision are to the first paragraph (2).

⁷ Our references to "Larry" in this decision are to Larry Singer Costa, and not to Appellant Larry Bear Cloud.

means that the Singers are not, as a matter of law, Decedent's siblings, and thus are not Decedent's actual or potential heirs.

Discussion

I. Introduction

The IPJ's determinations at issue in this appeal — that the presumption of undue influence applies to the facts of this case, and that the Singers would be Decedent's heirs in the absence of a valid will (and thus “interested parties” under the regulations) — are legal determinations, which we review *de novo*. See *Estate of Cyprian Buisson*, 53 IBIA 103, 107 (2011). We first address the undue influence issue, and conclude that the IPJ erred in applying the presumption and imposing a burden on Appellants to rebut it. We then turn to the status of the Singers, who contested the will in the proceedings below. We conclude that they are not Decedent's legally cognizable “siblings,” for purposes of applying AIPRA. Therefore, they are not Decedent's actual or potential heirs and are not entitled to contest the will. And because the Tribe has not contested the will, a remand is unnecessary and the will may be given effect.

II. Presumption of Undue Influence

As a general rule, the burden of proof to show that a will is the product of undue influence is on the will contestant, and the burden is stringent. See *Estate of Dick*, 50 IBIA at 300-301. If, however, a *presumption* of undue influence applies, the burden shifts to the will proponent to rebut the presumption by making a showing that the testator received objective and independent advice. See *id.* at 301. As the IPJ correctly recognized, there are three elements that must be present in order for the presumption to apply. In the present case, we need only address the third element — whether Darrell is the “principal beneficiary” of Decedent's will or whether the third element is otherwise effectively satisfied.

The IPJ acknowledged that Darrell was not “the principal beneficiary” of the will, but nevertheless held, based on the “totality of circumstances,” that the presumption “clearly existed.” Rehearing Order at 4. We conclude that the IPJ erred. Unless the third element is present, the presumption does not apply. See *Estate of Orville Lee Kaulay*, 30 IBIA 116, 122 (1996) (all three elements must be present for the presumption to apply).⁸ As the IPJ

⁸ Darrell also argues that the first element fails as well because he did not have a confidential relationship with Decedent. We need not address that argument because our conclusion that the third element is not satisfied is sufficient to preclude application of the presumption.

recognized, Darrell was not “the” principal beneficiary of the will. Nor can Darrell be characterized as “a” principal beneficiary of the will, even assuming that more than one principal beneficiary may exist for purposes of triggering the presumption. Under the will, Darrell receives a one-ninth share in Decedent’s estate, and we hold that Darrell’s one-ninth share under the will is insufficient to satisfy the third element for the presumption of undue influence. *See Estate of Tallbird*, 26 IBIA at 88 (stating, albeit in “dicta,” that an equal one-third interest did not make the person the principal beneficiary under the decedent’s will); *cf. Estate of George Fishbird*, 40 IBIA 167 (2004) (presumption was triggered when the decedent’s friend and guardian was the sole beneficiary under the will); *Estate of Ernestine Louis Ray*, 33 IBIA 92, 96-97 (1998) (decedent devised considerably more of her property to one son in relation to devises to her other children; the appellants did not contest the probate judge’s finding that the son was the principal beneficiary).

In finding that the presumption should apply in this case, the IPJ found it significant that while Darrell was not the principal beneficiary, all of Decedent’s estate passed collectively to Darrell and his siblings. Perhaps this explains the IPJ’s reference to the “totality of circumstances” in finding that the third element was present. But whatever the totality of circumstances, the facts must ultimately support the conclusion that Darrell is the principal beneficiary. And although the Board has not ruled out the possibility that, under certain circumstances, a person might be the principal beneficiary under a will even if he or she is not a direct beneficiary, *see Estate of Kaulay*, 30 IBIA at 123, we are not convinced that such circumstances exist here. The devises to Darrell’s siblings do not benefit him directly, and it would be pure speculation to suggest that he is likely to receive that property in the future from his siblings, even assuming that would make him the principal beneficiary for purposes of the third element. Moreover, the fact that Darrell and his siblings were also apparently the natural objects of Decedent’s bounty, as members of Decedent’s extended adoptive family, reinforces our conclusion that the devises to Darrell’s siblings could not simply be assumed to inure to Darrell’s benefit for purposes of satisfying the third element. *Cf. Bryan v. Norton*, 265 S.E.2d 282 (Ga. 1980) (presumption of fraud/undue influence applied where influencer is not a natural object of the testator’s bounty).

To summarize this portion of our decision, we conclude that the IPJ mistakenly applied a presumption that Darrell unduly influenced Decedent in the preparation of his will, and thus the IPJ mistakenly imposed on Appellants a burden to rebut the presumption and mistakenly relieved the will opponents of the burden to prove that the will was the product of Darrell’s undue influence. And the IPJ’s errors were material because, except for finding that the will was invalid as the product of (presumed) undue influence, the IPJ otherwise concluded that the requirements of a valid will were satisfied.

III. Standing of the Singers to Challenge the Will

In considering challenges to Decedent's will, and in determining the identity of Decedent's heirs in the absence of a will, the IPJ concluded that the Singers are his "surviving siblings" who are "eligible heirs," and thus they are entitled to inherit from Decedent under AIPRA.⁹ Whether or not the Singers would otherwise qualify as "eligible" to inherit from Decedent, they do not qualify as heirs to Decedent because they are not, as a matter of law, his "siblings."

AIPRA does not define "sibling," but the dictionary definition of the word is "one of two or more individuals having one common parent." Merriam-Webster Online Dictionary, www.merriam-webster.com/dictionary/sibling (Last visited Feb. 6, 2012; print-out added to record). The IPJ apparently concluded that because AIPRA does not expressly define "siblings" as requiring individuals to have a common parent, no such requirement exists. *See* Decision at 11. We think, to the contrary, that if Congress had intended to give special meaning to the term "sibling" — i.e., to depart from its ordinary meaning — Congress would have specially defined the term in AIPRA. In the absence of a special definition of "sibling," we conclude that Congress did not intend to depart from the word's ordinary meaning. Thus, in order for Decedent to be a "sibling" to the Singers, Decedent must share with each of them at least one parent. It is undisputed that, biologically, this is the case. The question in this case is whether Decedent is the Singers' "sibling" as a matter of law under AIPRA.

Relevant to this question, AIPRA contains a specific provision to define the *legal* status of adopted-out children. Under AIPRA "an adopted person *shall not be considered the child or issue of his natural parents*, except in distributing the estate of a natural kin, other than the natural parent, who has maintained a family relationship with the adopted person." 25 U.S.C. § 2206(j)(2)(B)(iii)(I) (emphasis added). As applied to Decedent, only the first clause in this provision is relevant: Because Decedent was adopted out, he shall not, under AIPRA, be considered the child or issue of his natural parents. The exception is not

⁹ Under the general rules of intestate succession in AIPRA, if a decedent is not survived by a spouse, children, grandchildren, great-grandchildren, or a parent, then the trust or restricted property shall pass "to those of the decedent's surviving siblings who are eligible heirs, in equal shares." 25 U.S.C. § 2206(a)(2)(B)(iv). If there are no surviving siblings who are eligible heirs, the property passes "to the Indian tribe with jurisdiction over the interests in trust or restricted lands." *Id.* § 2206(a)(2)(B)(v).

It is undisputed that if the Singers qualify as Decedent's "siblings" under AIPRA, they meet the additional requirement of being "eligible heirs" under § 2201(9).

relevant to Decedent's status in this case because we are not distributing the estate of a natural kin of Decedent; we are distributing Decedent's estate.¹⁰

Thus, under the plain language of AIPRA, Decedent is not considered, as a matter of law or fact, either the "child or issue" of his natural parents, Clifford Singer and Pearl Big Shoulder. For purposes of AIPRA, Decedent's adoption severed the parent-child or parent-issue relationship. As a result, Decedent does not, as a matter of law, share either Clifford or Pearl as a common "parent" with the Singers, even though biologically that is the case. And because we find no basis to conclude that Congress intended the word "sibling" to have something other than its ordinary meaning, and that the "sibling" relationship requires that individuals share at least one common parent, AIPRA's severance of any parent-child or parent-issue relationship between Decedent and his biological parents means that he is not a "sibling" to the Singers. AIPRA removed the predicate upon which a sibling relationship depends.

In approaching the heirship issue, the IPJ focused his analysis on whether *Larry's* adoption would prevent *Larry* from being considered the child of Clifford and Pearl, for purposes of inheriting from Decedent. The IPJ concluded that under the exception in § 2206(j)(2)(B)(iii)(I), *Larry's* adoption did not preclude *Larry* from being treated as the child or issue of Clifford and Pearl, or from inheriting from Decedent, because Decedent had maintained a family relationship with Larry. But the mistake made by the IPJ — and reflected in Larry's arguments on appeal — was in treating that exception as affirmative authority for determining that Larry was Decedent's heir. The exception to the general rule governing adopted-out children may *allow* an adopted out person to inherit from a natural kin, but only if the two have a legal relationship that places the adopted out person within a class of individuals who are heirs. In this case, for Larry to inherit from Decedent, he must be Decedent's sibling. Contrary to Larry's arguments on appeal, the exception in § 2206(j)(2)(B)(iii)(I), as applied to Larry, is simply irrelevant in this case because *Decedent's* adoption severed *Decedent's* relationship as a child or issue of Clifford

¹⁰ Nor does the remaining portion of § 2206(j)(2)(B)(iii)(I) apply, which provides that if a natural parent of an adopted child marries the adoptive parent, AIPRA preserves the parent-issue relationship between the natural parent and adopted child for purposes of inheritance. AIPRA also allows other Federal laws and laws of the Indian tribe with jurisdiction over the trust realty to otherwise define the inheritance rights of adopted-out children, *see* 25 U.S.C. § 2206(j)(2)(B)(iii)(II). In the proceedings below, the IPJ agreed with Larry that no such other laws apply in the present case.

and Pearl. Whether or not Larry remained the child or issue of Clifford and Pearl, under AIPRA, Decedent did not, and thus they could not be siblings under AIPRA.¹¹

Nor does AIPRA's definition of "eligible heirs" change the outcome. In order to inherit under 25 U.S.C. § 2206(a)(2)(B)(iv), one must be both a "surviving sibling" *and* an "eligible heir." Unless an individual is a "sibling," as a matter of law, to a decedent, it is irrelevant whether the individual would otherwise qualify as an "eligible heir." As the Board noted in *Estate of Reginald Paul Walkingsky*, 52 IBIA 233, 235 (2010), "the substantive rules of descent are not found in the definition of 'eligible heir,' but in [§ 2206(a)]." And in order to determine who is a "sibling" under § 2206(a)(2)(B)(iv), we must apply the terms of § 2206(j)(2)(B)(iii), which determines under what circumstances an adopted out person, in this case Decedent, will or will not be considered the child or issue of his natural parents.

We thus reject Larry's argument that because AIPRA does not define "sibling," its meaning can be derived from the definition of "eligible heir," which includes full siblings, and half siblings by blood. That argument misses the point because the fact that a full sibling or a half sibling by blood may be *eligible* to be an heir does not answer the threshold question of whether a particular individual is, as a matter of law, a "sibling" to a decedent. We conclude that under § 2206(j)(2)(B)(iii)(I), for purposes of probating the estate of a *decedent* who was adopted out, the decedent is only the child of his adoptive parents, is not a child or issue of his biological parents,¹² and his legally cognizable "siblings" must be determined accordingly.

The IPJ allowed Decedent's biological siblings to challenge Decedent's will because he found that they were "actual or potential heirs" to Decedent. *See* 43 C.F.R. § 30.101 (definition of "interested party"). As we have concluded, however, that finding was in error. Because none of Decedent's biological siblings are actual or potential heirs, they are not interested parties and do not have standing to contest the will. *See Estate of Sam Pooengerah*, 28 IBIA 92, 94 (1995).

¹¹ At most, applying the exception to Larry would place him in the same position as Victor, Susie, and Martha. But because Decedent's adoption out means that Decedent cannot be considered the child or issue of Clifford or Pearl, none of the Singers are his legally cognizable siblings.

¹² The exception is when a natural parent has married the adopting parent. *See supra* note 10.

In the absence of a will and in the absence of any legally cognizable siblings, the only heir to Decedent's entire estate would be the Tribe. *See* 25 U.S.C. § 2206(a)(2)(B)(v). The Tribe, however, did not challenge the validity of the will, and the sole reason that the IPJ disapproved the will was because Appellants had not rebutted the (improperly applied) presumption of undue influence. Because the Tribe did not oppose the will, and because our reversal of the erroneous portions of the IPJ's decision leaves intact and unchallenged those portions in which the IPJ concluded that the requirements of a valid will were satisfied, we find no basis to remand for further proceedings on the issue of undue influence. Under these circumstances, we conclude that Decedent's estate shall be distributed to Appellants in accordance with the terms of his will: one-third to Larry Bear Cloud; one-third to Christina Bear Cloud; and one-ninth each to Darrell Bear Cloud, Marilyn Bear Cloud Dumont, and Dana Bear Cloud Birdin Ground.

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 reverses the IPJ's decision in part, as provided in this order, and gives effect to the IPJ's decision in remaining part.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debora G. Luther
Administrative Judge