



INTERIOR BOARD OF INDIAN APPEALS

Estate of Alverda Beck

55 IBIA 93 (05/30/2012)

the interests passed to him in unrestricted (i.e., non-trust) status. *Id.*³ Appellant and another of Decedent’s surviving children, John Beck, requested *de novo* review of the ADM’s decision, and the IPJ held a hearing and issued his Decision, in which he reached the same conclusion as the ADM: William is Decedent’s sole heir and his interests pass out of trust. Decision, Apr. 20, 2009 (AR Tab 10). In the Decision, the IPJ noted that if it was determined, through a state court probate of William’s estate, that William’s heirs are his children, then the children could ask BIA to accept their interests in the land back into trust. *Id.* at 2.

Appellant responded to the Decision by writing a letter to the IPJ stating that she and her siblings “made the decision to keep this land in trust.” AR Tab 6. The IPJ treated Appellant’s letter as a petition for rehearing, which he denied. In the Rehearing Order, the IPJ noted that he had no jurisdiction to probate William’s estate or to place land in trust. AR Tab 5.

Appellant then appealed to the Board, again stating that she and her siblings would like to keep Decedent’s land interests in trust.⁴

Discussion

It was Appellant’s burden to demonstrate error in the Rehearing Order, as the Board advised her in its order scheduling briefing for this appeal. *See* Notice of Docketing, Aug. 11, 2010, at 2; *see also Estate of Verna Mae Pepion Hill Hamilton*, 45 IBIA 58, 63 (2007). Simple disagreement with the conclusion reached by the IPJ is not sufficient to carry this burden of proof. *Estate of Delma Kingbird*, 50 IBIA 167, 171 (2009).

In the present case, Appellant’s notice of appeal states that she and her siblings would like to have the land interests in Decedent’s estate remain in trust, but she does not

³ Because Decedent’s trust real property interests were located in South Dakota, and because Decedent died before the intestate succession rules in the American Indian Probate Reform Act of 2004 became effective, Decedent’s heirs were determined in accordance with the laws of South Dakota. Under applicable South Dakota law, if a decedent’s surviving spouse is also the parent of all of the decedent’s children, the surviving spouse takes the entire estate. *See* S.D. Codified Laws § 29A-2-102(1)(ii).

⁴ Appellant’s notice of appeal suggested that it was being filed on behalf of Appellant and her siblings, but the Board advised the parties that in the absence of signed statements from Appellant’s siblings, either joining in her appeal or authorizing Appellant to represent them, the Board could only consider the appeal to have been filed by Appellant in her own behalf. The Board received no responses from any of Appellant’s siblings.

make any arguments that the IPJ erred in finding that William was Decedent's sole heir and that, because William was non-Indian, the interests passed to him out of trust. The Board's own review of the IPJ's Rehearing Order does not indicate any error in applying South Dakota law, and it is well-established that an interest in trust real property that passes by inheritance to a non-Indian passes out of trust. *See Estate of Florence Ethel Bowry Lane*, 46 IBIA 188, 193 (2008).

Because Appellant failed to satisfy her burden of showing error in the IPJ's decision, we affirm the Rehearing Order. *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 support such an allegation fails to carry the burden of proof). Decedent's trust real property interests pass to William, out of trust. If it is determined, through the probate of William's estate in state court probate proceedings, that Appellant is an heir to William's estate, then as the IPJ explained, Appellant and her siblings, individually or jointly, may submit a request to BIA to accept the Rosebud interests that were inherited from William back into trust.⁵

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 affirms the Rehearing Order.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

//original signed
Debora G. Luther
Administrative Judge

⁵ The Department has no authority over the probate of William's estate, and thus Appellant and her siblings are responsible for the probate of William's estate in state court, if that has not already occurred. In response to the Board's solicitation of information from Appellant on whether an administrator had been appointed for William's estate, whether William had a will, and whether any probate orders had been issued for William's estate, Appellant responded only by stating that William did not have a will.