ESTATE OF DANIEL HOMEGUN
(Deceased Blackfeet Allottee No. 1919)

IBIA 74-28 Decided November 26, 1974

Appeal from an order after reopening adhering to original order determining heirs.

Dismissed.

APPEARANCES: John P. Moore, Esquire, Counsel for Appellant.

OPINION BY ADMINISTRATIVE JUDGE SABAGH

Peter Homegun appealed from Administrative Law Judge's Order dated April 20, 1967, determining heirship and the further order dated November 7, 1973, on the following grounds and reasons:

1. The appellant was denied the right of cross-examination of Suzie Dayrider Guardipee who attempts to comport herself as Suzie Homegun. Such cross-examination would have proven that Suzie Dayrider Guardipee never became the legal wife of Daniel Homegun.

2. That the appellant was denied his civil rights by not having an opportunity to confront, vis a vis, Suzie Dayrider Guardipee with cross-examination.

3. That the decision of the Judge herein is contrary to the evidence herein and is not supported by the evidence herein.

4. That the decision of the Judge herein is based on a mistake as to the laws of marriage and common-law marriage on the Blackfeet Indian Reservation.

Daniel Homegun, Blackfeet Allottee No. 1919 died intestate on April 20, 1966. A hearing was scheduled for August 25, 1966, at the Blackfeet Indian Agency, Browning, Montana. Notice thereof was directed only to Susie Dayrider Guardipee Homegun who was reported by the Blackfeet Indian Agency personnel to be the decedent's surviving widow. Notices of the hearing were duly posted as provided in the Departmental regulations.

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There appeared at the hearing at the appointed time and place, Suzie Homegun, Peter Homegun, the decedent's brother, and Maggie Homegun Sarceeman, the decedent's sister. The Judge announced to the aforementioned parties a continuance of the hearing to August 26, 1966.

Only Susie Homegun appeared at the continued hearing. She testified that the decedent had been married to Susan Cecile Manyhides in 1935 and that the marriage subsisted until Susan Cecile's death on July 7, 1946; that she started living with Daniel Homegun in May 1948 while still married to Henry Guardipee; that Henry Guardipee died on August 20, 1953; that she was Guardipee's wife at the time of his death; and that she continued to live with the decedent as his wife until the decedent's death in April 1966. At the hearing the Judge incorporated into the record photoprocessed copies of two notes executed by Daniel and Susie Homegun evidencing tribal loans to them from the Blackfeet Tribe in support of the Tribe's claim against decedent's estate.

An order determining heirs was issued in this estate on April 20, 1967, wherein Susie Homegun was determined to be the decedent's wife and sole heir. Notice of said order was mailed to Susie Homegun on this date, but not to the decedent's siblings or nieces and nephews who would have been heirs had the decedent not been survived by a spouse, since none had appeared at the continued hearing.

The notice recites among other things that "any person aggrieved by the decision of the examiner may, within 60 days, but not thereafter, file with the superintendent a written petition for rehearing. The petition must be under oath and must state specifically and concisely the grounds upon which it is based."

On March 24, 1970, Peter Homegun filed a petition for rehearing which had it been timely filed would have been insufficient in that it was not accompanied by the sworn statement of a disinterested person having knowledge of the facts as then required by Departmental regulations.

In said petition the petitioner in substance asserted the following:

1) The Judge had no jurisdiction or right to make a determination of heirship in this estate without having first caused actual written legal notice as required by Government Regulations to be sent to all of the heirs of the decedent, including the petitioner.

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2) Because petitioner had no written notice of such hearing, he had no opportunity to prepare the necessary legal procedure to protect his rights and disprove the claims made by Susie Dayrider Guardipee Homegun.

3) Given the opportunity, the petitioner could submit substantial evidence to show that Susie Homegun had no right to inherit from Daniel Homegun and that the estate of the decedent should go to the natural heirs.

The Judge considered the said petition as a petition for reopening. Notices were sent to all interested parties including the natural heirs indicating therein that because a copy of the order determining heirs was not sent to Peter Homegun and because additional evidence may be available as to heirship, the Judge was constrained to reopen the estate, unless good cause be shown by said interested parties in opposition of said reopening. Good cause not being shown, the matter was reopened and hearing was held in Browning, Montana, on June 20, August 1 and 2, 1972.

The Judge on November 7, 1973, affirmed the order determining heirs issued on April 20, 1967, and the petitioner, Peter Homegun appealed. The appellant among other things contends that he was denied the right to cross-examine Susie Dayrider Guardipee Homegun.

The basic issue before this Board in the case at bar is whether or not the appellant was afforded procedural due process.

We hold that the appellant was afforded procedural due process.

The Judge did not send appellant a written notice of the hearing to be held on August 25, 1966, because the information was not made available to her by the Title Plant. The Judge did however comply with Departmental regulation by causing notice of the time and place of the hearing to be posted at least 20 days prior thereto, in five or more conspicuous places in the vicinity of the designated place of the hearing. Moreover, the appellant appeared on the designated date. In the presence of the appellant the Judge announced a continuance until the next day. We are of the opinion that this satisfied Departmental regulations and procedural due process.

The appellant was afforded the opportunity of preparing for and of appearing at the hearing that was held on August 26, 1966, of being heard and of cross-examining any witness who then appeared

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and testified. Susie Dayrider Guardipee Homegun did appear on August 26, 1966, and offered testimony. The appellant was afforded the opportunity at that time to cross-examine Susie Homegun. However, he did not choose to appear at the hearing. He cannot through the use of a frivolous contention exclaim that his procedural rights were violated.

Nonetheless, because notice of the April 20, 1967, order determining heirs was not sent to the appellant and because the petitioner through counsel averred that if given an opportunity for a rehearing he could bring in substantial evidence to show that Susie Homegun had no right to inherit from Daniel Homegun, the Judge to prevent manifest error allowed the matter to be reopened. (Emphasis supplied). Opportunity was afforded appellant to submit the substantial evidence he alleged he could bring in to show that Suzie Homegun had no right to inherit. No evidence was submitted. Instead, counsel insisted upon the opportunity to cross-examine Susie Homegun. We hold that procedural due process was afforded the appellant on August 26, 1966, to cross-examine Susie Homegun. He did not choose to do so then. He cannot now say that he was not afforded procedural due process.

We find no merit to this or any of the other contentions raised against the order of the Judge.

Having reviewed the entire record and considered appellant's petition for appeal, unsupported by a brief, the Board finds that the appellant has shown no reason why the findings, conclusions and order of the Judge should not be affirmed. We hold that there is substantial evidence in the record to support the order of the Administrative Law Judge.

Now THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1 the appeal is dismissed and the ORDER DETERMINING HEIRS of April 20, 1967, stands unchanged.

This decision is final for the Department.

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Mitchell J. Sabagh
Administrative Judge

I concur:

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Alexander H. Wilson
Administrative Judge

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