ESTATE OF STELLA VALANDRY WILLIAMS

IBIA 84-14 Decided October 26, 1984

Appeal from an order denying reopening issued by Administrative Law Judge Elmer T. Nitzschke in IP BI 245A 83, IP BI 779C 78.

Affirmed.

1. Indian Probate: Settlement

The last will and testament of a deceased Indian may be modified by an agreement of the devisees in the form of a settlement of issues raised by or because of the will, if the modification is approved by an Administrative Law Judge or the Board of Indian Appeals on behalf of the Secretary of the Interior.

APPEARANCES: Edward M. Bubak, Esq., and Douglas R. Bleeker, Esq., Tyndall, South Dakota, for appellants; Lawrence E. Long, Esq., and Fredric R. Cozad, Esq., Martin, South Dakota, for appellee. Counsel to the Board: Kathryn A. Lynn.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

On January 23, 1984, the Board of Indian Appeals (Board) received a notice of appeal and supporting brief from John R. Williams, Rosemary Sayers, and Linda M. Westover (appellants). Appellants sought review of an order denying reopening of the estate of Stella Valandry Williams (decedent) issued by Administrative Law Judge Elmer T. Nitzschke on December 8, 1983. This order let stand a May 1, 1979, order approving decedent's last will and testament. For the reasons discussed below, the Board affirms this order.

Background

Decedent, Oglala Sioux Allottee No. 2463 of the Pine Ridge Indian Reservation in South Dakota, was born on March 8, 1906, and died on June 18, 1978. A hearing to probate her Indian trust estate was held on November 28, 1978, before Administrative Law Judge Keith L. Burrowes. Decedent's last will and testament, dated November 20, 1976, was introduced at the hearing. Under that will, decedent left a life-estate in her property to her non-Indian husband. The remainder interest was to vest in her son, Joseph Ward Williams (appellee), subject to payment of a specified amount to her remaining three children, appellants here. Failure to make the payment would result in the divestiture of appellee and the redistribution of decedent's trust estate

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to her four children in equal shares. It appears that decedent intended, through this devise, to attempt to keep her trust estate intact and in the hands of one of her children who would use the land. She also apparently intended that her three remaining children would receive a fair share of her estate.

Under the terms of decedent's will, appellee's payments to appellants were to be made over a period of 5 years. The first installment was due 1 year from decedent's death or from her husband's death, whichever was later. The initial four installments were quite small. The fifth and final payment included the bulk of the principal and interest.

Decedent's husband survived her, and died on December 12, 1981. Therefore, the first installment payment was due to appellants on December 12, 1982. There is no dispute that this payment was not made. Appellee states, however, that he did not make payment because of a family agreement under which appellants would receive payment in one lump sum, rather than over a 5-year period. This agreement was, according to appellee, suggested by appellant John R. Williams in January 1982, and accepted by his two sisters. Appellee states that appellants were aware during 1982 that he wished the land to go to his son, Steven, the contingent remainderman under decedent's will, and that Steven was attempting to secure financing in order to make appellee's agreed lump-sum payments to appellants. Appellee further states that he informed appellants in November 1982 that full payment to each of them would be possible in late December 1982 or early January 1983. Finally, appellee alleges that financing was secured and that he has stood ready since January 1983 to make full payment to appellants through his son, but that payment has been refused.

Appellants dispute appellee's version of the facts. They contend that appellee's two sisters did not agree to a lump-sum payment, although the record indicates that the sisters each received a letter from appellee's lawyer setting forth the lump-sum payment plan.

Judge Nitzschke found that an unwritten family agreement existed between appellants and appellee under which appellants requested payment for their portion of decedent's estate in a lump sum and appellee agreed to give up his right to make payments over a 5-year period. The Judge consequently denied appellants' petition for reopening, which sought to cause decedent's estate to be redistributed to themselves and appellee in equal shares. Appellants sought review of this order by the Board. Both parties filed briefs on appeal.

Discussion and Conclusions

The Board agrees with Judge Nitzschke's December 8, 1983, order, which is attached to this opinion and incorporated as the Board's opinion by reference. 1/ Judge Nitzschke's order carries out the testamentary intent

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1/ As Judge Nitzschke noted, the Department is not bound by state court decisions in determining questions relating to the probate of a deceased Indian's trust estate. The Board notes, however, that on May 9, 1984, the South Dakota Supreme Court affirmed a lower court's ruling in In the Matter

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of decedent, 2/ which was to prevent the fractionation of her Indian trust property among her children by providing that the property would go to one of her children who would use the land while ensuring that the other children would be compensated for their interests. The Board has previously endorsed the use of a testamentary option to purchase trust real property in order to carry out this same intention. See Estate of Thomas Hall, Sr., 10 IBIA 17, 89 I.D. 361 (1982).

[1] Despite appellant's arguments on the absolute inviolability of a decedent's will, the will of a deceased Indian may be modified by agreement of the devisees in the form of a settlement of issues raised by or because of the will, if the modification is approved by the Administrative Law Judge or the Board on behalf of the Secretary of the Interior. Cf., 43 CFR 4.207 (regulation allowing compromise settlements in Indian probate cases); Estate of Hattie George Lewis, 12 IBIA 160 (1984) (order approving settlement reached between the parties concerning sharing of devise under decedent's will).

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fn. 1 (continued)
of the Estate of Joe J. Williams, Deceased, 348 N.W.2d 471 (S.D. 1984). In that case, which involved the same parties and situation as the present appeal, the Court held that appellants were estopped from denying the existence of an agreement. The Court stated:

"Appellants assert there was no 'family agreement' authorizing Ward to make lump-sum payment arrangements. Certainly, there was no written agreement. The court found, as a fact, that there was a discussion among the heirs that 'the payments be made in a lump sum' and 'such lump sum payment was requested of the said Ward J. Williams.' The court further found that 'there was information sent out in connection with the estate handlings relative to the lump sum payment.' The court further found 'there was general knowledge among the heirs concerning such.' We have a duty to look at the facts of the case and conduct of the parties when reviewing the trial court's findings of fact and conclusions of law. There was certainly acquiescence, based on knowledge and a failure to speak or act in light of that knowledge, upon which Ward reasonably relied to inaugurate a loan to accommodate his siblings. In view of the circumstances, appellants never requested an explanation or accounting from Ward. They admit to having had conversations and to receiving letters of intent, yet claim confusion as to Ward's plans. Despite this claim, no one attempted to contact Ward or the estate attorney for enlightment. No question or discussion was ever initiated, not, that is, until December 1982, after the one-year will deadline had passed. * * *

"Ward relied on the silence of his siblings as confirmation of the agreement. He proceeded with a plan which necessitated allowing the will provision to lapse. This plan entailed foregoing an advantage of paying his brother and sisters off at five percent interest for at least five years and to disadvantage himself by borrowing money at a much higher rate of interest to fulfill the lump-sum commitment. There is every indication appellants had knowledge of this plan; to permit them to come forward now, after the fact, and insist on their right to enforce the lapse provision would be to sanction inequity. This we cannot do."

2/ See Estate of Verena Gean Kitchell, 12 IBIA 258, 261 n.2 (1984).

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Therefore pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, Judge Nitzschke's December 8, 1983, order denying reopening is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Jerry Muskrat
Administrative Judge

Bernard V. Parrette
Chief Administrative Judge

Attachment

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United States Department of the Interior
Office of Hearings and Appeals
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Indian Probate
(BI 779C 78)
BI 245A 83

IN THE MATTER OF THE ESTATE OF:	)	
	)	
STELLA VALANDRY WILLIAMS	)	ORDER DENYING
	)	PETITION TO REOPEN ESTATE
DECEASED OS Allottee 2463	)	
OF THE PINE RIDGE INDIAN	)	
RESERVATION IN SOUTH DAKOTA	)	

On May 1, 1979, an order approving will and decree of distribution was issued herein. By the will the testatrix herein created a life estate in all of her trust real estate in her husband, Joe J. Williams. The remainderman of said estate was to be a son, Ward J. Williams, or his son or other children involved in the operation of his ranch, if he or they met a certain condition at a specified time.

The condition was that Ward or his children were to pay each of the three remaining children of Stella Williams one-fourth (1/4) of the value of all the trust land in the estate of the decedent computed at $70.00 per acre. These payments were to commence one year after the death of Joe J. Williams, and each of the first four annual payments were to represent 5% of the principal, plus 5% interest on the unpaid balance, and the fifth annual payment was to be the interest, plus all the remaining unpaid principal.

The property of the estate was ordered distributed SUBJECT TO the condition subsequent, and if the condition subsequent was not met, the property was to vest in each of the four children of the decedent, share and share alike.

On January 8, 1983, a Petition For Rehearing was filed in this estate supported by affidavits of each of the three siblings of Ward J. Williams advising that the owner of the life estate, Joe J. Williams, non-Indian, passed away on December 12, 1981. Such affidavits further allege that the first annual payment from Ward J. Williams, remainderman, was due and payable on December 12, 1982, and that Ward J. Williams had failed to exercise his option on the purchase of the trust real property of this estate, and that by virtue of said failure the title to all trust property should vest in the four children of Stella V. Williams, share and share alike.

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An Order To Show Cause was issued by Judge Burrowes, Administrative Law Judge, Billings, Montana, on January 21, 1983, requiring Ward J. Williams to respond to the allegations of the petitioners. Ward J. Williams responded with an Answering Affidavit and the issue was joined.

On July 27, 1983, a hearing on the Petition to Reopen was held at Pine Ridge, South Dakota by the undersigned affording the parties an opportunity to cross-examine the affiants.

At the hearing a Motion to Limit was filed by Ward Williams asking that no present consideration be given to a request by petitioners that certain real property currently titled in Ward Williams should in fact have been included in the estate inventory of Stella Valandry Williams. The Motion to Limit was granted by the undersigned. The matter of this motion was not addressed in the post-hearing briefs filed by the parties.

The undersigned was also advised at the hearing that an order had recently been entered by Donald L. Heck, Judge of the Circuit Court, Sixth Judicial Circuit, County of Bennett, State of South Dakota in an action brought by the petitioners herein. The case is styled In the Matter of the Estate of Joe J. Williams, Deceased and involves allegations that Ward J. Williams acted improperly as executor for the Joe J. Williams estate. The petitions also raised the same issue in state court concerning the payment of money by Ward J. Williams under a provision of the Will of Joe J. Williams whereby Ward J. Williams was to receive the real property left by Joe provided Ward make payment to his brother and sisters, the first payment due one year from the date of Joe's death. This provision was identical to the one found in the will of Stella Valandry Williams. The circuit court decision was in favor of Ward J. Williams and is on appeal to the South Dakota Supreme Court. By agreement of the parties, copies of the state court hearing transcript and pleading were furnished to the undersigned for information.

NOW, THEREFORE, I find that:

1. As provided in the will of Stella Valandry Williams, confirmed by Order of May 1, 1979, Ward J. Williams become the beneficial owner of the trust real estate left by the decedent Stella Valandry Williams, subject to a life estate in Joe J. Williams, decedent's surviving husband, and payment of money by Ward to his brother and sisters.

2. With the death of Joe J. Williams on December 12, 1981, the life estate terminated and Ward J. Williams' vested interest in the trust property in question was subject only to the payment of money called for by the will of Stella Valandry Williams, with the first payment due on or before December 12, 1982.

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3. In January, 1982, John Williams advised Ward that he would prefer to have his money for his parents' land in one lump sum rather than in installments as provided for in their parents' wills. (Testimony of John Williams, H.R. pp. 8-10).

4. Soon thereafter, Ward Williams and his son Steven contacted Mr. John Guthmiller of the FHA as to possible financing to allow Ward to pay off his brother and sisters and obtain full title to the lands in question. These lands would be transferred to his son, Steven, who would be the one borrowing the money from FHA. (Affidavit of John Guthmiller - Attachment to Answering Affidavit of Ward J. Williams).

5. In May of 1982 a formal loan application was made by Steven Williams with FHA. (Affidavit of John Guthmiller, supra).

6. By letter of August 13, 1982, Frederic R. Cozad, attorney for Ward J. Williams, the petitioners were advised of the effort being made to obtain a loan from FHA to pay off the petitioners. (Affidavit of Frederic R. Cozad - Attachment to Answering Affidavit of Ward J. William's).

7. The loan application of Steven Williams was approved by FHA around the first of September, 1982. After approval, there was further processing of the loan, funding allocation was made, and a check for the loan proceeds was received in the local FHA office in January 1983. (Affidavit of John Guthmiller, supra).

8. The petitioners were further advised in November of 1982 that the loan had been approved and that the money would be paid either the end of December or the first part of January, 1983. (H.R. p. 23).

9. Ward J. Williams made no payment to the petitioners on or before December 12, 1982 in accordance with the terms of the Last Will and Testament of Stella Valandry Williams. (H.R. p. 31).

10. By letter of December 21, 1982, John R. Williams, through his attorney, advised Ward J. Williams that he had failed to make payment as called for by their mother's will and therefore his "option to purchase" had lapsed but that John was willing to sell Ward his interest at a "negotiable price." (H.R. Ex. P-1).

11. Ward J. Williams is "ready, willing and able" to pay his brother and sisters the entire sum required to be paid under the will of Stella Valandry Williams. (H.R. 25).

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12. As set forth in finding one (1) above, Ward J. Williams has "a vested interest in the trust estate of his mother--not merely an "option to purchase." His interest is subject to the payment of a fixed amount to his brother and sisters.

Based on the foregoing it is my conclusion that an "unwritten" family agreement had been reached among Ward J. Williams and his brother and sisters as to how Ward was to meet the payments required under their mother's will. The provisions in decedent's will made it clear that she wanted Ward J. Williams or his sons to have the property as long as fair payment was made to her other children. The fact that Ward plans to convey this land to his son and that his son will in effect make the payment is not inconsistent with the decedent's wishes. The lump sum payment the brother and sisters will receive based on the family agreement can be viewed as having a greater net value than payments over a four year period.

While the conclusion reached herein as to the trust estate of Stella Valandry Williams is the same as reached by the Circuit Court, Sixth Judicial Circuit, County of Bennett, State of South Dakota, in In the Matter of the Estate of Joe J. Williams and the nonrestricted property of Joe J. Williams, this decision is not based on or bound to that decision. The Secretary of the Interior is not bound by state law or state court decisions in testate estates. Estate of Charles Clement Richard, IA-1260 (decided July 15, 1963), and Hanson v. Hoffman, 113 F.2d 780 (C.C.A. Okl. 1940).

Ward J. Williams, in responding to the Order to Show Cause, has shown that he stands ready to make fair payment to his brother and sisters as called for by the decedent's will. The fact that actual payment was not made on or before December 12, 1982, is not fatal because of the "family understanding." The primary consideration in construing a will is to ascertain the intention of the testator (testatrix) and give effect to that intention. Estate of Albert Attocknie, IA-T-9 (decided March 27, 1969). Stella Valandry Williams intended her son Ward and/or his sons to have her trust lands provided payment in an amount she decided upon was paid to the other children. Refusal by the brother and sisters of Ward J. Williams to accept payment should not be allowed to frustrate their mother's wishes. Accordingly, IT IS THEREFORE ORDERED, That the petition to reopen dated January 8, 1983, is hereby Denied.

In order for the trust estate of Stella Valandry Williams to be closed it is suggested that consideration should be given by Ward J. Williams to deposit the payments

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due John Williams, Rosemary Sayers, and Linda Westover with the Superintendent, Pine Ridge Agency, for placement in an IIM account for each of these the brother and sisters. With this payment made the land transfer needed to secure the FHA loan would then be in order.

This order is subject to the petitioner's right to appeal to the Interior Board of Indian Appeals under 43 CFR, Secs. 4.320 through 4.340, copies of which are furnished herewith to the petitioner.

Done at Rapid City, South Dakota, December 8, 1983.

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Elmer T. Nitzschke
Administrative Law Judge

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