ESTATE OF FANNIE OTHER BLACK BIRD DEER NOSE GOES TOGETHER	:	Order Docketing Appeal and Affirming Decision
	:	
	:	Docket No. IBIA 00-17
	:	
	:	November 23, 1999

On November 3, 1999, the Board of Indian Appeals received a letter from Sharon Rides Horse (Appellant), pro se. The letter contained very little identifying information, but provided the name of Administrative Law Judge Keith L. Burrowes and indicated that a probate was involved. With assistance from the Hearings Division of the Office of Hearings and Appeals, the Board determined that Appellant was probably appealing from an order denying rehearing issued by Administrative Law Judge Nicholas T. Kuzmack in the estate of Fannie Other Black Bird Deer Nose Goes Together (Decedent) on August 31, 1999. IP BI 36A 95. Judge Kuzmack's order let stand an order issued on September 25, 1996, by Judge Burrowes approving Decedent's will. For the reasons discussed below, this appeal is docketed, and the prior determinations are affirmed.

Appellant's notice of appeal states in its entirety:

> I didn't receive my letter until Oct 29, 1999. I need more time for research on the issue. An that Dr. Marcehellc wasn't there that the time of my mother illness, a Dr. Kahn was in care of her. This is my new issue on the matter. An Marcehellc wasn't around, he either was on vacation. That Dr. Marcehellc was going on hear say. So, here a copy as to when I change my address and that my sister Martha hasn't received her copy. Are letter should have been certify letters. An the time it leave your office it longer for itto reach us. I also, put a copy of the letter I sent to Judge Burrowes.

Judge Kuzmack's office provided the Board with a copy of the August 31, 1999, order denying rehearing. That order did not contain information sufficient to allow the Board to understand the issue Appellant was raising. Therefore, it requested and received a copy of Judge Burrowes' September 25, 1996, order approving Decedent's will. Judge Burrowes' order contains the following paragraph:

> [Decedent], according to the testimony of Dr. Marchello, suffered a stroke on July 1, 1993, while in the hospital. She lost consciousness for a

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> period and was confused and unresponsive at times. He stated that [Decedent] "waxed and waned" and at times "had adequate perception and judgment to make a will." He further stated that he was not able to say she was capable when she made or signed the will, but that he could say that in his opinion she was not capable to do so at many times during the day.

Sept. 25, 1996, Order at 2. The order recites testimony about Decedent's testamentary capacity from the will scrivener and family members. It continues:

> The testimony is conflicting but I believe a substantial amount of it supports the finding that, at the very least, [Decedent] had lucid intervals after her first stroke which would have permitted her to execute the will which she had participated in having made during the previous week.

Id. at 3.

The Board finds that Judge Burrowes did not rely on the testimony of Dr. Marchello to determine that Decedent had testamentary capacity when she executed her will. In fact, if anything, Dr. Marchello's testimony suggested that Decedent might not have had testamentary capacity. Therefore, even if Appellant were able to support her allegation that Dr. Marchello was not caring for Decedent when Decedent executed her will, that fact would not support a reversal of Judge Burrowes' decision.

Under these circumstancs, the Board concludes that there is no reason to delay resolution of this estate further. Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal is docketed, and the decisions of Judges Burrowes and Kuzmack are affirmed.

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Kathryn A. Lynn
Chief Administrative Judge

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Anita Vogt
Administrative Judge

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