



INTERIOR BOARD OF INDIAN APPEALS

Estate of Walking Woman (Olympia) (Bearshead or Red Hat)

3 IBIA 132 (10/24/ 1974)

Reconsideration denied:

3 IBIA 159



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

ESTATE OF WALKING WOMAN
(OLYMPIA) (BEARSHEAD OR RED HAT)
(DECEASED CHEYENNE ALLOTTEE)

IBIA 74-27

Decided October 24, 1974

This is an appeal from a decision and order denying a petition for rehearing.

Affirmed

1. Indian Probate: Appeal: Matters considered on Appeal

On appeal consideration will not be given to a matter raised for the first time on appeal when it was not included in the petition for rehearing.

2. Indian Probate: Wills: Witnesses, Attesting

Applicable Departmental regulations do not require that the testatrix request the attesting witness to sign as such.

3. Indian Probate: Wills: Witnesses, Attesting

Applicable Departmental regulations do not require the attesting witness to know the language of the testatrix. The witness is merely required to know that he or she is acting as an attesting witness.

APPEARANCES: Bishop & Wantland, by William C. Wantland, Esq., for Appellants, Sophia Ellen Red Hat Limpy and Allen (Curley) Red Hat; Shirley & Stephenson, by Fred V. Shirley, Esq., for Appellees.

OPINION BY ADMINISTRATIVE JUDGE SABAGH

This is an appeal from the decision of Administrative Law Judge John F. Curran, denying the petition of Sophia Ellen Red Hat Limpy and Allen (Curley) Red Hat, for rehearing.

By the terms of decedent's last will and testament she devised her estate to a daughter, Leah (Big Foot) Little Hawk, and two grandsons, Perry Little Coyote and James M. Francis Little Coyote, in equal shares of 1/3 each. The testatrix specifically excluded her daughter Sophie Ellen Red Hat Limpy and her son Allen (Curley) Red Hat.

The decedent was survived by the following heirs at law who would have taken the interest indicated in the absence of a valid last will and testament:

Leah Bearshead (Big Foot) Little Hawk, daughter	2/10
Sophia Ellen Red Hat Limpy, daughter	2/10
Allen (Curley) Red Hat, son	2/10
James M. Francis Little Coyote, grandson	1/10
Perry Little Coyote, grandson	1/10
Jay Mark Bull Bear, great grandson	1/10
David Allen Bull Bear, great grandson	1/10

In their petition for rehearing, Sophia Ellen Red Hat Limpy and Allen (Curley) Red Hat contended that:

- 1) New evidence would show that Leah Bearshead was always trying to get the decedent to make a will;
- 2) Petitioners were not represented by counsel at the hearings to determine heirs and probate the Will of June 27, 1967;
- 3) The evidence presented at the hearing did not indicate petitioner's mother was blind.

The petition for rehearing was denied and the petitioners appealed. However, the basis of the appeal was on whether the Will was witnessed by two witnesses without the intervention of interpreters or third parties.

The appellants contended that the testatrix was required pursuant to Oklahoma State Law to declare the instrument to be her will, and request the witnesses to attest and sign same. Okla. Stat. Ann. (1961) § 55.

Departmental regulations provide that:

Any party in interest aggrieved by the action taken by the Examiner (Judge) on a petition for reopening shall have a right of appeal to the Board of Indian Appeals. The scope of the review on appeal shall be limited to those issues which were before the Examiner (Judge) when he ruled upon the petition for rehearing or reopening. 43 CFR § 4.290 [Emphasis supplied].

The issues submitted to the Judge on appeal in this matter were raised for the first time and were not the same issues that were before the Judge when he ruled upon the petition for rehearing.

[1] On appeal, consideration will not be given to a matter raised for the first time on appeal when it was not included in the petition for rehearing. Estate of Pinnahge Pinmee Pokibro, IA-861 (June 30, 1958).

Let us assume arguendo that the matter raised on appeal had been included in the petition for rehearing.

[2] Applicable Departmental regulations do not require that the testatrix request the attesting witness to sign as such. Estate of Annie Devereaux Howard, IA-884 (December 17, 1959).

[3] Nor do Departmental regulations require that the attesting witnesses know the language of the testatrix; it is required that the witness merely know that he or she is acting as an attesting witness. Estate of Matilda Levi, A-24653 (November 3, 1947).

Nonetheless, we are of the opinion that the factual situation in this case meet the standards of the Oklahoma Supreme Court that the testator declare in an understandable manner to the two witnesses to a Will, that the instrument that the testator was signing was in fact his Will. Price v. Price, Okla. 479 P.2d 952 (1971).

The decedent (testatrix) appeared at the Northern Cheyenne Agency on or about June 27, 1967, for the purpose of having a Will prepared. Because the decedent spoke little English, Patricia Littlewolf, a member of the Northern Cheyenne Tribe, and witness to the Will was asked to interpret. John Pereau, the other witness to the Will, was the scrivener. He testified that it was his policy, with the aid of the interpreter in this case, to write the wishes of the testatrix in longhand on a scratchpad, to type these wishes on the legal form, and then to read the will back to the person to see if it was satisfactory. Patricia Littlewolf testified that the Will was read back to the decedent before she signed it in the presence of Littlewolf and Pereau.

In light of the foregoing, we conclude that the decision and Order of the Judge be affirmed.

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 Walking Woman (Olympia) (Bearshead or Red Hat) stands unchanged.

This decision is final for the Department.

//original signed
Mitchell J. Sabagh
Administrative Judge

We concur:

//original signed
David J. McKee
Chief Administrative Judge

//original signed
Alexander H. Wilson
Administrative Judge