INTERIOR BOARD OF INDIAN APPEALS

Marcella Miller v. Portland Area Director, Bureau of Indian Affairs

26 IBIA 205 (08/22/1994)

United States Department of the Interior

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

MARCELLA MILLER,	:	Order Dismissing Appeal
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 94-32-A
PORTLAND AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	August 22, 1994

Appellant Marcella Miller seeks review of an October 19, 1993, decision issued by the Portland Area Director, Bureau of Indian Affairs (BIA; Area Director), declining to alter the BIA title records for Yakima Allotment 1911½. For the reasons discussed below, the Board of Indian Appeals (Board) dismisses this appeal.

Appellant and William Sylvester Miller are both members of the Yakima Indian Nation. They were married on November 18, 1967. In 1970, BIA approved a negotiated sale of Allotment 1911½, which contains .75 acres and a house. The justification for approving the trust conveyance indicates that the allotment was being purchased by William with the proceeds of a loan from the Yakima Tribal Credit office. The promissory note was signed by William as the borrower and by appellant as spouse. BIA approved the deed on April 14, 1970. The deed states that the property is held "by the United States of America in trust for William Miller, Sr., I.D. No. 124-U1747." 1/

On August 15, 1984, William filed a petition for divorce in the Yakima Tribal Court. The petition listed only personal property to be disposed of through the divorce.

On September 26, 1984, William applied to convey Allotment 1911½ to his daughter, Gloria Miller Watlamet. The application noted that William was separated. The application and accompanying deed to restricted Indian land was approved by the Superintendent, Yakima Agency, BIA (Superintendent), on February 27, 1985. The deed was transmitted to Gloria on April 12, 1985.

Gloria subsequently sought assistance from the Superintendent in evicting appellant from Allotment 1911½. The Superintendent wrote appellant on September 19, 1986, informing her that BIA records showed Gloria to be the owner of the allotment. There is no evidence that appellant responded to this letter; neither did she leave the property. Gloria again sought help

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1/ Both appellant and the Area Director state that the deed was corrected on Aug. 27, 1984, to show William's name to be William Sylvester Miller. No copy of this corrected deed appears in the administrative record.

from the Superintendent, who wrote appellant a second letter on October 7, 1991. The second letter stated:

> This is second and final notice to you that you must vacate the house located on Allotment 1911-1/2, which is owned by your daughter, Gloria Miller.
>
> You were previously notified by certified letter dated September 19, 1986, that you were to vacate. You signed for that letter on 9/23/86, but apparently failed to respond.
>
> You must comply with this order which is being hand delivered to you by a Special Officer, [BIA]. This is Indian land for which title is held by the United States of America. Use of this property is by the Indian owner, unless a lease satisfactory to the owner and the Superintendent has been approved. There is no such agreement. The owner wishes to use the house herself.

By letter dated October 9, 1991, appellant responded, through her attorney, that

> [t]he Yakima Nation Tribal Court has a case pending before it that will determine property rights between [appellant] and her husband. He transferred his interest in Allotment 1911-1/2 to Gloria Miller while this case was in progress. The validity of that transfer has been challenged. I believe it would be appropriate that no action be taken until the Tribal Court has resolved this issue.

The Superintendent replied to this letter on October 17, 1991, stating, inter alia, that William's conveyance of the allotment had been approved by BIA pursuant to statutory and regulatory authority, and that the Tribal Court lacked jurisdiction over trust land.

The first hearing in the divorce proceeding between William and appellant was held by the Tribal court on November 12, 1991. No explanation for the lengthy delay between the filing of the case and the hearing appears in the administrative record, and appellant has offered none.

In January 1992, Gloria again sought BIA assistance in evicting appellant from the allotment. At that time, William was hospitalized and, based upon the observations of BIA employees, was deemed nonresponsive and unable to conduct his business. The Superintendent requested advice and/or assistance from the Area Director in dealing with the situation.

The Tribal Court's decree in the divorce proceeding was issued on January 24, 1992. In that order, the Tribal Court purported to award appellant Allotment 1911½, as her sole and separate property. In response, by letters dated March 4, 1992, the Superintendent wrote the Chairman of the Yakima Tribal Council, citing Camel v. Portland Area Director, 21 IBIA 179 (1992), in support of his position that BIA would not alter its land title

records to conform with the Tribal Court's order. The Superintendent informed the Chairman that the decision could be appealed to the Area Director. A copy of the decision was sent to appellant.

William died on January 29, 1992. 2/

By letter dated April 3, 1992, appellant filed an appeal with the Superintendent. Appellant argued that BIA improperly deeded Allotment 1911½ only to William in 1970, although the allotment had been purchased by both William and herself; appellant and three of her children other than Gloria had rehabilitated the house and yard with their own money and time; BIA should recognize and give effect to the Tribal Court order; BIA should not have approved William's conveyance of the allotment to Gloria when the divorce action had already been filed in Tribal Court; and BIA was aware that ownership of the allotment was being considered by the Tribal Court and should have protested the court's assumption of jurisdiction earlier if it did not intend to abide by any order the court might issue.

The appeal file in this matter was apparently inadvertently not transmitted to the Area Director. When he received the file, the Area Director issued the decision under appeal on October 19, 1993. He concluded that there was no evidence that the allotment had been purchased by both appellant and William; if there was a problem with the deed, the problem should have been raised in 1970; recognition of the Tribal Court's order was controlled by the Camel decision; there was no impropriety in approving the deed to Gloria because the allotment was owned solely by William and BIA does not interfere in tribal sovereignty by telling a tribal court the extent of its jurisdiction.

Appellant appealed this decision to the Board. Both appellant and the Area Director filed briefs. Although advised of the pendency of the appeal, Gloria has not participated.

2/ A hearing to probate William's trust estate was held on Mar. 29, 1994, by Administrative Law Judge William E. Hammett. On July 15, 1994, Judge Hammett issued an order approving a will executed by William on June 27, 1984. The order states at page 2:

"[Appellant] alleges that her name should have been on a deed to the interest in Yakima Allotment 1911.5A, in which [William] is shown as the sole grantee, and which interest he thereafter gift deeded to his daughter, Gloria Watlamat. The [BIA] has not reported this interest as being in [William's] Indian trust or restricted estate, and the issue of whether [appellant's] claim should be recognized is properly before the Interior Board of Indian Appeals upon an administrative appeal from an adverse decision by the Portland Area Director, [BIA]. This forum lacks jurisdiction to permit a collateral attack of an administrative decision of the Area Director and it is not the proper forum to determine the validity of a deed approved by the [BIA]. Therefore, it must presume, and does, that [William's] interest in Yakima Allotment 1911.5A was not in the inventory of his Indian trust or restricted property interests at the time of his death."

In her opening brief, appellant concedes that recognition of the Tribal Court's order is controlled by Camel and by United States v. Yakima Tribal Court, 794 F.2d 1402 (9th Cir. 1986). She argues that the 1970 deed must be reformed to show her as a co-owner of Allotment 1911½, and alternatively, that a constructive trust must be imposed on the allotment based on her contribution to the allotment's acquisition and preservation and/or the community property laws of the State of Washington.

Assuming for the purposes of this discussion only that the Board would otherwise have jurisdiction over this matter, appellant has not disputed receiving a copy of the deed to the allotment in 1970, or receiving the Superintendent's September 19, 1986, letter. Appellant was, therefore, on notice in 1970 that the deed listed only William as the owner of the allotment, and in 1986, at the latest, that BIA supported Gloria's claim to the allotment. However, the first time appellant informed BIA that she disputed title was in her October 9, 1991, letter responding to the Superintendent's second eviction notice.

Under regulations in effect in 1970, a person aggrieved by a decision of a BIA official had 20 days in which to file an appeal from that decision. See 25 CFR 2.10(a) (1970); Murdock v. Acting Phoenix Area Director, 22 IBIA 130 (1992). By 1986, the time for filing an appeal had been extended to 30 days. See 25 CFR 2.10(a) (1986); Mesa Grande Band of Mission Indians v. Sacramento Area Director, 22 IBIA 197 (1992); Rocky Boy Schools v. Acting Billings Area Director, 21 IBIA 112 (1991). Appellant's attempt to dispute title in this appeal actually seeks review of the original 1970 deed and the 1984 gift deed. The time for challenging these decisions passed long ago. Burchard v. Acting Billings Area Director, 19 IBIA 254, recon. denied, 19 IBIA 276 (1991); Baker v. Anadarko Area Director, 17 IBIA 218 (1989).

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal from the Portland Area Director's October 19, 1993, decision is dismissed as being an untimely attempt to appeal from Departmental decisions that are final through failure to appeal them in a timely manner.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge