



INTERIOR BOARD OF INDIAN APPEALS

Colleen Talbott Ketcher v. Acting Muskogee Area Director, Bureau of Indian Affairs

33 IBIA 166 (02/17/1999)



United States Department of the Interior

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

COLLEEN TALBOTT KETCHER, : Order Affirming Decision
Appellant :
 :
v. :
 : Docket No. IBIA 97-141-A
ACTING MUSKOGEE AREA :
DIRECTOR, BUREAU OF :
INDIAN AFFAIRS, :
Appellee : February 17, 1999

This is an appeal from a May 30, 1997, decision of the Acting Muskogee Area Director, Bureau of Indian Affairs, declining to take into trust Appellant's 1/5 interests in four tracts of land in Adair and Tulsa Counties, Oklahoma. ^{1/} For the reasons discussed below, the Board affirms the Area Director's decision.

Appellant inherited her interests in the four tracts and presently holds them in restricted fee status. Sometime prior to June 12, 1996, she applied to have the interests taken into trust. Her application was examined by staff of the Realty Department of the Cherokee Nation of Oklahoma, acting pursuant to the Nation's Self-Governance Compact.

In a letter dated May 22, 1997, the Nation's Principal Chief analyzed the application under the factors in 25 C.F.R. § 151.10 and recommended denial of the request.

On May 30, 1997, the Area Director concurred in the Principal Chief's analysis and notified Appellant of his decision to deny her application.

Appellant then appealed to the Board, challenging the reasons given by the Area Director for denial of her request, *i.e.*, that Appellant had not demonstrated that she needed assistance in handling her affairs (25 C.F.R. § 151.10(d)) and that land use conflicts and jurisdictional problems would be likely to increase if Appellant's interests were taken into trust (25 C.F.R. § 151.10(f)).

^{1/} The appeal was stayed on Sept. 23, 1997, pending a final decision in Village of Ruidoso, New Mexico v. Albuquerque Area Director. See 31 IBIA 143 (1997). Following the issuance of a final decision in Ruidoso, 32 IBIA 130 (1998), the stay was lifted, and the briefing schedule was reinstated.

Appellant contends that she needs help in handling her affairs because she "know[s] nothing about Indian land law." According to the Principal Chief's May 22, 1997, letter, however, Appellant "is a very business minded woman who has negotiated leases on her restricted interest lucratively." The record includes a letter from Appellant to a lessee which indicates that Appellant is well able to handle her affairs. There is nothing in the record which suggests otherwise.

Appellant also objects to the Area Director's conclusion concerning the likelihood of increased land use conflicts and jurisdictional problems. She does not contradict his conclusion, however. Appearing to concede the existence of land use conflicts, she argues that her principal reason for seeking trust status was to ensure that her children would not lose her interests in the future.

The record shows that some of the interests in the property are presently held in restricted fee status and others are held in unrestricted fee status. Thus, if Appellant's interests were taken into trust, a third category of ownership would be added. The record also shows that there are already conflicts of land use among the family members owning interests in the property. The Area Director concluded that taking Appellant's interests into trust would be likely to exacerbate the existing problems by making any proposed use of the property even more difficult to accomplish than it already is.

The Area Director's conclusions are clearly reasonable. Because his decision was based upon the exercise of discretion, Appellant's task here was to demonstrate that he did not properly exercise his discretion. E.g., City of Lincoln City, Oregon v. Portland Area Director, 33 IBIA 102, 104 (1998). She has not done so.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Area Director's May 30, 1997, decision is affirmed.

//original signed

Anita Vogt
Administrative Judge

//original signed

Kathryn A. Lynn
Chief Administrative Judge