



INTERIOR BOARD OF INDIAN APPEALS

Dorothy Lucille Cervantes v. Acting Southern Plains Regional Director,
Bureau of Indian Affairs

37 IBIA 224 (04/18/2002)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

DOROTHY LUCILLE CERVANTES,
Appellant

v.

ACTING SOUTHERN PLAINS REGIONAL
DIRECTOR, BUREAU OF INDIAN
AFFAIRS,
Appellee

: Order Affirming Decision
:
:
:
: Docket No. IBIA 01-155-A
:
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:
: April 18, 2002

This is an appeal from a June 14, 2001, decision of the Acting Southern Plains Regional Director, Bureau of Indian Affairs (Regional Director; BIA), concerning a lease of a 1.25-acre tract of trust land in Pottawatomie County, Oklahoma. The landowner/lessor is Mary Walker Kaskuske. Appellant Dorothy Lucille Cervantes, who is Kaskuske's niece, is the lessee. For the reasons discussed below, the Board affirms the Regional Director's decision.

In 1993, Kaskuske applied to BIA to gift deed the 1.25-acre tract to Appellant. On April 13, 1993, Kaskuske and Appellant entered into a lease of the tract which stated:

The SOLE PURPOSE OF THIS AGREEMENT is to allow occupancy to the lessee in order to set up a mobile home unit and utilities on [the tract] and to occupy the improved unit while processing a formal GIFT DEED application. This lease will expire upon the approval of the GIFT DEED.

The only compensation noted was a one-dollar payment, receipt of which was acknowledged in the lease. There was no provision for the payment of rent. The lease was approved by the Superintendent, Shawnee Agency, BIA, on April 13, 1993.

By letter of October 5, 1993, the Superintendent advised Kaskuske that the documents necessary for completion of the gift deed were ready for her signature. As far as the record shows, Kaskuske did not respond to that letter. In any event, she did not sign the gift deed.

In December 2000, Kaskuske visited the Shawnee Field Office (formerly the Shawnee Agency) to inquire about having Appellant's mobile home removed from the property. She

stated that Appellant had not lived in the mobile home for almost two years and was now living in Kansas.

On January 8, 2001, Kaskuske again visited the Field Office, stating that she believed Appellant's brother-in-law was living in the mobile home. On the same day, she signed a formal withdrawal of her application to gift deed the tract to Appellant, stating that she was withdrawing the application because Appellant had not fulfilled a verbal agreement under which Appellant and her two daughters were to live in the mobile home. She requested that BIA write to Appellant and demand that Appellant remove her mobile home from the property.

On June 14, 2001, the Regional Director wrote to Appellant stating:

Based upon the stipulation that the lease agreement would be effective until the approval of a gift deed for the * * * 1.25 acres and the fact that Mary Kaskuske withdrew her application for the proposed gift deed transaction, a decision has been made that the lease agreement is terminated. Therefore, you are requested to remove the mobile home from the * * * property within thirty (30) days from receipt of this notice.

On appeal to the Board, Appellant describes what were apparently side agreements between herself and Kaskuske related to the lease and the proposed gift deed. She indicates that she is seeking Board review of her entire course of dealings with Kaskuske, evidently including the side agreements. She also voices a number of complaints about Kaskuske and makes it apparent that she disagrees with Kaskuske on several points.

The April 13, 1993, lease is the only agreement at issue in this appeal. That lease is the only agreement BIA approved and the only agreement the Regional Director addressed in his decision. Any side agreements between Appellant and Kaskuske are private matters, and disputes concerning those agreements must be resolved elsewhere.

Appellant does not discuss the Regional Director's June 14, 2001, decision, let alone attempt to show how the decision is in error.

An appellant who fails to make any allegation of error in the decision under appeal, let alone any argument in support of such an allegation, has not carried her burden of proof. E.g., OK Tank Trucks, Inc. v. Acting Muskogee Area Director, 33 IBIA 119 (1999), and cases cited therein.

Appellant has not carried her burden of proof in this appeal.

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 Regional Director's June 14, 2001, decision is affirmed. 1/

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge

1/ The lease at issue here is a casual one, and one which was approved by BIA without the usual formalities, presumably because it was expected to be of short duration. Had BIA reviewed the lease more carefully in 1993, it undoubtedly would have required the inclusion of an expiration date in the event the gift deed was not finalized.

While the action taken by the Regional Director in his June 14, 2001, decision does not fall neatly within any of the procedures set out in 25 C.F.R. Part 162, it was reasonable under the circumstances. Clearly, BIA cannot permit a lease of trust land to continue indefinitely, against the wishes of the Indian landowner, in a case where the landowner is receiving no rent for the use of her property.