



INTERIOR BOARD OF INDIAN APPEALS

Mike Caldwell v. Acting Northwest Regional Director, Bureau of Indian Affairs

41 IBIA 222 (09/21/2005)



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

MIKE CALDWELL,
Appellant,

v.

ACTING NORTHWEST REGIONAL
DIRECTOR, BUREAU OF INDIAN
AFFAIRS,
Appellee.

: Order Dismissing Appeal
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:
: Docket No. IBIA 03-121-A
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: September 21, 2005

Mike Caldwell (Appellant) challenges a June 4, 2003, decision of the Acting Northwest Regional Director, Bureau of Indian Affairs (Regional Director; BIA). That decision vacated a February 26, 2003, decision of the Superintendent of the Fort Hall Agency, BIA (Superintendent), which revoked approval of two gift deeds granting partial interests in two allotments on the Fort Hall Reservation to Terrell Hone. For the reasons set forth below, the Board of Indian Appeals (Board) dismisses the appeal.

Background

At issue in this case are two allotments within the Fort Hall Reservation in Idaho — Allotment No. 690 and Allotment No. 783-B — originally owned by Ardith F. Caldwell, a Shoshone-Bannock Indian. On October 21, 1997, Ms. Caldwell applied to BIA to convey by gift deed these allotments to three individuals: Appellant, her son; Jacob Ryan Caldwell, her grandson; and Terrell Hone, identified in the application as her grandson and a non-Indian. Each individual was to receive an undivided 1/3 interest in each allotment, such that the three would share equal ownership of both allotments.

On January 22, 1998, the Superintendent approved four deeds to complete Ms. Caldwell's requested gift conveyances. Two deeds conveyed undivided 1/3 interests in both

allotments to Mr. Hone; the other two conveyed undivided 1/3 interests in both allotments to the United States in trust for Appellant and Jacob Ryan Caldwell. 1/

Ms. Caldwell died on January 30, 2000. According to notes to the file by the Superintendent, approximately three years later, on February 20, 2003, Appellant and Mr. Hone attended a meeting with the Superintendent at which it was agreed that the two gift deeds to Mr. Hone were in error, apparently based on the fact that Mr. Hone is non-Indian. It was reportedly agreed that BIA would issue a decision letter restoring Mr. Hone's 1/3 interest in the allotments to the estate of Ms. Caldwell and that Appellant would "take care" of Mr. Hone for the loss of his 1/3 interest in the allotments. As subsequent events demonstrate, Appellant and Mr. Caldwell did not ultimately adhere to this purported agreement.

Shortly after this meeting, on February 26, 2003, the Superintendent sent a letter to Mr. Hone stating that he was cancelling the two deeds that had conveyed an undivided 1/3 interest in the allotments to him. The Superintendent declared that the gift deed transactions were not legal, citing federal regulations at 25 C.F.R. § 151.8 (Tribal consent for non-member acquisitions) and "a clerical error." 2/ The Superintendent stated that, upon cancellation, the property would revert to Ms. Caldwell's estate.

Mr. Hone filed a timely appeal of the Superintendent's decision to the Regional Director. Mr. Hone presented his argument in a Statement of Reasons, and no party filed an answer brief. On June 4, 2003, the Regional Director vacated the Superintendent's decision. The Regional Director concluded that there was nothing in the record to support the Superintendent's decision. The Regional Director determined that there was no authority under which a Superintendent could revoke his approval of an otherwise valid transaction and that there was no evidence in the record to cast doubt on the validity of the transaction. The Regional Director found that the regulations relied on by the Superintendent — 25 C.F.R. Part 151, pertaining to the acquisition of land in trust by the United States — are not applicable to this matter. The Regional Director noted that while the Superintendent had authority to withhold approval under 25 C.F.R. Part 152, those regulations did not provide him with authority to revoke an approval already given.

1/ Each of the four deeds stated that the grantor reserved a life estate in the land, but the life estates were extinguished by Ms. Caldwell in February 1998 and have no relevance to this appeal.

2/ The Superintendent's notes to the file indicate that the clerical error referred to was BIA's failure to follow a policy of notifying the Tribal Council in writing when a gift deed was proposed which involved a non-tribal member.

Appellant filed a timely appeal to the Board. Appellant filed an opening brief, the Regional Director and Mr. Hone filed answer briefs, and Appellant filed a reply brief.

Discussion

On appeal, Appellant argues that the Superintendent correctly revoked the deeds to correct a “manifest injustice or error” because Ms. Caldwell’s gift deed application misrepresented Mr. Hone, who is her husband’s nephew, to be her grandson. The Regional Director and Mr. Hone respond by arguing that: (1) Appellant lacks standing to appeal the decision of the Regional Director because he is not named in Ms. Caldwell’s will and has no property interest in the allotments; (2) the Board should not consider Appellant’s argument that Ms. Caldwell made a misrepresentation in her gift deed application because it is raised for the first time on appeal to the Board; and (3) the transaction was valid because Mr. Hone was adopted in the traditional manner by Ms. Caldwell and her husband as a son/grandson or because, in any event, Ms. Caldwell viewed Mr. Hone to be her son or grandson and clearly intended to convey the land to him. Mr. Hone’s brief was accompanied by three affidavits attesting to the close relationship between him and Ms. Caldwell.

The Board agrees with the Regional Director and Mr. Hone that Appellant lacks standing to appeal. Although the Board is not bound by the case or controversy requirement of Article III of the U.S. Constitution, as a matter of prudence, the Board generally limits its jurisdiction to cases in which the appellant can show standing. See Citizens for Safety and Environment v. Acting Northwest Regional Director, 40 IBIA 87, 92 (2004) (standing). The Board relies on the analysis provided in Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992), to evaluate standing. The burden is on the appellant to show: (1) an injury to a legally protected interest that is concrete and particularized, as well as actual or imminent; (2) that the injury is causally connected with or fairly traceable to the actions of the appellee and not caused by the independent action of a third party; and (3) that it is likely, as opposed to speculative, that the injury will be redressed by a favorable decision. Lujan, 504 U.S. at 560-561, cited in Citizens for Safety and Environment, 40 IBIA at 93.

Appellant cannot show a concrete and particularized injury to a legally protected interest as necessary to establish his standing to appeal. Appellant did not respond to the argument by the Regional Director and Mr. Hone that Appellant lacked standing to appeal, and to the Board’s knowledge, Appellant has no legal interest in or claim to Mr. Hone’s undivided 1/3 interest in the allotments. Appellant could potentially show standing if he was a beneficiary of Ms. Caldwell’s estate because a reversal of the Regional Director’s decision would cause Mr. Hone’s interest to revert to that estate. Appellant, however, is not a beneficiary of Ms. Caldwell’s estate. A decision by Administrative Law Judge Robert G. Holt, disposing of Ms. Caldwell’s trust and restricted property estate, was entered on May 7, 2004. See Decision, Estate of Ardith Marie Faulkner Caldwell, Probate No. NW-180-0367. The decision approved

Ms. Caldwell's will, which did not name Appellant as a beneficiary. There was no objection to the will and no appeal of that decision was filed with the Board within 60 days. Therefore, the decision became final. Because Appellant has no legally protected interest in Mr. Hone's undivided 1/3 interest in the allotments, he suffers no concrete injury from the Regional Director's decision and thus lacks standing to appeal.

Conclusion

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 Board dismisses this appeal. The June 4, 2003, decision of the Regional Director vacating the February 26, 2003, decision of the Superintendent stands.

I concur:

// original signed
Katherine J. Barton
Acting Administrative Judge

// original signed
Steven K. Linscheid
Chief Administrative Judge