



INTERIOR BOARD OF INDIAN APPEALS

Estate of Samuel Johnson (John) Aimsback (Aims Back)

45 IBIA 298 (09/12/2007)

Factual Background

Decedent died intestate on July 24, 2003, leaving five adult children who survived him. As reflected in Decedent's estate inventory, at the time of his death and relevant to this appeal, Decedent possessed an interest in Allotment No. 393-A. Allotment No. 393-A is described as Lot 3, NE $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, sec. 7, T. 30 N., R. 9 W., PMM, containing 98.96 acres more or less. According to the estate inventory, Allotment No. 393-A was valued at \$12,370.

On or about June 17, 2004, Virgil submitted a claim against Decedent's estate in the amount of \$12,000. Virgil stated that he had given five checks to Decedent, totaling \$12,000, as "personal loans." Bill of Collection attached to Virgil's Affidavit in Support of Claim, June 7, 2004. He attached copies of the checks, dated October through December 2001, to his claim. On each of the first four checks appears the notation, "downpayment on Comes At Night Allot. #393;" the last check contains the notation, "final payment on Comes At Night Allot. #393."

The ALJ held an initial probate hearing on September 1, 2004. Virgil and Decedent's five children attended the hearing. Virgil testified that he and Decedent had an oral agreement for Decedent to sell Virgil his interest in Allotment No. 393-A for \$12,000. Virgil told the ALJ that he either wanted Decedent's interest in Allotment No. 393-A transferred to him or to have his claim for \$12,000 paid out of funds in Decedent's estate. An individual at the hearing, who was not identified in the transcript, then testified that "we did come to an agreement, a settlement with [Virgil] and we did come to the conclusion where he owes us an excess amount of dollars to the land." Transcript, Sept. 1, 2004, at 21. The ALJ then suggested that Virgil and Decedent's heirs could agree, if they voluntarily chose, to resolve the dispute among themselves. The ALJ told the parties to reduce any agreement to writing and said that it must be signed by each of the five heirs as well as by Virgil.

Apparently, following the hearing, Virgil and Decedent's heirs further discussed a possible settlement. Virgil died two days later on September 3, 2004.

On October 19, 2004, the ALJ issued a notice of disputed estate inventory and notice of supplemental hearing pursuant to the Board's standing order in *Estate of Douglas*

Leonard Ducheneaux, 13 IBIA 169 (1985).⁴ The ALJ held the first of two *Ducheneaux* hearings on December 8, 2004. In attendance were Decedent's five children; Appellant; and Roberta Arnoux, a Realty Specialist for the Blackfeet Agency (Agency). The evidence showed that on October 30, 2001, Decedent and his wife Philomena Aimsback each signed a gift deed application in favor of Virgil for Allotment No. 393-A. Decedent and Philomena, who predeceased Decedent, stated on their respective applications and in a separate letter attached to the applications that the reasons for their gift conveyance were: Virgil had leased the land for years; Virgil could make better use of the land than they could; Virgil's ranch adjoined Allotment No. 393-A; Virgil had helped them out through the years for which they wanted to show their appreciation; and Virgil was a relative. By letter dated January 30, 2002, the Agency Superintendent notified Decedent and Philomena that their requests to convey Allotment No. 393-A to Virgil had been disapproved because of a secured interest in favor of the Blackfeet Tribal Credit Department. The disapproval letter included appeal rights and was mailed to Decedent and Philomena. No appeal was taken from the denial letter.⁵

Appellant testified that Virgil and Decedent's five heirs had reached an agreement whereby Virgil would pay Decedent's heirs a sum certain in return for Allotment No. 393-A. She stated that, on September 3, 2004, Virgil went to get additional money for the heirs to finalize their agreement, and that Virgil actually made the final payment to the heirs. Appellant testified that the heirs had signed "agreement papers," but that she had left the paperwork at home. Transcript, Dec. 8, 2004, at 48. Appellant agreed to bring in the agreement paperwork for the ALJ's review.

The ALJ held the second *Ducheneaux* hearing on March 10, 2005, to take further evidence concerning the alleged settlement agreement between Virgil and Decedent's five heirs. In attendance were Appellant, Decedent's five children, and Arnoux. The following

⁴ In *Ducheneaux*, the Board established a process by which alleged errors in BIA's estate inventory are to be considered by an ALJ during a probate proceeding, rather than separately referring inventory questions to BIA. 13 IBIA at 177-78; *see also Estate of Sandra Kay Bouttier LaBuff Heavy Gun*, 43 IBIA 143, 144 n.3 (2006). Instead, BIA participates as an interested party in the proceedings before the ALJ. In this way, an ALJ may address both probate matters and estate inventory matters in a unified proceeding (*Ducheneaux* hearing), subject to the parties' right to appeal to the Board. *First v. Rocky Mountain Regional Director*, 42 IBIA 76, 77 n.3 (2005).

⁵ As noted above in note 3, the ALJ concluded in his Recommended Decision that BIA's denial of the gift deed application was appropriate.

documents were introduced into evidence at the hearing: (1) receipts for cashiers checks obtained by Virgil for Decedent's five heirs from March 2004 through September 3, 2004, totaling \$11,940.00;⁶ (2) five separate notarized letters, each dated August 25, 2004, signed by each of Decedent's heirs, stating that, "[w]e have no use for [Allotment No. 393-A] or desire to live there. Upon the final probate order, we want to gift deed [Allotment No. 393-A] to Virgil Hall. He is a blood relative to us and he would have more use for the land than we would;" (3) letter dated September 9, 2004, from Decedent's heirs to the ALJ, in which they stated that they were unaware of any agreement between their parents and Virgil concerning Allotment No. 393-A, that no final decision had been made on a settlement with Virgil, and that they no longer desired a settlement agreement in the wake of Virgil's death; (4) an undated letter signed by Joseph Aimsback and Mary Aimsback to "whom it may concern" stating that they wanted to gift deed Allotment No. 393-A to Virgil because "he'll make use of it;" and (5) a statement by Appellant dated December 3, 2004, referencing the heirs' August 25, 2004, letters and the agreement allegedly struck with Virgil. Also introduced into evidence were a couple of pieces of paper with handwritten notations purporting to contain the terms of the agreement between the heirs and Virgil but no signatures. Appellant testified that she saw Virgil on September 3, 2004, prior to his meeting with the heirs and that he told her "[e]verything's settled . . . I'll make their final payment and then they'll give me those agreements." Transcript, Mar. 10, 2005, at 45. Appellant did not testify that she spoke to Virgil again that day. She pointed out that prior to his death, Virgil had paid a total of \$24,370 for Allotment No. 393-A (\$12,000 to Decedent and \$12,370 to the heirs),⁷ and disputed that Virgil agreed to pay any additional money.

Robert Aimsback, Decedent's son, testified that the \$12,000 payment from Virgil to Decedent was not a downpayment for Allotment No. 393-A, but was for "back lease payments." Transcript, Mar. 10, 2005, at 28-29. Robert further testified that Virgil had said he would pay the heirs \$12,370 for Allotment No. 393-A, but then another individual, Terry Tatsey, offered to pay \$24,000 for the property, and Virgil agreed to match the

⁶ The words "Final Payment 393A" were printed on each of five cashier's checks, dated September 3, 2004, and were made payable — one each — to Decedent's five heirs.

⁷ Appellant maintained that Virgil gave Decedent's heirs cash in addition to the checks, which brought the total payment to \$12,370.

\$24,000 offer from Tatsey.⁸ Robert explained that Virgil said he would pay the additional \$11,630 in the Fall after he sold some livestock. Decedent's remaining four heirs — Mary, Samuel, Thomas, and Joseph Aimsback — each testified that Virgil still owed them \$11,630 in addition to the money he had already paid them.

The ALJ issued a Recommended Decision on April 22, 2005, in which he found no error in BIA's decision to include Allotment No. 393-A in Decedent's estate inventory and concluded that Allotment No. 393-A should not be transferred out of it. The ALJ added:

One cannot consider the facts presented without concluding that an injustice has been done. Virgil has paid for land he has not received. However, the undersigned lacks authority to order an appropriate remedy. The remedy may lie in an action in tribal court or another court of general jurisdiction.

Recommended Decision at 4 (internal citation omitted).

The ALJ also concluded that he could not approve any settlement agreement under the provisions of 43 C.F.R. § 4.207 because there was "substantial dispute over the terms of the settlement," i.e., whether Virgil agreed to pay Decedent's heirs more money. Recommended Decision at 3.

Appellant appealed to the Board and included her arguments in her notice of appeal. The Board did not receive any briefs. The primary issue raised by Appellant on appeal is whether the ALJ should have approved what Appellant considers to have been a settlement agreement between Virgil and Decedent's heirs.

Discussion

It is Appellant's burden to show that the ALJ erred in declining to approve a settlement for the sale of Allotment No. 393-A. *See generally* 43 C.F.R. § 4.320(b)(1) (appellant must identify any error(s) of fact and law in the decision that is appealed). Where an appellant seeks approval of a settlement agreement, he or she must show that there is no dispute that a settlement was reached or as to the material terms of the

⁸ According to the record, Decedent submitted a land sale application to BIA in 2003 to sell Allotment No. 393-A to Tatsey for \$130 per acre for a total of \$12,864.80. Apparently, the sale was never approved by BIA. It is not clear whether Robert was referring to this sale agreement with Tatsey or another agreement.

agreement. 15A Am. Jur. 2d *Compromise and Settlement* § 57 (2000). The Board reviews the ALJ's application of legal principles for error, and will uphold factual determinations that are supported by substantial evidence. *See Estate of Samuel R. Boyd*, 43 IBIA 11, 19-20 (2006). Because we find that there is substantial evidence in support of the ALJ's factual determinations and because his legal determinations are correct, we affirm his decision.

As the ALJ noted, 43 C.F.R. § 4.207 permits an ALJ to approve a settlement agreement between interested parties that resolves any issue in the probate proceeding if the ALJ finds that (1) all parties to the agreement are fully advised as to all material facts; (2) all parties to the agreement are fully aware of the effect of their agreement on their rights; and (3) it is in the best interest of the parties to settle rather than to continue litigation. However, in the first instance there must be an *agreement* as to the material or essential terms of the settlement. In the present case, the ALJ declined to approve the settlement agreement because he found that there was a substantial dispute over its terms, specifically, whether Virgil agreed to pay Decedent's heirs an additional \$11,630 beyond the \$12,370 he had already paid to them.

The ALJ instructed the heirs and Virgil at the time of the first hearing on September 1, 2004, that any settlement agreement that they had reached or would reach must be reduced to writing and signed by *all* heirs and by Virgil. However, it appears that the parties' settlement agreement was not reduced to writing and signed prior to Virgil's death two days after the September 1 hearing.

Appellant argues on appeal that “[Virgil] told [her] before he went to get the money to pay the heirs off that every thing was agreed on [and t]hat is the only reason Virgil went to his bank [on September 3, 2004, was] to get each one of the heirs a cashiers check.” Notice of Appeal. Appellant maintains that the agreement was for the heirs to sell Allotment No. 393-A to Virgil for \$12,370. She avers that the “heirs all signed statements of agreement which were given to Virgil, on September 3, 200[4].” *Id.* Appellant apparently refers to the August 25, 2004, written statements signed by each of the heirs that state their intent to convey Allotment No. 393-A to Virgil by gift deed.

Although Appellant argues strenuously that Virgil and Decedent's heirs had an agreement for Virgil to buy and the heirs to sell Allotment No. 393-A for \$12,370, she is unable to produce a written agreement to that effect. Instead, she produced written statements of the heirs' intentions to convey Allotment No. 393-A by gift deed to Virgil. The heirs not only did not follow through by making gift deed applications to BIA, they

disclaimed any intent to give the land to Virgil.⁹ It cannot be disputed that grantors have the unilateral right to rescind gift deeds and applications at any time and for any reason prior to the actual transfer of ownership. *See Estate of Heavy Gun*, 43 IBIA at 149. Because “[a] gift is a *voluntary* transfer of property by one person to another *without any consideration or compensation therefor*,” 38 Am. Jur. 2d *Gifts* § 1 (1999) (emphasis added), the intended recipient cannot compel the gift to be given and the giver is free to change his or her mind before the transfer of the gift occurs, *id.* § 68 (“an incomplete or unexecuted gift confers no rights upon the [recipient]”). Therefore, Decedent’s heirs were free to change their minds about conveying Allotment No. 393-A by gift deed. *Cf.* 43 C.F.R. § 4.207(c)(2) (if a party to a settlement fails or refuses to execute a necessary deed, the judge will enter an order as if no agreement had been attempted).

Decedent’s heirs each testified that the purchase price was \$24,000, of which they admit Virgil paid them \$12,370 before he died. They also testified that Virgil had promised to pay the balance in the Fall after he sold some livestock. The apparent unwillingness of Decedent’s heirs to return Virgil’s money may, as the ALJ noted, give rise to a separate claim by Virgil’s estate against them in tribal court or in another court of general jurisdiction, but it does not mean that the ALJ erred in declining to approve a purported settlement.

Given the substantial dispute over a material term of the parties’ agreement and the absence of an executed, written settlement agreement that sets forth the terms of the agreement and is signed by all five heirs and by Virgil, we cannot say that Appellant has met her burden of showing error in the ALJ’s decision. There was evidence from each of the heirs, who were each present at the time of the final meeting with Virgil, as to the terms of the agreement, including an explanation that the final payment would be made on the sale of Virgil’s livestock in the Fall. Appellant, on the other hand, was not present for any of the negotiations with the heirs or for the final meeting on September 3, 2004, and her understanding of the parties’ agreement is limited to the information that Virgil shared with her. Moreover, Appellant testified that she spoke with Virgil *before* he went to meet with the heirs, but did not testify that she spoke with him *after* the meeting. Therefore, she would not have any knowledge of any modification of the settlement to which Virgil may have agreed after she last saw him. Because Appellant has not established that there was any

⁹ As noted with appropriate concern by the ALJ during the hearing, it appears that Virgil and Decedent — and then, the heirs — may have thought that the easiest or quickest way to effect the transfer of Allotment No. 393-A was by gift deed despite the fact that, in reality, the transaction was intended to be a sale for fair market value, albeit without compliance with governing regulations.

agreement among the parties as to the purchase price for Allotment No. 393-A, we affirm the ALJ's decision not to approve the settlement argued by Appellant.¹⁰

Finally, Appellant asserts that Virgil paid the Aimsback family \$24,370.00 for land that he never received and maintains that Decedent and his heirs "used and abused the gift deed process." Notice of Appeal. Although we are sympathetic to Appellant's position, Appellant's complaints against Decedent and his heirs are outside the scope of this appeal. Appellant has not shown that the ALJ erred in declining to approve the settlement agreement.

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 affirms the ALJ's April 22, 2005, Recommended Decision.

I concur:

 // original signed
Debora G. Luther
Administrative Judge

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Steven K. Linscheid
Chief Administrative Judge

¹⁰ Appellant also questions whether Virgil was given the proper instructions for negotiating a settlement at the September 1, 2004, hearing. We have reviewed the transcript of the September 1, 2004, hearing and have determined that the suggestions provided by the ALJ were entirely appropriate. He advised the heirs and Virgil that they could voluntarily negotiate a settlement between themselves to resolve Virgil's claim against the estate and he advised them to submit any settlement in writing signed by each of the five heirs and Virgil. *See Transcript, Sept. 1, 2004, at 24.*