INTERIOR BOARD OF INDIAN APPEALS

Alice Castillo and Ann Dalson v. Pacific Regional Director, Bureau of Indian Affairs

46 IBIA 209 (02/05/2008)

Related Board case:
43 IBIA 9

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

ALICE CASTILLO and ANN DALSON, Appellants,	)	Order Dismissing Appeal
v.	)	Docket No. IBIA 07-103-A
PACIFIC REGIONAL DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee.	)	February 5, 2008

Appellants Alice Castillo and Ann Dalson, as "original enrolled members" of the Paskenta Band of Nomlaki Indians of California (Tribe), seek review, pursuant to 25 C.F.R. § 2.8,[1] of the failure of the Pacific Regional Director (Regional Director), BIA, to issue a new decision to address Appellants' claim that the descendants of Ida Louella Henthorne-Pata were improperly included on the certified list of registered voters for a September 26, 1998, Secretarial election, and are not eligible for enrollment in the Tribe. The Regional Director had already decided the merits of Appellants' claim in a February 15, 2006, decision, which concluded that Appellants' challenge to the voter list was untimely and that the Tribe was the proper forum for considering the underlying enrollment dispute. Following that decision, Appellants failed to file a timely appeal to the Board of Indian Appeals (Board). *See Castillo v. Pacific Regional Director*, 43 IBIA 9 (2006).

We dismiss this appeal because when Appellants failed to file a timely appeal from the Regional Director's February 15, 2006, decision, that decision became final for the Department of the Interior (Department), and section 2.8 does not require BIA to issue a new merits decision on a claim that is barred by res judicata. In dismissing this appeal, we reject Appellants' argument that an intervening Federal court decision involving another tribe required BIA to again consider their claim.

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[1] Section 2.8 of 25 C.F.R. is an action-prompting provision, which allows a party to seek a decision or action by an official of the Bureau of Indian Affairs (BIA) on the merits of an issue, and then appeal from the "inaction" of that official if he or she fails to provide a timely response.

Background

In September of 2004, Appellants submitted to the Superintendent of the Central California Agency (Superintendent), BIA, a "formal request for written explanation on the alleged failure of the Secretary of the Interior to fulfill [her] fiduciary trust obligation" owed to Appellants. Letter from Chappabitty to Superintendent, Sept. 29, 2004, at 1. Appellants contended that BIA had violated its duties to them by allowing the descendants of Ida Louella Henthorne-Pata to become enrolled members of the Tribe and to be included on a certified list of registered voters for a September 26, 1998, Secretarial election to elect tribal officials.[2] The election had been conducted pursuant to the Paskenta Band Restoration Act (Act), 25 U.S.C. § 1300m–6(b), and pursuant to the Tribe's Constitution, which was enacted and approved by the Secretary pursuant to the Act and the Indian Reorganization Act (IRA), *see* 25 U.S.C. § 476. Appellants contended that the Henthorne-Pata descendants did not qualify for tribal membership under the Act, *see id.* § 1300m–4, or under the Tribe's Constitution. In their request to BIA, Appellants argued that BIA had a legal duty to ensure that the Tribe complied with the Act and its Constitution, and that the matter was not an internal tribal dispute.

When the Superintendent failed to issue a decision, Appellants appealed to the Regional Director, who addressed their claim in his February 15, 2006, decision. In that decision, the Regional Director dismissed as untimely Appellants' challenge to the registered voters list for the 1998 election, and also concluded that whether or not the Tribe had erroneously enrolled these individuals was an issue to be taken up with the Tribe, not with BIA.

Appellants appealed the Regional Director's decision to the Board, but the Board dismissed their appeal as untimely. *Castillo*, 43 IBIA 9.

Two months later, undeterred by their failure to file a timely appeal, Appellants submitted another "formal request" to the Superintendent to "resolve the failure of the Secretary of the Interior to fulfill [her] fiduciary trust obligation owed" to Appellants. Letter from Chappabitty to Superintendent, June 8, 2006, at 1. Appellants presented the same claim — that BIA had violated its trust duty to them by allowing the Henthorne-Pata descendants to become enrolled and included on the 1998 voter list — but Appellants

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[2] A "Secretarial election" is a Federal election, defined as an "election held within a tribe pursuant to regulations prescribed by the Secretary as authorized by Federal statute." 25 C.F.R. § 81.1.

argued that a recent Federal court decision had presented "'new' factual and legal issues different from those presented earlier by [Appellants]." *Id.* The court decision invoked by Appellants was *California Valley Miwok Tribe v. USA*, 424 F. Supp. 2d 197 (D.D.C. 2006), dated March 31, 2006,[3] which Appellants described as having "discussed the broad authority relevant to this situation." Letter from Chappabitty to Superintendent, June 8, 2006, at 2. Appellants quoted several portions of the *Miwok* decision, including language stating that "[a]s early as 1942 . . . the Supreme Court stated that the Department had a duty to conduct business only with lawfully-constituted governing bodies who represent the tribal membership," *id.* (quoting 424 F. Supp. 2d at 201), and that "[t]he IRA charges the Secretary, broadly, with supervising tribal elections and ensuring their fundamental integrity," *id.* (quoting 424 F. Supp. 2d at 202 (citing *Shakopee Mdewakanton Sioux (Dakota) Community v. Babbitt*, 107 F.3d 667, 670 (8th Cir. 1997))).

Appellants argued to the Superintendent that the "recently filed" *Miwok* decision "imposes a responsibility on the Secretary . . . to examine [Appellants' request] differently from their prior Request," and "creates entirely 'new' factual and legal issues" that required BIA to undertake a new review of their claim. *Id.* at 3. Appellants described BIA's "past position" as characterizing their claim as involving an internal tribal dispute, beyond Departmental jurisdiction. *Id.* According to Appellants, the *Miwok* case established "the most current and binding legal position of the Department" on the application of the IRA and the Secretary's duties in supervising tribal elections conducted pursuant to the IRA. *Id.* Appellants acknowledged that the Board had dismissed their appeal from the Regional Director's February 15, 2006, decision, but contended that "no decision reached the merits of that 'old' situation," and thus their request was not barred by res judicata or collateral estoppel. *Id.*

When the Superintendent failed to issue a decision on their new request, Appellants appealed to the Regional Director, pursuant to 25 C.F.R. § 2.8. Letter from Chappabitty to Regional Director, Mar. 12, 2007. When the Regional Director failed to respond, Appellants filed this section 2.8 appeal with the Board.

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[3] Appellants referred to the decision as having issued on March 30, 2006, which was consistent with their copy of the decision, but the reported decision is dated March 31, 2006. Coincidentally, March 31, 2006, is also the date that the Board received Appellants' untimely appeal from the February 15, 2006, decision. *See Castillo*, 43 IBIA 9.

Board Proceedings

Upon receipt of Appellants' appeal, the Board requested a status report from the Regional Director, consistent with its usual practice for appeals from alleged BIA inaction. *See, e.g.*, *Midthun v. Rocky Mountain Regional Director*, 43 IBIA 258, 260 (2006). In response, the Regional Director submitted a memorandum and related documentation. The Regional Director asserted that the issues raised by Appellants are the same issues previously addressed in his February 15, 2006, decision and previously raised in Appellants' prior untimely appeal to the Board. Therefore, the Regional Director argued, it was not necessary for BIA to respond, and on appeal to the Board, Appellants should not be afforded a second opportunity for Board review. The Regional Director disputed Appellants' assertion that the *Miwok* decision is relevant to his February 15, 2006, decision, and urged the Board to dismiss this appeal.

On July 10, 2007, after receipt of the Regional Director's memorandum, the Board issued an order for Appellants to show cause why this appeal should not be dismissed.

Appellants filed a response. After the briefing period concluded, Appellant Dalson filed a supplemental submission, which the Board struck because it was untimely, was not responsive to the Board's show cause order,[4] and did not indicate that it had been served on interested parties. The Board received a request from the Tribe to file an amicus brief. Although the Tribe's submission was also untimely, the subject matter of its amicus brief at least arguably was relevant to the Board's show cause order, and the Board granted the Tribe's motion, but also allowed Appellants to reply. Each Appellant filed a reply.

Discussion

Described in general terms, the doctrine of res judicata prevents a party from relitigating the same cause of action against the same party after a final decision has been issued on the merits. *See Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 398 (1981); *Allen v. McCurry*, 449 U.S. 90, 94 (1980); *see also* Black's Law Dictionary 1336-37 (8th ed. 2004) (definition of "res judicata").[5] The Board applies the doctrine of res judicata to final Departmental decisions, including those rendered by officials whose decisions were subject

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[4] Dalson's submission addressed the underlying merits of the tribal membership dispute, rather than why this appeal should not be dismissed because the merits had already been decided by the Regional Director in his February 15, 2006, decision.

[5] The doctrine also prevents a party from litigating in a second lawsuit any other claim arising out of the same transaction or series of transactions and that could have — but was not — raised in the first suit. *See* Black's Law Dictionary at 1337.

to appeal to the Board, but for which no timely review was sought. *See, e.g., Racine v. Rocky Mountain Regional Director*, 36 IBIA 274, 277 (2001); *Estate of Ralph James (Elmer) Hail*, 12 IBIA 62, 65 (1983); *Estate of George Swift Bird*, 10 IBIA 63, 66 (1982).

When Appellants failed to file a timely appeal from the Regional Director's February 15, 2006, decision, that decision became final for the Department. *See* 25 C.F.R. § 2.6 (Finality of Decisions); *American Land Development Corp. v. Acting Phoenix Area Director*, 26 IBIA 197, 199 (1994) (as a consequence of the appellant's failure to file a timely appeal, the Regional Director's earlier decision was final for the Department). Although the Board, in dismissing Appellants' appeal, did not decide the merits of Appellants' claim, Appellants were incorrect in asserting to the Superintendent that no decision reached the merits of their claim. To the contrary, the Regional Director's February 15, 2006, decision was a final decision on the merits.

In their response to the Board's show cause order, Appellants argue that the Board must retain jurisdiction over this appeal and fully address the merits, and that dismissal would prejudice their ability to argue the merits of their case. Appellants restate the assertion in their June 8, 2006, letter that the *Miwok* ruling "altered . . . the major premise" of the Regional Director's February 15, 2006, decision. Response to Show Cause Order, at 3. Appellants then devote a considerable portion of their response to arguing the merits of their underlying claim, including allegations that the Regional Director's status report attached documents that had not previously been provided to them.

None of Appellants' arguments convinces us that their claim is not barred by res judicata, and therefore we conclude that BIA was not required by section 2.8 to issue a new decision addressing the merits of their enrollment and voter registration challenge.[6] Significantly, nowhere in their response to the show cause order do Appellants even discuss the principle of res judicata, and nowhere do they identify any legal precedent or principles as grounds for avoiding the doctrine. Thus, for example, even were we to accept Appellants' contention that the *Miwok* ruling "altered the major premise" of the

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[6] That said, BIA should have responded to Appellants by specifically denying their request for a new decision on the grounds of res judicata, which in effect is what the Regional Director indirectly did in response to the Board's order for a status report. Section 2.8 requires action or a decision by BIA on the "merits," but we do not read that to require BIA to reopen the *underlying* merits of a claim that is barred by res judicata. Instead, the only new "merits" decision that is arguably required by section 2.8, under such circumstances, is a decision stating that BIA is declining to reopen the underlying issue based on principles of res judicata.

February 15, 2006, decision, Appellants have failed to cite a single source of legal authority to support a proposition that a party is excused from the principle of res judicata under such circumstances. *Cf. Federated Dep't Stores*, 452 U.S. at 398 (res judicata consequences of a final, unappealed judgment on the merits not altered by the fact that the judgment may have been wrong or rested on a legal principle subsequently overruled in another case).

Even aside from the strong principle of res judicata, we do not accept Appellants' assertion that the *Miwok* decision somehow altered the legal or factual landscape and provided "new" factual and legal issues that would warrant or require BIA to revisit the February 15, 2006, final decision. First, Appellants do not identify any new "factual" issues introduced by the *Miwok* decision, and we are unable to discern any. Second, with respect to "new" legal issues, the language from the *Miwok* decision that Appellants chose to quote to the Superintendent was language discussing — as characterized by Appellants themselves — the "broad authority relevant to" their claim. It included a discussion of principles dating back "[a]s early as 1942," 424 F. Supp. 2d at 201, and citing Federal court decisions from 1981, 1997, and 1999 — hardly "new" law. In addition, to the extent that the *Miwok* court repeated longstanding principles about the Secretary's responsibilities, Appellants made those same arguments to BIA in the earlier proceedings. Finally, in the *Miwok* decision, the plaintiff's claim depended "entirely" on its reading of 25 U.S.C. § 476(h), *see* 424 F. Supp. 2d at 203, a provision of the IRA that is not even implicated by Appellants' underlying claim in this case. Thus, even if Appellants' claim was not barred by res judicata, the *Miwok* decision would provide no basis for BIA to revisit Appellants' claim.[7]

In summary, we conclude that Appellants' claim is barred by res judicata, and therefore BIA was not required by section 2.8 to issue a new decision on the merits of that

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[7] In its amicus brief, the Tribe argues that the Board should dismiss the appeal because it is an enrollment dispute over which the Board lacks jurisdiction, and because Appellants' challenge is untimely. The Tribe's arguments regarding the merits of the enrollment dispute, like those of the Dalson submission that the Board struck, are outside the limited scope of the show cause order, and therefore we do not consider them. Similarly, Appellants' replies to the Tribe's amicus brief seek primarily to address the merits of the enrollment dispute.

Only the Tribe's argument regarding the timeliness of Appellants' appeal is arguably relevant to the Board's show cause order. That argument, however, is based on the statute of limitations, 28 U.S.C. § 2401(a), which the Tribe contends bars Appellants from challenging BIA's 1998 action regarding voter rolls. Because we resolve this appeal on the basis of res judicata, we need not decide the relevance to this case, if any, of the statute of limitations for judicial actions against the United States.

claim. And even if that were not the case, we would not find any basis in the *Miwok* decision for ordering BIA to do so.[8]

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.

I concur:

// original signed	// original signed
Steven K. Linscheid	Charles E. Breece
Chief Administrative Judge	Acting Administrative Judge

[8] If Appellants' claim was not barred, the Board still could not proceed to consider the merits, as Appellants urge us to do. The scope of a section 2.8 appeal to the Board is limited to addressing whether BIA should take action, not deciding how BIA should act on the merits. *See Midthun*, 43 IBIA at 264 n.7; *Tuttle v. Western Regional Director*, 41 IBIA 74 (2005). In addition, although Appellants argue otherwise, there is substantial doubt that the Board would have jurisdiction over the subject matter of the underlying dispute. The Board does not have jurisdiction to adjudicate enrollment disputes. *See* 43 C.F.R. § 4.330(b)(1); *Vedolla v. Acting Pacific Regional Director*, 43 IBIA 151, 154 (2006).