



INTERIOR BOARD OF INDIAN APPEALS

Wilfred Patrick Dumbeck v. Acting Great Plains Regional Director,
Bureau of Indian Affairs

47 IBIA 39 (04/28/2008)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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SUITE 300
ARLINGTON, VA 22203

WILFRED PATRICK DUMBECK,)	Order Affirming Decision
Appellant,)	
)	
v.)	
)	Docket No. IBIA 06-40-A
ACTING GREAT PLAINS REGIONAL)	
DIRECTOR, BUREAU OF)	
INDIAN AFFAIRS,)	
Appellee.)	April 28, 2008

Appellant Wilfred Patrick Dumbeck appeals from the December 15, 2005, decision of the Acting Great Plains Regional Director, Bureau of Indian Affairs (Regional Director; BIA), in which she affirmed the 1997 decision of the Superintendent, Sisseton Agency, BIA (Superintendent; Agency), to approve Appellant’s gift deed of his 1/15 interest in Allotment No. 1136 to John Barse. Appellant sought rescission of the gift deed on the grounds that he never intended to give his interest to John, only to sell his interest to him. He claimed that he signed the documents transferring his interest to John without reading them and did not realize they were gift deed documents. BIA offers evidence explaining that Appellant visited the Agency where the gift deed transaction was explained to him and BIA produced a statement of understanding signed by Appellant in which he acknowledged that he was making a gift of his interest to John. Because Appellant did not rebut the Agency’s evidence and the error, if any, was his own, we affirm the Regional Director’s decision.

Facts

A. 1997 Gift Deed Transaction

Appellant inherited a 1/15 interest in Allotment No. 1136 through his mother, Ella Barse Dumbeck.¹ According to the Agency’s Realty Officer, Carol Jordan, Appellant visited

¹ Allotment No. 1136 is described as the NW¹/₄SW¹/₄, SW¹/₄SW¹/₄ of Section 16, Township 120 North, Range 52 West, 5th Principal Meridian, Grant County, South Dakota, and containing 80 acres, more or less, on the Lake Traverse Reservation of the Sisseton-Wahpeton Tribe (Tribe).

the Agency along with John Barse (John) and Harold Barse on July 7, 1997, for the purpose of discussing a sale of Appellant's interest in Allotment No. 1136 to John, who apparently is Appellant's cousin. Jordan asserts in an affidavit that she was called into the Superintendent's office, where the Superintendent was meeting with Appellant and the Barses about the proposed sale. She informed Appellant that he could not sell his interest to John because John was not a co-owner of the allotment, but he could make a gift of his interest to John.² She contends that she explained the procedures to Appellant for completing the gift deed application and told him that the deed itself could be mailed to Appellant in Canada for his signature after it was typed up.³

Appellant disputes that he ever met Jordan prior to 2005 but does not otherwise dispute that he visited the Agency and met with staff concerning the proposed sale of his interest. He agrees that BIA provided him with a gift deed application (application), which he completed and dated on July 7, 1997, to give his 1/15 interest to John. Appellant stated on the application that the reason for the gift deed was "old age — distance from & warm relationship with giftee." Appellant's Application for Gift Deed of Indian Land, July 7, 1997, at 2.⁴ The language on the application specific to a sale of a trust interest was crossed out. Appellant indicated on the application that he did not wish to retain a life estate or mineral interests in the property. Thereafter, in August 1997, BIA mailed Appellant a "statement of understanding" as well as the deed itself to execute. The cover letter accompanying the documents began, "Enclosed is the deed and Statement of Understanding [for] the gift conveyance of your inherited interest." Letter from Superintendent to Appellant, Aug. 8, 1997. Nothing in the cover letter suggested that there was any deadline or time constraint for the return of the executed documents. The statement of understanding stated in its entirety:⁵

I, Wilfred Dumbeck, . . . do willingly wish to give my undivided 32/480 interest in and to [Allotment No. 1136] to John Barse. . . . I have been informed that the approximate fair market value of the property is

² BIA does not explain why John had to be a co-owner of the allotment in order to be eligible to purchase Appellant's interest.

³ At all times relevant to the gift deed transaction and to this appeal, it appears that Appellant has been a resident of the province of Alberta, Canada.

⁴ At the time he executed the application, Appellant was 78 years old.

⁵ The only information omitted here is the legal description of the allotment and the tribal identification numbers of Appellant and John.

\$17,678.00 and my share of any land sale proceeds would be about \$1,179.00. With this information, I still wish to give this share to John Barse. . . .

This statement was signed by Appellant and by two witnesses. Appellant and his wife also executed the deed, dated August 8, 1997, transferring his interest in Allotment No. 1136 to John. The consideration recited in the deed was \$1.00. The signed statement of understanding was received by BIA on August 26, 1997. It is unclear whether the executed deed was returned at the same time as the statement of understanding or sent separately.

On November 21, 1997, Appellant's application was presented to BIA's Land Review Committee where it was approved by both the Committee and the Superintendent. The certification block on the application, which states that "the effect of this application was explained to and fully understood by the applicant", was unsigned and crossed out. Appellant's Application for Gift Deed of Indian Land, July 7, 1997, at 2.

On December 19, 1997, the Superintendent approved the deed. The deed was recorded with BIA's land titles and records office on January 5, 1998.⁶ By letter dated January 22, 1998, a copy of the recorded deed was sent to Appellant. The letter references "the recent gift conveyance transaction to John" and encloses a copy of the deed. Letter from Superintendent to Appellant, Jan. 22, 1998. Appellant does not claim he attempted to cancel the transaction at any time prior to its approval and recording.

B. Appellant's 2005 Request to Rescind the Gift Deed Transaction

In March 2005, Appellant contacted the Agency to inquire about his land interests and about any trust funds to which he may be entitled. By letter dated March 8, 2005, BIA responded by reminding Appellant that he had given his interest in Allotment No. 1136 to John, who had since died, and informed Appellant he no longer had any trust interests with BIA at that time.

In August 2005, Appellant wrote twice to BIA, claiming that he did not realize that he had executed a gift deed of his interest in the allotment. He claimed that John was to purchase the land from him and that John only paid \$300 before he passed away. He referred to a 1982 letter from a BIA supervisory tribal operations specialist, claiming that

⁶ BIA's land titles and records offices serve as the functional equivalent of county recorder offices in maintaining the official records of ownership of Indian lands held in trust by the United States. *See* 25 C.F.R. Part 150.

that he did not know that he would lose some unidentified funds to which he believed he might be entitled by giving away his interest in the allotment.⁷ Appellant did not claim that he had been subjected to undue influence or coercion in executing the application, the statement of understanding, or the deed. He did not claim that his signature was forged or that there was any fraud in connection with his execution of any of the three documents. He claimed that he was not informed of the consequences of completing a gift deed transaction and that he was unaware that a *sale* of his interest to John had *changed* into a gift transaction. Appellant requested the return of his interest in the allotment.

By letter dated December 15, 2005, the Regional Director upheld the Superintendent's approval of Appellant's gift deed to John. She explained that the Agency staff had made clear to Appellant in 1997 that the transaction was a gift, not a sale. She also explained that BIA did not have authority to rescind the gift deed or to otherwise return Appellant's interest in the allotment to him. This appeal followed.

Along with his notice of appeal, Appellant sent two letters to the Board of Indian Appeals (Board) containing his arguments for rescission of the gift deed. The Regional Director submitted an answer brief along with a motion to supplement the record with additional correspondence received from Appellant in 2006. That motion is granted. Appellant submitted two letters in response to the Regional Director's brief.

⁷ Appellant's claim concerning unidentified funds was not entirely clear. He made references to a 1982 letter from a BIA official, Earl Azure, but the 1982 letter in the administrative record from Azure merely sought information from Appellant about his brothers. Subsequently, in October 1997, it became apparent that Appellant was concerned about the loss of his Individual Indian Money (IIM) account and that he would no longer be entitled to certain funds without an IIM account.

Appellant's IIM account was closed after he transferred his interest to John because that interest was the only trust interest owned by Appellant. In a letter to Appellant, the Office of the Special Trustee for American Indians explained that because Appellant no longer had any trust assets for the Department of the Interior to manage on his behalf, there was no need for the Department to maintain an account for Appellant. In his appeal to the Board, Appellant continues to maintain that he has been prejudiced by the loss of his IIM account and that BIA never informed him that the account would be closed as a "consequence" of the gift deed transaction, for which reason we address this argument, *infra* at 46-47.

Discussion

On appeal to the Board, Appellant seeks rescission of the conveyance of his interest to John on the grounds that he did not intend to make a gift of his interest and that he may have acted impulsively in signing the papers. Appellant does not claim, however, that BIA failed to make an appropriate inquiry into his understanding and intent, nor does he dispute that he signed several gift transaction documents that clearly and unambiguously described the transaction as a gift conveyance. Nor, as potential grounds for BIA to set aside the deed, does Appellant claim that fraud, undue influence, or other affirmative misconduct by John led him to execute the gift deed documents. Therefore, we affirm the Regional Director's decision on the grounds that Appellant failed to meet his burden of showing how the Regional Director erred in her decision.

A. Standard of Review

BIA is vested with considerable discretion in approving and disapproving gift deed transactions. *LeCompte v. Acting Great Plains Regional Director*, 45 IBIA 135, 142 (2007). Thus, the Board's role on appeal is limited to determining whether the Regional Director's decision to affirm the Superintendent's approval of the gift deed transaction — or, alternatively, to decline to rescind or revoke the gift deed — is in compliance with the law, is supported by the record, and is not arbitrary or capricious. *Id.* However, the burden rests at all times with Appellant to identify error in BIA's exercise of its discretion. *Id.*

B. Diligence and Timeliness

The Regional Director argues that Appellant's appeal should be dismissed for lack of diligence inasmuch as seven years passed before Appellant sought to set aside the gift deed. We agree that this argument has merit and constitutes a ground on which the Regional Director's decision may be affirmed. However, we note that she did not rely on Appellant's lack of diligence in rendering her decision.

Alternatively, the Regional Director argues that the Board lacks jurisdiction to review this appeal based on Appellant's failure to appeal to the Regional Director in accordance with 25 C.F.R. § 2.9(a). We disagree with this argument. The Regional Director issued a decision addressing the merits of Appellant's appeal from which Appellant has timely appealed to the Board. Therefore, the Board clearly has jurisdiction to review the Regional Director's December 15, 2005, decision in which she chose to address the merits of Appellant's claims.

Challenges by landowners to gift deed transactions do not fit neatly within the procedures for appealing adverse decisions under 25 C.F.R. Part 2. With respect to decisions to approve *applications* for gift deeds, it is well established that Indian grantors may change their minds and cancel their applications any time prior to BIA's approval of the signed deed itself even though the application may have been approved. *Estate of Bitonti v. Alaska Regional Director*, 43 IBIA 205, 214 (2006). The document that effects the transfer of the interest is not the approved application but rather the approved instrument of conveyance — the deed itself. *Estate of Joseph Baumann*, 43 IBIA 127, 136-37 (2006). Thus, at a minimum, where the deed has not been executed by both the grantor and BIA, the grantor may cancel the gift transaction for any or no reason. *See Estate of Bitonti*, 43 IBIA at 214. Hence, the 30-day period for appealing decisions, 25 C.F.R. § 2.9(a), does not apply to approval of a gift deed *application* because that action, standing alone, cannot adversely affect the Indian landowner's rights.

Once the deed is executed and approved at the request of an Indian grantor, the appeal procedures are also likely irrelevant because the execution and approval of a gift deed is done at the request and on behalf of the grantor and after compliance with certain statutory and regulatory prerequisites. *See, e.g.*, 25 U.S.C. § 2216 and 25 C.F.R. § 152.23. Ordinarily, then, BIA's decision to approve the gift deed cannot be characterized as an adverse action or decision from which an appeal by the grantor would lie. Instead, in the gift deed transaction, an injury typically occurs when BIA disagrees with the grantor and *declines* to approve a gift deed transaction, for which appeal rights must be provided. Therefore, where, as here, a grantor seeks the rescission of a completed gift deed transaction that was done with his consent, it is a request for a new decision — one to rescind a gift deed — rather than an appeal from the decision to approve the gift deed. If an Indian grantor requests rescission of a completed gift deed transaction, and that request is denied, BIA's denial then constitutes the “adverse” decision to which the appeal rights of 25 C.F.R. Part 2 attach.

Although a request to set aside a gift deed is a request for a new decision, rather than an appeal from a decision to approve the gift deed, the deciding official may still consider whether the appellant has been diligent in seeking to set aside the transaction. *Compare Bernard v. Acting Great Plains Regional Director*, 46 IBIA 28 (2007) (grantor sought to have gift deed declared null and void less than two months after the deed was recorded; Regional Director and Board treated request as timely) *with Estate of Albert Angus, Sr.*, 46 IBIA 90, 100 (2007) (a delay of two years renders request untimely). Because the Regional Director did not address Appellant's lack of diligence but proceeded to the merits of Appellant's challenge, we note that it is an alternate ground on which the Regional Director's decision

may be affirmed — Appellant delayed seven years before seeking to have the gift deed set aside — but we will also discuss the grounds that were relied on by the Regional Director.

C. Merits of the Regional Director’s Decision

Appellant does not assert any affirmative misconduct either by the grantee or by BIA that induced him to convey his interest to John through a gift deed transaction. At best, Appellant claims that BIA negligently handled the transaction and that he himself was negligent in not reviewing documents before signing and returning them to BIA. We reject both bases as grounds for overturning the gift deed transaction: Appellant offers only conclusions and no evidence to support either of his claims.

1. Background

It is well established that Indian trust interests in real property may only be conveyed in accordance with Federal law and with the approval of the Secretary of the Interior or his designee, *see Thomson v. Acting Pacific Regional Director*, 40 IBIA 36, 38 (2004). In 1997, when Appellant executed the gift deed documents to convey his interest to John, the regulations at 25 C.F.R. Part 152 governed BIA’s review and approval of Appellant’s gift transaction.⁸ Pursuant to Part 152, a gift of an interest in Indian trust land may be approved if it is in the long-range best interest of the owner, 25 C.F.R. § 152.23, and it may be conveyed for no money or less than fair market value where, e.g., “[a] special relationship exists between the grantor and grantee or special circumstances exist that in the opinion of the Secretary warrant the approval of the conveyance,” *id.* § 152.25(d). Typically, in examining the best interest of the owner, BIA must ensure that the grantor understands the effect of the conveyance and considers the grantor’s financial and residential circumstances vis-a-vis the gift transaction. *See LeCompte*, 45 IBIA at 143-44.

The Board has not determined whether BIA or the Board has authority to set aside completed gift deed transactions, much less under what circumstances. *See Racine v. Rocky*

⁸ In 2000, when Congress amended the Indian Land Consolidation Act, 25 U.S.C. §§ 2201 *et seq.*, a new provision was added, 25 U.S.C. § 2216, that applies to gift deed transactions. In *Bernard*, 46 IBIA at 42, we concluded that section 2216 overrides the provisions of subsection 152.25(d) to the extent that 25 C.F.R. §§ 152.24 and 152.25(d) might impose stricter limitations on the right of grantors to convey their interest in real trust property than would section 2216. However, because the gift deed transaction that is at issue in this appeal was completed prior to the enactment of section 2216, its provisions do not apply here.

Mountain Regional Director, 36 IBIA 274, 279 n. 7 (2001); cf. *Estate of Clifford Celestine v. Acting Portland Area Director*, 29 IBIA 269, 273 (1996) (“[A]lthough . . . BIA failed in its obligation toward Celestine, [the Board] is not aware of any relief which it has authority to grant appellant. Even if the Board has authority to void a gift deed on grounds of fraud or undue influence — a question the Board does not reach — neither fraud nor undue influence has been shown here.”).

The Board has recognized, however, that there may be limited circumstances in which it is possible that a gift deed may be declared void *ab initio* or voidable. See *Bernard*, 46 IBIA at 35-36. However, it is Appellant’s burden to establish that such circumstances are present and warrant setting aside a completed conveyance of an interest in Indian real property held in trust, *see id.* at 37 n.11, and we conclude that Appellant has not met this burden. We turn now to a discussion of Appellant’s claims.

2. Appellant’s Understanding of the Gift Transaction

Appellant maintains that the gift deed transaction was not explained to him. In particular, he claims that he was not told that one of the consequences of giving away his interest would be the loss of his IIM account. Based on the affidavit submitted by Jordan, in which she sets forth the details of meeting with Appellant on July 7, 1997, and the statement of understanding signed by Appellant, we conclude that BIA explained the gift deed to Appellant. Although Appellant claims he never met Jordan prior to 2005, Appellant does not otherwise deny that a meeting took place at BIA on July 7, 1997, nor does Appellant dispute the details of that meeting as set forth in Jordan’s affidavit.⁹

First, Appellant claims that BIA failed to explain “the serious consequences attend[ing] the loss of my land.” Letter from Appellant to Board, Apr. 2, 2006, at 1. Appellant claims that the “consequences” that BIA did not explain to him were the loss of his IIM account. Appellant appears to believe that he forfeited his IIM account number by giving John his only trust asset. He claims that this loss is significant because, without it, he cannot receive certain payments for which he may become eligible. Appellant is mistaken.

⁹ And, assuming that in denying that he ever met Jordan prior to 2005 Appellant means that he never met with any staff at BIA, Appellant does not explain how BIA learned that he was interested in transferring his interest to John in 1997 nor does he provide any details concerning how he came to execute the gift deed application in July 1997. For this reason, we reject Appellant’s assertion that an intended sale to John “turned into a gift deed without my knowledge.” Letter from Appellant to Board, Apr. 2, 2006, at 2.

Eligibility to receive trust funds is not determined by whether or not an individual has an IIM account. Rather, the Secretary of the Interior is charged with establishing IIM accounts on behalf of tribes and “certain individual Indians who have an interest in trust lands, trust resources, or trust assets.” 25 C.F.R. § 115.700. Thus, if Appellant were to acquire an interest in trust lands, trust resources, or other trust assets, the Secretary could establish a new IIM account for Appellant. *See, e.g., Simpson v. Acting Billings Area Director*, 27 IBIA 300 n.1 (1995) (IIM account established when Appellant inherited trust land). The fact that the transfer of Appellant’s interest in Allotment No. 1136 may have resulted in the closing of his IIM account does not reflect on Appellant’s eligibility to receive trust assets and to have an IIM account reestablished for any such trust assets. It simply reflects that — at the time of the transfer of his trust interest to John — Appellant no longer owned any trust interests subject to BIA’s oversight and, therefore, an IIM account did not need to be maintained for Appellant. Therefore, BIA was not remiss in failing to inform Appellant that his IIM account would be closed with the transfer of his interest in Allotment No. 1136 to John.

Second, Appellant attaches significance to the deleted certification on the application. This certification, when signed by BIA, certifies that the transaction has been explained to and understood by the grantor. Appellant contends that the contrary is also true: If BIA does not execute the certification, it is proof that the transaction was not explained or understood by the grantor. We disagree.

In *Estate of Celestine*, 29 IBIA at 273, we held that the deletion of the certification can create a problem of proof concerning BIA’s determination of the grantor’s intent with respect to the gift transaction. However, a deleted certification — without more — does not compel the conclusion that BIA did not explain the transaction to the grantor or determine that he understood the transaction. In *Estate of Celestine*, we found a complete absence of evidence from BIA supporting an adequate examination by BIA of the circumstances of the transaction, including BIA’s failure to meet with or otherwise discuss the conveyance with the grantor to determine his intent, BIA’s failure to communicate directly with the grantor instead of through the grantee, *and* BIA’s failure to document in writing its reasons for approving the transaction. This absence of evidence, together with the deleted certification, led us to conclude that BIA had “failed in its obligation toward [the grantor].” *Id.* at 273.

In contrast, the circumstances of Appellant’s deed are significantly different: BIA met with Appellant, had a record of the meeting with Appellant at which the gift deed procedures were explained to him, and BIA sent communications directly to Appellant to complete the transaction. Appellant does not dispute these facts. Thus, we conclude that although BIA should have executed the certification when it determined that the application

reflected Appellant's intent, the absence of a signed certification does not compel the conclusion that BIA did not explain the transaction to Appellant or that he did not understand it.

Therefore, we conclude that Appellant has not shown that BIA failed to inform him of the nature and consequences of the gift deed transaction, even assuming that this would provide grounds for reversing the transaction. Moreover, because BIA proffers evidence that it explained the gift deed procedures to Appellant, which Appellant does not rebut, and because the statement of understanding signed by Appellant informed him of the value of his gift to John, we also find that Appellant was fully aware that he was executing a gift deed transaction. For these reasons, we affirm the Regional Director's decision.

3. Unilateral Mistake

Appellant also argues, in essence, that he signed the gift deed documents by mistake when he signed them "impulsively" and without looking at them. We reject this argument for two reasons: (1) to the extent that any mistake occurred, it was Appellant's own unilateral mistake, and (2) Appellant identifies no special circumstances that might permit or warrant setting aside a gift deed where the mistake is due to Appellant's failure to review the documents before he signed them.

Although in some circumstances deeds executed by mistake are voidable, *see* 26 C.J.S. *Deeds* § 68b (1956), 23 Am. Jur. 2d *Deeds* §§ 176, 184 (2002), the law does not protect the grantor where the mistake is unilateral and due to the grantor's own negligence, 23 Am. Jur. 2d *Deeds* § 187, 13 Am. Jur. 2d *Cancellation of Instruments* § 30 (2000). In particular, "[a] party's failure to read an instrument and thus understand its terms is ordinarily not a ground for canceling or rescinding a contract, at least if no special circumstances excuse the party's failure to become acquainted with the contents of the instrument." 13 Am. Jur. 2d *Cancellation of Instruments* § 30.

Appellant asserts no special circumstances to excuse his negligence. He concedes that he is "reasonably well read." Letter from Appellant to Board, Apr. 2, 2006, at 2. The face of the application and the text of the statement of understanding both contained language stating clearly that Appellant was making a gift of his interest in Allotment No. 1136 to John; the deed transferring title stated that the consideration for the deed was \$1.00. Nothing in the application or the statement of understanding suggests that a sale

was contemplated.¹⁰ Although Appellant appears to have executed the application on the same date that he visited the Agency in July 1997, the statement of understanding and the deed itself were mailed to Appellant in Canada and the cover letter for the documents does not contain any time constraints for reviewing, signing, and returning the documents to BIA. Therefore, Appellant had as much time as he needed to read over the documents carefully, to seek advice, and generally to obtain the answers to any questions he may have had or to inform BIA that he did not want to give his interest to John or execute the gift deed documents. Instead, Appellant executed the documents in short order and returned them to BIA.

Therefore, we conclude that, to the extent any mistake may have occurred, it was unilateral only and Appellant has not identified any special circumstances that might justify setting aside the gift deed.

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 affirms the December 15, 2005, decision of the Acting Great Plains Regional Director.

I concur:

// original signed
Debora G. Luther
Administrative Judge

// original signed
Steven K. Linscheid
Chief Administrative Judge

¹⁰ The final deed includes the following boilerplate language: Appellant “does hereby grant, bargain, sell, and convey” his interest in Allotment No. 1136. Deed from Appellant to John, recorded January 5, 1998. However, while the deed says “sell,” the only amount set forth in the deed is \$1.00, which is a nominal sum often recited as consideration for what is in fact a gift.