



INTERIOR BOARD OF INDIAN APPEALS

Alan Iron Eyes v. Acting Great Plains Regional Director, Bureau of Indian Affairs

49 IBIA 64 (04/10/2009)



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

ALAN IRON EYES)	Order Affirming Decision
Appellant)	
)	
v.)	
)	
ACTING GREAT PLAINS REGIONAL)	Docket No. IBIA 07-88-A
DIRECTOR, BUREAU OF)	
INDIAN AFFAIRS,)	
Appellee)	April 10, 2009

Alan Iron Eyes (Appellant) has appealed the January 31, 2007, decision of the Acting Great Plains Regional Director (Regional Director), Bureau of Indian Affairs (BIA), affirming the Standing Rock Agency (Agency) Superintendent’s June 15, 1999, decision to approve eight gift conveyances from Edward (a.k.a. Eddie) J. Iron Eyes, Jr. (Edward), to his brother Everett J. Iron Eyes (Everett). Appellant, who is Edward’s son, claims that Edward, who died in 2006, was an alcoholic and incompetent to execute the gift deeds, and was unduly influenced by Bernice Iron Eyes (Bernice), Edward’s sister, in making the gift conveyances. Although the Regional Director purported to “affirm” the Superintendent’s approval of the gift deeds, his decision is more properly characterized as one declining to rescind or declare void conveyances that had been completed nearly eight years earlier. We affirm the Regional Director’s decision, as so characterized, because even assuming that BIA has authority to void a conveyance based on an Indian grantor’s mental incapacity or on undue influence, Appellant has not met his burden of proof to demonstrate that either circumstance existed in the present case.

Statutory and Regulatory 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 Dumbuck v. Acting Great Plains Regional Director*, 47 IBIA 39, 45 (2008); *Thomson v. Acting Pacific Regional Director*, 40 IBIA 36, 38 (2004); *see also* 25 C.F.R. § 152.22(a). In 1999, when Edward executed the gift deed documents conveying his interests to Everett, the regulations at 25 C.F.R. Part 152 governed BIA’s review and

approval of gift trust transactions.¹ In accordance with 25 C.F.R. § 152.23, an application for a gift of an interest in Indian trust land may be approved “[i]f, after careful examination of the circumstances in each case, the transaction appears to be clearly justified in the light of the long-range best interest of the owner or owners or as under conditions set out in § 152.25(d).” Section 152.25(d) authorizes gifts or conveyances for less than fair market value when “the prospective grantee is the owner’s spouse, brother, sister, lineal ancestor of Indian blood or lineal descendent, or when some other 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.”

In examining the best interest of the owner, BIA owes a duty to the grantor. This duty typically includes discerning the grantor’s intent, ensuring that the grantor understands the effect of the conveyance, and considering the grantor’s personal financial and residential circumstances as they relate to the gift transaction. *See Dumbeck*, 47 IBIA at 45; *LeCompte v. Acting Great Plains Regional Director*, 45 IBLA 135, 143-44 (2007); *Estate of Clifford Celestine v. Acting Portland Area Director*, 26 IBIA 220, 228 (1994).

The Board has not decided whether BIA or the Board has authority to set aside a completed gift transaction, and if so, under what circumstances. *See Dumbeck*, 47 IBIA at 45-46; *Estate of Joseph Baumann*, 43 IBIA 127, 139 n.19 (2006); *Racine v. Rocky Mountain Regional Director*, 36 IBIA 274, 279 n.7 (2001); *Estate of George Dragswolf, Jr.*, 30 IBIA 188, 200 (1997); *Estate of Clifford Celestine v. Acting Portland Area Director*, 29 IBIA 269, 273 (1996). Although the Board has left open the possibility that there might be circumstances where a gift deed could be declared void ab initio or voidable, it has suggested that those circumstances at most might be limited to cases involving fraud or undue influence exerted on the grantor. *See Dumbeck*, 47 IBIA at 46; *Bernard*, 46 IBIA at 35-36.

¹ Congress amended the Indian Land Consolidation Act, 25 U.S.C. §§ 2201 *et seq.*, in 2000, and added, inter alia, a new provision, 25 U.S.C. § 2216, which applies to gift deeds. That statutory provision now overrides the provisions of 25 C.F.R. §§ 152.24 and 152.25(d) to the extent that those regulatory subsections might impose stricter limitations on the right of grantors to convey their interest in real trust property than does the statutory provision. *See Dumbeck*, 47 IBIA at 45 n.8; *Bernard v. Acting Great Plains Regional Director*, 46 IBIA 28, 42 (2007). However, because the gift deed transactions at issue here were completed before the enactment of 25 U.S.C. § 2216, its provisions do not apply here. *See Dumbeck*, 47 IBIA at 45 n.8.

Factual and Procedural Background

Edward, an enrolled member of the Standing Rock Sioux Tribe (No. 302-U05125), filed an application for a gift conveyance with BIA on January 13, 1999. The application stated that he wished to convey “All my Standing Rock Land” to Everett because “I do not use it, Everett can make use of it.” Administrative Record (AR), Tab 1. That land included seven undivided mineral interests and one undivided surface and mineral interest.²

² The mineral and surface interest and undivided mineral interests are legally described as:

An undivided 5/288 interest in Minerals Only in and to the NE $\frac{1}{4}$ SE $\frac{1}{4}$ sec. 34, and the N $\frac{1}{2}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, sec. 35, T. 20 N., R. 29 E., Black Hills Meridian (BHM), South Dakota, containing 190 acres more or less (Allotment # 302-M0038);

An undivided 5/288 interest in Minerals Only in and to the W $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ sec. 34, and the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ sec. 35, T. 20 N., R. 29 E., BHM, South Dakota, containing 130 acres more or less (Allotment # 302-M0038-A);

An undivided 1/48 interest in the Minerals Only in and to Lot 8 sec. 8, T. 19 N., R. 29 E., BHM, South Dakota, containing 2.98 acres more or less (Allotment # 302-M0039T);

An undivided 1/6 interest in the Minerals Only in and to the NW $\frac{1}{4}$ sec. 22, T. 21 N., R. 28 E., BHM, South Dakota, containing 160 acres more or less (Allotment # 302-M0193);

An undivided 1/6 interest in the Minerals Only in and to Lot 38, sec. 16, T. 20 N., R. 31 E., BHM, South Dakota, containing 5.81 acres more or less (Allotment # 302-M0193T);

An undivided $\frac{1}{24}$ interest in the Minerals Only in and to the NE $\frac{1}{4}$ sec. 34, T. 21 N., R. 28 E., BHM, South Dakota, containing 160 acres more or less (Allotment # 302-M0194);

An undivided 1/24 interest in the Minerals Only in and to the E $\frac{1}{2}$, SW $\frac{1}{4}$ sec. 22, T. 21 N., R. 28 E., BHM, South Dakota, containing 480 acres more

(continued...)

Upon receipt of the application, the Agency checked its records to see if Edward owed any outstanding debts and conducted short form appraisals to determine the value of each of the eight undivided interests sought to be conveyed. *See* AR, Tabs 2 and 3.³ The Agency also referred the application to the Land Advisory Committee (Committee) for processing. After preparing Information and Worksheets for each of the interests, the Committee recommended approval of the application on January 22, 1999; the Superintendent concurred with the approval recommendation on January 25, 1999. *See* AR, Tab 4.

By letter dated February 3, 1999, the Superintendent notified Edward that the gift conveyance application had been approved and forwarded to him the eight deeds conveying his interests to Everett. *See* AR, Tab 5. The Superintendent advised Edward that if, after reviewing the amounts on attached statements of estimated value, he approved the amounts, he should sign the forms, and that, if he then wished to proceed with the gift transaction, he should sign the deeds in the presence of a notary, have the deeds notarized, and return the executed forms and deeds to the Agency.

On June 9, 1999, Edward signed the statements of estimated value and executed the deeds, which were appropriately notarized. *See* AR, Tabs 6 and 7. The Superintendent signed the deeds on June 15, 1999, and they were recorded in the Aberdeen Area Office on August 11, 1999. *See* AR, Tab 7.

According to Appellant, Edward was an alcoholic who lived on the streets of Seattle, Washington, between 1974 and 1999, until Bernice located him and moved him back to

²(...continued)

or less (Allotment # 302-M0194-A); and

An undivided 1/48 interest in and to the SE $\frac{1}{4}$ sec. 23, T. 21 N., R. 28 E., BHM, South Dakota, containing 160 acres more or less (Allotment # SR-A0040-A).

See AR, Tab 4 (Agency Land Advisory Committee Information and Worksheets).

³ The estimated value of these interests totaled approximately \$750, as follows: \$24.74 (Allotment # 302-M0038), \$16.93 (Allotment # 302-M0038-A), \$0.46 (Allotment # 302-M0039T), \$200 (Allotment # 302-M0193), \$7.26 (Allotment # 302-M0193T), \$50 (Allotment # 302-M0194), \$150 (Allotment # 302-M0194-A), and \$321 (Allotment # 302-A0040-A). *See also* AR, Tab 4.

North Dakota, where he resided in the Beverly Healthcare Nursing Home until his death in March 2006. Appellant contends that in 2001 he began challenging Edward's gift conveyances. The first record of any such action by Appellant is a letter dated April 21, 2005, in which Appellant appealed to the Regional Director from the Superintendent's approval of the gift deeds. In that letter, Appellant asserted that he "believe[d] my elderly father was incompet[e]nt to sign the (8) deeds and this constitute[d] fraud." AR, Tab 8. The letter offered no proof to support Appellant's assertion.

Appellant contacted the Regional Director again about the gift land conveyance on January 16, 2007.⁴ See AR, Tab 9. He averred that his aunt (Bernice) and uncle (Everett) had convinced Edward to convey the Standing Rock land to Everett in 1999, but that Edward was not mentally capable of handling his finances at that time. Appellant asserted that after the gift conveyance had been approved, Bernice placed Edward into the Fort Yates hospital and was appointed his guardian. Appellant contended that he learned of the gift conveyances from an Agency social worker who told him that Bernice was attempting to persuade Edward to gift convey other land to her. It was in this letter to the Regional Director that Appellant claimed that he had started appealing the gift conveyances in 2001, admittedly after the conveyances to Everett had been approved. Appellant indicated that his intent had been to stop any further gift conveyances to Bernice. He alleged, however, that "the BIA office people that are friends with my Uncle & Aunt would let them know what I was doing [and] [f]or some reason my Aunt[']s gift conveyance paperwork was lost (or so I was told)." As was the case with his 2005 letter to the Regional Director, Appellant offered no proof that Edward was mentally incapable of conveying his property. Instead, Appellant asked the Regional Director to provide him with any information that might help him.

In his decision affirming the Superintendent's approval of the gift conveyances to Everett, the Regional Director reviewed all the evidence in the case record and concluded that it was Edward's intent to gift convey his undivided interests to Everett and that Edward was of sound mind and body at the time of these transactions. The Regional Director stated that, if Appellant had any documentation that Edward was legally incompetent on June 9, 1999, the date Edward executed the gift deeds, Appellant should submit that evidence to both the Regional Director's office and to the Board. The Regional Director therefore affirmed the Superintendent's June 15, 1999, decision to approve the eight gift conveyances from Edward to Everett.

⁴ Although the Regional Director's Office date-stamp indicates that the letter was received on "06 JAN 16," the date-stamp affixed to the letter by the Branch of Realty indicates receipt on "2007 JAN 14." Since the letter itself refers to Edward's death in March 2006, we consider the Regional Director's Office date-stamp to be an error.

Standard of Review

BIA is vested with considerable discretion in approving and disapproving gift deed transactions. *Dumbeck*, 47 IBIA at 43; *Lecompte*, 45 IBIA at 142. The Board's role on appeal is thus limited to determining whether the Regional Director's decision to affirm the Superintendent's approval of a gift deed transaction or, more accurately stated, to decline to rescind or revoke the gift deeds, complies with the law, is supported by the record, and is not arbitrary or capricious. *Dumbeck*, 47 IBIA at 43. The burden of identifying error in BIA's decision rests at all times with the appellant. *Id.* Simple disagreement with or bare assertions concerning BIA's decision are insufficient to carry this burden. *Aitkin County v. Acting Midwest Regional Director*, 47 IBIA 99, 104 (2008); *Anderson v. Acting Southwest Regional Director*, 44 IBIA 218, 225 (2007).

Unless manifest error or injustice is evident, the Board is limited in its review to those issues raised before the Regional Director and does not consider arguments raised for the first time on appeal to the Board. 43 C.F.R. § 4.318; see *Jackson County v. Southern Plains Regional Director*, 47 IBIA 222, 228 (2008); *Aitkin County*, 47 IBIA at 106 n.5.

Discussion

Although Appellant identified his pleadings as an appeal from the approval of the gift conveyances and the Regional Director characterized his decision as affirming the Superintendent's decision to approve the gift conveyances, Appellant's submissions more appropriately constitute a request that the Regional Director revoke or rescind the completed approval and issuance of the gift deeds, and the Regional Director's decision, accordingly, is actually a refusal to revoke or rescind that application approval and deed approval and recordation. See *Dumbeck*, 47 IBIA at 44, and discussion, *infra*.

Arguments on Appeal

Appellants' arguments on appeal have evolved and expanded throughout the pendency of the appeal. In his notice of appeal, Appellant states that he is "appealing the paperwork that was sent from Fort Yates BIA office [i.e., the Standing Rock Agency] to the Aberdeen regional office, because my father gift conveyed his Fort Yates land not the minerals in his South Dakota interest," but "Fort Yates BIA sent the regional office copies of interest and no land, thereby providing a smokescreen to direct your attention elsewhere." He alleges Agency mismanagement, averring that the Agency is "covering up in favor for my uncle Everett Iron Eyes and Bernice Iron Eyes[, t]he Fort Yates BIA office workers are close friends to my uncle and aunt" and would contact Bernice to let her know

whenever he “put in a request for appeals.” In a June 29, 2007, request for an extension of time, Appellant contends that he needs the additional time to gather medical records to support his appeal.

In a subsequent July 12, 2007, request for an extension of time to file his opening brief, in addition to reiterating his earlier arguments,⁵ he articulates for the first time the basis for his claim that Edward was mentally incompetent when he signed the gift deeds. In this pleading, Appellant contends that his father was an alcoholic who was flown from Seattle, Washington, to Bismarck, North Dakota, because he was not capable of handling any financial or medical issues in 1999. He states that he has received Edward’s medical records from Seattle clinics, but requests the additional time because the Beverly Healthcare Nursing Home where Edward resided from 1999 until his death in March 2006 will not give him Edward’s medical records without a court order even though Edward is dead. Appellant has not submitted any of the Seattle clinic records.

In his September 25, 2007, “opening brief,” Appellant repeats that he has tried many times to get Edward’s medical records from the Beverly facility without success.⁶ He avers that at the time Edward entered the Beverly Healthcare nursing home, Edward was so saturated with alcohol that his memory was as bad as a person’s with Alzheimer’s disease. Appellant contends that Edward lived off and on the streets of Seattle from 1974 until 1999, at which point his physical and mental health had so deteriorated from alcohol saturation that Bernice (who Appellant met for the first time in 1994) located Edward and flew him back to Bismarck. Appellant asserts that he first met his father, whom Appellant

⁵ To bolster his objection to Bernice’s guardianship, Appellant contends that his aunt is now “trying to steal the rest of my father’s land that is located on the Rosebud Reservation,” but that he was told by the Rosebud Agency that she couldn’t get that land because Edward had not signed a gift application for that land.

⁶ In his brief, Appellant asks the Board to request the Beverly Healthcare facility to turn over Edward’s medical records to him. Appellant did not raise this issue to the Regional Director, nor is there any evidence he sought to obtain a court order to obtain these records. The Board is not a court of general jurisdiction and has only those authorities which have been delegated to it by the Secretary; thus, its authority with respect to Indian lands is not all-encompassing. *Big Lagoon Park Co., Inc. v. Acting Sacramento Area Director*, 32 IBIA 309, 323 (1998). Given the limited nature of Board authority, we conclude that we would not have the authority to direct the Beverly Healthcare facility to release medical records to Appellant, even if the issue were properly presented on appeal. *See Estate of Harold Frank Pickernell*, 32 IBIA 1, 3-4 (1998).

allegedly had been trying to locate since 1997, in 1999, when Appellant moved back to North Dakota and discovered that Bernice had placed Edward in the nursing home. He contends that, in 2004, he was unsuccessful in his efforts to be named Edward's guardian, despite Bernice's alleged misuse of Edward's money for her family.

Appellant claims that he has continually written and called both the Agency and the Regional Office since December 2001 concerning his appeal but that only recently has any progress begun to be made. He insists that the Beverly facility medical records would prove his contentions concerning Edward's lack of capacity to handle his financial affairs at the time he executed the gift deeds to Everett, and that the nursing home's refusal to release those records is unfair. He asks the Board to reverse the gift conveyance.

In response, the Regional Director contends that the appeal is untimely since the gift conveyances were completed in 1999.⁷ He also asserts that his decision was proper because (1) BIA considered the appropriate criteria and properly approved the gift deed conveyances, pointing out that the deeds were notarized and that, in North Dakota, a notary acts as an impartial agent who certifies that a signature is willingly and voluntarily made, which supports the conclusion that Edward knew what he was doing when he signed the gift deeds to his brother; (2) there is no evidence that Edward was intoxicated or legally incapacitated when he executed the gift deed conveyances; and (3) there is no evidence of fraud or undue influence with the gift deed conveyances. The Regional Director thus contends that, even if the Board has the authority to rescind gift deeds under some circumstances, rescission is not warranted here. In short, the Regional Director maintains that Appellant has not met his burden of showing error in the Regional Director's refusal to revoke the completed gift trust deed transactions.

We agree with the Regional Director and conclude that Appellant has failed to meet his burden of showing error in the Regional Director's decision.

⁷ Briefing for this appeal took place in 2007, and in his answer brief, the Regional Director suggests that Appellant may lack standing because he had not been determined to be Edward's heir for the disputed property, if the gift deeds were set aside. On September 18, 2008, the Indian Probate Judge who adjudicated Edward's probate found that Appellant is Edward's sole surviving child. Decision and Recommended Decision, *Estate of Edward Jerome Iron Eyes, Jr.*, Probate No. P-000-37497-IP (Sept. 18, 2008). Appellant contends that he is a member of the Standing Rock Tribe, and thus, it appears he would be eligible to inherit Standing Rock property.

Procedural Issue

Before turning to the merits of Appellant's arguments on appeal, we first briefly address the Regional Director's argument that Appellant's challenge to the gift deeds is untimely and should be dismissed for lack of diligence. The Regional Director, however, did not rely on Appellant's lack of diligence in rendering his decision. Since we conclude that Appellant has not met his burden of showing error in the Regional Director's decision, we need not discuss whether Appellant's challenge to the gift deeds could have been dismissed for lack of diligence. We therefore turn to the issues raised by Appellant.

Substantive Issues

As a preliminary matter, we note that although Appellant asserted, before the Regional Director, that Edward lacked competency, it is only on appeal to the Board that Appellant has described the basis for that assertion — Edward's alcohol abuse — and it is only on appeal to this Board that he specifically claims that Bernice exerted undue influence over Edward. Because the Regional Director had no opportunity to consider these assertions and our review is limited to deciding whether the Regional Director erred in rejecting Appellant's appeal, we conclude that these issues arguably are not properly before us. Nevertheless in the interest of completeness, we will address those issues.

Appellant's central argument is that Edward's chronic alcoholism rendered him incapable of handling his financial affairs and incompetent to execute the gift deeds. The Board has held that

[L]ong-term alcohol abuse, per se, does not deprive a testator of testamentary capacity. Rather, it is the testator's condition at the time he executed his will that is decisive. Therefore, unless a testator is shown to have been intoxicated at the time he made his will or to have suffered permanent alcohol-induced brain damage, the fact that he drank excessively is not evidence that he lacked testamentary capacity.

Estate of Comer Fast Eagle, 16 IBIA 40, 43 (1988) (citations omitted). This standard has been adopted as applicable in the context of gift deed conveyances. *Escalanti v. Acting Phoenix Area Director*, 17 IBIA 290, 293-94 (1989). Thus, evidence of Edward's chronic alcoholism is not sufficient to demonstrate lack of mental capacity when he signed the gift deeds in 1999. In addition, although Appellant alleges that Edward was a chronic alcohol abuser, Appellant has offered no proof that Edward was intoxicated on June 9, 1999, when

he executed the deeds, or that Edward suffered permanent alcohol-induced brain damage.⁸ The fact that Bernice was appointed Edward's guardian shortly after the deeds were executed and approved also does not establish that Edward lacked the capacity to execute those deeds. *See Estate of Thomas Longtail, Jr.*, 13 IBIA 136, 137-38 (1985). Appellant's unsupported allegations do not satisfy his burden of showing that Edward lacked the capacity to execute the gift deeds to his brother Everett. Thus, even assuming that BIA or the Board has authority to set aside a completed conveyance based on a lack of capacity, the evidence here fails to support Appellant's assertions.

Appellant's claim of undue influence meets a similar fate. Appellant relies on Bernice's alleged misuse of Edward's funds for the benefit of her family after she was appointed Edward's guardian as evidence that she exerted undue influence to induce Edward to execute the gift deeds transferring Edward's interests to Everett. The guardianship, however, post-dated the execution of the deeds and thus does not establish that Bernice unduly influenced Edward's actions before that time. Appellant fails to allege, and there is no evidence to suggest, that Everett exerted undue influence over Edward. Thus, again assuming that BIA could void a completed conveyance based on undue influence, we find that Appellant has not met his burden of proving that either Bernice or Everett exerted undue influence over Edward and induced him to execute the gift deeds to Everett. *See Estates of Evan Gillette, Sr., and Lizzie Gillette/Yellow Bird/Bellanger/Paint/Bedell, a.k.a. Elizabeth Burdell*, 22 IBIA 133, 140 (1992); *aff'd sub nom. Gillette v. Babbitt*, No. A4-92-134 (D. N.D. Oct. 15, 1993), *aff'd sub nom. In Re Estate of Gillette*, 26 F.3d 126 (8th Cir 1994) (Table).

We conclude that Appellant has not shown error in the Regional Director's decision which was properly based on the record before him. We therefore affirm the Regional Director's refusal to revoke or rescind the gift deeds.

⁸ We note that, while not dispositive, the notary's certification on the deeds provides some evidence that Edward was not intoxicated at that time since she presumably would not have considered the signature willingly and voluntarily made if he had exhibited signs of alcohol impairment.

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 Regional Director's decision.

I concur:

// original signed
Sara B. Greenberg
Administrative Judge*

// original signed
Steven K. Linscheid
Chief Administrative Judge

*Interior Board of Land Appeals, sitting by designation.