



## INTERIOR BOARD OF INDIAN APPEALS

Patricia Lafferty LeCompte v. Great Plains Regional Director, BIA

52 IBIA 274 (12/06/2010)

Related Board case:

45 IBIA 135 (2007)



# 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

PATRICIA LAFFERTY LECOMPTE,	)	Order Dismissing Appeal
Appellant,	)	
	)	
v.	)	
	)	Docket No. IBIA 08-103-A
GREAT PLAINS REGIONAL	)	
DIRECTOR, BUREAU OF	)	
INDIAN AFFAIRS,	)	
Appellee.	)	December 6, 2010

Patricia Lafferty LeCompte (Appellant) appealed to the Board of Indian Appeals (Board) from a May 5, 2008, decision (May 5 Decision) of the Great Plains Regional Director (Regional Director), Bureau of Indian Affairs (BIA), in which the Regional Director reaffirmed an earlier decision in which the Regional Director declined to revoke or declare void 13 gift deeds executed by Appellant’s deceased mother, Katherine Lafferty (Katherine), in favor of Appellant’s brother, Duane Lafferty (Duane), and approved by the Superintendent of BIA’s Cheyenne River Agency (Superintendent). The Regional Director’s May 5 Decision responded to the Board’s remand in *LeCompte v. Acting Great Plains Regional Director*, 45 IBIA 135 (2007) (*LeCompte I*), in which we vacated in part the Regional Director’s first decision, dated February 2, 2005, and ordered her to address, in the first instance, whether Appellant could demonstrate that she has standing to challenge the completed gift conveyances based on BIA’s noncompliance with 25 U.S.C. § 2216(b).

On remand, the Regional Director concluded that, notwithstanding the Cheyenne River Agency’s failure to comply with § 2216(b), Katherine both knew the approximate value of her lands when she executed the 13 gift deeds and was intent on giving those interests to her son regardless of their value. We find that the record does not support the Regional Director’s conclusion that Katherine knew the approximate fair market value of the interests that were conveyed to Duane, but that Appellant nevertheless has failed to demonstrate standing. In particular, Appellant adduces little if any evidence to show that Katherine had no knowledge of the approximate value of her trust lands and that she would not have completed the gift deed transactions had she been informed of the estimated value of the lands she was giving to Duane. To the contrary, the evidence shows that Katherine not only had some appreciation of the magnitude of her gift, she intended to convey the

properties to Duane regardless of their estimated fair market value: Katherine executed 13 separate gift deeds to convey 13 separate property interests to Duane and the record supports not only that Katherine and Duane had a close relationship but that Katherine was adamant about giving her trust property interests to him. In contrast, Appellant herself concedes that there was a long-standing estrangement between her and her mother, up to and including her mother's emphatic refusal to permit medical personnel to discuss her medical issues with Appellant shortly before she died. These facts are relevant to show that Katherine was not inclined to leave or give her property to Appellant, and the record does not reflect that she ever considered leaving these lands, or a portion of them, to Appellant. Therefore, we agree with the Regional Director's conclusion that Katherine would have given her interests to Duane regardless of their value, and we dismiss this appeal for lack of standing.

## Facts

### A. Background

In October 2003, Katherine executed 13 gift deed applications and, 4 days later, 13 gift deeds in which she gave her interests in over 1,600 acres of trust land<sup>1</sup> on the Cheyenne River Reservation in South Dakota to her son, Duane; Katherine retained a life estate in each of these properties. Katherine's stated reason for giving her trust interests to Duane was to "keep [them] in [the] family." Gift Deed Applications at 2 (Administrative Record (AR) at Tab F15). On October 14, 2003, the Superintendent approved the applications and the deeds.

Katherine died intestate on June 29, 2004, apparently after having a heart attack. The record does not reflect that Katherine had any health issues prior to this time. Katherine's sole heirs at law, for purposes of inheriting her Indian trust estate, were Appellant and Duane. Order Determining Heirs and Decree of Distribution at 2, *Estate of Katherine Margaret Lafferty*, No. GP 340-0295 (Dept. of the Int. Sept. 30, 2005) (AR at Tab G11). The record does not reflect any efforts by Katherine to rescind or otherwise cancel any of the 13 gift deeds executed to Duane.

### B. The Regional Director's February 2, 2005, Decision

Following Katherine's death, Appellant appealed the Agency's approval of the gift deeds to the Regional Director, and alleged that BIA failed to comply with 25 U.S.C.

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<sup>1</sup> This acreage includes over 1,196 surface acres and 404.75 mineral acres.

§ 2216(b)<sup>2</sup> by providing Katherine with an estimate of value of her properties or by obtaining a written waiver from Katherine of the estimate of value, which, according to Appellant, rendered the gift deeds void *ab initio*. Appellant also alleged that BIA failed to investigate Katherine's circumstances to ensure that Katherine was aware of criminal proceedings against Duane and to rule out the possibility of undue influence or fraud. Appellant provided the Regional Director with a copy of an October 29, 2004, tribal court order from *In the Matter of the Katherine Lafferty Estate*, No. P-014-04 (Cheyenne River Sioux Tribal Court). According to the order, Appellant testified "to the effect that she and her mother got along well until after [Appellant's] father passed away<sup>3</sup> and that their relationship [then] became strained." Order, Oct. 29, 2004, at 2 (AR at Tab F6). The tribal judge found that "Duane had a very close relationship with [Katherine], and [Appellant's] relationship with her mother was strained." *Id.* The tribal court concluded that "Katherine favored Duane." *Id.*

In addition to the above, the Regional Director also received statements from BIA personnel in the Cheyenne River Agency who assisted Katherine in the gift deed process. In particular, the notary, Sally L. Pearman, stated that Katherine appeared competent and coherent, and adamantly wanted to leave her lands, subject to a life estate for herself, to Duane. The statements did not address BIA's compliance with 25 U.S.C. § 2216(b).

In a decision dated February 2, 2005, the Regional Director upheld the approval of the gift deeds. She found no evidence of undue influence or fraud, and, after reviewing the circumstances surrounding Katherine's application for and execution of the gift deeds, concluded that BIA fulfilled its responsibilities to Katherine. The Regional Director also noted that Duane's criminal history or "worthiness" to receive the remainder interests in Katherine's lands are not factors set out for BIA's consideration in reviewing gift deed applications. *See* 25 C.F.R. pt. 152. Finally, the Regional Director noted that "Katherine fully understood the value of the parcels she proposed to gi[ve to Duane]." Regional Director's Feb. 2, 2005, Decision at 2. Since Katherine retained a life estate, the Regional Director observed that Katherine would continue to benefit from the income from the properties. The Regional Director did not directly address the issue of whether BIA

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<sup>2</sup> Section 2216(b) requires BIA to provide an estimate of the value of trust lands to any owner seeking to make a conveyance of such lands unless the conveyance is to certain family members and the owner waives the estimate of value in writing.

<sup>3</sup> Appellant's father died in 1985. *Estate of Ellsworth (Buster) Lafferty*, No. IP RC 105Z 86 (Dept. of the Interior Mar. 19, 1987) (AR at Tab F16).

complied with § 2216(b) by providing Katherine with an estimate of the value of her land interests or by having her sign a waiver of the right to receive an estimate of their value.

Appellant appealed the Regional Director's February 2 Decision to the Board.

C. *LeCompte I*

Before the Board, Appellant reiterated the arguments that she made to the Regional Director. Appellant proffered affidavits from Katherine's sister, Donna Dunn Folster, and a close friend, Florence Bartlett. Folster testified that "Katherine alienated herself from her daughter, [Appellant]," which Folster attributed to lies told to Katherine by Duane. Affidavit of Donna Dunn Folster, Mar. 11, 2005 (AR at Tab G22). Folster also testified that "Katherine would give much of her limited money to Duane." *Id.* Bartlett testified that she had known Katherine since approximately 1979, considered herself a "close friend," and Katherine told her "in the 1990's that she intended to leave the real estate to her great granddaughter, Shanda." Affidavit of Florence Bartlett, Mar. 11, 2005 (AR at Tab G22).

BIA conceded that it had not complied with § 2216(b), but argued that Katherine had lived on her land for decades and reiterated that she "knew the extent of her trust land . . . and knew its relative value." *LeCompte I*, 45 IBIA at 140. The Regional Director also argued that Katherine was competent and had "clear intentions" concerning the disposition of her trust lands. *Id.* Therefore, according to the Regional Director, it would not have mattered to Katherine if she had been provided with an estimate of the value of her properties.

Duane also appeared, and presented statements signed by several individuals. Duane's wife, Connie Decker, stated that "Katherine told me several times [that] she was partial to Duane and said, 'She would tell anybody the same.'" Statement of Connie L. Decker, July 11, 2004 (AR at Tab G19). She further stated that "for quite sometime before Katherine's death, she and [Appellant were] not even speaking to each other." *Id.* Duane also produced statements from two health care professionals who cared for Katherine in the emergency room of the local Indian Health Service clinic on June 29, 2004, immediately prior to her death. According to Dr. Sophie Two Hawk, when Appellant called the clinic for an update on Katherine's condition, Katherine "became quite upset, said she didn't want her daughter knowing anything about her medical care and that there was a very good reason." AR at Tab G19. In addition, Arlene Black Bird, R.N., who apparently was present during the conversation that occurred between Dr. Two Hawk and Katherine, related that "Katherine said she did not want [Appellant] to know anything about her," that Appellant hurt Katherine terribly, and she (Katherine) "do[es] not want

anything to do with [Appellant], I won't have anything to do with her." *Id.*; *see also* Order, *Katherine Lafferty Estate*, No. P-014-04 (Cheyenne River Sioux Tribal Court), Oct. 29, 2004, at 2 (AR at Tab F6) ("There was testimony that Katherine did not want [Appellant] to be contacted when Katherine was in the hospital before she passed away.").

The Board issued its decision on August 7, 2007. 45 IBIA 135. The Board noted that the issue of BIA's admitted noncompliance with § 2216 is "[t]he more difficult issue" presented by Appellant. *Id.* at 145. The Board concluded that it is only the landowner who is potentially injured by noncompliance with § 2216(b). The Board further explained that *if* a deceased landowner already knew the estimated value of her lands or *if* a deceased landowner intended to gift her lands regardless of their value, then there would be no injury to the landowner as a result of BIA's noncompliance with § 2216 and, consequently, no standing to challenge the noncompliance. In reviewing the record, we found no evidence of Katherine's understanding, if any, of the value of any of her lands. However, we also noted that Appellant did not deny this assertion by the Regional Director or her assertion that Katherine intended to transfer her land interests to Duane notwithstanding their value. We concluded that "Appellant has not established on what basis she would have standing to enforce Katherine's rights under [§] 2216(b), either in her individual capacity or in her capacity as the administrator of Katherine's estate." *Id.* at 147-48. Therefore, to enable Appellant to show that she has standing to pursue her appeal, we remanded the matter to the Regional Director to determine, "in the first instance, whether there is evidence to show that Katherine knew the current estimated value of some or all of her properties at the time of the conveyances or, alternatively, whether Katherine intended to convey her interests to Duane regardless of their value." *Id.* at 148.<sup>4</sup>

#### D. The Regional Director's May 5 Decision

On remand, the Regional Director solicited additional evidence from the parties. New evidence provided by Appellant included an affidavit from Katherine's great-granddaughter, Shanda Rieker, and a new affidavit from Bartlett; the record does not reflect any new evidence provided by Duane. Rieker and Bartlett both opined in their respective affidavits that Katherine did not understand, and did not express any knowledge of, "the

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<sup>4</sup> The Board affirmed the Regional Director's February 2 Decision in all other respects, specifically concluding that BIA made a "careful examination" of the circumstances to determine whether adverse circumstances – such as fraud or undue influence – led Katherine to give her land interests to Duane. *LeCompte I*, 45 IBIA at 144-45, 148. Therefore, this portion of the Regional Director's decision is not before the Board in the present appeal, and we omit from our decision today a recitation of the evidence in the record on this issue.

actual value of her land.” Affidavit of Shanda Rieker, Mar. 7, 2008, at 2 (AR at Tab C1); Affidavit of Florence Bartlett, Mar. 8, 2008 (AR at Tab C1). Both stated that they never heard Katherine talk about the value of her land interests, and opined that had Katherine known the “true” or “actual” value of her land, she would not have left her property to Duane.

BIA added to the record a copy of grazing permit no. 14-20-A01-6028 for Range Unit #218, which was signed by Katherine, Duane, and Duane’s son, Michael, and issued by BIA on January 8, 2004. Copies of modifications to the grazing permit, all but one dated after Katherine’s death, also were added to the record along with affidavits from Sally Pearman and from Vernon and Kathy Martin.<sup>5</sup> The grazing permit signed by Katherine and Duane sets forth the annual grazing fee, which was \$15,481.24, effective November 2003, for leasing over 8,400 acres of tribally-owned rangeland, individual allotted land, and Federal (non-trust) land. Neither the permit nor its subsequent modifications set forth a valuation of the leased lands. According to the Superintendent, Katherine utilized this land together with her own lands as part of the cattle ranching business that she first operated with her husband prior to his death and thereafter operated with Duane.

Consistent with her prior statements, Pearman testified in her affidavit that Katherine “seemed very adamant on her wishes to gift deed [her lands], reserving a life estate, to her son Duane.” Affidavit of Sally L. Pearman, Apr. 2, 2008 (AR at Tab D1, D2); *see* memorandum of Sally L. Pearman to Gregg Bourland, Sept. 14, 2004 (AR at Tab F10) (same); *see also* affidavit of Sally L. Pearman, Sept. 13, 2007 (received by the Board on November 5, 2010; referenced in but apparently inadvertently omitted from the Superintendent’s memorandum that appears in the AR at Tab D4) (same). Katherine explained that she was having surgery and wanted the gift deeds completed before her surgery. The Martins testified generally that Katherine was well informed, intelligent, and very capable of making decisions up to the time of her death.

On May 5, 2008, the Regional Director rendered her decision on remand. The Regional Director concluded that Katherine “had an idea of the *estimated* value of grazing

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<sup>5</sup> BIA also added to the record an undated list, prepared by the Cheyenne River Agency’s Realty Officer, Gregg Bourland, entitled “Gift Deed Procedures - A&D Gift Transactions” to which was attached another undated, blank form containing questions to be asked by BIA of a gift deed applicant. AR at Tab D9. These documents apparently were prepared after the subject gift deeds were prepared inasmuch as Bourland was not employed at the Cheyenne River Agency until December 15, 2003, two months after the gift deeds were executed and approved. *See* May 5 Decision at 4.

land in the local area.” May 5 Decision at 4. She based this conclusion on Katherine’s longstanding involvement in the family’s ranching business and on her status as a lessee of over 8,000 acres of land for which the annual rental value at the time of the gift deeds was over \$15,000. The Regional Director also concluded that Katherine intended to give her land to Duane regardless of its value based on (1) a rural custom to pass ranch land to the eldest son to prevent further fractionation of title or to leave the family business in the hands of the child involved in the family business, and (2) the estrangement between Appellant and her mother as contrasted against evidence of Duane’s involvement in the family’s ranching business, demonstrated by his signature on the grazing permit. The Regional Director ultimately concluded that “the Agency staff followed proper procedures in the application and preparation of these 13 deeds.” *Id.* The Regional Director did not address Appellant’s standing to appeal the Superintendent’s approval of the gift deeds.

Appellant timely appealed from the May 5 Decision and submitted an opening brief. The Regional Director filed an answer brief, in which Duane joined. No reply brief was filed.

### Discussion

As we explained in *LeCompte I*, the Regional Director was to determine on remand whether Appellant met her burden of showing that the injury to Katherine — i.e., the gift of the remainder interests in her trust properties to Duane — “resulted from” BIA’s failure to comply with § 2216. To put it another way, it was Appellant’s burden to show BIA that Katherine did not know the estimated value of her properties and that she would not have given away these interests to Duane had she been provided an estimate of their value by BIA. The Regional Director addressed the issue instead as though BIA, rather than Appellant, had the burden of proof on this issue.<sup>6</sup>

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<sup>6</sup> We recognize that BIA’s regulations permit persons to appeal a BIA decision if that decision may adversely affect an appellant’s interests, which, in this case, is Katherine’s interests. *See* 25 C.F.R. § 2.2 (definitions of “appellant” and “interested party”). However, BIA is not precluded from considering, and has the burden of determining, whether an appellant has met her burden of showing that the injury or “adverse affect” was, in fact, caused by BIA, either because BIA took a particular action or because BIA failed to take an action it should have taken. Ordinarily, this “cause and effect” are self-evident. But in the unique posture of this particular appeal, where the allegedly injured party is now deceased and did not herself challenge BIA’s decision, causation is not so apparent.

(continued...)

On appeal to the Board, we examine the record and Appellant's pleadings to determine whether she has met her burden of establishing standing to pursue her appeal before this Board, and we conclude that she has not because causation is lacking. While we agree with Appellant that the record does not support the Regional Director's determination that Katherine knew the estimated value of the lands she gave to Duane, the burden instead lies with Appellant to show that Katherine did *not* know the value of her lands. Because the Regional Director asserted in her February 2, 2005, decision that Katherine knew the value of her lands, evidence supporting her assertion would be relevant *if*, on remand, Appellant had actually presented evidence, i.e., had met *her* burden of showing that her mother did not know the value of her lands. Appellant has offered only conclusory declarations containing little or no foundation or support for the affiants' ultimate opinions that Katherine did not know the value of her properties. Given the paucity of foundation, we find the opinions entitled to little weight and we reject them.

Even if we were to presume that Katherine did not know the value of her properties, Appellant has failed to show that Katherine would not have given them to Duane had she known their estimated value, and the record contains substantial evidence to the contrary. Therefore, we conclude that Appellant lacks standing to pursue this appeal on Katherine's behalf, for which reason we dismiss this appeal.<sup>7</sup>

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<sup>6</sup>(...continued)

Closely related is the issue of whether any claim under § 2216 survived Katherine's death. We are not aware of any cases that specifically address the survivability of claims under § 2216(b). Because we dispose of Appellant's appeal on other grounds, we assume for purposes of our decision that Katherine's claim did not abate. *See generally Kirk v. C.I.R.*, 179 F.2d 619 (1st Cir. 1950) (survivability of Federal statutory claim determined in accordance with common law); *Bracken v. Harris & Zide, L.L.P.*, 219 F.R.D. 481 (N.D.Cal. 2004) (abatement of statutory claims).

<sup>7</sup> To the extent Appellant contends that the gift deeds are void *ab initio* based on BIA's failure to comply with § 2216 by providing Katherine with an estimate of the value of her lands or obtaining from her a written waiver of the estimate, Appellant arguably has standing in her own right to pursue this claim. Even so, this claim is rejected. Appellant, who bears the burden of showing error in the Regional Director's decision, adduces no legal argument in support of this claim and simply assumes that the conveyances are void *ab initio* as opposed to voidable. *See Dumbeck v. Acting Great Plains Regional Director*, 47 IBIA 39, 46 (2008), *Bernard v. Acting Great Plains Regional Director*, 46 IBIA 28, 35-36 (2007). Based on our review of the law, we have not found a basis for finding a deed void *ab initio* in the absence of a facial defect to the deed itself. *See* discussion in *Bernard*, *supra*.

## A. Standard of Review

It is Appellant's burden to establish standing before the Board. *Enemy Hunter v. Acting Rocky Mountain Regional Director*, 51 IBIA 322, 325 (2010). Questions of law and the sufficiency of the evidence are subject to *de novo* review. *LeCompte I*, 45 IBIA at 142.

## B. Appellant's Standing to Challenge BIA's Compliance with 25 U.S.C. § 2216

Standing is a multi-part inquiry. First, we determine whether Appellant or her decedent is one whose interests are affected by the decision under review. 43 C.F.R. § 4.331; *see also* 25 C.F.R. § 2.2 (definition of "interested party," incorporated by reference into the Board's regulations, 43 C.F.R. § 4.330(a)); *Enemy Hunter*, 51 IBIA at 324-35. In *LeCompte I*, we determined that Appellant had standing in her own right to appeal the approval of the gift deeds on grounds of fraud and undue influence, but concluded that she could pursue her statutory violation claim on Katherine's behalf. Next, we utilize the three elements of constitutional standing to determine whether the interests of Appellant's decedent were adversely affected: "An appellant to the Board must show that (1) he has suffered an actual or imminent, concrete and particularized injury to or invasion of a legally protected interest; (2) the injury is fairly traceable to the challenged action; and (3) the injury will likely be redressed by a favorable decision." *Rosebud Indian Land & Grazing Ass'n and Members v. Acting Great Plains Regional Director*, 50 IBIA 46, 53 (2009) (citations omitted); *LeCompte I*, 45 IBIA at 146-47. As we explained in *LeCompte I*,

Congress enacted the Indian Land Consolidation Act (ILCA), of which [§] 2216 is part, in response to the exponential increase in the undivided fractionation of title to Indian trust lands. To reduce the fractionation, the policy of the United States is "to encourage and assist the consolidation of [Indian trust] land ownership" where the transfer of beneficial interest occurs between individual Indians or between individual Indians and the tribe exercising jurisdiction over the land involved in the transaction. 25 U.S.C. § 2216(a). Pursuant to this policy, Congress sought to clarify that BIA was not required to conduct a formal appraisal for such conveyances. S. Rep. No. 106-361 at 21 (2000). At the same time, however, Congress imposed a minimum requirement that, prior to such a conveyance, the grantor be "provided with an estimate of the value of the interest" being conveyed while allowing the request to be waived in writing by the grantor for conveyances between certain family members. 25 U.S.C. § 2216(b). Thus, Congress acted to ensure that the grantor has some understanding of the value of the interest being conveyed (an estimate) or, alternatively, written assurance that

the grantor knowingly intends to convey his or her interest without being provided with an estimate of its value. The first requirement, to be provided with an estimate of value, inures to the benefit of the grantor. The exception, allowing a written waiver, exists to avoid the necessity of preparing even an estimate of value when a grantor considers receipt of an estimate to be unnecessary; it also protects BIA.

45 IBIA at 145-46 (footnote omitted). We then concluded that,

Appellant is seeking to enforce *Katherine's* interests and *Katherine's* rights under [§] 2216(b). If Katherine was, in fact, aware of the current estimated value of her property interests, she had the information that Congress intended her to have under [§] 2216(b) and Appellant cannot claim that the alleged injury to Katherine, i.e., loss of ownership interest for less than fair market value, resulted from (or is “fairly traceable to”) the noncompliance with [§] 2216(b). Similarly, if the evidence demonstrates that Katherine fully intended to convey her interests regardless of their value, it would appear doubtful at best that Appellant is entitled to seek rescission of the conveyance[s] based on the absence of a written waiver of the estimate of value.

*Id.* at 147 (footnote omitted). We turn now to determine whether Appellant has met her burden of establishing standing, on Katherine's behalf.

In her May 5 decision on remand, the Regional Director both determined that Katherine knew the value of her lands and, even if she did not, that she fully intended to give her lands to Duane regardless of their value. We conclude that even if Appellant were able to establish the first and third prongs of standing by showing, e.g., that Katherine was injured when she gave her trust lands to Duane and that this injury may be redressed by rescinding or revoking the gift deeds, Appellant did not, as we explain below, satisfy her burden under the second prong, which is to show that Katherine would not have given Duane her lands had BIA complied with § 2216, i.e., that her injury was caused by BIA's failure to comply with § 2216.<sup>8</sup>

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<sup>8</sup> It is not at all clear that Katherine actually was injured by the conveyances in light of the fact that she retained a life estate in all 13 properties. In addition, the Board has not determined whether it or the Department of the Interior can provide the relief Appellant seeks, i.e., whether the Board or the Department possess the legal authority to void completed gift deed transactions. *See Dumbuck*, 47 IBIA at 45-46.

## 1. Was Katherine Unaware of the Approximate Value of Her Land?

We give little weight to the opinions expressed by Appellant's affiants — that Katherine did not know the value of her lands — because the foundation offered for the opinions is susceptible of several conclusions and not just the conclusions expressed by the affiants. Therefore, Appellant has not met her burden of showing that Katherine did not know the estimated value of her lands.

Both Rieker (Katherine's great-granddaughter) and Bartlett (Katherine's friend) declare that they never heard Katherine talk about the value of her lands. Because she had not done so, both affiants then opine that they believe Katherine did not know the value of her lands. We do not agree that the one fact — that Katherine never spoke of the value of her properties — necessarily compels the conclusion reached by these two affiants — that Katherine did not, in fact, know the value of her lands. It may simply mean that Katherine chose not to discuss the subject or that the subject did not arise in conversation. Therefore, we find that the opinions are entitled to little, if any, weight.

We also conclude that the Regional Director's assertion that Katherine did know the value of her lands lacks support in the record. The Regional Director bases her conclusion on Katherine's active involvement in the family cattle ranching business and because, in the year before her death, she leased over 8,000 acres of trust and government-owned land for cattle grazing for which the annual rent was \$15,481.24. Appellant disagrees with the Regional Director, and argues that "there is no evidence in th[e] record to support the B.I.A. contention that Katherine . . . knew the value of her land." Opening Brief at 6. In particular, Appellant argues that "[t]he lease documents provide no evidence [of] land value." *Id.* at 5. We agree with Appellant, and we conclude that the record does not support BIA's determination. Whether Katherine was active in the family cattle ranching business does not, without more, support an inference that she knew the approximate value of her lands.<sup>9</sup> With respect to the leases executed by Katherine, BIA does not explain how Katherine's knowledge of the annual rental value of nearby lands necessarily demonstrates that Katherine knew the value of the remainder interests that she gave to Duane. At best, it provides Katherine with some idea of the income she might expect to receive if she were to lease her own lands. Section 2216(b)(1) entitles grantors to the estimated value of the interests being conveyed, which would be the remainder interests that Katherine gave to

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<sup>9</sup> Although the Agency Realty Officer states that Katherine was active in the family's ranching business, he does not identify a foundation for his assertion. But, by the same token, we note that Appellant does not deny that the family had a ranching business or that her mother was actively involved.

Duane. Although it may be possible to approximate fair market value based on income, there is no evidence that Katherine knew how to make this determination or that she did so.<sup>10</sup>

After due consideration of the parties' arguments, we are unable to determine whether Katherine was or was not aware of the approximate value of her lands. Therefore, we conclude that Appellant has not met her burden, which was to show that — notwithstanding BIA's failure to give Katherine an estimate of the value of her land — Katherine did not know the approximate value of the land interests that she gave to Duane.

## 2. Did Katherine Intend to Give Her Lands to Duane Regardless of Their Value?

Even if we assume that Katherine was ignorant of the value of her trust lands, we would conclude that Appellant did not meet her burden of showing that Katherine would not have given away her lands had she been provided with an estimate of their value. In this regard, we find Appellant's evidence to be entirely conclusory and lacking foundation; in contrast, there is substantial evidence of Katherine's intention to give her land interests to Duane regardless of their value.

Appellant's affiants both opine that they do not believe that had she known the "true value" of her trust properties, Katherine "would never have given *any* property to Duane." Rieker Affidavit at ¶ 14 (emphasis added); *see also* Bartlett Affidavit, Mar. 8, 2008, at ¶ 4 (same). Both affiants predicate their opinion on their unsupported beliefs that Duane could be subject to "life in prison and hundreds of thousands, if not millions in fines." Rieker

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<sup>10</sup> BIA also seems to suggest that because Katherine inherited all of her husband's trust lands when he died, she knew the estimated value. Answer Brief at 2. The administrative record includes a copy of the March 19, 1987, Order Approving Will and Decree of Distribution in *Estate of Ellsworth (Buster) Lafferty*, which states that "[t]he estimated value of [Buster's] estate is \$95,681.00." Order at 2 (AR at Tab F16). We cannot determine what portion of this valuation is ascribed to Buster's land interests and what, if any, is attributable to funds on deposit in his Individual Indian Money (IIM) account. The order does not identify the land interests inherited by Katherine, so we cannot determine whether these interests were among the interests she conveyed to Duane. Finally, even if we were to assume that \$95,681.00 were the aggregate value of all 13 interests conveyed to Duane, this estimate was dated 1987 or earlier, which was at least 16 years prior to the conveyances to Duane. There is no evidence in the record to show that land values remained flat during these 16 years or that they returned to 1987 levels by 2003. Therefore, we find that the estimate of value found in the probate order, without more, is not helpful.

Affidavit at ¶ 15; Bartlett Affidavit, Mar. 8, 2008, at ¶ 4 (if Katherine “understood the actual value of her land and the truth regarding the likely consequences of [Duane’s] meth[amphetamine] dealing charges [she would not have given him her land].”). Neither Appellant nor her affiants provided a foundation for their apparent belief that Indian trust lands could be forfeited in the event of Duane’s conviction.<sup>11</sup> More importantly, Appellant essentially concedes that it would not have been BIA’s failure to give Katherine an estimate of the value of her trust lands that would have dissuaded her from giving them to Duane but an entirely different reason: The possible outcome of criminal charges against Duane, i.e., his incarceration, fines, and potential forfeiture of trust lands.

Finally, Appellant argues, quoting the Board’s decision in *Dumbeck*, that “[i]t is well established that Indian trust interests may only be conveyed in accordance with Federal law. . . .” 47 IBIA at 45. As a matter of the *merits* of an appeal, this is true. However, the procedural postures of Appellant’s appeal and the appeal in *Dumbeck* are entirely distinct. Here, the issue is Appellant’s standing to pursue Katherine’s interests in the wake of Katherine’s death; in *Dumbeck*, the appellant was the grantor, thus standing was not an issue.

In contrast to the conclusory evidence submitted by Appellant, the Regional Director properly points to evidence of a longstanding estrangement between Katherine and Appellant. Even on the day that she died, Katherine adamantly refused to permit medical personnel to discuss her medical condition with Appellant, and thus it appears that it was Katherine’s choice and decision to shut herself off from Appellant. Appellant concedes as much, both in the tribal court as well as in submitting the affidavit of her aunt (Katherine’s sister) who confirms that Katherine was “alienated” from Appellant.

These facts, coupled with the finding by the tribal court that Katherine and Duane “had a very close relationship,” support the finding that Katherine intended to give her land interests to Duane notwithstanding their value. Through her actions and words towards Appellant, we find no suggestion or indication that she wanted her daughter to have or share in any of the land interests that she gave to Duane.

In addition, we note that the record contains further support for the Regional Director’s conclusion. First, had Katherine intended for Appellant or anyone else to receive

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<sup>11</sup> The record reflects that judgment was entered against Duane pursuant to his guilty plea to one count of conspiracy with dismissal of all remaining counts, that Duane received a prison term, and that he was fined \$30,000.00. *United States v. Lafferty*, No. 03CR30004-001 (D.S.D. *Judgment* Mar. 5, 2004) (AR at Tab F1).

some portion of her land or mineral interests, she could well have either limited the number of interests that she conveyed to Duane or transferred some of her land interests to someone other than Duane. Instead, Katherine chose to transfer all 13 interests to Duane under circumstances (impending surgery and retention of a life estate) that suggest that the conveyances might have been intended as a will substitute. *See, e.g., Halleck v. Halleck*, 216 Or. 23, 37 (1959) (“the law affords the owner of property a number of effective devices other than a will by which he can postpone the enjoyment of property until his death,” e.g., by conveying her interest in land subject to a life estate, citing *Deckenbach v. Deckenbach*, 65 Or. 160 (1913)). Second, according to BIA, Katherine “seemed very adamant” about giving her lands to Duane, subject to her life estate in each parcel. Pearman Affidavit, Sept. 13, 2007 (AR at Tabs D1, D2); *see also* Pearman Affidavit, Apr. 2, 2008 (same). Where an individual seems “adamant” about her choices, she is confident and determined, and thus not likely to be deterred or dissuaded from her choices.

Finally, Appellant herself concedes that the “sheer size of the [amount of land subject to the gift deeds] *obviously* makes the transfer substantial. This was not the normal gift deed of a few small fractionated parcels worth a few hundred dollars.” Appellant’s Opening Brief at 2-3 (emphasis added). We agree. The fact that Katherine executed not one or two, but 13 separate gift deed applications at the same time, then returned several days later to execute 13 separate gift deeds only underscores both her appreciation of the magnitude of her gift to Duane and her determination that he should receive all 13 interests. The fact that she appeared at BIA on both occasions voluntarily and unaccompanied to execute these 13 gift deed applications and, later, these 13 gift deeds also underscores the purposeful intent of her actions. Ultimately, the record does not reflect nor does Appellant ever claim that Katherine contacted BIA to rescind the gift deeds or otherwise expressed remorse over the transactions during the 8 months following their execution and prior to her death. Indeed, Bartlett, who avers that she saw Katherine at least twice a week on average between 1998 and Katherine’s death in 2004, does not testify that her “close friend” ever expressed any doubts or regrets about the conveyances or that she sought their cancellation.

Given the totality of these circumstances, we agree with the Regional Director that Katherine intended to convey her trust land interests to Duane regardless of their value.<sup>12</sup> Because we conclude that Katherine would have given her lands to Duane notwithstanding

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<sup>12</sup> To the extent that the Regional Director also relied for her decision on her determination that “it is not uncommon in rural areas to leave ranch land to the eldest son,” May 5 Decision at 4, we find no support in the record for any such tradition, much less for the Regional Director’s determination that it was a tradition to which Katherine adhered. Therefore, we reject this assertion as supportive of the Regional Director’s decision.

BIA's noncompliance with § 2216, Appellant has not shown that any action or inaction by BIA caused Katherine to part with her lands. Thus, Appellant has not met her burden of showing standing to challenge the 13 gift deeds.

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 May 5, 2008, conclusion that Katherine would have given her lands to Duane regardless of their value and, therefore, we dismiss Appellant's appeal for lack of standing.<sup>13</sup>

I concur:

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// original signed  
Debora G. Luther  
Administrative Judge

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// original signed  
Steven K. Linscheid  
Chief Administrative Judge

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<sup>13</sup> The Board's decision in *LeCompte I* affirmed the Regional Director's earlier, February 2, 2005, decision insofar as the Regional Director concluded that BIA had met its duty in conducting an appropriate inquiry into the basis and reason for Katherine's decision. We further concluded that Appellant had not shown that undue influence or fraud played any role in Katherine's execution of the gift deeds. Our decision in *LeCompte I* foreclosed any further review of these issues. To the extent that the Regional Director considered anew any evidence of these issues, we find the Regional Director's decision to be fully supported by the record. *See* n.4 *supra*.