



INTERIOR BOARD OF INDIAN APPEALS

Kyle J. Biegler v. Great Plains Regional Director, Bureau of Indian Affairs

54 IBIA 160 (11/29/2011)



United States Department of the Interior

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

KYLE J. BIEGLER,)	Order Dismissing Appeal
Appellant,)	
)	
v.)	
)	Docket No. IBIA 09-129
GREAT PLAINS REGIONAL)	
DIRECTOR, BUREAU OF)	
INDIAN AFFAIRS,)	
Appellee.)	November 29, 2011

Kyle J. Biegler (Appellant) appealed to the Board of Indian Appeals (Board) from a June 23, 2009, decision (Decision) of the Great Plains Regional Director (Regional Director), Bureau of Indian Affairs (BIA). The Regional Director upheld the approval, by BIA's Cheyenne River Agency Acting Superintendent (Acting Superintendent), of a deed executed by Richard Wolverton (Wolverton) to convey Cheyenne River Allotment No. 183 (Allotment) to Patrick Aberle (Aberle).¹ In approving the deed to Aberle (Aberle Deed), the Superintendent impliedly declined to approve a deed to Appellant for the Allotment that Wolverton had executed before he executed the Aberle Deed. Appellant seeks to set aside BIA's approval of the Aberle Deed.

We dismiss this appeal for lack of standing because Appellant has not shown that the Decision adversely affected any legally protected interest held by Appellant. When Wolverton changed his mind and executed the Aberle Deed, Wolverton's action intervened to cut off any potential right, privilege, or legally protected interest that Appellant may have held in having BIA consider the unapproved deed that Wolverton previously had executed to convey the property to Appellant.

¹ Cheyenne River Allotment No. 183, also known as the Maggie Ducharme Allotment, is described as the SW $\frac{1}{4}$ of Section 3, Township 17 North, Range 27 East, Black Hills Meridian, Dewey County, South Dakota, containing 160 acres, more or less. Title status reports in the record indicate that in 2008, when the events of this case took place, Wolverton owned a full interest in the Allotment.

Background

The land transaction at issue here relates to Wolverton's interest in the Allotment. Wolverton is a member of the Cheyenne River Sioux Tribe, as apparently so are Appellant and Aberle. In 2008, Wolverton entered into negotiations to sell the Allotment to Appellant, who owns adjacent lands. Wolverton and Appellant agreed on a price and Wolverton submitted an Application for the Negotiated Sale of Indian Land (Application) to BIA on August 18, 2008. After BIA received the Application, BIA's appraiser valued the Allotment above the negotiated price. Wolverton chose not to raise his asking price and agreed to continue with the conveyance as negotiated.

On November 26, 2008, Wolverton executed a deed to Appellant and also a waiver acknowledging that he was accepting a below-appraisal offer. BIA received those two documents on December 1, 2008. Around this time, Aberle contacted Wolverton and offered him a higher price for the Allotment. On December 3, 2008, Wolverton executed the Aberle Deed and another waiver acknowledging that he was accepting a below-appraisal offer.² Aberle delivered these documents, along with a check for the purchase price, in person to BIA on December 4, 2008. That same day, the Acting Superintendent³ (1) approved the Application for Sale to Appellant (but did not approve the deed to Appellant), (2) approved Wolverton's request for a negotiated sale to Aberle,⁴ and

² In his appeal to the Regional Director, Appellant contended that when Aberle presented Wolverton with the deed to Aberle, "Wolverton then faxed a letter to the [Cheyenne River] Agency canceling [the signed deed to Appellant], and signed [the Aberle Deed]." Administrative Record (AR) Tab 11. No such letter is in the administrative record, but if Appellant's contention is correct, it would only provide additional evidence that Wolverton changed his mind and no longer intended to convey the property to Appellant.

³ The Cheyenne River Agency Superintendent was out of town this particular day and thus these actions were taken by an individual apparently designated as the Acting Superintendent. AR Tab 16 at 81.

⁴ The Acting Superintendent approved the Wolverton-Aberle transaction by approving a memorandum prepared by the BIA Realty Specialist and a BIA Realty Officer, titled "Request for Negotiated Sale." See AR Tab 6. That memorandum refers to an "application for a negotiated sale" from Wolverton to Aberle, but no separate application is in the record. In the context of gift deeds, the Board has held that BIA's failure to approve an application for a gift deed does not invalidate BIA's approval of a deed. See *Bernard v.*

(continued...)

(3) approved the Aberle Deed. At some point, the word “void” was handwritten on Appellant’s deed, but the record does not establish when or by whom.

Eight days later, on December 12, 2008, Wolverton (apparently after a telephone conversation with the now-retired Cheyenne River Agency Superintendent (Superintendent)), faxed a letter to BIA requesting that the sale of the Allotment be “frozen” and that the property be put up for public auction. AR Tab 8. Wolverton stated that he had agreed to the sale to Aberle “under duress brought about by the [recent] death of my wife.” *Id.* In response, the Superintendent initiated action to return the sale proceeds to Aberle and proceeded to place advertisements for sealed bids in two newspapers.⁵

Four days after that, on December 16, 2008, Wolverton, along with Aberle and Aberle’s brother (an attorney), called the Superintendent to inform him that Wolverton had changed his mind again and wished to complete the transaction with Aberle. The same day, Wolverton faxed a letter to BIA confirming his wish to go through with the Aberle sale. On December 10, 2008, the Land Titles & Records Office, Great Plains Region, recorded the Aberle Deed. AR Tab 7 at 46.

Appellant appealed the approval of the Aberle Deed to the Regional Director on December 18, 2008. Appellant argued that (1) his deed should never have been “voided,” (2) he should have been informed of Aberle’s negotiations with Wolverton, and (3) he should have had a chance to increase his offer after Wolverton began negotiating with Aberle. Appellant sought the opportunity to either increase his offer to Wolverton or, in the alternative, to participate in a public auction for the Allotment.

The Regional Director upheld the Acting Superintendent’s approval of the Aberle Deed. Decision at 3. The Regional Director held that (1) the deed to Appellant had never been approved, thus it was never valid and as such could not have been voided, (2) there was no evidence that Aberle had unjustly influenced Wolverton or that Wolverton was

⁴(...continued)

Acting Great Plains Regional Director, 46 IBIA 28, 43 (2007), *aff’d sub nom.*, *Bernard v. U.S. Department of the Interior*, 2011 WL 1256658, 2011 WL 2160930 (D.S.D. Mar. 30, 2011 and June 1, 2011), *appeal docketed*, No. 11-2502 (8th Cir.).

⁵ Whether or not the Superintendent would have had the authority to cancel the approved Aberle Deed is an issue we need not address. Because Wolverton later requested that the public sale be called off and the Aberle Deed left intact, that question is moot.

incompetent to convey the Allotment to Aberle,⁶ and (3) had Appellant wished to increase his offer, he should have extended that offer directly to Wolverton.⁷

Appellant now appeals the Regional Director's Decision to the Board. In this appeal, Appellant seeks to have the Aberle Deed voided and title to the Allotment transferred to himself. In the alternative, he seeks the opportunity to offer Wolverton a higher price for the Allotment or to be able to bid on the Allotment in a public auction.

Appellant filed an opening brief, the Regional Director and Aberle filed answer briefs, and Appellant filed a reply brief.

Discussion

Appellant claims that he was prevented from owning the Allotment because of two wrongful actions taken by BIA. First, Appellant claims that BIA improperly voided, or allowed to be voided, the deed that Wolverton executed to Appellant. Second, Appellant contests BIA's approval of the Aberle Deed. For the reasons set out below, we dismiss this appeal for lack of standing. Neither the alleged voiding of the deed to Appellant nor the approval of the Aberle Deed affected any legally protected interest held by Appellant, and to the extent that Appellant has been "prevented" from owning the Allotment, it is due to the independent intervening action of Wolverton, and was not the result of the Decision.

I. Standard of Review and Standing Requirements

Whether an appellant has standing is a legal question that we review *de novo*. *Northern Cheyenne Livestock Ass'n v. Acting Rocky Mountain Regional Director*, 48 IBIA 131, 135-36 (2008). Appellant has the burden of establishing his standing for each claim on appeal. *Anderson v. Great Plains Regional Director*, 52 IBIA 327, 331 (2010); *see also* 25 C.F.R. § 2.2 (definitions of "Appellant" and "Interested Party"); 43 C.F.R. § 4.331 (Who may appeal).

⁶ Appellant argued that, because Wolverton stated that he had agreed to the Aberle sale under the "duress" of his wife's recent passing, Aberle had exercised undue influence over Wolverton in the sale.

⁷ Appellant apparently told BIA that he intended to offer Wolverton the full appraised value. *See* AR Tab 16 at 72.

An appellant must be “adversely affected” by a “final administrative action or decision” by BIA in order to appeal it to the Board. *Anderson*, 52 IBIA at 331; 43 C.F.R. § 4.331. To be “adversely affected” within the meaning of the regulations, the adverse effect must be to Appellant’s own legally protected interest. *Anderson*, 52 IBIA at 331; *see also Cheyenne River Sioux Tribe v. Acting Great Plains Regional Director*, 41 IBIA 308, 311 (2005) (a party must assert its own rights and interests and cannot rest its claim of relief upon the rights and interests of others). Without an injury to an appellant’s legally protected interest, an appeal will be dismissed. *Hall v. Great Plains Regional Director*, 43 IBIA 39, 44 (2006).

II. The Rights of Indian Landowners and Prospective Grantees

Indian landowners may, upon BIA’s approval, convey their trust or restricted land through a negotiated private sale or a public auction. 25 C.F.R. §§ 152.17 and 152.25. Particularly relevant to this appeal, an Indian landowner has the right to revoke consent to a proposed conveyance of trust or restricted land at any time before the deed is both executed by the landowner and approved by BIA. *Bitonti v. Alaska Regional Director*, 43 IBIA 205, 214 (2006). “[A]n unapproved conveyance of trust or restricted lands is void ab initio, has no force or effect, and grants no rights to either the attempted grantor or grantee.” *HCB Industries, Inc. v. Muskogee Area Director*, 18 IBIA 222, 225 (1990); *see also Fleury v. Alaska Regional Director*, 54 IBIA 83, 84 (2011) (“Any potential right or interest that a prospective grantee may have in the consummation of a transaction is purely derivative of the grantor’s continuing intent to convey the property.”). Thus, a prospective purchaser gains no legally protected interest in the land or in the sales process, as long as the landowner remains free to change his or her mind and to revoke consent to the sale. Because a prospective purchaser has no legally protected interest in the land itself or in the sales process, a failed purchaser does not have standing to challenge a landowner’s decision to proceed with one type of sale over another or to challenge BIA’s approval of a request from the landowner to sell the property to another buyer and approve the deed to complete the conveyance.⁸

⁸ Even when it is BIA that decides whether to negotiate or take bids for a conveyance of real property, a disappointed prospective purchaser would still not have standing to challenge that choice. The Board recently noted that a party wishing to participate in a public auction for a lease of trust or restricted land would likely lack standing to appeal a superintendent’s decision to pull the land from an ongoing bid process in order to enter lease negotiations with a third party. *See Shelbourn v. Acting Great Plains Regional Director*, 54 IBIA 75, 82 n.12 (2011).

III. Appellant's Deed

Appellant contends that BIA abused its discretion by voiding, or allowing to be voided, the deed that Wolverton executed to convey the Allotment to Appellant. But even assuming that someone in BIA wrote "void" on Appellant's deed, or allowed a third party to do so, that action caused no injury to any legally protected right held by Appellant. The unapproved deed was legally void with or without any such notation, *see HCB*, 18 IBIA at 225, and it was *Wolverton's action* (not BIA's) that precluded BIA from giving further consideration to Appellant's deed.

As discussed above, Wolverton, as the landowner, was within his right to revoke consent to the unapproved deed he had previously executed. Wolverton changed his mind, exercised his right to revoke, and executed the Aberle Deed, which was then submitted for BIA approval. In the absence of BIA's approval of the deed to Appellant, Appellant gained no interest in the land, and thus writing "void" on that deed, regardless of who did it, had no effect. And even assuming, without deciding, that Appellant gained some legally protected procedural interest when Wolverton initially executed the deed to Appellant, e.g., an interest in obtaining a decision by BIA whether to approve or disapprove it, any such interest lapsed when Wolverton executed the Aberle Deed. Because Appellant had no legally protected interest that was adversely affected by writing "void" across the deed to Appellant, or by BIA's failure to approve that deed or give it further consideration, Appellant has not established that BIA's actions "prevented" him from owning the land or adversely affected any legally protected interest held by Appellant, and therefore Appellant lacks standing to appeal BIA's failure to approve the deed to him.

IV. Aberle Deed

Appellant also contends that BIA abused its discretion in approving the Aberle Deed. Appellant advances arguments concerning alleged irregularities in the sales process and also alleged failures in BIA's trust responsibilities to Wolverton. Appellant lacks standing to challenge BIA's approval of the Aberle Deed on either of these grounds, so this claim must also be dismissed.

The unapproved deed to Appellant gave Appellant no right or interest in the Allotment. The fact that Appellant had entered negotiations with Wolverton, and later had hoped to participate in a public auction for the Allotment, created nothing more than an expectancy. BIA approved the Aberle Deed at Wolverton's request and Appellant had no right to insist on being given an opportunity to renegotiate with Wolverton or to bid on the property. As soon as the Acting Superintendent approved the Aberle Deed, any potential for rights to accrue to Appellant from the unapproved deed to him were extinguished. *See*

Fleury, 54 IBIA at 84. Just as Appellant lacked standing to challenge the non-approval of his deed (and his resulting failure to gain title to the Allotment), he similarly lacks standing to challenge the approval of the Aberle Deed because that approval did not adversely affect any legally protected interest of Appellant.

Appellant advances other arguments challenging the approval of the Aberle Deed based on alleged failures of BIA in administering its trust responsibility to Wolverton. *See* Appellant's Opening Brief at 15-24. However, Appellant lacks standing to assert the rights of others, such as Wolverton. Ordinarily, a party may not rest a claim for relief upon the rights and interests of others. *See Cheyenne River Sioux Tribe*, 41 IBIA at 311; *see also Powers v. Ohio*, 499 U.S. 400, 410 (1991). In a conveyance of restricted or trust land, BIA owes a trust responsibility *only* to the prospective grantor and not the prospective grantee, even when both the grantor and grantee are Indians with assets held in trust by BIA. *Estate of Celestine v. Acting Portland Area Director*, 26 IBIA 220, 228 (1994). Thus, Appellant does not have standing to appeal alleged violations of the trust responsibility owed to Wolverton.

Because Appellant has suffered no injury to his own legally protected interests by the approval of the Aberle Deed, either through his status as a prospective purchaser or by any alleged violations of the BIA's trust responsibility to Wolverton, his second claim, challenging the approval of the Aberle Deed, also must be dismissed for lack of standing.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board dismisses this appeal for lack of standing.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debora G. Luther
Administrative Judge