

GEORGE McDEVITT

IBLA 88-407

Decided March 12, 1990

Appeal from a decision of the Arizona State Office, Bureau of Land Management, declaring mining claim A MC 56751 null and void ab initio.

Affirmed.

1. Evidence: Presumptions--State Grants

There is a presumption that land granted to a state for school purposes was of the character contemplated by the grant, and that title to the land has consequently passed to the state. Where a mining claimant contends that land within a state school grant was mineral in character when surveyed, and was therefore excluded from the grant, the mining claimant bears the burden of proving the land was mineral in character.

2. Appeals: Generally--State Grants

This Department will not entertain review of an appeal from a determination that land located by a mineral claimant was not Federally owned where the appeal is made under circumstances indicating that an opinion is sought to facilitate issuance of a lease to the same land from the State and where appellant fails to point to error in the BLM decision appealed from.

APPEARANCES: H. Louis Hizer, Esq., Kingman, Arizona, for appellant.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

George McDevitt has appealed from a decision of the Arizona State Office, Bureau of Land Management (BLM), dated April 1, 1988, declaring unpatented lode mining claim A MC 56751, the Starizona No. 1, null and void ab initio. BLM found the claim was located in sec. 16., T. 19 N., R. 20 W. Gila and Salt River Meridian, which had been conveyed to Arizona when the land was surveyed in 1917, pursuant to provision of the Arizona Enabling Act, Ch. 310, 36 Stat. 557 (1910).

On June 6, 1912, the Mayflower No. 1, was located on the same land where the Starizona claim would later be located in 1968. A plat of mineral survey of the claim, Mineral Survey No. 3114, was prepared on August 29, 1914, prior to completion of the survey of sec. 16. The map of

survey of sec. 16, T. 19 N., R. 20 W. was approved by the Surveyor General on February 26, 1917. As approved, the 1917 survey did not include MS 3114.

The Starizona No. 1 was located on March 26, 1968, and was recorded with BLM on August 21, 1979, pursuant to the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1982). Appellant filed evidence of assessment work annually from 1979 through 1987.

In his statement of reasons for appeal (SOR), appellant states that the Starizona claim occupies the same land as did the Mayflower No. 1, and that the land at issue here is identical to the land which comprised MS 3114. The SOR explains that in 1972 appellant attempted to lease the land from the State of Arizona, only to learn that "the position of the State of Arizona was that the title to the subject mineral lands had not been perfected." Id. at 1, see enclosure to SOR, letter dated December 19, 1972. The SOR states that appellant has no opinion concerning whether this uncertainty is unfounded because "[i]t is completely immaterial to Mr. McDevitt and his successors in interest whether they are holding the particular ground as lode claimant under the mining laws of the United States of America or whether they hold the ground as a mineral lessee from the State of Arizona." Id. at 2.

The SOR offers this statement concerning the validity of the Starizona claim:

The persons purporting to hold an interest in the subject mineral lands are officers and stockholders of the Starizona Mining, Milling and Development Company, an Arizona corporation. They have at all times maintained their lode mining claim as a valid and subsisting claim under the laws of the United States since March 26, 1968. Due to information received by them in 1972, from the Bureau of Land Management, they did attempt, at that time, to enter into the lease [with the State] but as you can see the lease was denied * * *.

Id. at 2. Appellant concludes that:

The reason for this appeal is to clarify the ownership of the subject mineral lands. We were informed by telephone as recently as April 12, 1988, that the Arizona State Land Department is still of the opinion that the title in the State of Arizona has not been perfected and that the State of Arizona is not the owner of the subject mineral lands. Hopefully, this matter can be disposed of summarily without the necessity of going through a complete appeal.

Id.

The case file before us on appeal contains a letter from the Deputy State Land Commissioner addressed to BLM concerning the Starizona claim, stating that the Arizona State Land Department has reviewed "Unpatented Mining Claim No. MS3114" and concludes that the State of Arizona "owns

those lands described as 'MS3114.'" Letter dated May 2, 1988, Collins to Mezes. This letter is consistent with prior correspondence in the case file from the Arizona State Land Department dated November 10, 1980, which concludes, concerning MS 3114, that "the acreage in question automatically became State-owned and not subject to further location under the provisions of Federal Mining Laws." This conclusion was reached in reliance upon the provision of FLPMA governing recordation of mining claims. 43 U.S.C. § 1744 (1982). The State of Arizona has not appeared as a party to this appeal, however.

When land grant states were admitted to the Federal Union, a Federal land disposition program designed to promote education in the new states provided for the grant of "school lands" to the states. Under this program, designated sections in each township were granted to subsidize public education. In Arizona, 4 sections in each township, secs. 2, 16, 32, and 36 were granted for this purpose. Arizona Enabling Act, Ch. 310, 36 Stat. 557, 572 (1910). Whether the Enabling Act contained words of present or future grant, title to the numbered sections did not vest in the state until completion of an official survey. Andrus v. Utah, 446 U.S. 500 (1980).

Even then, however, as the Court's opinion in Andrus v. Utah, supra, explains, there was an exception to the grant:

The original school land grants in general * * * did not include any numbered sections known to be mineral in character by the time of survey. United States v. Sweet, 245 U.S. 563. This Court so held even though the Utah Enabling Act "neither expressly includes mineral lands nor expressly excludes them." Id. at 567. The Court's opinion stressed "the practice of Congress to make a distinction between mineral lands and other lands, to deal with them along different lines, and to withhold mineral lands from disposal save under laws specially including them." Ibid. Mineral lands were thus excluded not only from the original grants in place but also from the indemnity selections. * * * In 1927, some nine years after the decision in United States v. Sweet, supra, Congress changed its policy to allow grants of school lands to embrace numbered sections that were mineral in character. [Footnote omitted.]

Id. at 508, 509. The 1927 act referred to above is codified at 43 U.S.C. § 870 (1982), and provides, pertinently, that "the several grants to the States of numbered sections in place for the support or in aid of common or public schools be, and they are extended to embrace numbered school sections mineral in character." Id.

Whether BLM correctly decided that the land embraced by MS 3114 was conveyed to Arizona when the official survey was completed in 1917 depends, therefore, upon whether the land in sec. 16, where the Mayflower No. 1 was located, was mineral in character. If the land was mineral in character in 1917 when the survey was completed, title to MS 3114 could not pass until January 27, 1927, the effective date of the 1927 Act permitting acquisition of land mineral in character under the school grant. And even then, if the

Mayflower No. 1 was a valid claim on that date, the land in MS 3114 could not pass to the State. State of Idaho, 101 IBLA 340, 95 I.D. 49 (1988).

On the record before us, it is impossible to determine the validity of the Mayflower No. 1, either in 1912, 1917, 1927, or at any later date. There is no evidence concerning this claim before us, nor is there any showing that the claim continued in existence after MS 3114 was completed in 1912, nor is there any showing concerning the mineral character of this land. Appellant does not allege that he is a successor in interest to the locator of the Mayflower No. 1, nor that the Starizona No. 1 claim is an amendment to the Mayflower No. 1. Nor does the Arizona State Land Department fully explain why the opinion held by that office in 1972, that title to MS 3114 had not been perfected in the State, changed in 1980 to the position that Arizona had acquired title to the land at some unspecified time after 1917.

[1] There is a presumption that land granted to a state for school purposes was of the character contemplated by the grant, and that title to the land consequently passed to the state. State of Idaho, supra; Margaret Scharf, 57 I.D. 348 (1941); Mangan v. Arizona, 52 L.D. 266 (1928). If a mining claimant contends that land within a state school grant was mineral in character when survey was completed, and was therefore excluded from the statutory grant, the mining claimant bears the burden of proving the land was mineral in character. State of Idaho, supra.

This appeal does not come before us from a contest between the State and the mineral claimant, but as a result of a finding by BLM that the Starizona No. 1 claim was located in 1968 on land patented to Arizona in 1917. In reaching this conclusion, BLM applied the presumption that the school grant became effective when survey of the land in sec. 16 was completed in 1917, as it was entitled to do. State of Idaho, supra. There has been no attempt by appellant to rebut this presumption, and, to the contrary, he admits the result announced by BLM is immaterial to him, so long as Arizona does not fault it. This position, and the fact that the record is barren of any showing concerning the history of MS 3114 except that it was completed in 1914, leaves the presumption un rebutted that the school grant became effective in 1917.

[2] Further, although there was a BLM decision invalidating his claim seemingly adverse to appellant from which he timely took an appeal, there does not appear to be any controversy before us. Appellant does not dispute the determination that Arizona holds title to MS 3114, but simply seeks recognition of that determination by the State. He states that his approach seeks to avoid "a complete appeal." SOR at 2. Instead, appellant seeks an opinion from this Board to facilitate execution of a lease from the State. The Department, however, does not issue opinions in such cases. Margaret Scharf, supra. As was stated in Scharf:

As to Scharf's application, there is no need to determine the mineral character of the land since she has shown nothing to rebut the presumption that title passed to the State under the school land grant. Even if she did make such a showing it would avail

her nothing because she has shown nothing which would reasonably support an allegation that title could not pass under the Act of 1927 * * *, and indeed she has not even made such an allegation or raised the issue.

Id. at 364. The same reasoning applies here: appellant has shown nothing to rebut the presumption relied upon by BLM to find that title to the land in MS 3114 passed to the State under the Enabling Act when the 1917 survey was completed. Appellant does not seriously challenge BLM's decision. Instead he seeks an opinion in order to compel State action favorable to appellant. Since he fails to allege any error in the BLM decision appealed from, affirmation of that decision is proper. Add-Ventures, Ltd., 95 IBLA 44 (1986).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Franklin D. Arness
Administrative Judge

I concur:

James L. Byrnes
Administrative Judge