



INTERIOR BOARD OF INDIAN APPEALS

Bidge Bah (Mrs. Ella McDonald) v. Navajo Area Director, Bureau of Indian Affairs

17 IBIA 1 (10/17/1988)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

BIDGE BAH (MRS. ELLA McDONALD),	:	Order Dismissing Appeal
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 88-1-A
AREA DIRECTOR, NAVAJO AREA OFFICE,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	October 17, 1988

By memorandum dated October 6, 1987, the Assistant Secretary--Indian Affairs referred the above appeal to the Board of Indian Appeals (Board) in accordance with 25 CFR 2.19. 1/ Appellant Ella McDonald had sought review of a May 14, 1985, decision of the Navajo Area Director, Bureau of Indian Affairs, declining to cancel surface coal mining lease No. N00-C-14-20-5103, dated November 29, 1972, covering individual allotment No. 1578 on the Navajo Indian Reservation. The administrative record in the case was received on February 16, 1988. By order dated February 16, 1988, the Board established a briefing schedule.

On March 21, 1988, the Board received a filing from Paul E. Frye, Esq., seeking a stay of proceedings in this case. Mr. Frye stated that appellant had died in August 1987, her estate was not settled, and it was unclear whether her heirs and/or devisees would want to continue the litigation. By order dated March 21, 1988, the Board granted an indefinite stay.

On August 18, 1988, the Board received another filing from Mr. Frye seeking a dismissal of this matter without prejudice. As grounds for this motion, Mr. Frye stated that no personal representative of appellant's estate had been appointed and no member of the family had contacted him about pursuing the appeal. Mr. Frye stated that counsel for appellee and for the Pittsburg & Midway Coal Mining Company consented to the granting of the motion.

On August 26, 1988, the Board received a copy of an Order Approving Will, dated August 23, 1988, in the Estate of Ella McDonald, IP AL 112L 88, from Administrative Law Judge (Indian Probate) Patricia McDonald. The order found

1/ Section 2.19 states in pertinent part:

"(a) Within 30 days after all time for pleadings (including extension granted) has expired, the Commissioner of Indian Affairs [or Bureau of Indian Affairs official exercising the administrative review authority of the Commissioner] shall:

"(1) Render a written decision on the appeal, or

"(2) Refer the appeal to the Board of Indian Appeals for decision."

that appellant executed a valid will on April 8, 1986, under which she devised all of her trust or restricted property, including the allotment at issue here, equally to her daughter, Marie Smith, C#64081, and her granddaughter, Lorraine Smith, C#49532.

By order to show cause issued on August 26, 1988, the Board treated Mr. Frye's motion for dismissal as a request to withdraw as counsel, and granted the motion. In addition, Marie Smith and Lorraine Smith were given until September 30, 1988, in which to indicate their intention to continue this appeal as appellant's successors-in-interest. The order specifically stated that the Board would dismiss the appeal for lack of prosecution if it did not receive information that either or both Marie Smith and Lorraine Smith wished to continue the appeal and were ready to actively prosecute it.

The Board has received nothing from either Marie Smith or Lorraine Smith indicating their intention to continue this appeal. Accordingly, pursuant to its August 26, 1988, order and the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal is dismissed for lack of prosecution.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge