



INTERIOR BOARD OF INDIAN APPEALS

Estate of Clifford Celestine v. Acting Portland Area Director, Bureau of Indian Affairs

26 IBIA 220 (09/09/1994)

Related Board case:

29 IBIA 269

Appeal dismissed (Settled), *Olsen v. United States*, Cause No. C00-1160R (W.D. Wash. 2001)



United States Department of the Interior

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

ESTATE OF CLIFFORD CELESTINE

v.

ACTING PORTLAND AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 94-60-A

Decided September 9, 1994

Appeal from a decision declining to void a gift deed of Indian trust property.

Referred for evidentiary hearing and recommended decision.

1. Indians: Lands: Individual Trust or Restricted Lands: Alienation

No conveyance of individually owned trust land is valid unless approved by the Secretary of the Interior or his authorized representative.

2. Indians: Lands: Individual Trust or Restricted Lands: Alienation--
Indians: Trust Responsibility

In approving a conveyance of trust land, the Bureau of Indian Affairs acts as trustee for the Indian owner, even where the prospective grantee is also Indian and a member of the owner's family.

3. Indians: Lands: Individual Trust or Restricted Lands: Alienation--
Indians: Trust Responsibility

In determining whether to approve a gift deed of trust land, the Bureau of Indian Affairs must ensure that the prospective donor understands and intends the effect of his/her action; must make a careful examination of the circumstances to determine whether the transaction is in the donor's best interest; and must refrain from approving a gift deed where there is any question as to the donor's intent or where the facts show the conveyance is not in the donor's best interest.

APPEARANCES: Matthew S. Elich, Esq., Bellingham, Washington, for appellant; Colleen Kelley, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Portland, Oregon, for the Area Director.

OPINION BY ADMINISTRATIVE JUDGE VOGT

Appellant, the Estate of Clifford Celestine, seeks review of a January 11, 1994, decision of the Acting Portland Area Director, Bureau of Indian Affairs (Area Director; BIA), declining to void a gift deed of trust land. For the reasons discussed below, the Board refers this case for an evidentiary hearing and recommended decision.

Background

Clifford Celestine was an enrolled member of the Lummi Tribe and the owner of Lummi Allotment 29-X, consisting of a .61-acre tract in Whatcom County, Washington. ^{1/} On March 5, 1991, he wrote to the Superintendent, Puget Sound Agency, BIA, stating: "I am the sole owner of Lummi Assignment 29-H [sic] and want to sell this property to my niece, Karen Williams. * * * Please help me to complete this transaction as quickly as possible." On September 16, 1991, he again wrote to the Agency, this time stating: "I would like to request the gift deeding [of] my trust land (assignment 29-X) to my niece, Karen Williams. Please provide the appropriate form necessary for initiating this process."

By letter of October 22, 1991, the Superintendent sent Celestine the requested forms, noting: "IF CONVEYANCE IS TO ANY OTHER THAN LINEAL ANCESTOR, LINEAL DESCENDANT, SPOUSE, BROTHER, OR SISTER, A WRITTEN JUSTIFICATION MUST ACCOMPANY THE APPLICATION." (Capitals in original.)

Celestine then submitted an application for gift conveyance, stating that he was 83 years old, that his 72-year-old wife was dependent upon him for support, and that his annual income was \$4,392, derived from Social Security. In addition to the application, Celestine submitted a document in which he waived formal appraisal of his property and a document entitled "Grantor's Agreement to Gift Convey." In the latter document, Celestine gave as his reason for wishing to gift convey the property to Williams: "To keep in family. Karen is a grand niece."^{2/}

On January 29, 1992, the Superintendent wrote to Celestine, stating that, because the proposed conveyance "is to someone other than those mentioned in [25 CFR 152.25(d)], [^{3/}] a stronger justification is required,"

^{1/} According to the record, Celestine died on Dec. 11, 1993, while this matter was pending before the Area Director.

^{2/} In another place in this document, Celestine also identified Williams as his "grand niece," rather than his niece, as stated in the two letters quoted above.

^{3/} 25 CFR 152.25(d) provides:

"Gifts and conveyances for less than the appraised market value. With the approval of the Secretary, Indian owners may convey trust or restricted land, for less than the appraised fair market value or for no consideration when the prospective grantee is the owner's spouse, brother, sister, lineal ancestor of Indian blood or lineal descendant, or when some other special

and that “[a]s soon as we receive your written statement, we can process your application.” In response, Celestine sent a note to the Agency, stating: “I wish to gift convey for less than the appraised value for the following reason: Karen Williams is helping me financially with \$150.00 a month to help with my finances.” Celestine’s note, dated January 31, 1992, was received at the Agency on February 20, 1992.

On February 24, 1992, the Superintendent approved Celestine’s application for gift conveyance. ^{4/} On April 9, 1992, he sent Celestine the prepared gift deed. Celestine signed the deed on April 11, 1992, and the Superintendent approved it on April 16, 1992.

On July 30, 1993, Celestine and his granddaughter, Darlene Olsen, wrote to the Agency, requesting that the gift deed be voided. Their request stated: “Clifford has had numerous problems in collecting payment from Karen. The agreement was for Karen to pay \$150.00 a month to help Clifford cover his finances, as partial payment or exchange for the gift deed. Karen has not lived up to this agreement.” The letter also stated, *inter alia*, (1) that Williams made payments to Celestine only when he demanded them, and then only in small amounts; (2) that she once gave him a bad check for \$50 as a partial payment; (3) that she once called the police to charge Celestine with trespass when he came to her place of business to demand payment; and (4) that, in September 1991, she “made arrangements to collect \$350 rent from this property” and “collected this amount for approximately one and one-half years.”

The Superintendent responded on August 9, 1993. In a letter of that date, he recited the facts, essentially as stated above, and reached the following determinations:

fn. 3 (continued)

relationship exists between the grantor and grantee or special circumstances exist that in the opinion of the Secretary warrant the approval of the conveyance.”

^{4/} The printed application form is titled “Application for Patent in Fee or for the Sale of Indian Land.” In the body of the form, the word “gift” is typed in. The form includes a printed certification statement, intended to be the statement of the official approving the application. It reads: “I hereby certify that the effect of this application was explained to and fully understood by the applicants and the application is hereby approved.”

This statement is crossed out on Celestine’s application, as is the printed signature line for the approving official. A new signature line has been added, to the right of the original line. Above the new line is typed: “APPROVED ____ DISAPPROVED ____.” The space after “APPROVED” is checked on Celestine’s application, and the Superintendent’s signature appears on the new signature line.

Certain other portions of the form are also crossed out. These other portions deal with matters not relevant to a gift conveyance.

1. The regulations at Part 152 of Title 25 of the Code of Federal Regulations do not address the action requested by Mr. Celestine to void a gift deed.
2. The laws under which Part 152 of Title 25 [was] promulgated do not address the action requested by Mr. Celestine.
3. The facts listed above do not justify voiding the gift deed based on undue influence on the Grantor. The facts above indicate that Mr. Celestine understood and had been informed of the consequences of his gift deed. He was informed of the difference between a sale of the property to his niece and a gift deed of the property.
4. The fact[s] listed above do not justify the voiding of the gift deed base[d] on fraud perpetrated on Mr. Celestine. Mr. Celestine's January 31, 1992 letter does not indicate that he considered the \$150.00 per month from his niece as consideration for conveyance of the property. The "help" of \$150.00 a month is by way of justification of the special circumstances between Mr. Celestine and his niece in addition to his desire to keep the property in the family.

Because of the foregoing, I find that the deed cannot be voided and that the only way that Mr. Celestine can obtain return of the property is through a gift deed from the niece to Mr. Celestine.

(Superintendent's Aug. 9, 1993, Letter at 2).

Celestine appealed this letter to the Area Director, contending in essence that he and Williams had entered into a binding contract, which Williams had breached, and which he therefore sought to have voided. In an affidavit, he stated that Williams had offered to purchase the property for \$25,000 and to make monthly payments of at least \$175; that he had accepted her offer; that, as part of the agreement, he executed the gift deed, but that the gift deed was never intended to stand alone. He also submitted an affidavit from Darlene Olsen stating that, to her knowledge, and according to the elders of the Lummi Tribe, land was commonly transferred between tribal members by gift deed, even though the parties intended the transaction to be a sale.

On January 11, 1994, the Area Director affirmed the Superintendent's decision. He stated, inter alia:

The law requires that at the time of approval of the gift deed the Superintendent must determine that special circumstances exist. In this case Mr. Celestine indicated that he wanted to gift deed the property to Ms. Williams because he wished to keep the property in the family, that Ms. Williams was his niece, and that she

had assisted him financially. At that time the Superintendent concluded that these circumstances were sufficient to support a decision to approve a conveyance of the property for less than fair market value.

The Superintendent's decision does not indicate in any way that he concluded that Ms. Williams had any continuing obligation to make payments to Mr. Celestine. Nor does his decision suggest that a continuing obligation formed the special circumstances. The Superintendent's decision is consistent with a finding that payments in the past combined with the family relationship establish the special circumstances necessary to approve the gift deed.

* * * * *

Your second argument is that the Superintendent erred in finding that the past financial payments by Ms. Williams do not constitute consideration to support an underlying contract. First of all, as indicated above, the Superintendent did not consider that the past payments created a continuing obligation to pay. If the Superintendent had considered the past payments by Ms. Williams to be an indication that further payments would continue, the gift deed form of conveyance would not have been used. Notwithstanding your allegation that another method is used by some people on the Lummi Reservation, under 25 CFR 152.35 the BIA prepares a written memorandum of sale to memorialize any deferred sale of trust land. When a deferred sale is intended a gift deed is not prepared or executed. The lack of any such documents further supports our conclusion that the Superintendent did not consider the past payments to be an indication that Mr. Celestine and Ms. Williams had intended such a deferred payment sale for the property.

* * * * *

V. DECISION

The Superintendent's decision not to void Mr. Celestine's gift deed to Ms. William is affirmed. The only time a Superintendent would take action to void a previously approved deed would be if his original decision was made without sufficient authority, or he believed fraud had been involved in the earlier decision. Our review concludes that the Superintendent had adequate authority for his decision to approve the conveyance as a gift deed, and insufficient reason to conclude that fraud or undue influence was involved in his original decision.

(Area Director's Decision at 2-3).

Appellant's notice of appeal from this decision was received by the Board on February 15, 1994. Both appellant and the Area Director filed briefs. 5/

Discussion and Conclusions

Appellant makes essentially the same arguments before the Board as Celestine made before the Area Director, *i.e.*, that Celestine intended to sell his property to Williams, rather than to give it to her; that there was an oral contract between Celestine and Williams for sale of the property; and that the gift deed executed by Celestine was only a part of that agreement.

Appellant's arguments appear to be based on one of two theories--either that BIA and this Board should enforce the alleged oral sales contract between Celestine and Williams or that the gift deed approved by the Superintendent should be deemed a sales contract.

[1] The first theory is easily disposed of. No conveyance of individually owned trust land is valid unless approved by the Secretary of the Interior or his authorized representative. *E.g.*, 25 U.S.C. § 348 (1988), 25 U.S.C. § 372 (1988), 25 CFR 152.22(a). *Cf. Bulletproofing, Inc. v. Acting Phoenix Area Director*, 20 IBIA 179 (1991) (Unapproved lease is invalid and grants no rights to attempted lessee or lessor). Appellant does not contend that the alleged oral contract between Celestine and Williams was approved by the Secretary or by any BIA official. Absent such approval, the alleged oral contract is clearly unenforceable.

The second theory supposes that BIA approved a sale of trust land in the guise of a gift deed. The record fails to support this theory. The deed itself clearly identifies the transaction as a gift, as do Celestine's application and the documents related to the application. There is simply no evidence to support a theory that, in approving the gift deed, the Superintendent intended to approve a sales transaction. The Board declines to construe the gift deed as a sales contract.

Appellant also contends that the only "special circumstances" recognized by BIA as sufficient under 25 CFR 152.25(d) was Williams' payment of \$150 a month to Celestine. Absent continuing payments by Williams, appellant argues, no "special circumstances" exist, and the gift deed must be voided. This argument again construes the transaction as a sale--in particular, a deferred payment sale. However, as the Area Director noted, deferred payment sales are addressed in another section of 25 CFR Part 152, *i.e.*, section 152.35. 6/ It seems clear, given that it did not follow the

5/ Although she has been notified of these proceedings and served with the other parties' filings, Karen Williams has not participated in this matter before the Board.

6/ 25 CFR 152.35 provides:

"When the Indian owner and purchaser desire, a sale may be made or

very different provisions of section 152.35, that BIA did not view this transaction as a deferred payment sale and did not approve it as such. Rather, as noted above, BIA approved this transaction as a gift. By definition, a gift is a transfer of property without consideration. The Board finds that the "special circumstances" contemplated in 25 CFR 152.25(d) do not include any payment obligation on the part of the recipient of a gift.

Appellant's arguments in this appeal are not persuasive. Under other circumstances, the Board might end its analysis at this point, concluding that appellant had failed to carry its burden of proof.

In this case, however, the Board believes it must pursue this matter further, under its authority "to exercise the inherent authority of the Secretary to correct a manifest injustice or error where appropriate," 43 CFR 4.318, even though it is not entirely clear that the Board has the authority to correct the kind of error that may have occurred in this case. As discussed below, there is a question here as to whether BIA was as careful as it should have been when it approved Celestine's gift deed application.

The administrative record suggests that no BIA employee discussed the gift deed transaction with Celestine, either in person or by telephone. No notes or other evidence of any such discussions are included in the record. Perhaps the strongest evidence of the lack of discussions is the fact that BIA crossed out the standard printed certification on the application form, pursuant to which the Superintendent would have attested that the "effect of this application was explained to and fully understood by the applicants." Z/

Especially in light of Celestine's age, BIA should have been careful to make an independent evaluation of his true wishes and his understanding

fn. 6 (continued)

approved on the deferred payment plan. The terms of the sale will be incorporated in a memorandum of sale which shall constitute a contract for delivery of title upon payment in full of the amount of the agreed consideration. The deed executed by the grantor or grantors will be held by the Superintendent and will be delivered only upon full compliance with the term of the sale. * * * If the purchaser on any deferred payment plan makes default in the first or subsequent payments, all payments, including interest, previously made will be forfeited to the Indian owner." See also 25 U.S.C. § 372 (1988).

Z/ Although the Superintendent's decision states that Celestine was informed of and understood the consequences of his gift deed, the decision does not identify the evidence upon which this statement is based. Nothing presently before the Board supports it, and it appears inconsistent with the fact that the Superintendent signed the gift deed application, from which the certification language, intended to attest to these very facts, had been deleted.

of the transaction. His gift deed application showed that he was 83 years old, suggesting at least the possibility that he might have been, in comparison to a younger person, more susceptible to undue influence and less likely to have a complete understanding of the consequences of his action. There is no evidence that BIA took Celestine's age into particular account.

It appears that all business between Celestine and BIA was transacted through the mail, presumably because Celestine lived in Bellingham, Washington, and the Agency is located in Everett, Washington. It is perhaps understandable that a personal meeting might not occur under these circumstances, although clearly such a meeting would have presented the best opportunity for BIA employees to assess Celestine's understanding of the transaction. As noted, however, there is no evidence that BIA employees conducted even a telephonic discussion with him.

There are a number of signs in Celestine's written communications that should have alerted BIA to the need for further investigation. His March 5, 1991, letter stated that he wished to sell his property to Williams. Six months later, he stated that he wished to give the property to her. There is no indication that anyone in BIA ever asked Celestine why he had changed his mind. Celestine's statement that he wanted to give his property to Williams because she helped him with \$150 a month should have alerted BIA to the possibility that he expected the payments to continue and, consequently, to the possibility that he actually wanted to sell the property to Williams, as he later stated, rather than give it to her. At the least, Celestine's statement should have caused BIA to inquire into the possibility that he needed the income from these payments and therefore should be selling or leasing his property rather than giving it away.^{8/} In fact, BIA should already have been aware, from Celestine's gift deed application, that his best interests might not be served by giving his property away. As noted above, the application showed that his annual income was only \$4,392 and that he had a wife who was dependent upon him for support.

Another concern is that, beginning with his September 16, 1991, letter seeking to gift convey his property to Williams, Celestine's return address is shown as "c/o Karen Williams, 118 North Commercial, Bellingham, WA." ^{9/}

^{8/} The record indicates that no BIA-approved lease of the property was in existence at the time of the gift deed. The record includes an allegation, however, that Williams leased the property to a third party, even before she received title. It also includes a suggestion that Celestine leased his property to a third party before giving it to Williams. These alleged leases were evidently not approved by BIA. If they existed, however, they would at least demonstrate that the property could produce income.

^{9/} From other materials in the record, it appears that this is Williams' business address. There is no indication that Celestine lived with Williams. His gift deed application gives his permanent address as 3292 Balch Road, Bellingham, Washington. Other documents in the record also show this address for him.

BIA addressed all of its subsequent letters concerning the gift deed to Celestine in care of Williams. The fact that this correspondence was being routed through the potential gift recipient should have prompted BIA to investigate the possibility that Williams may have been improperly involved in the transaction, perhaps to the extent of exerting undue influence or committing fraud. Even the remote possibility that undue influence or fraud might be involved made the need for personal discussions with Celestine and an independent assessment of his wishes more critical.

[2, 3] 25 CFR 152.23 provides: "Applications [for the sale, exchange or gift of trust or restricted land] may be approved if, 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)." ^{10/} In approving a conveyance of trust land, BIA acts as trustee for the Indian owner, even in a case where the prospective grantee is also Indian and a member of the owner's family. Smith v. Billings Area Director, 18 IBIA 36 (1989). In the case of a gift conveyance, it is BIA's duty to ensure that the prospective donor understands and intends the effect of his/her action. It is also BIA's duty to make a careful examination of the circumstances to determine whether the transaction is in the donor's best interest. BIA must refrain from approving a gift deed where there is any question as to the donor's intent or where the facts show the conveyance is not in the donor's best interest. See, e.g., Estate of Evan Gillette, 22 IBIA 133 (1992), aff'd, Gillette v. Babbitt, No. A4-92-134 (D.N.D. Oct. 15, 1993), aff'd, No. 93-3769 (8th Cir. May 19, 1994). From the record presently before the Board, it does not appear that BIA met these standards in this case.

It is apparent that there are factual matters in this case which have not been fully developed. In particular, there is the question of whether Williams exerted undue influence on Celestine or induced him by fraud to gift deed his property to her. While the Area Director concluded that no undue influence or fraud had been shown, the Board finds that, under the circumstances of this case, the Department has an affirmative duty to inquire further into the matter.

Therefore, the Board concludes that it must refer this matter for an evidentiary hearing by an Administrative Law Judge. The primary purpose of the hearing will be to determine whether undue influence or fraud was present. However, BIA will also be allowed to present further evidence in support of the Superintendent's approval of the gift deed. While, under

^{10/} Use of the conjunctive "or" in this sentence suggests the possibility that the regulation does not require BIA to find that a gift transaction under section 152.25(d) is in the long-range best interest of the owner. The Board declines to hold, however, that the regulation relieves BIA of its ordinary trust duty toward Indian landowners simply because they seek to make a gift of their property rather than sell it.

normal circumstances, a BIA decision must stand or fall on the written record BIA submits to the Board, the Board believes that, under the circumstances of this case, whatever further evidence may exist should be brought out.

Another question, this one a matter of law, remains unanswered. That is the question of whether either BIA or this Board has the authority to void a gift deed approved by BIA. The Area Director appears to have assumed that the Superintendent could have voided the deed if he found fraud to be present: "The only time a Superintendent would take action to void a previously approved deed would be if his original decision was made without sufficient authority, or he believed fraud had been involved in the earlier decision" (Area Director's Decision at 3). In an earlier case before the Board, a different Area Director indicated that he did not believe BIA officials have the authority to void deeds: "Once the deeds were executed and approved, the transaction was final. Even though the Superintendent later requested some of the deeds be cancelled, no one could legally have done so. [Appellant] would have to prove his case in Court to have the deeds declared null and void" (Brackets in original) (Acting Phoenix Area Director's Sept. 20, 1988, Decision, quoted in Escalanti v. Acting Phoenix Area Director, 17 IBIA 290, 293 (1989)).

The Board has never addressed this question. Accordingly, if the evidence at the hearing shows that fraud or undue influence was involved in this case, the Board will, upon return of the case to the Board, order briefing on the question of the Board's authority to void a gift deed.

Order of Referral for Evidentiary Hearing

Pursuant to 43 CFR 4.337(a), the Board refers this matter to the Hearings Division of the Office of Hearings and Appeals for an evidentiary hearing and recommended decision by an Administrative Law Judge. The Administrative Law Judge shall take evidence and issue a recommended decision, in accordance with 43 CFR 4.338, concerning (1) whether Williams exerted undue influence on Celestine or induced him by fraud to gift deed his property to her and (2) whether BIA met the minimum standards listed above for approval of a gift deed. In accordance with 43 CFR 4.339, any party may file exceptions or other comments with the Board within 30 days of their receipt of the recommended decision. The Board may order further briefing, as discussed above, or may issue a final decision.

//original signed

Anita Vogt
Administrative Judge

I concur:

//original signed

Kathryn A. Lynn
Chief Administrative Judge