



INTERIOR BOARD OF INDIAN APPEALS

John Gray v. Acting Aberdeen Area Director, Bureau of Indian Affairs

33 IBIA 26 (09/28/1998)



United States Department of the Interior

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

JOHN GRAY,
Appellant

v.

ACTING ABERDEEN AREA DIRECTOR,
BUREAU OF INDIAN AFFAIRS,
Appellee

: Order Affirming Decision
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:
:
: Docket No. IBIA 97-121-A
:
:
: September 28, 1998

Appellant John Gray seeks review of a March 13, 1997, decision of the Acting Aberdeen Area Director, Bureau of Indian Affairs (Area Director; BIA), approving an application for partitionment which was submitted by Daniel, Delaine, Patrick, Gerald, Richard, and Donald Gray (collectively, Applicants). For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

During their lifetimes, Oscar P. Gray, an enrolled member of the Cheyenne River Sioux Tribe (Tribe), and his non-Indian wife, Evelyn, put together a sizeable ranching operation on the Reservation. At the time of Oscar's death in 1970, the ranch consisted of approximately 4,620 acres of trust land and 1,120 acres (7 quarter sections) of fee land. Oscar's will dealt with both the trust and the fee land, leaving a life estate to Evelyn and undivided remainder interests to his and Evelyn's seven sons, Appellant and Applicants. Evelyn died in 1995, thus ending her life estate. By operation of law, Appellant and Applicants became the undivided interest owners in both the trust and fee lands.

On March 15, 1996, Applicants filed an Application to Partition Indian Land with the Superintendent, Cheyenne River Agency, BIA (Superintendent). The letter transmitting the Application stated that attempts to settle the matter had been unsuccessful, and that the disagreements among the parties were set forth in the Application. The Application listed the particular parcels that Applicants proposed to partition to each brother. The Application dealt with both trust and fee lands.

Following initial BIA review of the Application and the filing of an objection by Donald, an amended Application was submitted on August 9, 1996. The letter transmitting the second Application stated that only Appellant disagreed with the proposed partition.

The Superintendent requested Appellant's response to the second Application. Appellant stated his continued disagreement and set forth alternative proposals which he had made to Applicants. Appellant also stated that he disagreed with BIA's determination that Fee Tract #2243

should have an appraised value of \$180 per acre, and with the failure to value the improvements and buildings on another trust parcel. On October 11, 1996, the Superintendent advised Appellant that, if he disagreed with BIA's appraisal, he could contact an independent appraiser to conduct another appraisal. In an October 15, 1996, letter to the Superintendent, Appellant stated that he was having an appraisal prepared and requested that no further action be taken until that appraisal was completed.

On November 18, 1996, Applicants submitted to the Superintendent a signed copy of the partitionment to which they, but not Appellant, had agreed.

On December 9, 1996, the Superintendent wrote to Appellant concerning Appellant's request that no action be taken until his appraisal was completed. The Superintendent stated that he was required to take action on the Application in a timely manner, and that he believed Appellant had had sufficient time to complete an appraisal. He informed Appellant that he had decided to approve the Application because he found that the partition plan was equitable, feasible, and beneficial to all the landowners.

Appellant appealed the Superintendent's decision to the Area Director, who, on March 13, 1997, affirmed the decision. The Area Director specifically conditioned his approval on the successful partitionment of the fee lands under the laws of the State of South Dakota.

Appellant then appealed to the Board. Briefs on appeal have been filed by Appellant, Donald, and the remaining Applicants.

Decisions concerning partitionments are based on the exercise of discretionary authority. Soper v. Acting Anadarko Area Director, 29 IBIA 182 (1996); Romo v. Acting Phoenix Area Director, 18 IBIA 16 (1989). As the Board held in Soper, 29 IBIA at 184: "[T]he Board's role here is to determine whether BIA has given proper consideration to all legal prerequisites to the exercise of discretion. If it has, and if there is support for its decision in the record, the Board will not substitute its judgment for BIA's."

In footnote 1 of his Opening Brief, Appellant argues that "Federal law, properly construed, does not authorize the partition of trust property unless the petition is approved by all the owners." He concedes that both the United States District Court for the District of South Dakota and the Board have held otherwise in, respectively, Sampson v. Andrus, 483 F. Supp. 240 (D.S.D. 1980), and Davis v. Aberdeen Area Director, 27 IBIA 281 (1995). However, he contends that "no appellate court of the federal judiciary has determined the issue." Opening Brief at 3, n.1.

Appellant is incorrect in his assertion that only Federal appellate court decisions constitute Federal law. A ruling of a Federal district court or the Department of the Interior is the law unless and until that ruling is overturned by a superior court. Sampson states the law at least in the State of South Dakota. The Board declines Appellant's invitation to overrule Davis, which states the law for the Department of the Interior. The Board therefore rejects this argument.

Appellant argues that the BIA decisions were premature because BIA should have awaited action by the South Dakota courts regarding the fee lands before partitioning the trust lands. Appellant contends that “[u]ntil the [fee] lands have been partitioned, it is impossible to predict if they ever will be. A whole different procedure is involved under South Dakota law to partition real property.” Opening Brief at 4. Appellant notes that, if the fee lands are not partitioned identically to the way BIA proposed, it may be impossible to ever complete this partitionment.

In view of the facts that 80 percent of the lands involved in the proposed partitionment are trust lands while only 20 percent are fee lands, and that BIA has a trust responsibility to consider partitionment applications in a timely manner, the Board does not believe that BIA erred in considering the Application.

In his Opening Brief, Appellant obliquely raises an issue as to which court would have jurisdiction to partition the fee lands. In his Reply Brief, Appellant clearly states his belief that the State courts would lack jurisdiction over the fee lands because they are located on the Reservation.

The State courts, not Appellant, have the authority to determine the extent of their own jurisdiction. Should the State courts determine that they lack jurisdiction, then Applicants will be forced to pursue other avenues to effectuate the partitionment. The possibility that there may be problems in completing the transaction does not constitute grounds for reversing BIA’s decision.

Appellant states: “[T]hose heirs who have received [fee] lands as part of the partition * * * actually have only an undivided one seventh interest in the [fee] lands, clearly not a fee interest and clearly an interest that is lesser in value than those who have received trust property solely in their own name.” Opening Brief at 5. This statement shows Appellant’s misunderstanding of several matters. First, although it is true that an undivided interest in a tract of fee land is of less value than the entire interest, as a general matter, an undivided interest in fee land is still a fee interest. Second, no one will be getting anything under the proposed partitionment until the fee lands are also partitioned, whether voluntarily or by court order. Therefore, at this time no one holds any trust lands in his own name.

Appellant contends that BIA lacks legal authority to include fee lands in determining the value of the lands to be partitioned. Appellant misunderstands the Area Director’s decision. The Area Director approved the partitionment of the trust lands in the manner proposed by Applicants, conditioned on approval from a court of competent jurisdiction--or voluntary agreement--as to the proposed partitionment of the fee lands. This is a situation of dual jurisdiction in which the Department and the appropriate court must work together. The Board finds that the Area Director did not err in considering the value of fee lands in determining whether the total proposed partitionment would be fair, equitable, and beneficial to all of the individuals to whom he owes a trust responsibility.

Appellant argues that the appraisal on the S $\frac{1}{2}$, sec. 27, T. 17 N., R. 3 ., Black Hills Meridian, South Dakota, was erroneous, and that this property should have been valued at \$230 per acre, rather than \$180 per acre as determined by BIA.^{1/} Appellant bases this argument on the appraisal prepared for him by an independent appraiser.

The parcel whose value Appellant disputes would go to Donald under the proposed partitionment. Donald's proposed share includes fewer acres than the proposed shares for the remaining brothers, including Appellant. In order to bring Donald's share to parity with the other shares, Daniel and Delaine agreed to pay him a total of \$17,638. Their agreement was based on BIA's valuation of this particular parcel at \$180 per acre. If the land is actually worth \$230 per acre, as appellant claims, Appellant would still receive his fair share under the proposed partitionment, as would Patrick, Gerald, and Richard. Donald would receive more than his fair share at the sole expense of Daniel and Delaine, who would each receive less than their fair share. Daniel and Delaine have indicated their agreement with the proposed partitionment using the \$180 per acre value determined by BIA. The Board declines to address this issue further when the only people who would be harmed by the possibility of an error in the valuation have not only failed to challenge the valuation, but have affirmatively agreed to it.

Appellant contends that he specifically requested the S $\frac{1}{2}$, NE $\frac{1}{4}$, sec. 31, T. 14 N., R. 29 E., Black Hills Meridian, South Dakota, because of sentimental attachments to that property and because of improvements and buildings which he placed on the property in 1984. He argues that his special relationship to this tract should have been considered.

The record shows that the Area Director knew both of Appellant's interest in having this particular tract, and of Tribal Court litigation over the tract. Although the copy of the Tribal Court order in the administrative record is incomplete, the Area Director stated at page 3 of his decision that "[t]he Cheyenne River Sioux Tribal Court has determined that you do not own the improvements and buildings." Appellant has not disputed this characterization of the Tribal Court order. The Board declines to hold that the Area Director committed reversible error because the proposed partitionment did not give Appellant precisely what he wanted.

Appellant argues that the BIA appraisal was inadequate. The Board has consistently held that a person challenging a BIA appraisal has the burden of proving that the appraisal was unreasonable. See Strain v. Portland Area Director, 23 IBIA 114, 118 (1992); Wapato Orchard Partnership v. Portland Area Director, 18 IBIA 254, 255-56 (1990). Although Appellant submitted a separate appraisal for the parcel proposed to be partitioned to Donald and discussed above, he submitted nothing else. Appellant is correct that he did not bear the initial burden of conducting

^{1/} Appellant describes this parcel as lying in T. 16 N. Other materials in the record, including the Applications, the appraisal which was prepared for Appellant, and the Area Director's decision, indicate that the parcel is in T. 17 N.

an appraisal. However, on appeal, he has the burden of proof described here. Appellant's expression of dissatisfaction with the BIA appraisal does not carry his burden of proof.

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 Aberdeen Area Director's March 13, 1997, decision is affirmed. 2/

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge

2/ Arguments not specifically addressed were considered and rejected.