



INTERIOR BOARD OF INDIAN APPEALS

Hazel M. Doney v. Benjamin Carrywater

39 IBIA 165 (10/17/2003)

Related Board case:
38 IBIA 116



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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HAZEL M. DONEY,	:	Order Docketing and Dismissing
Appellant	:	Appeal
	:	
v.	:	
	:	Docket No. IBIA 04-4-A
BENJAMIN CARRYWATER,	:	
Appellee	:	October 17, 2003

On October 14, 2003, the Board of Indian Appeals (Board) received a letter from Appellant Hazel M. Doney. Appellant asks the Board to enforce its decision in Carrywater v. Rocky Mountain Regional Director, 38 IBIA 116 (2002), in and through the Fort Belknap Tribal Court. The Board treats Appellant's letter as a notice of appeal. It docketed this appeal, but dismisses it for lack of jurisdiction and lack of authority to grant the relief requested.

The Board issued its Carrywater decision on September 13, 2002. In that decision, it affirmed a decision issued by the Rocky Mountain Regional Director, Bureau of Indian Affairs (Regional Director; BIA), finding that a road crossing an allotment held by Appellee Benjamin Carrywater was a public road and part of the BIA road system. The road was constructed with Federal funds to provide access to homes built for Appellant and Appellee by the Department of Housing and Urban Development. The road was added to the official BIA roads system in 1995 at the request of the Fort Belknap Community Council.

Problems arose between the Doney and Carrywater families. Appellee blocked access to the Doney home by barricading the road. According to Appellant's present filing, the problems are on-going and are currently before the Fort Belknap Tribal Court.

Appellant states that a court date is scheduled before the Tribal Court. She also states that she does not wish to attend the court session and objects to the fact that the Tribal Court has suggested that the parties meet with a mediator. Rather than participating in the Tribal Court proceedings, Appellant wants the Board to step in and order the Tribal Court to honor the decision in Carrywater.

The Board is not a court of general jurisdiction. It has only that authority delegated to it by the Secretary of the Interior. The Board has not been delegated any authority that the Secretary might have to order a Tribal Court to honor or enforce a Departmental decision.

In addition, it seems that Appellant's present complaint is against either Appellee or the Tribal Court. The Board does not have jurisdiction over a matter unless a BIA Regional Director, or other Departmental official over whose decisions it has jurisdiction, has issued a decision. Although the Rocky Mountain Regional Director issued the decision that was under review in Carrywater, Appellant has not stated that the Regional Director has issued any more recent decision(s).

Although the Board could obtain jurisdiction by treating Appellant's letter as a petition for reconsideration of its decision in Carrywater, doing so would not help Appellant. First, Appellant clearly does not seek reconsideration of that decision, but rather seeks enforcement of it. Second, the Board would be precluded by its governing regulations from hearing any petition for reconsideration. Under 43 C.F.R. § 4.315(a), any petition for reconsideration of a Board decision must be filed within 30 days from the date of the decision. Appellant's letter was filed much more than 30 days after September 13, 2002. If the Board were to treat Appellant's letter as a petition for reconsideration, it would have to dismiss the petition as untimely.

The Board finds that there are no set of circumstances under which it would have either jurisdiction to hear this matter or authority to grant the relief Appellant requests.

The Board notes that some of Appellant's objections appear to be about participating in the Tribal Court proceedings and, particularly, in mediation either ordered or suggested by the Tribal Court. Appellant is advised that, if this case were before the Board, it might also order the parties to consider some form of alternate dispute resolution. It is clear that problems have continued between the Doney and Carrywater families despite the fact that the Board, on behalf of the Department of the Interior, held that this access road is a public road and part of the BIA road system. It furthermore appears likely that problems will continue in the future. Under these circumstances, a decision by any judicial body may not be the best, or most lasting, solution. Appellant obviously has strong emotions about Appellee. Most likely, Appellee also has strong emotions about Appellant. The Doney and Carrywater families will have an on-going relationship because of the shared access road. These are conditions under which mediation or another form of alternate dispute resolution may be beneficial. The Board urges Appellant to participate in the Tribal Court proceedings and any mediation that the Court may order or suggest.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal is docketed but dismissed because the Board lacks jurisdiction over the matter and lacks authority to grant the relief requested.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Kathleen R. Supernaw
Acting Administrative Judge