



INTERIOR BOARD OF INDIAN APPEALS

Estate of Sandra Kay Bouttier LaBuff Heavy Gun

43 IBIA 143 (06/23/2006)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ESTATE OF SANDRA KAY BOUTTIER : Order Affirming Decision
LABUFF HEAVY GUN :
: Docket No. IBIA 04-147
:
: June 23, 2006

Appellant Patricia DeBoo seeks review of a July 26, 2004 Recommended Decision entered in the Estate of Sandra Kay Bouttier LaBuff Heavy Gun (Decedent), deceased Blackfeet Indian, Probate No. RM-201-0283, by Administrative Law Judge Robert G. Holt (ALJ). 1/ The Recommended Decision determined that a gift deed application signed by Decedent in favor of Appellant, but never approved by the Bureau of Indian Affairs (BIA), should not be retroactively approved. For the reasons stated below, the Board affirms the ALJ's Recommended Decision.

Factual Background

Decedent died intestate on May 29, 2002 at Great Falls, Montana. As reflected in the estate inventory, at the time of her death, Decedent possessed a one-eighth interest in the surface and mineral rights to Blackfeet Allotment No. 4004. 2/

1/ In a separate decision, also issued on July 26, 2004, the ALJ determined that Decedent's sole heir was her husband, Curtis Leroy Heavy Gun (Heavy Gun), ordered the estate to be distributed to Heavy Gun, and approved a claim filed against Decedent's estate. That decision has not been appealed.

2/ Decedent's estate inventory includes a one-eighth interest in Allotment No. 4004 (surface rights) and a one-eighth interest in Allotment No. M4004 (mineral rights). Because Appellant claims that Decedent conveyed all of her interests in the allotment, for purposes of this appeal we refer to her interests collectively as an interest in Allotment No. 4004.

On February 5, 2004, the ALJ issued a notice that an initial probate hearing would be held on March 5, 2004. By letter dated February 11, 2004, Appellant, Decedent's sister, advised the ALJ that Decedent had initiated the process to gift deed her interest in Allotment No. 4004 to Appellant, but that Decedent had died before the transaction was completed. Appellant attached to her letter a copy of an application for gift deed for Allotment No. 4004, signed by Decedent and dated August 30, 1999, and requested that the ALJ "consider this gift left to [her] by [her] sister."

The ALJ held an initial probate hearing on March 5, 2004. Appellant, Appellant's daughter (Roberta Sinclair), and Heavy Gun attended the hearing. On March 16, 2004, the ALJ issued a notice of disputed estate inventory and notice of supplemental hearing pursuant to the Board's standing order in Estate of Douglas Leonard Ducheneaux, 13 IBIA 169 (1985). ^{3/} The ALJ also issued a subpoena directing the Superintendent of the Blackfeet Agency (Superintendent) to produce all files containing requests for transfer of title related to Allotment No. 4004, and to designate an employee to testify about the files at the supplemental hearing.

The ALJ held the supplemental hearing on June 24, 2004. In attendance were Appellant; Roberta Sinclair; Lorie (Lorraine) Gobert, Decedent's daughter; Gobert's husband, Donald Gobert; and Yoletta Polk, a realty specialist for the Blackfeet Agency. BIA's gift deed file, admitted into evidence through Polk, consisted of: (1) an application for gift deed, signed by Decedent and dated August 30, 1999, requesting that Decedent's one-eighth interest in Allotment No. 4004 be transferred to Appellant; (2) an Agency routing sheet, dated August 31, 1999, documenting approval of the application by all necessary BIA branches; (3) a gift deed "work sheet" showing Polk's and the Superintendent's approval of the gift deed application on September 27, 1999; and (4) a Title Status Report Request Form, reflecting that the Agency submitted the request to the Billings Land and Titles Records Office (LTRO) on September 27, 1999, and that the Agency received the completed title status report from the LTRO on February 9, 2000.

^{3/} In Ducheneaux, the Board established a procedure under which alleged errors in BIA's estate inventory are to be considered by an ALJ during a probate proceeding, rather than separately referring inventory questions to BIA. 13 IBIA at 177-78; see also In the Matter of the Estate of Laura Wetsit Wells, 42 IBIA 94, 95 n.4 (2006). BIA is to be afforded an opportunity to participate as an interested party in the proceedings before the ALJ. In this way, an ALJ may address both probate matters and estate inventory matters in a unified proceeding, subject to the parties' right of appeal to the Board. Estate of Mary Dorcas Gooday, 35 IBIA 79, 80 n.1 (2000).

At the hearing, Polk testified that no further processing of Decedent's gift deed application had occurred due to a lack of personnel at the Agency and the priorities given to other work. She testified that if the remaining steps in the gift deed process had occurred, the Agency would have prepared the deed, Decedent and her husband would have signed it, and the Superintendent would have approved it. Polk testified that if Decedent had changed her mind about gift deeding her interest in Allotment No. 4004 to Appellant after she filed the application with the Agency, Decedent could have stopped the gift deed process by refusing to sign the deed when it was presented to her. Polk further testified, however, that she knew of no reason why Decedent and the Superintendent would not have signed the gift deed.

Lorraine Gobert, Decedent's daughter, testified in opposition to Appellant's challenge to the estate inventory. Gobert testified that she had discussed the gift deed application with Decedent several times in the last two years of Decedent's life, and that Decedent had stated she wanted her interest in Allotment No. 4004 to go to her grandson, William LaBuff, Jr., and not to Appellant. Gobert stated that Decedent had wanted to withdraw her application for a gift deed to Appellant, but that illness prevented her from doing so. According to Gobert, Decedent told her, "get me away from [Appellant]. She keeps bugging me over this land * * * and I don't want to sell this land to her and she won't take no for an answer." June 24, 2004 Transcript (Transcript) at 15-16. Gobert also testified that Appellant repeatedly tried to force Decedent to sign a "paper" that "had to do with the land" but that Decedent did not want to sign it. Id. at 18. Upon further questioning from the ALJ as to what paper Gobert could be referring to, given that Decedent had already signed the gift deed application and the gift deed had not been prepared, Gobert could not identify the document, but testified that Decedent was "being pressured into it by money." Id. at 19.

In response, Appellant testified that she "never in [her] life pressured" Decedent to sign the gift deed application. Id. at 23. She denied asking Decedent to sign any paper other than the gift deed application, and testified that Decedent had never refused to sign anything. Appellant also testified that at the March 5, 2004 hearing, Decedent's husband, Heavy Gun, said he did not dispute the gift deed application. 4/

4/ Heavy Gun did not attend the June 24, 2004 hearing. An individual at the hearing, whose name is not identified in the transcript, informed the ALJ that Heavy Gun had wanted to attend the hearing but was sick and had been in the hospital as of the day before.

The ALJ issued his Recommended Decision on July 26, 2004, concluding that Decedent's interest in Allotment No. 4004 should not be transferred from Decedent's estate inventory of trust lands to Appellant. In explaining BIA's responsibilities with respect to the approval of gift deeds, the ALJ relied on the Board's decision in Estate of Evan Gillette, Sr., 22 IBIA 133 (1992). The ALJ focused on the Board's statement in Gillette that BIA's "duty is toward the owner of the trust land rather than the prospective recipients, even if those prospective recipients are family members. Its duty in this regard includes a duty to refrain from approving such deeds where there is any question concerning an owner's intent." Recommended Decision at 3 (emphasis by ALJ) (quoting Gillette, 22 IBIA at 138) (internal citation omitted). The ALJ then concluded:

In determining whether a gift deed should be retroactively approved after the death of a decedent, the undersigned has, at a minimum, the same duties as those of the BIA. The undersigned finds that [Gobert's] testimony raises doubt about whether Decedent would have executed a final deed of Blackfeet Allotment [No. 4004] to [Appellant] once the deed had been prepared and presented by the BIA. Therefore a question concerning Decedent's continued intent to gift deed this land to [Appellant] exists. Accordingly, the undersigned must conclude that Blackfeet Allotment [No. 4004] may not be transferred from Decedent's inventory of trust lands to [Appellant].

Recommended Decision at 3.

Appellant appealed to the Board and included her arguments in her notice of appeal. The Board did not receive any briefs.

Discussion

On appeal, Appellant argues that the ALJ erred in concluding that Gobert's testimony raised doubt about whether Decedent would have executed the deed for her interest in Allotment No. 4004 to Appellant. Appellant argues first that Decedent did not change her mind about conveying her allotment interest to Appellant, and that the only reason that the gift deed process was never completed was BIA's failure to prepare the necessary paperwork in a reasonable amount of time. Appellant's second argument is that Gobert's testimony at the probate hearing "was based upon lies and deceit." Notice of Appeal at 1. Appellant's final argument is that Gobert's testimony at the supplemental

hearing was hearsay, and that Appellant did not have sufficient time at the hearing to rebut this testimony. ^{5/}

We address first Appellant's contention that Gobert's testimony at the supplemental hearing constituted hearsay.

Under 43 C.F.R. § 4.232(a) (2003), parties in interest may offer at a hearing "such relevant evidence as they deem appropriate under the generally accepted rules of evidence of the State in which the evidence is taken, subject to the OHA deciding official's supervision as to the extent and manner of presentation of such evidence." The supplemental hearing was held in Browning, Montana. Accordingly, Montana rules on hearsay apply.

Under Montana law, hearsay is defined as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." See Mont. R. of Evid. (Rule) 801. Hearsay is inadmissible unless it falls within one of the exceptions to the hearsay rule. Rule 802. These exceptions include an exception for "a statement of the declarant's then-existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed." Rule 803(3); see also State v. Losson, 262 Mont. 342, 348-49 (1993).

Appellant does not challenge any particular statements made by Gobert. Rather, Appellant makes a blanket assertion that Gobert's testimony was hearsay. Presumably, Appellant intends to challenge Gobert's statements about what Decedent said to her.

Gobert testified that:

"my stepdad [Heavy Gun] was telling me that he was sitting there and that [Appellant] just kept pushing this paper at [Decedent] and [Decedent] kept pushing it back saying she didn't want to sign it." Transcript at 15.

^{5/} Appellant also asserts that several of her brothers and sisters have submitted applications to gift deed their interests in Allotment No. 4004 to her, but that BIA has failed to complete the gift deed process within a reasonable amount of time. She complains that nearly five years has passed since the applications were submitted and that the delay in completing the gift deed process has caused "a family dispute and hardships which may be irrevocable." Notice of Appeal at 1. Appellant also advances several general complaints against BIA. Because this appeal is limited to a challenge of Decedent's estate inventory, we do not address these arguments.

“[Decedent] said she didn’t want to let the land go. That she wanted it to go to her grandson who is my brother’s little boy.” Id.

“[Decedent] would jump in the car with me and tell me, ‘get me away from [Appellant]. She keeps bugging me over this land,’ she said, ‘and I don’t want to sell this land to her and she won’t take no for an answer.’” Id. at 15-16.

“I told [Decedent], ‘Did you sign anything * * *’ [s]he said, ‘No. I didn’t sign nothing finalizing it.’” Id. at 16.

“And I told [Decedent], ‘Why are you gift deeding it [to Appellant]?’ * * * And, [Decedent] said, ‘Well, [Appellant] keeps bugging me.’ I said, ‘Well, tell her no.’ She said, ‘Well, she keeps hounding me.’ * * * I said, ‘Well, tell her no.’ She said, ‘I tell her no, but she won’t take no for an answer.’” Id. at 17.

The majority of these statements describe Decedent’s feelings toward Appellant and Decedent’s intent concerning her gift deed application for Allotment No. 4004. Those statements would therefore fall within the state of mind exception contained in Rule 803(3) and would be admissible.

Moreover, to the extent that any of Gobert’s hearsay testimony would not fall within the state of mind exception, or any other hearsay exception, we conclude that the ALJ’s consideration of such testimony was properly within the discretion afforded to him under 43 C.F.R. § 4.232(b). Section 4.232(b) provides the ALJ with broad discretion to consider evidence “not ordinarily admissible under the generally accepted rules of evidence.” 6/ Section 4.232(b) therefore allows an ALJ to consider testimony in a form otherwise inadmissible, such as hearsay. See Edmonds v. Hammett, 2006 U.S. App. LEXIS 13001, *14-15 (9th Cir. May 25, 2006), and Board cases cited therein.

In this case, much of the hearsay testimony occurred in direct response to questioning by the ALJ aimed at ascertaining Decedent’s intent with respect to the gift deed. The ALJ presumably concluded that such information was necessary in order for him

6/ Section 4.232(b) also provides that “the weight to be attached to evidence presented in any particular form [is] within the discretion of the OHA deciding official, taking into consideration all the circumstances of the particular case.”

to determine whether Decedent's interest in Allotment No. 4004 should remain part of the estate inventory, and the Board will not substitute its judgment for that of the ALJ.

Appellant also argues that "not enough time was allowed at the hearing to rebut [Gobert's] testimony." Notice of Appeal at 1. The Board concludes that this argument is without merit. The hearing transcript reflects that the ALJ specifically asked Appellant if she had any questions for Gobert and that Appellant responded that she would wait until it was her time to testify. Transcript at 19. During her testimony, Appellant then offered evidence to rebut a portion of Gobert's testimony, stating only that she did not attempt to pressure Decedent into completing the gift deed application. We conclude that Appellant had sufficient opportunity to rebut Gobert's testimony at the June 24, 2004 hearing, and her contention to the contrary is not supported by the record.

We turn now to Appellant's next argument — that Decedent had not changed her mind about gift deeding the allotment interest to Appellant.

An Indian landowner may change her mind about a conveyance and revoke her consent at any time prior to the actual conveyance. Barber v. Western Regional Director, 42 IBIA 264, 266 (2006). Further, we have consistently held that BIA, or an ALJ, as in this case, must refrain from retroactively approving a gift deed where there is any question as to the donor's intent. See id.; Estate of Clifford Celestine v. Acting Portland Area Director, 26 IBIA 220, 228 (1994); Estate of Gillette, 22 IBIA at 138.

The only evidence offered by Appellant to rebut Gobert's testimony was relevant to whether Appellant had pressured Decedent into signing the gift deed application or some other unidentified document. Even assuming Appellant's testimony effectively rebutted Gobert on this issue, Appellant produced no rebuttal evidence to counter Gobert's testimony that during the last two years of her life, Decedent had either actually changed her mind or had expressed doubts and reluctance about completing the gift deed transaction to Appellant. Appellant merely contends that Decedent had more than two years to withdraw her gift deed application but took no action to do so. The fact that Decedent did not actually withdraw her application, however, is not dispositive of whether she had changed her mind about gift deeding the allotment interest to Appellant, and Appellant

offered no evidence of any actual discussions with Decedent relevant to Decedent's state of mind with respect to completing the gift deed transaction. 7/

Appellant's last argument is that Gobert's testimony was based on lies and deceit. Again, however, Appellant has offered no evidence in support of her assertion. In her notice of appeal, Appellant instead promises to provide proof that Gobert had lied at the supplemental hearing at "the upcoming probate hearing" for her sister, Margaret Bouttier Buchholz. Notice of Appeal at 1. Bare allegations that a witness at a hearing has perjured herself, without more, are insufficient to call into question that witness's testimony. In addition, the ALJ specifically gave Appellant an opportunity to cross-examine Gobert, but Appellant declined. We therefore reject Appellant's claim.

Under these circumstances, we conclude that based on the un rebutted and unimpeached portion of Gobert's testimony, the ALJ reasonably could conclude that Gobert's testimony had raised sufficient doubt to preclude retroactive approval of the gift deed to Appellant.

Conclusion

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 Board affirms the ALJ's July 26, 2004 Recommended Decision.

I concur:

// original signed
Amy B. Sosin
Acting Administrative Judge

// original signed
Steven K. Linscheid
Chief Administrative Judge

7/ In support of her position that Decedent had not changed her mind, Appellant also points to a statement made by Heavy Gun following the March 5, 2004 hearing, witnessed by Appellant's daughter, that "i[t] was only right that the gift deeded land go to [Appellant]." Notice of Appeal at 1. Heavy Gun's statement, however, does not address the issue of whether Decedent changed her mind. Rather, Heavy Gun's statement merely expresses his own opinion about who should own the land. As such, this statement provides no support for Appellant's position.