



## INTERIOR BOARD OF INDIAN APPEALS

Marty Delorme v. Acting Great Plains Regional Director, Bureau of Indian Affairs

46 IBIA 107 (12/05/2007)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
801 NORTH QUINCY STREET  
SUITE 300  
ARLINGTON, VA 22203

MARTY DELORME,	)	Order Affirming Decision
Appellant,	)	
	)	
v.	)	
	)	Docket No. IBIA 07-98-A
ACTING GREAT PLAINS REGIONAL	)	
DIRECTOR, BUREAU OF	)	
INDIAN AFFAIRS,	)	
Appellee.	)	December 5, 2007

Marty Delorme (Appellant) appeals to the Board of Indian Appeals (Board) from a March 20, 2007, decision of the Acting Great Plains Regional Director, Bureau of Indian Affairs (Regional Director; BIA). The Regional Director affirmed a June 16, 2006, decision by the Turtle Mountain Agency Superintendent (Superintendent), BIA, which charged Appellant with trespass on the Louis Delorme Allotment No. 304-5121 (Allotment), located on the Turtle Mountain Reservation.<sup>1</sup> In concluding that Appellant was in trespass, the Regional Director found that Appellant was not an owner of the Allotment and did not have a homesite lease.

On appeal, Appellant does not dispute the Regional Director’s findings. Instead, Appellant contends that while his grandparents, Louis and Jane Delorme, were alive, he had their permission to live on the Allotment. Appellant also apparently seeks to challenge the validity of Louis’s will. We affirm the Regional Director’s decision because his undisputed factual findings regarding Appellant — no ownership interest and no lease — fully support his decision finding Appellant in trespass on the Allotment. Neither of Appellant’s two arguments on appeal provide any basis to reverse the Regional Director’s decision.

## Background

Appellant’s grandfather, Louis Delorme, owned the Allotment until his death in 1999. In subsequent probate proceedings, Louis’s will was approved and various life estate

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<sup>1</sup> Allotment No. 304-5121 is described as the W½SE¼, Sec. 26, T. 162 N., R. 71 W., 5th Principal Meridian, Rolette County, North Dakota, containing 80 acres more or less.

and remainder interests in the Allotment were distributed to his surviving spouse Jane and to his living children. *See* Order Determining Heirs, Approving Will, and Decree of Distribution, Sept. 28, 2000 (Order Approving Will and Decree of Distribution). One of Louis's sons, Julius, who was Appellant's father, had predeceased Louis, and therefore under the terms of the approved will neither Julius nor Appellant received any interest in the Allotment.<sup>2</sup> Appellant was present at the probate hearing and was mailed a copy of the probate order, which included notice of appeal rights. Appellant did not seek rehearing of the probate order.<sup>3</sup>

Since at least July 2005, Appellant has occupied a trailer house on the Allotment. It is undisputed on appeal that 1) Appellant is not an owner of the Allotment; 2) Appellant does not have the consent of the current owners of the Allotment to live on the Allotment; and 3) Appellant does not have a BIA-approved homesite lease for the Allotment.

By letter dated August 1, 2005, the Superintendent notified Appellant that Appellant was living on the Allotment without the owners' consent, and that BIA's records showed that Appellant was not an owner of the land and did not have a lease allowing him to live on the land. The Superintendent advised Appellant that he had 10 days from receipt of the notice to provide documentation that he had a valid right to use the land or he would be assessed trespass damages.

Appellant responded to the Superintendent in two letters dated August 19, 2005, and August 24, 2005. Appellant argued that his grandmother wanted him to stay on the Allotment and that he had the "right to [his] home where [he] visited [his] grandparents while they were alive." Letter from Appellant to Superintendent, Aug. 24, 2005. Appellant also stated that he would be "contest[ing] all wills," apparently in reference to the probates of his deceased grandfather and grandmother, Louis and Jane. Letter from Appellant to Agency, Aug. 19, 2005.

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<sup>2</sup> Jane died on September 4, 2003. Because Louis had only devised a life estate to her, her probate estate did not include any interest in the Allotment.

<sup>3</sup> In 2005, the Superintendent sought to reopen Louis's estate on the grounds that the Order Approving Will and Decree of Distribution had misinterpreted Louis's will with respect to the various interests to be divided among Louis's surviving children. The petition for reopening was denied, *see* Order Denying Reopening, Mar. 31, 2006, and no appeals were filed.

On June 16, 2006, the Superintendent issued a decision charging Appellant with trespass and assessing Appellant damages in the amount of \$137.50 for the period between August 1, 2005, through June 1, 2006. The Superintendent reiterated that Appellant was not an owner of the Allotment and did not have an approved lease. The Superintendent advised Appellant that he would be assessed “trespass rental” until he moved from the property.

Appellant appealed the Superintendent’s decision to the Regional Director. Appellant asserted that his grandfather and grandmother provided for him in their wills “with at least a [l]ife estate.” Letter from Appellant to Superintendent, June 29, 2006. He stated that his aunts and uncles, “except Raymond Delorme” would “sign for [him] . . . to reside [o]n [his] grandparents[’] land.” *Id.* Appellant also suggested that the Superintendent was biased because he was friends with Raymond Delorme and Raymond Delorme is the brother-in-law of the Agency Realty Officer.

On March 20, 2007, the Regional Director affirmed the Superintendent’s decision to charge Appellant with trespass on the Allotment. The Regional Director determined that Appellant was not an owner of the Allotment, nor was there any evidence of a homesite lease allowing Appellant to reside on the subject property.

Appellant appealed the Regional Director’s decision to the Board, and submitted a statement of reasons with his notice of appeal. The Regional Director filed a brief. No other briefs were filed.

### Discussion

The regulations require that any individual or entity who is not a landowner “must obtain a lease . . . before taking possession” of Indian trust land. 25 C.F.R. § 162.104(d). If a lease is required, and possession is taken without a lease by a party other than an Indian landowner of the tract, BIA “will treat the unauthorized use as a trespass.” 25 C.F.R. § 162.106(a); *see also id.* § 162.101 (definitions of “lease” and “trespass”).

Appellant bears the burden of showing that the Regional Director’s decision affirming the Superintendent’s decision charging Appellant with trespass was in error or not supported by substantial evidence. *Wolfe v. Acting Eastern Regional Director*, 45 IBIA 95, 97a (2007).

On appeal, Appellant does not dispute the Regional Director’s findings that he is not an owner of the Allotment and does not have a lease. Appellant contends, however, that while his grandparents were alive, they gave him permission to live on the Allotment.

Appellant's assertion that he had permission to live on the Allotment while his grandparents were alive does not provide a basis to find that he has a right of possession or any permission to live on the property after their deaths. To the extent that Appellant argues that his grandparents' permission to him was intended to survive their deaths, any such oral permission cannot overcome the disposition of the Allotment through the probate of Louis's estate, nor can it constitute an encumbrance on the interests received by Louis's devisees.

Appellant also contends that an "injustice" was done with Louis's will, and appears to suggest that he might have some right or claim to the Allotment through probate. Notice of Appeal. Thus, Appellant appears to challenge the validity of Louis's will. The Regional Director responds in his answer brief that Appellant failed to file a petition for rehearing, despite being provided with notice of his opportunity to do so, from the Order Approving Will and Decree of Distribution entered in Louis's estate, which then became final.<sup>4</sup> Appellant did not file a reply brief, and therefore did not respond to the Regional Director's assertion that it is too late to challenge Louis's probate.

An appeal from a BIA administrative decision does not provide a means to collaterally attack a probate order, final or otherwise. When Appellant failed to challenge the Order Approving Will and Decree of Distribution, that decision became final for the Department. *See* 43 C.F.R. § 4.240(c). We reject Appellant's attempt to challenge BIA's finding of trespass by seeking to revisit Louis's probate in the context of BIA's administrative proceedings.

Appellant has failed to carry his burden of showing error in the Regional Director's decision.<sup>5</sup>

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<sup>4</sup> Appellant was also provided notice of the Order Denying Reopening of Louis's probate in 2005, and did not seek to appeal. As noted *supra* note 3, however, the petition for reopening apparently only implicated the distribution of interests as among Louis's surviving children, and did not seek to reopen the *approval* of Louis's will, which did not devise any interest to Appellant or his father. Thus, it does not appear that Appellant would have had standing to appeal from the Order Denying Reopening which, in any event, became final when no appeals were filed.

<sup>5</sup> Appellant also argues that, because Louis disenrolled from the Turtle Mountain Band of Chippewa Indians and was a member of the Little Shell Band, the Turtle Mountain Agency "should have no say in his land." Notice of Appeal. Appellant raises this argument for the first time on appeal, and therefore we decline to consider it. *See Arizona State Land Dep't v. Western Regional Director*, 43 IBIA 158, 165 (2006).

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 Regional Director's March 20, 2007, decision is affirmed.

I concur:

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// original signed  
Steven K. Linscheid  
Chief Administrative Judge

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// original signed  
Debora G. Luther  
Administrative Judge