INTERIOR BOARD OF INDIAN APPEALS

Dan Van Mechelen v. Northwest Regional Director, Bureau of Indian Affairs

56 IBIA 111 (01/09/2013)

Related Board case:
61 IBIA 125

United States Department of the Interior

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

DAN VAN MECHELEN,	)	Order Dismissing Appeal
Appellant,	)	
	)	
v.	)	
	)	Docket No. IBIA 11-159
NORTHWEST REGIONAL	)	
DIRECTOR, BUREAU OF INDIAN	)	
AFFAIRS,	)	
Appellee.	)	January 9, 2013

Dan Van Mechelen (Appellant) appealed to the Board of Indian Appeals (Board) from an August 12, 2011, decision (Decision) of the Northwest Regional Director (Regional Director), Bureau of Indian Affairs (BIA), denying Appellant's request to convey, as a gift, his interest in an allotment on the Quinault Indian Reservation (Reservation) to the Confederated Tribes of the Chehalis Reservation (Tribe). The Indian Land Consolidation Act (ILCA), *see* 25 U.S.C. § 2216(b)(1), requires, as a general rule, that an Indian who wishes to convey a trust interest in land by gift must be provided with an estimate of the value of the interest. Appellant executed a waiver of that requirement, which the statute allows under specified circumstances, but the Regional Director concluded that those circumstances do not exist in this case, and he declined to process the gift deed application in the absence of an estimate of value. Appellant subsequently withdrew his attempted waiver. The Board dismisses this appeal because the Regional Director's Decision was based solely on his finding that BIA is precluded from considering the gift deed application unless and until Appellant is provided with an estimate of value, and Appellant's withdrawal of his attempted waiver of that requirement renders the Decision, and this appeal, moot.

Background

Appellant owns a 1/27 interest in Quinault Indian Allotment 117 1583 (Allotment) on the Reservation. Letter from Appellant to Regional Director, July 15, 2011 (Administrative Record (AR) Tab 4). Appellant submitted a request to the Regional Director to convey his interest in the Allotment to the Tribe by gift deed. *Id*. Along with this request, Appellant submitted a waiver, pursuant to ILCA, 25 U.S.C. § 2216(b)(1)(B), of the requirement that he be provided with an estimate of the value of his interest in the Allotment as a prerequisite for a gift conveyance. *Id*., Attach. ILCA permits an Indian

owner to waive the estimate-of-value requirement in certain situations, including when he conveys his interest to "the tribe with jurisdiction over the subject parcel of land." 25 U.S.C. § 2216(b)(1)(B)(ii). The Regional Director concluded that Appellant could not waive the estimate-of-value requirement because the Tribe does not exercise any jurisdiction within the exterior boundaries of the Reservation, within which the Allotment is located. Decision at 1. The Regional Director stated that BIA was unable to approve Appellant's gift deed application, which he returned to Appellant. *Id*.

After filing his appeal with the Board, Appellant withdrew his waiver of the requirement for receiving an estimate of value. *See* Opening Br. at 1 (Appellant "has now withdrawn his waiver") & App. Tab B (withdrawal of waiver). The Board then suggested that Appellant's withdrawal of his waiver appeared to have rendered the appeal moot because Appellant's action had removed, as an issue, the sole ground relied upon in the Decision—that Appellant is not entitled to waive the estimate-of-value requirement if he wishes to convey his interest in the Allotment to the Tribe. The Board solicited briefing from the parties on possible mootness. *See* Order for Briefing on Mootness, Sept. 14, 2012.

The Regional Director agrees that the appeal should be dismissed as moot because Appellant's attempt to waive the estimate-of-value requirement, and to have his application considered in the absence of an estimate of value, is no longer at issue. *See* Regional Director's Brief Addressing Mootness. Appellant and the Quinault Nation (Nation) argue that the appeal is not moot.

Discussion

The Board does not issue advisory opinions, and adheres to the principle that an active case or controversy must be present at all stages of an appeal before the Board. *See Forest County Potawatomi Community v. Deputy Assistant Secretary – Indian Affairs*, 48 IBIA 259, 264 (2009), and cases cited therein. When a suggestion of mootness has been made, the burden is on a party opposing the suggestion of mootness to demonstrate that an appeal is not moot. *Parker v. Southern Plains Regional Director*, 45 IBIA 310, 318 (2007). Neither Appellant nor the Nation has convinced us that the appeal is not moot.

Appellant and the Nation argue that this appeal is not moot because they continue to disagree about whether the Tribe has jurisdiction over the Allotment and whether there is any authority for Appellant to convey by gift deed his interest to the Tribe. But the Regional Director's determination that BIA was unable to approve Appellant's gift deed application was based on his determination that Appellant was not entitled to waive the estimate-of-value requirement for the proposed conveyance. It was in that context alone that he addressed the tribal jurisdiction issue. When Appellant withdrew his waiver, the

issue of whether or not he was entitled to waive the estimate-of-value requirement for the proposed conveyance disappeared.

Appellant acknowledges that the Regional Director "denied his application for the one and only reason that waiver of [an estimate of value] of the parcel was not allowed under [ILCA]." Appellant's Brief Addressing Mootness at 1; *see id*. at 2 (Appellant withdrew his waiver to eliminate the only issue that the Regional Director had identified for declining to process the gift deed). Appellant contends, however, that the appeal should not be dismissed as moot because a controversy still exists. According to Appellant, the Regional Director's refusal to process Appellant's gift deed application "was and still is the only issue in dispute." *Id*. at 6. But the Regional Director *only* refused to process the gift deed application on the ground that Appellant could not waive the estimate-of-value requirement, and as Appellant correctly asserts, his withdrawal of that waiver "completely de-fanged the Regional Director's reason for denial." *Id*. at 2.

For its part, the Nation also argues against dismissal on mootness grounds, urging the Board to resolve whether Appellant has any right to convey his interest in the Allotment to the Tribe. Nation's Brief on Mootness at 2 (unnumbered). The Nation argues that it has exclusive tribal jurisdiction over the Allotment and that there are no circumstances under which Appellant could convey his interest to the Tribe without the Nation's consent. According to the Nation, there is still an "active controversy" over Appellant's attempt to convey his interest in the Allotment to the Tribe. *Id*. Thus, the Nation contends, "Appellant's underlying claim that an appraisal was not required because other tribes share coequal rights in the . . . Reservation with the . . . Nation should still be addressed." *Id*. at 3 (unnumbered).

But the Board has no authority to adjudicate Appellant's "underlying claim" just because Appellant and the Nation continue to have a disagreement, or because Appellant may, prospectively, continue to pursue a conveyance to the Tribe. The subject of this appeal, and the source of the controversy that served as the basis for the Board's review, is the Regional Director's Decision. The Nation fails to convince us that there is still any active controversy *over the Decision*, now that Appellant has withdrawn his waiver of the estimate-of-value requirement. As noted earlier, the Regional Director agrees that Appellant's action rendered the Decision, and this appeal, moot. The issues purportedly in controversy, as identified by the Nation, either appear nowhere in the Decision or at most were part of the underlying rationale for the Regional Director's decision on the waiver issue. But the underlying rationale—that the Tribe does not have jurisdiction over the Allotment—served only as the basis for the Regional Director to reject Appellant's attempted waiver. It does not constitute an independent action or decision by BIA, nor is it separately reviewable by the Board now that Appellant "completely de-fanged the Regional

Director's reason for denial," Appellant's Brief Addressing Mootness at 2, by withdrawing his waiver.

It is possible that the issues over which the Nation and Appellant disagree may arise in future proceedings before BIA, if Appellant pursues a transfer of his interest to the Tribe.[1] And BIA may address those issues, in whole or in part, in making some future decision. But that does not mean that the Decision, and this appeal, are not moot. *See Pueblo of Tesuque v. Acting Southwest Regional Director*, 40 IBIA 273, 274-76 (2005) (the possibility that issues could re-emerge in a new controversy does not mean that the original controversy is not moot).[2]

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 dismisses this appeal as moot.

I concur:

// original signed	//original signed
Steven K. Linscheid	Debora G. Luther
Chief Administrative Judge	Administrative Judge

[1] It appears that Appellant has requested an appraisal of the Allotment. *See* Letter from Appellant to Office of Appraisal Services, June 19, 2012; Letter from Appellant to Office of Appraisal Services, Sept. 4, 2012 (copies in appeal record).

[2] The Tribe has not filed any briefs in the present appeal, and we do not know whether the Tribe has any interest in acquiring, by gift or otherwise, Appellant's 1/27 interest in the Allotment.