



INTERIOR BOARD OF INDIAN APPEALS

Rex Scrudder and Alex Scrudder v. Southern Plains Regional Director,
Bureau of Indian Affairs

56 IBIA 206 (02/28/2013)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
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REX SCRUDDER AND ALEX)	Order Affirming Decision
SCRUDDER,)	
Appellants,)	
)	
v.)	
)	Docket No. IBIA 09-053
SOUTHERN PLAINS REGIONAL)	
DIRECTOR, BUREAU OF INDIAN)	
AFFAIRS,)	
Appellee.)	February 28, 2013

This is an appeal to the Board of Indian Appeals (Board) by Rex Scrudder and Alex Scrudder (Appellants) from a January 15, 2009, Notice of Claim (Decision) published by the Southern Plains Regional Director (Regional Director), Bureau of Indian Affairs (BIA). The Decision concluded that a railroad easement across the allotment of Mammedaty, Kiowa Allottee No. 1761, had terminated by operation of law when it ceased to be used for railroad purposes, and that the property had reverted to the United States in trust for the Indian heirs. Because Appellants have not made any arguments on appeal or asserted any error in the Decision, we affirm.

Background

This appeal was filed by Appellants' predecessors-in-interest after the Regional Director published the Decision, which encompassed certain property to which Appellants claimed ownership.¹ Before any briefs were filed, the Board granted a request from

¹ The appeal was filed by Wade Coffey and Cheryl Coffey. In an order dated May 22, 2012, the Board granted a request from the Scrudders, as successors-in-interest to the Coffeys, to be substituted as the appellants, and recaptioned the case accordingly.

Allotment 1761 originally consisted of the S¹/₂ of the NW¹/₄, the NW¹/₄ of the NW¹/₄, and Lot Three of Section 12, Township 7 North, Range 15 West of the Indian Meridian, Kiowa County, Oklahoma, consisting of 156.35 acres, more or less. The railroad easement, which the United States granted to the Chicago, Rock Island and Pacific Railway Company, apparently crossed the NW¹/₄ of Section 12, in the vicinity of Mountain View, Oklahoma. The specific property at issue in this appeal consists of a parcel approximately

(continued...)

Appellants, agreed to by the Regional Director, for a stay, to allow the parties to explore possible settlement. Eventually, after the Board had granted the parties a considerable period of time to attempt a settlement, Appellants and the Regional Director apparently reached an agreement, although neither sought dismissal of this appeal—evidently because some or possibly all of the Indian landowners objected to the agreement.² Thereafter, the Board lifted the stay and scheduled briefing. *See* Order Lifting Stay and Setting Briefing Schedule, Oct. 25, 2012.

Appellants' notice of appeal contained no allegations of error or argument concerning the Decision, and Appellants have filed no briefs on the merits of their appeal.

Discussion

As explained below, Appellants have failed to satisfy their burden to prove error in the Decision. It is an appellant's burden to demonstrate error in a regional director's decision. *Taylor Drilling Corp. v. Eastern Oklahoma Regional Director*, 53 IBIA 15, 18 (2011). Conclusory objections to, simple disagreement with, or bare allegations regarding a BIA decision will not carry an appellant's burden of proof. *Jackson County, Kansas v. Southern Plains Regional Director*, 47 IBIA 222, 228 (2008). In addition, the Board may affirm a regional director's decision where the notice of appeal does not identify any error in the decision being appealed and the appellant submits no brief or other statement of reasons in opposition to the regional director's decision. *Tama County Board of Supervisors, Tama County, Iowa v. Midwest Regional Director*, 52 IBIA 179, 180 (2010); *DeNobrega v. Acting Northwest Regional Director*, 40 IBIA 233, 234 (2005).

(...continued)

334 feet by 220 feet, more particularly described in the Decision and identified by the Regional Director for purposes of this appeal as "Tract A." *See* Letter from Regional Director to Wade Coffey and Cheryl Coffey, Mar. 24, 2009, at 1 & Attach (Administrative Record (AR) Top Set Tab 10); *see also* Annotated Aerial Photograph, Apr. 16, 2009 (AR Top Set Tab 15).

² On September 4, 2012, Appellants and the Regional Director notified the Board that BIA's Anadarko Agency Superintendent (Superintendent) had issued a decision, subject to appeal rights, regarding a lease of the subject property. Joint Status Statement, received Sept. 4, 2012; *see also* Notice to the Board, received Sept. 14, 2012 (enclosing copy of Superintendent's Aug. 31, 2012, decision). The Superintendent's decision was appealed to the Regional Director, where it remains pending. *See* Notice of Appeal from M. Mechelle Aitson to Superintendent, Oct. 1, 2012.

Here, Appellants' notice of appeal asserted, without explanation or argument, that there is "no doubt" that Appellants own the property at issue. Appellants, who subsequently retained counsel for this appeal, did not file an opening brief or any other document containing allegations of error, evidence, or arguments to support their bare claim of ownership. Accordingly, Appellants have not met their burden of proof and the Board affirms the Decision.

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 Regional Director's January 15, 2009, Notice of Claim.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

//original signed
Thomas A. Blaser
Administrative Judge