



INTERIOR BOARD OF INDIAN APPEALS

Gloria J. Grimes v. Acting Pacific Regional Director, Bureau of Indian Affairs

59 IBIA 251 (11/18/2014)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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GLORIA J. GRIMES,)	Order Affirming Decision in Part,
Appellant,)	Vacating in Part, and Remanding
)	
v.)	
)	
ACTING PACIFIC REGIONAL)	Docket No. IBIA 12-098
DIRECTOR, BUREAU OF INDIAN)	
AFFAIRS,)	
Appellee.)	November 18, 2014

Gloria Jean (Jeff) Grimes (Appellant) appealed to the Board of Indian Appeals (Board) from a February 22, 2012, decision (Decision) of the Acting Pacific Regional Director (Regional Director), Bureau of Indian Affairs (BIA). In relevant part, the Regional Director upheld a decision by BIA’s Central California Agency Superintendent (Superintendent), ordering Appellant to vacate a 2-acre parcel (Property) in which Arthur Dean Grow (Grow) holds a life estate interest and Appellant holds the remainder interest. Appellant contends that it was arbitrary and capricious for the Regional Director to uphold the Superintendent’s eviction decision without considering Appellant’s allegation that Grow is committing waste on the Property and therefore BIA should terminate his life estate.

We affirm the Decision in part because Appellant has no present possessory interest or right to occupy the Property, and the law provides no basis for BIA to terminate Grow’s life estate based on waste. The regulations applicable to the life estate in this case provide that California law governs, and California law does not permit extinguishment of a life estate as a remedy for waste. Because the relief sought by Appellant would be unavailable under California law, even assuming Grow has committed waste, the Regional Director did not abuse his discretion by failing to consider Appellant’s allegation as grounds to permit her to remain on the Property.

We vacate the Decision in part because the Regional Director remanded the case to the Superintendent to calculate the fair market rent owed by Appellant to Grow for her use of the house on the Property. The record is not sufficient to determine the ownership of the house or to conclude that BIA has jurisdiction to assess trespass damages against Appellant for her use of the house.

Background

The Property is a 2-acre portion of Allotment SAC-70J (Allotment), which was owned by Lula Jeff (Lula) until her death. Decision at 1 (Administrative Record (AR) Tab 39). In 1992, through the probate of her trust estate and will, Grow received a life estate in the Property and Appellant received a remainder interest. Last Will and Testament, Aug. 22, 1972, at 1 (AR Tab 17); *see also* Modification to Decision Nunc Pro Tunc, Feb. 7, 1995 (AR Tab 32, Attach. 9).¹ During Lula's lifetime, a house was built on the Property funded by BIA's Housing Improvement Program (HIP). Decision at 1.

In 1994, Grow was sentenced to life imprisonment without possibility of parole for two counts of first degree murder. *See* Sentencing Order, Nov. 15, 1994 (AR Tab 32, Attach. 9); *see also* Notice of Appeal, May 18, 2012, at Exhibit 5. Sometime thereafter Appellant moved into the house on the Property. When Grow learned of Appellant's actions, he sought to have her evicted. Eventually, the Superintendent served a cease and desist notice on Appellant on May 5, 2011, finding her in trespass and ordering her to vacate the premises. Superintendent's Decision, May 5, 2011 (AR Tab 28). The Superintendent also stated that Appellant could be found to be liable for trespass damages. Superintendent's Decision at 2.

Appellant appealed to the Regional Director. Notice of Appeal to Regional Director, June 1, 2011 (AR Tab 32). Appellant argued that Grow had committed waste by failing to maintain the Property to preserve its value for future interest holders, and argued that because title to the Property was vested in Appellant, she had a legal right to occupy the home in Grow's absence. *See id.* at 4, 7. Appellant's allegations of waste were directed primarily at the condition of the house. Grow responded that under the terms of the Will, he was not required to live on the Property, and that he was entitled to the rent and profits derived from the land in his absence. Answer to Notice of Appeal to BIA, Aug. 31, 2011, at 3 (AR Tab 37). Grow countered Appellant's allegation by contending that she had committed timber trespass by cutting down an ancient walnut tree on the Property. *Id.* at 7.

On February 22, 2012, the Regional Director upheld the Superintendent's eviction order. The Regional Director found that despite his present incarceration, Grow was

¹ The will also left a life estate in the entirety of the Allotment, consisting of 10.04 acres, to Lula's husband, Hamby Jeff (Hamby), with a remainder interest in Appellant. Hamby died in 1998, and Appellant now has full ownership of the 8.04 acre-portion of the Allotment that does not comprise the Property. Death Certificate, Jul. 21, 2006 (AR Tab 8); Decision at 1. There is no controversy over the 8.04-acre portion now owned in full by Appellant.

“entitled to undisturbed use and occupancy of the house and immediately surrounding two-acre area,” and that he was further “entitled to receive rents for use of the house and subject area.” Decision at 2.² The Regional Director opined that “it is our belief that had [Appellant] not occupied and assumed control over the site, that the premises would have continued to be occupied by non-owners and would likely have deteriorated even more.” *Id.* at 3.³ But the Regional Director concluded that the Superintendent was correct in ordering Appellant to vacate the Property. *Id.*

The Regional Director remanded the case to the Superintendent with instructions to obtain an appraisal of the fair market rental value “for the house and [2]-acre area” from the date of Appellant’s occupation. *Id.* The Regional Director also concluded that Grow’s allegation of timber trespass against Appellant for cutting and selling the walnut tree required further investigation by BIA. *Id.*

Appellant appealed to the Board. Appellant contends that the Regional Director erred in upholding the Superintendent’s decision without considering her allegation that Grow had committed waste on the Property, and that because Grow committed waste, his life estate should be extinguished. Notice of Appeal at 3 (unnumbered). Grow filed an answer brief, arguing that the extinguishment of a life estate is not an available remedy for the commission of waste under applicable law, and also arguing that he has not committed waste and that the issue is not properly before the Board. Answer Brief (Br.), Nov. 9, 2012, at 11, 16. Appellant filed a reply brief.

Standard of Review

The Board will review a regional director’s decision to determine whether it comports with the law, is supported by substantial evidence, and is not arbitrary or capricious. *Adakai v. Acting Navajo Regional Director*, 56 IBIA 104, 107 (2013); *see also Nemont Telephone Cooperative, Inc. v. Acting Rocky Mountain Regional Director*, 55 IBIA 75, 79 (2012). We review legal determinations and the sufficiency of the evidence *de novo*. *Adakai*, 55 IBIA at 107. If we find that a regional director has erred in exercising his discretion, we will not substitute our judgment for the regional director’s, but will remand the matter for further consideration. *Id.* An appellant bears the burden of showing error in a regional director’s decision. *Dobbins v. Acting Eastern Oklahoma Regional Director*, 59 IBIA 79, 87 (2014).

² The Regional Director vacated the Superintendent’s decision to the extent it might have been construed as applicable to the Allotment as a whole, rather than being limited to the Property. Decision at 2-3; *see supra* note 1.

³ The Regional Director’s reference apparently is to the house.

Discussion

I. Legal Framework

Under BIA's regulations, California law applies to the life estate at issue in this case. *See* 25 C.F.R. § 179.3.⁴ In general, the holder of a life estate has a current possessory interest in the subject property. *See* Cal. Civ. Code § 818. The holder of a remainder has a future interest in the property, with no possessory interest until such time as the life estate is extinguished. *See id.* § 780. Upon the death of the life tenant, the life estate is terminated and the possessory interest in the property automatically vests in the remainderman. *See id.*

The owner of a life estate must not act to injure the inheritance of the remainderman. *Id.* § 818. Such an injury is considered "waste," and is defined as "an unlawful act or omission of duty on the part of a tenant, resulting in permanent injury to the property." *Old Republic Ins. Co. v. Superior Court*, 66 Cal. App. 4th 128, 149 (1998) (citing *Southern Pac. Land Co. v. Kiggins*, 110 Cal. App. 56, 60 (1930)). To recover for waste, the plaintiff must prove an injury that is "sufficiently substantial and permanent" to damage a future interest that may not become possessory for many years. *Avalon Pacific-Santa Ana, L.P. v. HD Supply Repair & Remodel, LLC*, 192 Cal. App. 4th 1183, 1213 (2011). A person "aggrieved by the waste may bring an action . . . for treble damages." Cal. Code Civ. Proc. § 732. But, as relevant here, there is no forfeiture of a life estate for the commission of waste. *Chipman v. Emeric*, 3 Cal. 273, 283 (1853).

II. The Regional Director Did Not Abuse His Discretion by Failing to Consider Appellant's Allegations of Waste.

Appellant argues that the Regional Director erred in failing to consider her allegation of waste against Grow, and asks that the Board terminate Grow's life estate based on the commission of waste, and allow Appellant to remain on the Property. Appellant's Mem. of Points and Authorities, Aug. 7, 2012, at 2.⁵ Appellant contends that while Grow

⁴ Although the regulation was revised after enactment of the American Indian Probate Reform Act (AIPRA), the substance of the rule was unchanged as applied to the Property. In 1992, when Lula's trust estate was probated, § 179.3 read as follows: "In the absence of Federal law or Federally-approved tribal law to the contrary, the rules of life estates and future interests in the State in which the land is located shall be applied on Indian land." 25 C.F.R. § 179.3 (1992); *cf.* 25 C.F.R. § 179.3(b) (2014) (same substantive rule for life estates not created by AIPRA).

⁵ As a preliminary matter, the Board notes that the Regional Director did acknowledge Appellant's allegations of waste in his decision, but determined that Grow did not forfeit his life estate on the facts alleged. Decision at 2-3.

lived in the house on the Property, he “smashed the doors and windows and shot holes in the walls and the roof.” *Id.* at 3. She also contends that Grow used the Property to deal drugs, that he paid no utilities, and that he was sentenced to life in prison for murdering two people on the Property. *Id.* For these reasons, Appellant argues that Grow “destroyed the property to the point that it held almost no value,” thereby committing waste sufficient to extinguish his life estate. *Id.*

Appellant acknowledges that monetary damages are normally awarded for waste, but argues that in the present context, equitable relief is more appropriate. Reply Br. at 13 (unnumbered). Appellant emphasizes that due to his incarceration, Grow “is unable to earn money sufficient to pay for the damage his waste caused to the property,” and that awarding damages is therefore “impractical, implausible, and patently unfair.” *Id.* She further argues that “the Board as a federal body must have another equitable remedy to offer plaintiffs suffering injuries in trust land,” or it risks setting a precedent permitting waste of trust property. *Id.* Although acknowledging that California law governs the instant dispute, Appellant contends that California permits equitable relief in cases of waste. *Id.* at 12. Moreover, Appellant argues that because the allegations were raised in the context of an appeal of a BIA decision, the Board has the authority to act to prevent manifest injustice. *Id.* at n.47.

As Grow correctly points out, however, the case law from California courts cited by Appellant in support of her position does not provide for termination of a life estate as a remedy for waste. Answer Br. at 16-17. Instead, the cases discuss the general duty of a life tenant to avoid committing waste, and contemplate damages as the means of compensation for future interest holders if sufficient injury to the property can be proven.⁶ See *Sallee v. Daneri*, 49 Cal. App. 2d 324, 327 (1942); see also *In re Steiner’s Estate*, 240 Cal. App. 2d 78, 81 (1966). Appellant also cites *More v. Massini*, 32 Cal. 590 (1867), in support of her assertion that equitable relief for waste is available under California law. Reply Br. at 12. Yet that case approved of an injunction to prevent the wasting of natural resources, and although an injunction is equitable in nature, it does not terminate the tenant’s possessory interest in the property, and as such is not a comparable form of relief to that sought in this case. See *More*, 32 Cal. at 594-95.

California law is clear that the remedy for waste to a life estate is confined “to the recovery of treble damages.” *Chipman*, 3 Cal. at 283. The trust status of the Property is immaterial to the available relief because the operative regulations explicitly provide that the

⁶ We express no opinion, of course, on whether Appellant’s factual allegations against Grow have merit, or whether, even if meritorious, they would constitute waste under California law. As noted earlier, Appellant’s allegations appear to be directed primarily at the house located on the Property, and not to the Property itself.

life estate at issue is governed by state law. 25 C.F.R. § 179.3; *see Abbott v. Billings Area Director*, 20 IBIA 268, 275 (1991) (BIA is bound by its own regulations); *see also Kuykendall v. Phoenix Area Director*, 8 IBIA 76, 87 (1980) (same). Neither BIA nor the Board has authority to terminate Grow’s life estate in contravention of California law, and if Appellant wishes to remain on the property, she is free to negotiate a lease with Grow.

III. The Record Does Not Support the Regional Director’s Instructions for the Superintendent to Determine the Rental Value of the House.

The Regional Director remanded the case to the Superintendent with instructions to obtain an appraisal to determine the fair market rental value “for the house and [2]-acre area” from the date of Appellant’s occupation to the date of the Decision. Decision at 3. We cannot determine from the record whether the ownership of the HIP house differs from the ownership of the Allotment. Nor is it clear from the Decision or the record on what basis the Regional Director apparently concluded that BIA had jurisdiction to assess the rental value of the house against Appellant. *See Thompson v. Acting Southern Plains Regional Director*, 54 IBIA 125, 125 (2011) (record did not support BIA’s conclusion that house located on trust property was held in trust and could be included in BIA’s assessment of back rent); *Smartlowit v. Northwest Regional Director*, 50 IBIA 98, 99 (2009) (vacating portion of a BIA decision that impliedly found that a house located on trust property was subject to BIA’s leasing regulations). Whether or not Appellant may be liable to Grow for her use of the house, or entitled to offsets for improvements she made to the house, a threshold issue exists as to whether those issues are to be determined by BIA, and if so, under what applicable regulation, or whether the appropriate remedies are private remedies found in state or tribal law. Thus, we vacate this portion of the Decision, and remand it to BIA for further consideration.

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 Decision in part, vacates it in part, and remands the case to the Regional Director.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

//original signed
Thomas A. Blaser
Administrative Judge