

UNITED STATES
v.
BENJAMIN L. TAYLOR and MARTHA L. TAYLOR

IBLA 71-239

Decided December 4, 1972

Appeal from decision by Administrative Law Judge Dent D. Dalby holding lode mining claim null and void. Montana Contest 1816.

Affirmed.

Mining Claims: Discovery: Generally

Testimony by a government mineral examiner that he examined a mining claim and the workings thereon but found no evidence of a valuable mineral deposit is sufficient to establish a prima facie case by the Government of a lack of discovery.

Administrative Procedure: Burden of Proof--Mining Claims: Contests--Mining Claims: Discovery: Generally

In a government mining contest, where the contestant made a prima facie showing of a lack of discovery, the burden of producing preponderating evidence of the existence of a valuable mineral deposit sufficient to support a discovery is upon the claimants.

Mining Claims: Determination of Validity--Mining Claims: Discovery: Generally

Where mineral values ascertained on a lode mining claim would not justify a prudent man in going forward with developmental endeavors with a reasonable prospect of success in obtaining a valuable mine, it is proper to declare the claim null and void.

APPEARANCES: Benjamin L. Taylor, Martha L. Taylor, pro se; Robert W. Parker, Esq., Office of the General Counsel, United States Department of Agriculture, Missoula, Montana, for the United States.

OPINION BY MR. HENRIQUES

Benjamin and Martha Taylor appeal from the decision of an Administrative Law Judge 1/ dated February 22, 1971, holding void their Sky Baby No. 1 lode mining claim situated in unsurveyed sections 25 and 36, T. 4 S., R. 12 E., P.M., Montana, within the Gallatin National Forest. The notice of location was filed on September 14, 1962. A complaint was filed on April 1, 1970, 2/ at the request of the Forest Service, United States Department of Agriculture, alleging:

- (1) No discovery of valuable minerals sufficient to support a mining location has been made upon or within the limits of said claims.
- (2) The land within the limits of said claims is nonmineral in character.
- (3) Said claims are not being held in good faith for mining purposes.

Appellants denied all three allegations and a hearing was held on November 18, 1970. The government presented witnesses who testified as to the results of assays and spectrographic analyses of materials taken from various points within the claim. The ascertained values of the samples varied from 68 cents to \$3.80 a ton, deriving from minute showings of gold and silver and small amounts of copper and lead. The government witnesses testified that costs for mining operations in a tunnel similar to that present on the Sky Baby claim would be from \$10 to \$20 per ton, greatly exceeding the value of the mineral material present. In their opinions a person of ordinary prudence would not be justified in further expenditure of time and means in an effort to develop a paying mine. Mr. Taylor then testified that he had taken a subsequent sample which an assay report indicated had a value of \$33.80 a ton. This assay report was discounted, however, since the Judge noted that the sample had been taken from selected pieces of rock. 3/ The Judge, on the basis of the information adduced

1/ The change of title of the hearing officer from "Hearing Examiner" to "Administrative Law Judge" was effectuated pursuant to order of the Civil Service Commission, 37 F.R. 16787 (August 19, 1972).

2/ The complaint named Sky Baby No. 1 lode mining claim and Sky Baby No. 2 lode mining claim. At the hearing, the complaint was amended to delete the charges against the Sky Baby No. 2 lode mining claims.

3/ In their appeal, appellants stated: " * * * We concede that the assay may not be taken as the true content of this particular vein, as it was taken with the seam, and not across, as it should be, * * * however we do maintain that the assay does indicate values that more than constitute a discovery, and does warrant further exploration and development of this claim." While their frankness is commendable, the fact remains that any probative value that the assay report might command is greatly reduced.

at the hearing, held that the discovery of a valuable mineral deposit had not been made, and that the land within the limits of the claim was nonmineral.

Appellants' major contention on appeal is that the government did not conclusively prove that the claim was nonmineral. The Government, however, need only present a prima facie case that there has been no discovery; after such a presentation the burden devolves to the mineral claimant to prove, by a preponderance of the evidence, the existence of a valuable mineral deposit sufficient to support a discovery, Foster v. Seaton, 271 F.2d 836 (D.C. Cir. 1959); United States v. Wayne Winters d/b/a Piedras Del Sol Mining Company, 78 I.D. 193 (1971). Here, the testimony of government mineral examiners that they had examined the claim and the workings thereon, but found no evidence of a valuable mineral deposit, is sufficient to establish a prima facie case of a lack of discovery. United States v. Raymond Bass, Betty Yeck, et al., 6 IBLA 113 (1972); United States v. L. B. McGuire, 4 IBLA 307 (1972); United States v. Harold Benson, A-31061 (September 4, 1969). Thus it was the affirmative responsibility of appellants to establish a discover. United States v. Raymond Bass, Betty Yeck, et al., *supra*.

The crucial impediment to the validity of the claims is succinctly stated by appellants in their statement of appeal: "That a large quantity of mineable ore exists can only be determined or denied by further exploration and development of this very promising lead." As the Department has stated:

Exploration work is that which is done prior to discovery in an effort to determine whether the land contains valuable minerals. Where minerals are found, it is often necessary to do further exploratory work to determine whether those minerals have value and where the minerals are of low value, there must be more exploration work to determine whether those low value minerals exist in such quantities that there is a reasonable prospect of success in developing a paying mine. It is only when the exploratory work shows this that it can be said that a prudent man would be justified in going ahead with this development work and that a discovery has been made.

United States v. Converse, 72 I.D. 141, 149 (1965), *aff'd, sub nom. Converse v. Udall*, 262 F. Supp 583 (1966), *aff'd*, 399 F.2d 616 (9th Cir 1968), *cert. denied*, 395 U.S. 1025 (1969).

Thus, a priori, before development, in the sense used by Departmental decisions interpreting the mining laws, can begin it must be determined whether any minerals found on the land have value. As noted by the Judge, the mineral values thus far ascertained on the claims would not justify a prudent man in going forward with developmental endeavors, with a reasonable prospect of success in obtaining a valuable mine. United States v. William J. Bartels, Sr., et al., 6 IBLA 124 (1972); United States v. Federal Materials, Inc., 2 IBLA 161 (1971); United States v. Herbert H. Mullin, Pearl F. Mullin, C. A. Gussman, 2 IBLA 133 (1971); United States v. Walter and Thelma Bossard, A-30784 (July 16, 1968). On the basis of the record appellants have not shown that a discovery has been made and the Judge correctly held the claim to be null and void.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques, Member

We concur:

Martin Ritvo, Member

Frederick Fishman, Member

