

UNITED STATES
v.
MARVIN GONDOLFO AND EMMA A. GONDOLFO

IBLA 72-41 Decided January 29, 1973

Appeal from a decision of Administrative Law Judge Robert W. Mesch ^{1/} holding Homestead Lode Mine Claim null and void. (Contest Nev. 4570).

Affirmed

Mining Claim: Discovery: Generally

Evidence of mineralization which might warrant further exploration work within a claim rather than development of a mine is not sufficient to constitute a discovery of a valuable mineral deposit.

Mining Claims: Discovery: Generally

To constitute a discovery upon a lode mining claim there must be an exposure on the claim of a lode or vein bearing mineral which would warrant a prudent man in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine.

APPEARANCES: George G. Holden, Esq., Battle Mountain, Nevada, for appellant; Erol R. Benson, Esq., Office of the General Counsel, Department of Agriculture, Ogden, Utah, for the United States.

OPINION BY MR. RITVO

Marvin Gondolfo and Emma A. Gondolfo have appealed from the decision of Administrative Law Judge Robert W. Mesch, dated July 20, 1971, declaring the Homestead Mine Lode Claim null and void. The claim is located in the Toiyabe National Forest, Nevada. At the request of the Forest Service, Department of Agriculture, the Bureau of Land Management, Department of the Interior, issued a complaint on April 24, 1970, challenging the validity of the claim. The complaint charged, among other things, that there was not a valid

^{1/} The title "Administrative Law Judge" replaced that of "Hearing Examiner" by order of the Civil Service Commission, 37 F.R. 16787 (August 19, 1972).

mineral discovery within the limits of the claim. A hearing was held April 1, 1971, at Austin, Nevada.

The mining claim was originally located in 1947. It was acquired by contestees in 1966 by purchase from John and Betty Nurmi. The Gondolfos, after acquiring the claim which then had as improvements a cabin and two drifts, did work in the drifts, excavating an additional 6 to 8 feet to their present 15 to 18 feet depth. They also installed a water system, made some trails and cleared some brush.

Vernon T. Dow, a mining engineer for the Forest Service, testified that he had examined the claim in 1968 and 1969. On his first examination he took a sample from each of the two drifts. On the second examination he took seven samples from locations indicated by Gondolfo (Tr. 32, 33). These were assayed for gold, silver, lead and zinc. Of the best two samples, one showed 0.005 ounces of gold (17.5 cents per ton). Tr. 37; Exh. 6. The other showed 1.0 ounces of silver (\$ 1.70 per ton). Tr. 30; Exh. 5. He further testified that he did not see any areas which would warrant further sampling. In his opinion he did not think that sufficient mineralization had been found within the claim to warrant a prudent man in the further expenditure of money and time in an effort to make it a paying mine. Tr. 38, 39.

Gondolfo also took six samples, the best of which showed 0.2 ounces and 0.15 ounces of silver per ton. Exh. B.

One of the witnesses for contestee, Robert T. Morris, Jr., chief geologist for a company that was negotiating with the contestees in an attempt to obtain certain rights with respect to the claim, stated:

[W]e have the mineral indications on the ground and it warrants further investigation * * * Tr. 76.

* * * We would like to go on to the property to investigate, further investigation for minerals. The method we use, what we decide to do before we start to drill or anything is going to be up to our discretion. Tr. 77, 78.

The Judge concluded that:

* * * [F]rom the evidence * * * the claim has not as yet been perfected by the discovery of a valuable mineral deposit. The most favorable conclusion that

can be reached from the contestees' evidence is that a person of ordinary prudence might be warranted in the expenditures of time and money in exploratory work in an effort to determine whether a valuable mineral deposit might be found within the limits of the claim.

The standard applied by the Department of the Interior to determine the validity of mining claims is well established. A discovery sufficient to validate a mining claim has been made

*** [W]here minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine ***. Castle v. Womble, 19 L.D. 455, 457 (1894).

And where the location is of minerals in a lode or vein:

*** [T]here must be a vein or lode of quartz or other rock in place; the quartz or other rock in place must carry gold or some other valuable mineral deposit; and the two preceding elements, when taken together, must be such as to warrant a prudent man in the expenditure of his time and money in the effort to develop a valuable mine. Jefferson-Montana Copper Mines Co., 41 L.D. 320 (1912).

This test has been accepted by the Courts, United States v. Coleman, 390 U.S. 599, 602 (1968); Best v. Humbolt Placer Mining Co., 371 U.S. 334 (1963); Chrisman v. Miller, 197 U.S. 313, 322 (1905); Converse v. Udall, 399 F.2d 616 (9th Cir. 1968), cert. denied, 393 U.S. 1025 (1969), and cited repeatedly in Departmental decisions, United States v. William J. Bartels Sr., et al., 6 IBLA 124 (1972); Ray L. Stevens, et al., A-31052 (May 14, 1970); East Tintic Consolidated Mining Co., 43 L.D. 79, 81 (1914).

On appeal contestee relies heavily on what he believes is a general misconstruction of the meaning of United States v. Coleman, 390 U.S. 599 (1968). In his opinion, significant to the ruling in Coleman was the court's differentiation between "non-metallic minerals of wide-spread occurrence" and the "metallic minerals" (or "precious metals"). He argues that the Coleman decision lessened the proof required for discovery of "precious metals," stating that:

Where the indications or manifestation of mineral in place is one of valuable metals and if the geology is of such nature so as to justify a prudent man to further expend his time and resources, then it is a valid claim. It is not necessary under the authorities that the primary showing of valuable minerals be in and of itself of mine degree.

In other words, he is contending that indications of minerals not of themselves warranting the further expenditure of labor and money with a reasonable expectation of success in developing a valuable mine constitute a discovery and that there is no distinction between the exposure of minerals sufficient to justify further exploration and that necessary to constitute a discovery. Rather, the Court stated that the marketability test is a logical complement to the prudent-man test in determining the value of non-metallic minerals of wide-spread occurrence. The prudent-man test remains unchanged. Appellant's contentions, as the Judge pointed out, have long since been decided adversely to him. Evidence of mineralization which may justify further exploration in hope of finding a valuable mineral deposit is not synonymous with evidence of mineralization which will justify the expenditure of labor and money with a reasonable prospect of success in developing a valuable mine. Only the latter constitutes discovery. Henault Mining Company v. Tysk, 419 F.2d 766 (9th Cir. 1969), cert. denied, 398 U.S. 950 (1970); Converse v. Udall, 399 F.2d 616 (9th Cir. 1968), cert. denied, 393 U.S. 1025 (1969); United States of America v. Charles W. and Cora A. Kohl, 5 IBLA 298 (1972); United States v. New Mexico Mines, Inc., 3 IBLA 101 (1971); Marvel Mining Co. v. Sinclair Oil and Gas Co., et al., 75 I.D. 407 (1968).

In the case at hand, the evidence falls short of that required to constitute a discovery. At best, as the Judge concluded, a reasonably prudent man might invest further time and funds to explore the prospect.

Accordingly, 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.

Martin Ritvo, Member

We concur:

Anne Poindexter Lewis, Member

Newton Frishberg, Chairman

