

WAYNE L. WILLISTON  
BARBARA C. BAIRD

IBLA 73-370

Decided October 4, 1973

Appeal from decision of the Alaska State Office, Bureau of Land Management denying application for reinstatement of an oil and gas lease AA-633.

Affirmed.

Oil and Gas Leases: Reinstatement! ! Oil and Gas Leases: Rentals

Where an appellant asserts that the failure to pay rental timely: (1) was due to an apparent lack of diligence; (2) resulted from mishandling of the courtesy notice; and (3) was caused in part by the illness of one of appellants' mother, reinstatement of the oil and gas lease is denied properly since "justifiable delay" within the ambit of 43 CFR 3108.2-1(c)(1) has not been demonstrated.

APPEARANCES: Wayne L. Williston and Barbara C. Baird, pro sese.

OPINION BY MR. FISHMAN

Wayne L. Williston and Barbara C. Baird have appealed from the decision of the Alaska State Office, Bureau of Land Management, dated April 16, 1973, which denied their petition for reinstatement of oil and gas lease AA-633 which terminated January 31, 1972.

Rental for this oil and gas lease was due in the Alaska State Office on or before February 1, 1972. Rental was received by that office on February 7, 1972. On February 10, 1972, the State Office sent a termination notice to appellants.

By letter dated February 16, 1972, appellant Baird advised the State Office that her "failure to meet the deadline of February 1, 1972 was due to an apparent lack of diligence to meet said deadline. In previous years, we have never failed in a similar manner." By letter dated February 17, 1972, appellant Williston notified the State Office as follows:

At the time of renewal last year, my son inadvertently [sic] included notice of same in with mail delivered to our address which he was taking to his mother. This led my former wife to believe that I wished her to pay the annual rental fee, which she did, consequently, causing her to receive the renewal notice for the current year instead of myself.

Mrs Baird had not handled this matter prior to that time, and was not aware of the necessity regarding strict adherence [sic] to the anniversary date.

Under the circumstances, I am sure you will agree that failure to send payment of the annual rental according to the specific requirements quoted in your letter was due to error and misunderstanding, and certainly not due to any willful tardiness, negligence, or attempt on our part to circumvent this particular rule.

By decision of April 16, 1973, the decision appealed from, the petition for reinstatement was denied. The decision recited in part that under the regulations a lease could be reinstated upon a showing that the failure to pay timely the full amount of rental was either justifiable or not due to a lack of reasonable diligence on the part of the lessee, citing 43 CFR 3108.2-1(c). The decision also recited "[t]he lessees' petitions for reinstatement do not show the requisite causality to be justifiable under the standards set in the cited decision [Louis Samuel, 8 IBLA 268 (1972)]."

On appeal appellant Baird stated in part as follows:

Please be advised further that during the months prior to February, my mother was ill, under intensive testing and subsequently operated on February 29, 1972 [sic] at Pomona Valley Hospital after a firm but lengthy diagnosis was achieved! ! gall bladder removed.

We are maintaining, therefore, that lease AA-633 should be reinstated. An inordinate amount of time has elapsed since the initial reinstatement was submitted. The tenuous situation related to my mother affected the delay. Finally, a review of the history of previous payments would reveal promptness.

In her earliest communication to the Land Office, concerning the reinstatement appellant Baird had acknowledged that the failure to pay rental on or before February 1, 1972, was due to an apparent lack of diligence. It necessarily follows that appellants are not entitled to relief under the provision of the regulation excusing failure to pay the rental promptly where such failure was "not due to lack of reasonable diligence." We therefore proceed to consider the issue whether that the failure to pay on or before the anniversary date of the lease was "justifiable" within the ambit of 43 CFR 3108.2-1(c)(2).

In Louis Samuel, supra, we stated that "justifiable delay" in making an oil and gas lease rental payment will be recognized only where sufficiently extenuating circumstances are present so as to affect the lessee's action. We also stated at page 274 as follows:

We believe that cases which are so covered are those where the death or illness of the lessee or member of his close family, occurring with immediate proximity to the anniversary date, have been a causative factor in his failure to exercise reasonable diligence. Coming under this rubric would be natural disasters such as floods, earthquakes and the like. Whether in the individual case, these events had the sufficient proximity and causality to fall under this statute is a question in which the various components must be weighed. What is clearly not covered are cases of forgetfulness, simple inadvertence or ignorance of the regulations \* \* \*. To allow these latter circumstances the protection of the statute would be, in effect, to repeal the requirement of timely payment! ! an end which Congress could have achieved by direct action and which it chose not to mandate. To be "justifiable" within the meaning of the statute, sufficiently extenuating circumstances must be present so as to affect the lessee's actions. And it is to be emphasized that the burden of proof is upon the lessee to prove that such was, in fact, the case.

We have already disposed of diligence as a possible mitigating circumstance. The mishandling of the courtesy notice cannot serve as a basis for the relief here. Even the failure of the Bureau of Land Management to send a courtesy notice affords an insufficient basis for relief. Louis J. Patla, 10 IBLA 127 (1973); see Monturah Company, 10 IBLA 347 (1973). The illness of appellant Baird's mother, during which the mother underwent intensive testing and a subsequent operation on February 29, 1972, and her illness for the months prior to February do not constitute circumstances sufficient to warrant favorable action, since they did not affect appellant Williston's compliance with the requirement to pay rental timely.

Accordingly, appellants' petition for reinstatement of their oil and gas lease was properly denied and 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.

Frederick Fishman  
Member

I concur:

Edward W. Stuebing  
Member

I concur in the result:

Joseph W. Goss  
Member

