

UNITED STATES
v.
GWENDOLYN McCLURG, ET AL.

IBLA 77-114

Decided June 15, 1977

Appeal from decision of Administrative Law Judge Robert W. Mesch declaring null and void the Eunice Edna Nos. 1 and 2 placer mining claims (C-597).

Affirmed.

1. Administrative Authority: Generally--Mining Claims:
Generally--Mining Claims: Contests

The Bureau of Land Management, in exercise of its authority to regulate the acquisition of rights in the public lands, may contest any unpatented mining claim located on public land under its jurisdiction to determine, among other things, if the claimant has discovered on his mining claim a valuable mineral deposit as required by 30 U.S.C. § 22 (1970).

2. Mining Claims: Discovery: Generally

In order to support the validity of a mining claim, the claimant must show that he has discovered a mineral deposit and that 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 paying mine. The fact that some minerals may exist which might justify further exploration on the claim is insufficient to show a discovery of a valuable mineral deposit.

3. Administrative Procedure: Burden of Proof--Mining Claims: Contests--Mining Claims: Determination of Validity

Although the Government has assumed the burden of proof in mining claim contests of presenting a prima facie case of lack of discovery, once it has done so, the burden shifts to the claimant to prove by a preponderance of the evidence the discovery of a valuable mineral deposit. A prima facie case is established when a Government mineral examiner testifies that she examined the claim and could find no evidence showing the discovery of a valuable mineral deposit.

APPEARANCES: Larry Sebring, pro se; Lloyd R. Roush, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

This appeal, filed by Lloyd R. Roush and Larry Sebring, is taken from the December 7, 1976, decision by Administrative Law Judge Robert W. Mesch declaring null and void the Eunice Edna Nos. 1 and 2 placer mining claims. The contest complaint, C-597, was issued by the Colorado State Office, Bureau of Land Management (BLM), against Lloyd R. Roush, Eunice Spalding, Eunice L. Thompson, and Lola M. Vaughan. The complaint was later amended to include Gwendolyn McClurg, Larry Sebring and George E. Spalding as contestees.

All contestees filed answers to the complaint. At the hearing, Larry Sebring appeared on his own behalf and on behalf of Lloyd Roush. Linda Spalding also appeared at the hearing, stating that her father, George E. Spalding, had conveyed all his interest in the mining claims to her.

The mining claims at issue were located on May 25, 1946. The principal mineral alleged to be within the claims is gold. The contest complaint listed three bases for finding the claims invalid:

a. No valuable minerals have been found within the limits of the claims in sufficient quantities so as to constitute a valid discovery within the meaning of the mining laws.

b. No discovery of a valuable common variety of mineral had been made within the limits of the Eunice Edna No. 1 or Eunice Edna No. 2 claims because such mineral material present cannot or could not be marketed at a profit prior to July 23, 1955, the effective date of Public Law 84-167 (30 U.S.C. sec. 611, (1970)).

c. No discovery of a valuable mineral had been made within the limits of the Eunice Edna No. 1 or the Eunice Edna No. 2 claims prior to the effective date of the Gunnison-Arkansas Reclamation Project Withdrawal on June 27, 1946.

At the hearing, Helen Hankins, a geologist employed by the Bureau of Land Management, testified that she had examined the mining claims and that, in her opinion, a prudent man would not further expend his time, effort and money with the reasonable expectation of developing a valuable mine on the claims (Tr. 37). Geologist Hankins also testified that the sand and gravel which exist on the claims are a common variety of no special value and which could not have been extracted and marketed at a profit prior to July 23, 1955, the date common varieties of sand and gravel, among other materials, were removed from location under the mining laws by 30 U.S.C. § 611 (1970) (Tr. 33-34).

For the contestees, Sebring testified that he had not taken any gold from the claims although he had observed Roush do so (Tr. 50). Linda Spalding testified that she had removed some gold and other minerals and hoped to mine the land when it would be more profitable (Tr. 54). Neither contestee introduced any probative evidence, such as assay reports or marketing reports.

In his decision, Judge Mesch discussed the principles of law applicable to this mining claim contest and then found that the Government had presented a prima facie case that there had not been a discovery of a valuable mineral deposit on either mining claim. He further found that the contestees had failed to introduce any evidence that would support such a discovery. Judge Mesch then held the mining claims null and void for lack of the discovery of a valuable mineral deposit.

As his allegation of error in Judge Mesch's decision, appellant Sebring argues that BLM's mineral examiner failed to take mineral samples from the river on the claims. Appellant Roush argues that the "1872 Mining Laws" do not require a mining claimant to show any certain production at any certain time and that the Government's entire case, including the prudent man rule, is based on the Act of July 23, 1955, as amended, 30 U.S.C. § 611 et seq. (1972). In answer to the above arguments, the Government suggests that appellants do not point out how Judge Mesch's decision was in error and should be dismissed. The Government argues alternatively that the contestees introduced no evidence that a valuable mineral deposit exists on the claims and, therefore, Judge Mesch's decision should be affirmed.

We agree that Judge Mesch's decision should be affirmed. Appellants have made a sufficient suggestion of error to warrant some discussion of the law and its application to the facts of this case.

[1] Appellants' claims were found null and void under the 1872 mining law, 30 U.S.C. § 21 et seq. (1970). That law states that "all valuable mineral deposits," and lands containing such deposits, are open to exploration and purchase by citizens of the United States. 30 U.S.C. § 22 (1970). For a mining claimant to obtain rights under this law, he must discover a valuable mineral deposit on his claim. However, the Department of the Interior "is charged with seeing that this authority [to regulate the acquisition of rights in the public lands under the mining laws] is rightly exercised to the end that valid claims may be recognized, invalid ones eliminated, and the rights of the public preserved." Cameron v. United States, 252 U.S. 450, 459-60 (1920); United States v. Mine Development Corp., 27 IBLA 238, 245 (1977). Therefore, BLM may contest any unpatented mining claim located on public land under its jurisdiction to determine, among other things, if the claimant has discovered on his mining claim a valuable mineral deposit as required by 30 U.S.C. § 22 (1970).

[2] The prudent man rule was established by the Department as the criteria under 30 U.S.C. § 22 (1970) for determining whether a claimant had discovered a "valuable mineral deposit" on his claim. Castle v. Womble, 19 L.D. 455 (1894). This rule was most recently approved and refined by the Supreme Court of the United States in United States v. Coleman, 390 U.S. 599, 602 (1968).

Thus, a mining claimant must show that a mineral deposit is exposed on his claim and that "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 paying mine." Castle v. Womble, supra at 457. The fact that some minerals may exist within the claim, as appellants allege here, which might justify further exploration on the mining claim is insufficient. United States v. Taylor, 25 IBLA 21, 25 (1976). The actual discovery of a valuable mineral deposit must be shown in order to support the validity of the mining claim.

[3] Although the Government has assumed the burden of proof in mining claim contests of presenting a prima facie case of lack of discovery, once it has done so, the burden shifts to the mining claimant to prove by a preponderance of the evidence the discovery of a valuable mineral deposit. United States v. Zweifel, 508 F.2d 1150, 1157 (10th Cir.), cert. denied, 423 U.S. 829 (1975). A prima facie case is established when a Government mineral examiner testifies that she examined the claim and could find no evidence showing the discovery of a valuable mineral deposit. The examiner is not required to perform the discovery work on the claim but only to examine the exposed areas and workings to verify whether or not a discovery has been made. United States v. Taylor, 19 IBLA 9, 29, 82 I.D. 68, 76 (1975); see Humboldt Placer Mining Co. v. Secretary of the Interior, 549 F.2d 622, 624 (9th Cir. 1977).

Appellant Sebring's argument that the Government's witness failed to take her samples from the river is thus without merit. Geologist Hankins correctly described her duty as selecting a representative sample, not performing discovery work. She stated that she felt the samples she took were sufficient to determine what values were on the claims. This included a sample on the east side of the river which would include any material deposited by the river (Tr. 41). Sebring has introduced no evidence showing the quantity and quality of any gold or other mineral deposits in the riverbed. Appellants introduced no evidence showing the existence, quantity, or quality of mineral deposits anywhere on their mining claims. We find, therefore, that Judge Mesch correctly held these mining claims to be null and void. 1/

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of Administrative Law Judge Robert W. Mesch declaring null and void Eunice Edna Nos. 1 and 2 placer mining claims is affirmed.

Joan B. Thompson
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge

1/ The Government's prima facie case primarily related to lack of a present discovery on the claims although there was testimony by Geologist Hankins concerning a lack of marketability of the sand and gravel on the claim in 1955. Because there is no present discovery of a valuable mineral deposit within the claims it is unnecessary to consider whether there was a discovery prior to the withdrawal in 1946 which would affect all minerals, or prior to the Act of July 23, 1955, 30 U.S.C. § 611 (1970), which would only affect sand and gravel. Had there been a showing of a present discovery, consideration of the earlier times would be necessary to determine the validity of the claims as a discovery after land is no longer locatable cannot validate a claim which was invalid when the land was withdrawn or otherwise removed from operation of the mining laws.