

UNITED STATES

v.

EMMA ELIZABETH CONNER, AND
WALTER T. NOLTE, AS THE HEIRS OF
R. W. SPEER, A LAST KNOWN DIRECTOR OF THE
ARLINGTON GOLD MINING COMPANY, CONTESTEE

IBLA 77-94

Decided July 5, 1977

Appeal from a decision of Administrative Law Judge Robert W. Mesch holding the Little Giant Placer claims invalid insofar as the interests, if any, of the named contestees are concerned. Colorado A 563.

Affirmed.

1. Mining Claims: Discovery: Generally

The "prudent man" test is the longstanding test to determine whether there has been a discovery of a valuable mineral deposit. To meet this test there must be sufficient mineralization within a claim to warrant a man of ordinary prudence to expend his time and means with a reasonable expectation of developing a valuable mine.

2. Administrative Procedure: Burden of Proof--Evidence:
Burden of Proof--Mining Claims: Contests--Mining
Claims: Determination of Validity--Mining Claims:
Discovery: Generally

In making a prima facie case of lack of discovery of a valuable mineral deposit, the Government has no duty to do the discovery work for the mining claimant. It is incumbent upon the claimant to keep his discovery points available for

inspection. A prima facie case is established when a Government mineral examiner gives his expert opinion that he examined the claim and found insufficient values to support a finding of discovery.

3. Contests and Protests: Generally--Mining Claims:
Contests--Rules of Practice: Government Contests

Since a government contest is not insufficient and subject to dismissal for failure to name all parties in interest, a contest is properly brought against persons who are heirs of a director of a corporation whose charter has expired under state law, even though the state law provides that the property of such a corporation passes to a public trustee for distribution by him. Any interest of those not named or served in a manner provided by the pertinent regulation is not affected.

APPEARANCES: Walter P. Nolte, Esq., for appellants; Albert V. Witham, Esq., Office of the Regional Solicitor, Denver, Colorado, for appellee.

OPINION BY ADMINISTRATIVE JUDGE RITVO

George A. Thrush, Emma Elizabeth Conner, and Walter T. Nolte have appealed from a decision of Administrative Law Judge Robert W. Mesch, dated December 7, 1976, holding the Little Giant Placer Claim invalid insofar as their interests are concerned.

The Little Giant Placer Claim covers land in sections 36, T. 11 S., R. 80 W., and section 1, T. 12 S., R. 80 W., 6th PM, in the Hope Mining District, Chafee County, Colorado. This claim and others conflict with land needed for the Fryingpan - Arkansas project of the Bureau of Reclamation. As a result of an examination of this claim, a contest was initiated charging that the claim was invalid because "no valuable mineral deposits have been discovered within the limits of the claim." The appellants were served as heirs of one of the last known directors of the Arlington Gold Mining Company. Appellants at first entered a general denial, and sought particulars as to the basis for the complaint. Paragraph 2 of the complaint stated:

The above named contestees are owners of or may assert some interest in the above named unpatented mining [claim]. * * *

The appellants were then specifically named.

On September 29, 1976, appellants filed an amended answer in which they specifically admitted allegation 2 (and allegations 1 and 4).

Appellants did not appear at the hearing held at Denver, Colorado, on October 4, 1976. At the hearing the United States presented a qualified mining engineer who testified the claim was located in 1890 and conveyed to the Arlington Gold Mining Company in 1894. This claim and others lie in an area which was extensively gold placer mined from 1860 through 1910, - with dwindling production until 1918, when no production was made. Only some small scale placering was carried out thereafter. Exhibit G-2 (1), p. 9. He further testified as to the geologic setting of the claim area, the mining history, his examination of the claim, and his findings and conclusions concerning the value of the claim for mining purposes. He then expressed his opinion that there was not sufficient mineralization on the claim to warrant a person of ordinary prudence in spending further time and money in an attempt to develop a valuable mine.

The Administrative Law Judge in his decision set out the relevant mining law and applied the facts to the law. He found that the United States had made a prima facie case that the claim was invalid and that the contestees had offered nothing to meet their burden of proof. He thereupon found the claim invalid insofar as the interests of the appellants are concerned.

The basic legal premises relied on by the Administrative Law Judge are well established.

[1] The mining law provides that "all valuable mineral deposit in lands belonging to the United States * * * shall be free and open to exploration and purchase * * *." act of May 10, 1872, as amended, 30 U.S.C. § 22 (1970). Under the mining law, discovery of a valuable mineral deposit is the sine qua non for a valid claim.

The long-standing test to determine whether there is a discovery of a valuable mineral deposit is the "prudent man" test. To meet this test the mining claimant must establish there is sufficient mineralization within his claims in both quality and quantity to warrant a person of ordinary prudence to expend his time and means with a reasonable expectation of developing a valuable mine. United States v. Coleman, 390 U.S. 599 (1968); Chrisman v. Miller, 197 U.S. 313 (1905), approving Castle v. Womble, 19 L.D. 455 (1894). See Jefferson-Montana Cooper Mines Co., 41 L.D. 320 (1912). The value which sustains a discovery is such that with actual mining operations under proper management a profitable venture may reasonably be expected to result. United States v. White, 72 I.D. 522, 525 (1965), aff'd, White v. Udall, 404 F.2d 334 (9th Cir. 1968).

[2] In locating a mining claim and alleging discovery of a valuable mineral deposit, the mining claimant asserts a right and title to those lands superior to that of the United States. Therefore, he is the proponent of a rule or order that he has complied with the mining laws entitling him to validation of the claim. Consequently, when the Government contests a mining claim, it has by practice assumed only the burden of going forward with sufficient evidence to establish a prima facie case. The ultimate burden of proving a discovery is always on the mining claimant. That burden requires a showing, by a preponderance of the evidence, that the discovery test has been met by the claimant. United States v. Zweifel, 508 F.2 1150, 1157 (10th Cir. 1975), cert. denied, 423 U.S. 829 (1976), rehearing denied 423 U.S. 1008; United States v. Springer, 491 F.2d 239, 242 (9th Cir.), cert. denied, 419 U.S. 834 (1974); Converse v. Udall, 262 F. Supp. 583, 593 (D. Ore. 1966), aff'd, 399 F.2d 616 (9th Cir. 1968), cert. denied, 393 U.S. 1025 (1969); Foster v. Seaton, 271 F.2d 836, 837-38 (D.C. Cir. 1959); United States v. Taylor, 19 IBLA 9, 82 I.D. 68 (1975); United States v. Bechtold, 25 IBLA 77 (1976).

Applying these principles to the facts of the case, the Administrative Law Judge properly found the claim invalid as to these contestees for lack of discovery.

[3] On appeal, appellants do not dispute the established principles or the essentials of the case presented at the hearing. However, they raise several other points. First they contend that Arlington Gold Mining Company expired in 1914, that under Colorado law the corporation was dissolved automatically and that as a result the assets passed to the public trustee. They assert that the public trustee is an indispensable party and that the contest is fatally defective for failure to join him. This contention is not persuasive.

In the first place, appellants do not deny that they may well be the public trustee's only beneficiaries, and they do not disclaim their interest in the case, as their amended answer admits. In the second place the pertinent regulation, 43 CFR 451-2(b), provides as follows:

A government contest complaint will not be insufficient and subject to dismissal for failure to name all parties interested, or for failure to serve every party who has been named.

It is sufficient for this contest that appellants were named, served, and admit an interest in the contested claim. Any interests of those not named and served in a manner provided by the regulation, 43 CFR 450-5, are not affected.

Next appellants argue that the decision purports to dispose of another earlier claim, the Planet, which is identical with the Little Giant, without findings.

This assertion is incorrect. The Administrative Law Judge merely pointed out that at the hearing the United States took the position that the Planet had been held invalid by a decision of the Colorado State Office, dated October 23, 1975, as to the interests of all contestees other than appellants for failure to file an answer, 43 CFR 450.7. At the hearing the United States took the position that the Planet claim was no longer involved in the proceedings because the party who held title to the claim, one V. D. Markham, was one of the defaulting contestees.

The correctness of the conclusion is not before us. Since this contest proceeded only against the Little Giant, only appellants' interest in it are at stake. If they believe they have interests in the Planet, which have not been extinguished, they may assert such rights at another time.

Next appellants point out that the mining engineer's report was made in 1972 and not brought up to date. Since they offered not an iota of evidence as to past or present mineralization, their comment is of no consequence.

Finally they point to other conflicting locations. Such locations are no bar to a contest of the location in this proceeding. It must stand or fall on its own merits.

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

Martin Ritvo
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Douglas E. Henriques
Administrative Judge