

UNITED STATES
v.
RAY PADEN

IBLA 76-512

Decided January 25, 1978

Appeal from decision of Administrative Law Judge Dean F. Ratzman declaring certain millsite claims null and void. Contest A-6675.

Affirmed.

1. Millsites: Determination of Validity--Mining Claims: 'millsites'.

A mineral claimant who has not made a discovery of a valuable mineral deposit within the limits of his lode or placer mining claims is not the proprietor of a "it vein, lode or placer" within the context of 30 U.S.C. § 42, and cannot establish any right to a millsite claim based on such unperfected mining locations.

APPEARANCES: Stephen P. Shadle, Esq., Westover, Heddie, Choules, Shadle and Bowen, Yuma, Arizona, for the appellant; Fritz L. Goreham, Esq., Office of the Solicitor, U.S. Department of the Interior, Phoenix, Arizona, for appellee.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

The millsite claims involved in this appeal derive from four claims purchased by appellant in 1968 from several estates, and thereafter relocated in the name of appellant in January 1969. After inception of the contest in these proceedings, the tract was located in July 1974 as Confidence Custom Nos. 1, 2, 3 and 4 millsites, each location embracing 5 acres described by aliquot parts of the NW 1/4 NW 1/4 sec. 19, T. 4 N., R. 21 W., Gila and Salt River Meridian, Arizona, and as an unnamed location of 2-1/2 acres, also described by aliquot parts of section 19.

The above-noted locations were originally recorded as custom millsites intended for use in connection with a quartz mill or a reduction works pursuant to 30 U.S.C. § 42(a) (1970). After receipt of the Government's contest complaint, however, Paden was advised by BLM representatives that his millsite claims might have added validity if he owned some mining claims in the vicinity of the millsite (Contestee's post-trial brief, p. 5). Accordingly, Paden located a number of mining claims, both placer and lode sites, in the general vicinity of his millsite (Tr. 158, 159). Having acquired these claims, he now asserts a right to the millsite locations as nonmineral land needed by the proprietor of a placer claim for mining, milling, processing, beneficiation, etc., under 30 U.S.C. 42(b) (1970).

An important, though distinctly collateral, issue in the proceedings below was the probable validity of Paden's claim of a valuable mineral discovery on these above-mentioned placer and lode claims. Together with the issue of the amount of valuable mineralization present in the area generally, this "valuable discovery" question was the subject of much testimony at the hearing before Judge Ratzman. The Government's first witness in that hearing, Hall Susie, then employed as a mining engineer by BLM, 1/ testified at length regarding an April 1975 inspection of appellant's mining claims and this testimony was met by an objection from appellant's attorney (Tr. 40) who stated that, "I don't know that these other claims are relevant to the issue in question here." BLM counsel, Fritz L. Goreham, replied to this contention saying:

"[While these claims are not the subject of the contest we know that if the claims aren't valid his millsite cannot be valid for that purpose (i.e., as appurtenant to a valid mining claim) I believe he (i.e., appellant) is going to come in and show, in fact, he has prepared to offer in testimony American Cyanamid assay results from these same claims and, so, as a safety valve, the Government went out and sampled his claims for this very reason."

(Tr. 40-41).

Judge Ratzman overruled contestee's objection, citing statements made by Paden to BLM employees regarding his intent to process placer materials from the claims, and, subsequently, both sides introduced evidence on the issue of discovery.

1/ Mr. Susie is now employed by the U.S. Geological Survey, Phoenix, Arizona.

Although the conclusions reached in the decision below will not effect the ultimate validity of appellant's placer and lode claims, we believe that Judge Ratzman correctly concluded that Paden has not made a discovery of a valuable mineral deposit on an of these claims. As the decision below correctly notes, discovery, within the meaning of the mining law, requires, "a showing that there is a reasonable expectation, based on circumstances known at the time, that the mineral can be extracted, removed, and marketed at a profit." (ALJ Decision, p. 11.) This standard is set forth in United States v. Coleman, 390 U.S. 599 (1969). However, the Government, not having contested the validity of appellant's mining claims, cannot affect the status of these unpatented locations in this proceeding. The question of whether appellant has found mineralization which could be profitably extracted, removed and marketed is of obvious significance, however, in making the determination of whether Paden can claim these millsites as processing units for his mining claims. Having reviewed the record and submissions below, we agree with Judge Ratzman's conclusion that he cannot.

Despite appellant's contention to the contrary, we do not feel that the decision below gave undue weight to the testimony of the Government's expert witnesses in its assessment of the value of these mining claims. More specifically, we find that the testimony of Susie, one of the Government's experts, was accorded weight consistent with his experience and acquaintance with the facts of the case and that Susie's professional conclusions were substantially corroborated by John H. Wells, the Government's other expert witness, ^{2/} who assisted him in sampling the Paden claims (Tr. 106).

With respect to the question of whether there are substantial mineral deposits in the Ehrenberg area which might support the Paden operation as a custom mill facility, the evidence was again in conflict. Wells, when asked whether he agreed with Susie's opinion that the Ehrenberg area was a relatively poor area for mineralization, stated, "So far as a lode mining is concerned, it has not been one of the better districts in Arizona" (Tr. 126). This assertion assumes considerable importance when considered along with Wells' earlier statement that the Paden mill is not suitable for processing placer gold, and is thus limited to serving lode operations (Tr. 124).

Although the right to use nonmineral public land for a "millsite" arises from the mining laws of 1872, a millsite is not a mining location, Smelting Co. v. Kemp, 104 U.S. 636 (1881). However, the

^{2/} John H. Wells, a mining engineer employed by BLM, is the author of BLM Technical Bulletin 4, Placer Examination, Principles and Practices.

Department has long held that the location of millsites must be made substantially in the manner as that employed in the location of mining claims. Helena Etc. Co. v. Dailey 36 L.D. 144 (1907); Hales v. Symons, 51 L.D. 123 (1925); Eagle Peak Copper Mining Co., 54 I.D. 251 (1933); Rex N. Anderson, 71 I.D. 140 (1964); United States v. Swanson, 1 IBLA 158, 81 I.D. 14 (1974). There are three classes of millsites that may be located: (1) those occupied by the proprietor of a vein or lode for mining and milling purposes; (2) those that have thereon quartz mills or reduction works, ^{3/} and (3) those that are used by the proprietor of a placer claim for mining, milling, processing, beneficiation or other operations in connection with such claim. 30 U.S.C. § 42. ^{4/} Clearly, millsites located under (1) or (3) above are simply auxiliary to the working of valid mining claims, and to be considered valid as millsites, it must be shown that the site is being occupied and used in good faith for the appropriate statutory purposes. A prospector is not entitled to claim a millsite. United States v. Wedertz, 71 I.D. 368 (1964). For a millsite claim owned by the proprietor of either lode or placer mining claims, it must be shown that the claims are valid by discovery; for a millsite used for a quartz mill or reduction works, it must be shown that there is mineral material from a vein or lode which is being processed through works existing on the millsite. Millsites of this category may not be used as custom works to beneficiate material from placer claims. 30 U.S.C. § 42(a). A millsite must be shown to be used or occupied as the statute requires; and if it fails to meet the statutory test it is invalid. Howard C. Brown, 73 I.D. 172 (1966).

As the Department has considered it necessary that the location of a millsite be made substantially in the manner of locating mining claims, so it has also construed the mineral contest procedures as being wholly applicable to contests against millsite locations. United States v. Dietemann, 26 IBLA 356 (1976); United States v. Swanson, 14 IBLA 158 (1974).

In contrast to the testimony of the Government witnesses, two of the witnesses called by the contestee testified to the existence of relatively rich deposits in the area. George F. Rice, who owns

^{3/} Quartz mill: "A machine or establishment for pulverizing quartz ore, in order that the gold or silver it contains may be separated by chemical means; a stamp mill. Standard, 1964; Fay."

Reduction works; "Works for reducing metals from their ores, as a smelting works, cyanide plant, etc. Fay."

Dictionary of Mining, Mineral and Related Terms.

^{4/} (1) and (2) derive from RS 2337; (3) from Act of Search 18, 1960, Pub. L. 86-390, 74 Stat. 7.

several patented lode claims in the general vicinity of Paden's millsite, stated that he had found promising mineralization on his land and stated that he was interested in seeing Paden develop a milling facility which might service his claims (Tr. 211). Similarly, Walter D. Scott, who testified to owning "numerous claims" in the area, stated that there was "very much of a need" for Paden's custom mill and stated that Paden had, on one occasion, processed a 5-ton lot of copper and gold ore for him (Tr. 214). Neither Rice nor Scott, however, appeared to be engaged in commercial scale mining operations at the time that they gave their testimony, and we agree with the Judge's conclusion that potential sources of lode and placer material for milling operations appear to be lacking.

[1] It is well established that, after the Government has made a prima facie case of invalidity, in a contest under the mining law, the claimant must assume the burden of going forward with sufficient evidence to show by a preponderance of the evidence that his location is valid. United States v. Dietemartn, supra. In the case before us, the Government has made a prima facie case against all the Paden millsite claims insofar as it has offered evidence tending to show that the claims are not needed, used or occupied by the proprietor of a vein, lode, or placer for milling purposes. We find that appellant's evidence is wholly insufficient to show by a preponderance that the operations on the millsite are bona fide in connection with any of Paden's lode or placer claims. Indeed, appellant's evidence with respect to these mining claims, seen in its best light could only be said to suggest the possibility of further exploration on the claims. Such evidence of mineralization, which may justify further exploration, but not development of a mine, does not establish the discovery of a valuable mineral deposit. United States v. Fichtner, 24 IBLA 128 (1976). Having made no discovery within the meaning of the mining laws, 30 U.S.C. § 22 et seq. (1970), appellant is not the proprietor of a "vein, lode or placer" within the context of 30 U.S.C. § 42 (1970). Cameron v. United States, 252 U.S. 450, 459 (1920); Best v. Humboldt Placer Mining Co., 371 U.S. 334 (1963). Accordingly, if the validity of any of appellant's millsite locations is to be established, it must be from a quartz mill or reduction works under 30 U.S.C. § 42(a) (1970).

We hold that meager use and unsubstantial improvement of a millsite for mining and milling purposes leads to serious doubt as to the intention of appellant in occupying the land, and we conclude that he has not shown sufficiently that the millsites known variously as Confidence Custom Nos. 1 and 2, Coronado Custom Nos. 1 and 2, Millsite No. 4, embracing the E 1/2 NW 1/4 NW 1/4 NW 1/4, W 1/2 NW 1/4 NW 1/4 NW 1/4, N 1/2 SW 1/4 NW 1/4 NW 1/4, sec. 19, T. 4 N., R. 21 W., were sought for use and occupancy in good faith by the claimant of any valid vein, lode or placer mining claim, for mining or milling purposes, or for the construction of a quartz mill or reduction works.

Contestee errs in assuming that the Judge awarded him a portion of the millsite claims. Rather, the Judge found the millsite claims invalid as to 15 acres, and deferred his ruling as to the remaining 7-1/2 acres until March 1, 1978. Contestee, at that time, may present evidence showing how he has used the 7-1/2 acres for millsite purposes. The Judge will then rule whether he finds the millsite claims invalid.

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 insofar as it declared the millsite locations on E 1/2 NW 1/4 NW 1/4 NW 1/4) W 1/2 NW 1/4 NW 1/4 NW 1/4, NW 1/4 SW 1/4 NW 1/4 NW 1/4, sec. 19, T. 4 N., R. 21 W., null and void, and the case is remanded to the Administrative Law Judge for his further consideration.

Douglas E. Henriques
Administrative Judge

We concur:

Martin Ritvo
Administrative Judge

Newton Frishberg
Chief Administrative Judge

