

FARRELL L. LINES, TRUSTEE
and
WINSTON TRUST

IBLA 78-345
IBLA 78-360

Decided March 27, 1979

Appeals from two separate decisions of the Wyoming State Office and the Colorado State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offers. C 22405, C 22492, C 22584, W 50422, W 51116, W 51141, W 51260, W 51271, W 51829, and W 51975.

Affirmed.

1. Oil and Gas Leases: Applications: Drawings

Where, in a drawing of simultaneously filed noncompetitive oil and gas lease offers, an offer is filed by a trustee on behalf of a minor child, and another offer for the same land is filed by the parent of that child, and the parent has an interest in the child's offer, this interest effectively gives the parent greater chances of success in the drawing and is inherently unfair, regardless of whether there has been collusion or intent to deceive the Department.

2. Oil and Gas Leases: Applications: Drawings

Where separate trusts are created for siblings, and the trust agreements provide for a contingent distribution of the assets from the estate of one or more trusts of decedents into the trust estates of the survivors, each of the beneficiaries of the separate trusts has an "interest" in any oil and gas lease or offer as that term is defined in 43 CFR 3100.0-5(b), and the simultaneous filing of lease offers by more

than one such trust for the same parcel is therefore violative of the regulation which prohibits the filing of multiple offers. 43 CFR 3112.5-2.

APPEARANCES: G. Richard Martlo, Esq., Lamb, Metzgar 3 Lines, P.A., Albuquerque, New Mexico, for appellant; Harold J. Baer, Jr., Esq., Office of the Regional Solicitor, Denver, Colorado, for the appellee, Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Farrell L. Lines, as trustee of the Winston Trust, appealed from the February 10, 1978, decision of the Colorado State Office, Bureau of Land Management (BLM), which rejected the Winston Trust's noncompetitive oil and gas lease offers C 22405, C 22492, and C 22584. ^{1/} He also appealed the March 21, 1978, decision of the Wyoming State Office, BLM, which rejected the Winston Trust's noncompetitive oil and gas lease offers W 50422, W 51116, W 51141, W 51260, W 51271, W 51829, and W 51975.

The Winston Trust was established on February 24, 1969, by Michael P. and Corinne Grace for their son Winston Grace. This was one of five irrevocable, discretionary support trusts created by Mr. and Mrs. Grace for each of their minor children. The terms of each trust are substantially the same. Each trust is managed by a different third party trustee.

In drawings held at various dates during 1975, the appellants drew first priority for each of the noncompetitive oil and gas leases listed above. BLM rejected these offers and the offers filed on these leases by Winston's parents and by the trustees for Winston's siblings as violative of the prohibition against multiple filing. 43 CFR 3112.5-2. The Winston Trust appealed, but the appeals were remanded to the State Offices at BLM's request. After a lengthy delay for factfinding, the Colorado and Wyoming State Offices again rejected these trust offers on the same grounds. The Trust appealed.

BLM's Wyoming State Office concluded that, by disbursing tuition money for Winston's educational expenses, the Winston Trust reduced the parents' legal obligation of support. Therefore, the parents had

^{1/} Although the notice of appeal was filed jointly on behalf of the trustees of the Winston Trust, the Marie Trust, and the Zachary Trust, nothing further was filed on behalf of the Marie and Zachary Trusts, and they were not perfected. Accordingly, they are dismissed. 43 CFR 4.402(a).

an interest in the success of the trustee's lease offers for their child. BLM maintained that the parents had the same interest in the lease offers filed by the trustees for the other children. BLM decided that multiple filing violations by the parents resulted when a parent filed on the same parcel as did a child's trustee and when the trustees for two or more children filed on the same parcel. Therefore the Wyoming lease offers were rejected as violative of the prohibition against multiple filing. 43 CFR 3112.5-2. The Colorado State Office used the same reasoning in its rejection of the Winston Trust's three Colorado lease offers as well as several lease offers filed by the trustees for the other children.

BLM maintains this position on appeal and also contends that oil and gas leasing is a venture so speculative that it does not comport with a trustee's duty to invest and manage trust assets conservatively.

Appellant, trustee for the Winston Trust, argues the following points in his consolidated statement of reasons for appeal. He denies any relation between the settlor-parents and the trustees which would permit either to benefit from a lease awarded to the other. He emphasizes that the trust instrument by its terms denies the parent-settlor any interest in trust assets. The parents retained no reversionary interests. Because the trust is irrevocable, they cannot regain control over trust assets. Moreover, the trustee has a fiduciary duty to the beneficiary alone in making discretionary support payments.

Appellant also asserts that no understanding or relationship between the settlors and the trustee existed that would increase the probability of success where the parents and trustees each filed lease offers for the same land. Appellant acknowledges the longstanding Departmental policy against multiple filings, McKay v. Wahlenmaier, 226 F.2d 35 (1955), and interprets the current regulation as a prohibition on overtly collusive attempts to increase one's chances of success in the oil and gas lease lottery. He submitted affidavits by the trustees of the various Grace children's trusts and a copy of the trust instruments to show that no collusive understanding existed between the parents and the trustees, and that none was possible according to the trust terms.

Appellant asserts also that he paid Winston's tuition solely as an exercise of his fiduciary duty to Winston, the beneficiary. Consideration of any interests besides those of the beneficiary, he argues, would constitute a breach of his fiduciary duty of loyalty. See Restatement (Second) of Trusts, § 170 (1959).

This Department has held many nonpossessory interests in oil and gas leases sufficient to fall before the multiple filings prohibition.

William R. Boehm, 36 IBLA 346 (1978); Panra Corporation, 27 IBLA 220 (1976); Richard Donnelly, 11 IBLA 170 (1973); Schermerhorn Oil Corp., 72 I.D. 486 (1965). These cases illustrate the broad application of the multiple filing regulation in order to ensure an equal chance for each applicant in the drawing. The terms of the prohibition against multiple filings, expressed in 43 CFR 3112.5-2, are not restricted to those instances where applicants would have actual ownership, viz:

When any person, association, corporation, or other entity or business enterprise files an offer to lease for inclusion in a drawing, and an offer (or offers) to lease is filed for the same lands in the same drawing by any person or partly [sic] acting for, on behalf of, or in collusion with the other person, association, corporation, entity or business enterprise, under any agreement, scheme, or plan which would give either, or both, a greater probability of successfully obtaining a lease, or interest therein, in any public drawing, held pursuant to § 3110.1-6(b), all offers filed by either party will be rejected. [Emphasis added.]

"Interest," as employed in the foregoing, is very broadly defined in 43 CFR 3100.0-5(b), as follows:

An "interest" in the lease includes, but is not limited to, record title interests, overriding royalty interests, working interests, operating rights or options, or any agreements covering such "interests." Any claim or any prospective or future claim to an advantage or benefit from a lease, and any participation or any defined or undefined share in any increments, issues, or profits which may be derived from or which may accrue in any manner from the lease based upon or pursuant to any agreement or understanding existing at the time when the offer is filed, is deemed to constitute an "interest" in such lease. [Emphasis added.]

The first issue to be resolved is whether the parents have any prospective advantage or benefit in any increments, issues or profits which may be derived from leases won by the trust established for their minor child. Conversely, does the minor child stand to accrue any benefit or advantage from profits derived from leases won by his parents?

The second issue is whether two or more of these sibling trusts may file simultaneous lease offers without violating 43 CFR 3112.5-2, the prohibition against multiple filings.

[1] In a trust for the support of a minor child, the extent of the beneficiary's interest depends on the intent of the settlor as indicated in the trust instrument. Restatement (Second) of Trusts, § 128 (1959). The trust instrument must be examined in order to ascertain the interests of this beneficiary, relative to his parents and siblings.

Article III of the trust instrument outlines the trustee's broad powers under this agreement. The trust places special emphasis on mineral leasing. Oil and gas leasing is specifically contemplated by this trust instrument; management of oil and gas ventures is given more detailed attention than other contemplated endeavors. The agreement particularly provides for oil and gas lease offers on public lands in Article III M(8).

The trust instrument forbids the donor parents from dealing directly with the trust assets, from receiving income or principal distributions for themselves, and from borrowing from the trust (Articles IV 1, 3). They are not barred from lending money to the trust, but neither is the trust barred from borrowing elsewhere. Article IV 3. The donor parents may accept resignation and reappoint new trustees, so long as the new appointee is not a relative (Article V A). The trust instrument avoids establishing a reversionary interest in the trust assets. While these provisions also avoid establishing parents' possessory interests in the corpus of the trust estate, the trust terms do not, merely by making payments discretionary in the trustee, avoid the support interest.

The Restatement (Second) of Trusts, § 176 (1959) would indicate that although a trustee has a duty to use reasonable care and skill to preserve trust property, the terms of the trust agreement itself can modify or relieve that duty. This undermines BLM's argument that oil and gas leasing should be considered too speculative to be a permissible trust activity, since oil and gas lease filing was specifically contemplated in the trust instrument. In addition, trust filing on oil and gas leases is specifically permitted by the regulations. 43 CFR 3102.1-1(b); 43 CFR 3102.5; 43 CFR 3110.1-3(a). A trustee may properly file a simultaneous drawing entry card in the name of a trust for a minor. Margo Panos Trust, 28 IBLA 1 (1976). Therefore, we are not concerned with the propriety of a trustee of a single trust filing an offer to lease.

Even if lease filing were considered an abuse of the trustee's discretion, the Government lacks standing to challenge such abuse. This is the beneficiary's option. Here, however, a different difficulty arises, since the beneficiary is the party with standing to

challenge any abuse of the trustee's discretion. As the beneficiaries of these trusts are minors, their parents, as natural guardians, must contest any abuses for their children. Such a challenge is unlikely where the parent benefits from the trust administration.

The trust's support standards are outlined in Articles I C and II B of the trust agreement. The trustees have complete discretion to make or withhold payments of income or principal while Winston is a minor, "to assure the adequate comfort, care, support, maintenance, education and medical attention * * *." Payments out of principal are permitted by Article II B for the beneficiary's "suitable care, maintenance, education, and medical attention (including hospitalization, institutional, dental and nursing care) * * *." All these items are direct parental obligations.

The trust instrument notes that such payments may be made directly to the child's guardian. This is a common provision. In a support trust for a minor, the trustee is generally under a duty to pay income for the beneficiary to the child's guardian. It is not necessary that the guardian be court appointed. Restatement (Second) of Trusts, § 182 (1959), Scott on Trusts, § 182.1 (1967). Therefore, in a trust such as the one at hand, there is benefit to the parents in the possibility of direct support payments for the child. In this case, the potential was realized, for example, by payment of Winston's tuition from trust assets.

Parents are liable for the kinds of support obligations contemplated by Articles I C and II B of this trust instrument. Not only can the success of this trust directly benefit the parents, but the very purpose of this trust is support of the minor child. Any disbursements must necessarily fulfill a support obligation, to the consequent relief and benefit of the parents. Quite obviously, this was one of the purposes intended by the parents when they established the trusts. To say that the parents, having created these trusts in furtherance of their obligation to provide support for their children, now have no interest in the financial success or failure of those trusts is to defy reason.

Moreover, except in the most extraordinary circumstances, it would be sophistry to contend that the minor children of a family unit have no beneficial interest in the relative wealth or poverty of their parents. Therefore, even if the parents were successful in insulating themselves entirely from enjoyment of any advantage derived from the assets of their minor children, it would still be necessary, for the purpose of this appeal, to demonstrate that the children's circumstances would remain unchanged regardless of whether their parents attained great wealth or were pauperized. This has not been demonstrated.

Thus, where the parents and one of the children's trusts file simultaneous offers for the same parcel, the success of either of them would be mutually advantageous, although not to the same degree, thereby violating 43 CFR 3100.0-5(b) and 3112.5-2.

[2] The trust terms give a contingent remainder interest in this Winston Trust to the trusts for the other Grace children (Article I F). Like the parents' interest in the Winston Trust, these contingent remainders are also sufficient interests to fall within the ambit of the multiple filing prohibition. Once the minor beneficiary reaches age 21, when the discretionary aspect of the trust ceases, one-half the principal is to be paid to the beneficiary. Income accruing to the remaining principal is to be paid annually until age 30, when the remaining trust assets are to be paid to the beneficiary and the trust ceases. If, however, the child should die prior to trust termination, the remaining trust assets are to go to the child's issue or failing that, to the parents' issue—creating the possibility of a pour over into Winston's siblings' trusts (Articles I, F, and G of the Trust Agreement). No reversion was retained by the parent donors. There has been no showing that any of the Grace children had children of their own at the time of the filings in question. Therefore, it must be presumed that each of the remaining trusts would receive its pro-rata share of the distribution of the assets of any of them.

These contingent remainder interests, established in each trust for the other Grace children, constitute "prospective or future claims to an advantage or benefit from a lease based upon or pursuant to [those] agreement[s] or understanding[s] existing at the time when the offer is filed," and are "interests" within the definition of 43 CFR 3100.0-5(b).

At the heart of BLM's contentions lies the allegation that the trusts for the Grace children are a legalistic ruse designed to evade the letter and spirit of the multiple filing prohibition. Appellant argues that the trustees did not collude with the parents because they acted in the interest of the child. However, multiple filings on individual lease parcels by various combinations of parents and their children's trustees gave the parents and the trusts greater mathematical chances to benefit from the results of the drawings. An interest which an oil and gas lease applicant has in the offer of another applicant for the same land in a drawing of simultaneously filed noncompetitive lease offers, and which effectively gives the first applicant greater chances of success in the drawing, is inherently unfair whether or not there has been collusion or intent to deceive the Department. Richard Donnelly, supra.

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.

Edward W. Stuebing
Administrative Judge

I concur.

Douglas E. Henriques
Administrative Judge

ADMINISTRATIVE JUDGE GOSS CONCURRING:

I concur that the contingent interest of the other children in the Winston Trust bars them and their trusts from filing on the same parcel as the Winston Trust.

As to the parents, despite the Department's construction as to husbands and wives, e.g., Duncan Miller, 71 I.D. 121 (1964), I agree that the obligation to support minor children mandates the above result under 43 CFR 3100.0-5(b) and 3112.5-2. I would hope that the regulations can be reviewed as to the extent to which multiple filings by close family members should be permitted when an obligation to support is involved.

Joseph W. Goss
Administrative Judge.

