

Russell Hoffman
v.
Bureau of Land Management

IBLA 87-187

Decided November 4, 1988

Appeal from a decision by Administrative Law Judge Michael L. Morehouse reversing a decision of the Anchorage District Office, Alaska, Bureau of Land Management, which had declared mining claim AA-22584 null and void.

Reversed.

1. Mining Claims: Lands Subject to--Mining Claims: Relocation

An agreement between one of two original locators of a mining claim and a relocater of the claim that the original locator would refrain from filing an affidavit of labor in order to permit the relocation of exactly the same claim did not result in an amendment of the original claim, because the relocation established a new date of claim location and the parties intended to extinguish the original claim and substitute the relocater for the original locators of the claim.

2. Mining Claims: Withdrawn Land--Withdrawals and Reservations: Generally

An attempt to relocate a mining claim upon lands withdrawn from the operation of the mining law in 1972 by a State of Alaska land selection was ineffective to establish a relocated claim upon the segregated land.

3. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claims--Mining Claims: Recordation

Failure to file documents required by sec. 314(a) of the Federal Land Policy and Management Act of 1976 causes a mining claim to become abandoned and void.

APPEARANCES: Russell Hoffman, pro se; James R. Mothershead, Esq., Assistant Regional Solicitor Alaska Region, Anchorage, Alaska, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

In Russell Hoffman, 83 IBLA 295 (1984), this Board affirmed a decision of the Anchorage District Office, Bureau of Land Management (BLM), declaring the Rockpile mining claim, AA-22584, null and void because it had been located in 1973 upon land which was then withdrawn from the operation of the mining laws. Upon reconsideration, however, we vacated our decision and set aside BLM's finding that the claim was null and void, and ordered a hearing into the matter to permit Hoffman to show whether his 1973 location of the Rockpile claim could be considered to relate back to 1960, a time when the land where the claim is situated was still open to location. Russell Hoffman (On Reconsideration), 87 IBLA 146 (1985).

Hoffman had offered evidence in support of his petition for reconsideration which tended to show that his claim was an amendment of a prior claim which had been located in 1960 by Isaac N. and Cecilia Woodman, well before the land was segregated from the operation of the mining laws. The effect of this would be that the claim, assuming there was a valid discovery, could continue in existence. As was explained in Russell Hoffman, supra, there were two actions taken in 1972 to withdraw the land upon which the Hoffman claim was located, either of which would have prevented any subsequent mineral location on the land. On January 21, 1972, Alaska State selection AA-6794 was filed for the entire township in which the claim was situated. Later, on March 15, 1972, Public Land Order 5178 withdrew the entire township "from location and entry under the mining laws." 83 IBLA at 296. Since Hoffman's claim appeared to have been located on December 14, 1973, subsequent to both these events, it had been declared null and void.

On reconsideration, we referred the matter to the Hearings Division to permit the development of an evidentiary record, and directed that, at hearing, Hoffman would have the burden to prove that his 1973 location of the Rockpile claim was an amended location and not a relocation. He was also required to show that the original 1960 location was valid, and that he had an unbroken chain of title to the location made by the Woodman's in 1960. Finally, Hoffman was required to establish that his claim to the Woodman property was not barred by the Alaska statute of frauds. 87 IBLA at 148.

Pursuant to our order, a hearing was held before Administrative Law Judge Michael L. Morehouse who rendered a decision on November 5, 1986. Judge Morehouse found that Hoffman had proved his case as to each of the elements our decision on reconsideration had required that he must establish in order to prevail. Relying upon the record which he made of the hearing, the Judge concluded that there had been a gift of the claim made by Isaac Woodman to Hoffman "late in 1971." To reach this conclusion, Judge Morehouse reasoned that

There was no oral contract to transfer the land between Woodman and Hoffman. There was an intention on Woodman's part to give the property to Hoffman and there was a willingness on Hoffman's part to accept said property. It is difficult to pinpoint exactly when

this gift was effectuated, but on the basis of this record, I conclude it is entirely reasonable to find that the gift took place late in 1971 following Hoffman's extensive labors on the trail to make the claim more accessible and it was further effectuated by his later labors on the claim. I therefore find that Hoffman's claim is not barred by the Alaska statute of frauds.

Having reached this conclusion it follows that the 1973 relocation was merely an act affirming the prior transfer by gift and that it should be considered in the nature of an amended location dating back to Woodman's original location in 1960.

(Morehouse Decision at 5). Our review of the record upon which this conclusion is premised, however, causes us to reverse the decision of the Administrative Law Judge, whose decision we find to be flawed by a mistaken analysis of the recorded evidence.

The record of the hearing consists primarily of the testimony of Russell Hoffman and documentary evidence relating to the location and annual labor performed upon the Rockpile claim. The documentary record shows that Isaac N. Woodman and Cecilia Woodman, who were husband and wife, located the Rockpile claim on April 2, 1960, and that annual affidavits of labor for the claim were recorded by Isaac N. Woodman on behalf of both locators until 1969. On August 13, 1969, Cecilia Woodman died testate, leaving as heirs her husband Isaac, her son Edward E. Haltness, and a grandson. In 1970 and 1971 Isaac N. Woodman recorded proofs of annual labor for the claim on his own behalf as owner. In 1972 the annual proof of labor for the claim was signed by both Isaac N. Woodman and Russell Hoffman. Then, for 1973, no affidavit was recorded, but, on December 14, 1973, a claim location for the Rockpile claim was recorded by Russell Hoffman. Thereafter, annual labor affidavits for the Rockpile claim were recorded each year until 1985 by Russell Hoffman on his own behalf as owner of the Rockpile claim. (Exhibits G-8 through G-37)

In Alaska, the Federal Mining Law provides, respecting annual affidavits of labor on mining claims, that "if such affidavits be not filed within the time fixed [not later than 90 days after the end of the assessment year] the burden of proof shall be upon the claimant to establish the performance of such annual work and improvements." 30 U.S.C. § 49e (1982). See Lowe v. United States Smelting, Refining & Mining Co., 175 F.2d 486 (9th Cir. 1949), reh. denied 176 F.2d 813, vacated on other grounds, 338 U.S. 954 (1950). Since the assessment year ended on September 1, the annual affidavit for 1973 for the Woodman claim was overdue when Hoffman recorded his location of the claim on December 14, 1973, and it would appear that his location was adverse to the Woodman claim. His subsequent affidavits of annual labor appear to confirm that his 1973 location superceded the Woodman location of the Rockpile claim, for which there are no filings of any sort following the joint affidavit filed in 1972 by Woodman and Hoffman.

Alaska case law dealing with the effect of failure to file timely affidavits of annual labor indicates that forfeiture of a claim is never

complete until an adverse claim is made by another locator. Sakow v. J.E. Riley Inv. Co., 9 Alaska 427, 443 (D. Alaska 1939), aff'd 9 Alaska 663, 110 F.2d 345 (9th Cir. 1940), cert. denied, 311 U.S. 659 (1940). An adverse claim is known as a "relocation," a term which we defined in Grace P. Crocker, 73 IBLA 78 (1983), by comparing it to an amendment of a claim, explaining that "[i]n contrast to an amended location, a relocation is * * * adverse to the original claim and is authorized where the owners of the original claim have failed to perform assessment work." Id. at 80. To determine whether the Hoffman claim was intended to be adverse to the Woodman location, we turn to the testimony of Russell Hoffman.

Hoffman's testimony leaves no doubt that Woodman intended that Hoffman should take over sole control and ownership of the Rockpile claim, but that the mechanism for doing so was problematic (Tr. 79-80). Since the death of Woodman's wife, the interest of her son Edward E. Haltness in the property was considered by both Hoffman and Woodman to be a cloud over title to the claim. As Hoffman explained in response to questioning by the Administrative Law Judge

HEARING OFFICER: Why didn't he [Woodman] want you to file the affidavit of labor?

THE WITNESS: [Hoffman] Well, he wanted me to relocate it. He wanted me to let his [claim] run out and let me relocate it, and I -- there was no, you know -- I didn't know anything about the mining laws or any such thing as that. I was going by what he said, and I had told him that I didn't want to do that. I might -- there might be hard feelings that I tried to crowd him into that kind of deal. And so I didn't do it. Well, what he had me do, and you will see that the affidavit for '72's assessment was filled out in my handwriting.

(Tr. 81).

In 1972, Haltness reportedly told Hoffman that "he had no interest in the [Rockpile] property" (Tr. 83). Once the possibility of objection to transfer of the claim by Haltness was removed, Hoffman stated he was willing to proceed as suggested by Woodman in order to effect a transfer of the claim, the value of which Haltness had derided (Tr. 133). Thereafter, in 1973, Hoffman worked on the claim in the summer, but filed no affidavit of labor in the fall, and instead relocated the claim on December 14, 1973. As he explained at hearing:

HEARING OFFICER: You worked up there [on the Rockpile claim] during the summer of 1973; you didn't file an affidavit of labor. And then you went in and filed a location notice?

THE WITNESS: [Hoffman] Right.

HEARING OFFICER: In December 1973?

THE WITNESS: Yes. Actually, I posted upon the property pretty much prior to that, but I had to make a trip to Valdez to file that other -- the other property.

(Tr. 93). Later in his testimony, Hoffman explains this circumstance further:

[Question by BLM counsel] Now, when did you finally decide that you would be willing to go this route of [claim] relocation, that you would be willing to accept the title?

[Answer by Hoffman] Well, I probably would have accepted it, you know, when Ike started talking about it. But I didn't want to do it at that time, so I held off. And when I saw that there was no other interest and that Mr. Woodman really did want me to have it, he really sincerely wanted me to have it, then I saw nothing wrong with that. And that would have probably been, you know, in the late '72 or something like that, you know, when I started getting more involved in it.

Q That was also after you learned from Mr. Haltness that he didn't want any part of it?

A Yes, that was his original statement, yes.

Q Would you have felt some discomfort [sic] if he would have been interested in that claim?

A At that time?

Q Yes.

A Yes, I would have.

Q That was one of your concerns?

A That was one of my biggest concerns.

(Tr. 135).

Hoffman testified several times that neither he nor Woodman were aware that the land upon which the Rockpile claim was located had been withdrawn from mineral entry in 1972. In this colloquy with the Administrative Law Judge, Hoffman stated:

HEARING OFFICER: Well, you stated he didn't want you to file the affidavit of labor in 1972? Well, he wanted -- no, he wanted you not to file it?

THE WITNESS: That's correct.

HEARING OFFICER: So that the property would become yours? III

WITNESS: Yes. His idea, what he told me was to just go ahead and let his [claim] lapse and then for me to refile on it. We did not, you know -- we were ignorant of the fact of these withdrawals; we did not know that. And Mr. Woodman did not know that. And certainly myself, just becoming acquainted with the land status and all that, I did not know it.

(Tr. 84,85). Again Hoffman spoke of this oversight in response to a question by counsel for BLM, when he stated:

May I add that Mr. Woodman was not at all concerned about the Government being a problem on the location or the assessment work. The only thing he was concerned about was that someone else did not go up there and file on it between him and me. He had no

idea, neither did I, that the Government would contest what we were doing.

(Tr. 141). Isaac N. Woodman died on October 14, 1974.

[1] Judge Morehouse, in the decision under review, found that the method for transferring the claim chosen by Woodman and Hoffman was probably used "in order to nullify any possible claims of the heirs of Cecilia" (Decision at 2). Despite this finding, however, he found that there had been a transfer from Woodman to Hoffman in 1971, a year prior to the time when Haltness is first reported to have disclaimed any interest in the claim. Hoffman, however, had testified that he was unwilling to accept title to the claim by any method of transfer until he was assured that Haltness would not object to the transfer. His reticence arose from the fact that the transfer was founded upon other considerations than the payment of money. Clearly, he was concerned that Haltness, as a surviving heir of Cecilia and probably the sole heir of Isaac as well, had standing to object to a transfer which might be considered to be a diminution of the estate of both Woodmans. Because of this circumstance, therefore, such a transfer was not possible so far as Hoffman was concerned until Haltness had agreed not to oppose it. It was only after sometime in "late '72" that Hoffman agreed to the transfer. Then, some time after the 1972 work affidavit had already been filed, he acquiesced in the proposal that he relocate the claim, an action finally taken by him on December 14, 1973.

Hoffman's testimony absolutely precludes the possibility that there was a gift, as Judge Morehouse found, in 1971. Woodman declared his intention to abandon the Rockpile claim so that Hoffman could relocate it. It is true that this was done in ignorance of the fact that the land in question had been withdrawn from mineral entry in early 1972. Nevertheless it was planned that Hoffman would then make a relocation of the claim, thereby extinguishing the 1960 Woodman location with a new and valid location by Hoffman.

That a relocation rather than an amendment of the original claim was planned is clear, for the purpose of the new location, which was to establish Hoffman as the sole owner and operator of the claim, required that the location by Hoffman be a relocation, that is, that it be adverse to the Woodman claim. Any possible doubt that this was the plan is dispelled by Hoffman's observation that Woodman was concerned that other miners might intervene before Hoffman in making a relocation of the claim. No such interference would have been possible had they planned to merely amend the 1960 claim, but continue it in existence. Because they were primarily concerned about the interposition of claims by other persons, however, both Hoffman and Woodman overlooked the possible effect that intervening actions of the Federal owner of the land might have upon their plan.

[2] The land upon which the Woodman claim was located was withdrawn from mineral entry on January 21, 1972. See Russell Hoffman, supra. As a result, the attempted relocation of the property by Hoffman on December 14, was a nullity, for it was made, of necessity, upon land which was then no longer subject to such location.

[3] The original location of the Rockpile claim by the Woodmans on April 2, 1960, was made on vacant, unappropriated and unreserved public land available for location under the mining law. No defect in that location has been brought to our attention, and it is assumed that the claim was valid when made. However, the location document recorded by the Woodmans with the local recording office was not filed with BLM on or before October 29, 1979, as required by sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. | 1744(b) (1982) (Tr. 138).

As a result, even assuming the abandonment declared by Woodman was not effective to extinguish the 1960 claim in December 1973, and even assuming the attempted relocation by Hoffman on December 14, 1973, did not result in forfeiture of the 1960 claim, the failure to make a timely filing of the claim with BLM voided the claim under the provisions of 43 U.S.C. | 1744(b) (1982). 43 CFR 3833.1-1. See United States v. Locke, 471 U.S. 84 (1985). Nor could the timely filing with BLM of the Hoffman claim preserve the 1960 claim, for the 1973 location was adverse to the earlier claim.

Because we find that the location made by Hoffman was an attempt to relocate the Rockpile claim, we do not reach the remaining questions propounded by our decision in Russell Hoffman (On Reconsideration), supra at 147-9, concerning questions of title or the possible application to this appeal of the Alaska statute of frauds. The record before us establishes that the Hoffman claim was not, nor was it ever intended to be, an amendment of the Woodman claim. The attempt, on December 14, 1973, to make a location upon the land where the Rockpile claim had been located by Woodman was frustrated by the prior withdrawal of the land from such location. The 1960 location was then extinguished by abandonment or forfeiture, but, even assuming for purposes of decision only, that it somehow survived until 1979, it was voided by operation of law. The Rockpile claims, therefore, are void because the method selected by Woodman for the transfer to Hoffman resulted not in a transfer but a voiding of both.

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 Morehouse is reversed, and mining claim AA-22584 is declared null and void.

Franklin D. Arness
Administrative Judge

I concur:

Kathryn A. Lynn
Administrative Judge
Alternate Member