

LARUE BURCH

IBLA 93-322

Decided January 29, 1996

Appeal from a decision of the Idaho State Office, Bureau of Land Management, dismissing protest of mineral patent application of Lionel Rodriguez, IDI-28366.

Appeal dismissed.

1. Mining Claims: Patent–Mining Claims: Possessory Right–Mining Claims: Title–Res Judicata–Rules of Practice: Appeals: Standing to Appeal

Where a final state court decision has determined the right of possession and title between adverse mining claimants, the losing claimant is bound by that determination and may not collaterally attack the state court determination by protesting the patent application of the winning claimant based on the validity of the winning claimant's title to the mining claims.

APPEARANCES: LaRue Burch, Oakley, Idaho, pro se; Barry Marcus, Boise, Idaho, for respondent, Lionel Rodriguez.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

LaRue Burch has appealed from an April 12, 1993, decision of the Idaho State Office, Bureau of Land Management (BLM), dismissing her protest of mineral patent application IDI-28366 filed by Lionel Rodriguez. Rodriguez' application seeks title to, inter alia, the Rock Garden Quarry Nos. 1 through 4 placer mining claims (IMC-19850 through IMC-19853) situated in the E½ SE¼ sec. 10, T. 15 S., R. 22 E., Boise Meridian, Cassia County, Idaho.

Rodriguez filed mineral patent application IDI-28366 on November 22, 1991, tracing his title to the original locators through Elden and Elsie Whittle. Elden Whittle and others originally located the Whittle Quarry No. 1 claim, encompassing the SE¼ sec. 10, on June 7, 1953. By instrument signed on varying dates in July and August 1966, members of the Whittle family, including appellant LaRue Burch, conveyed all of their right, title, and interest in the minerals subject to the placer mining claims in the S½ sec. 10, T. 15 S., R. 22 E., Boise Meridian, Cassia County, Idaho, to Elden and Elsie Whittle and Freeman and Fern Whittle.

Freeman and Fern Whittle then conveyed all of their right, title, and interest in those minerals to Elden and Elsie Whittle by instrument dated September 7, 1966. Elden and Elsie Whittle, in turn, conveyed to Freeman and Fern Whittle all of their right, title, and interest to all minerals subject to the placer mining claims on the west side of a diagonal line running through the SE $\frac{1}{4}$ sec. 10, described by courses and distances, while retaining all right, title, and interest in the minerals east of that line.

On September 22, 1974, Elden and Elsie Whittle located the Rock Garden Quarry Nos. 1 through 5 placer mining claims covering the eastern part of the SE $\frac{1}{4}$ sec. 10 which were recorded with the Cassia County Recorder's Office on October 7, 1974. On May 8, 1978, the Whittles executed a contract for sale of the Rock Garden Quarry Nos. 1 through 5 placer mining claims and a warranty deed conveying the claims to Rodriguez, placing the deed in escrow with its delivery to be made upon full payment of the contract price for the claims. On September 10, 1979, copies of the 1974 location notices were duly filed for recordation with BLM by Donald G. Seehusen, as required by section 314(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(b) (1988). Seehusen also filed for recordation with BLM amended notices for the Rock Garden Quarry claims executed by Seehusen on August 24, 1979, identifying Rodriguez and Seehusen as locators of the claims and giving the address of the Idaho Quartzite Flagstone Company (Idaho Quartzite) as the locators' address. These amended location notices were recorded with the Cassia County Recorder's Office on August 27, 1979. BLM serialized the corresponding original and amended location notices as IMC-19850 through IMC-19854.

On October 17, 1979, Rodriguez separately filed for recordation with BLM the original and amended location notices for the Rock Garden Quarry Nos. 1 through 5 placer mining claims, listing himself as sole locator. BLM assigned these location notices serial numbers IMC-35236 through IMC-35240. By decision dated August 30, 1982, BLM declared these claims and others abandoned and void for failure to file the required evidence of annual assessment work or notice of intention to hold the claims. The decision found, however, that Rodriguez' "unpatented mining claims [IMC] 35236-35240 are still current under [IMC] 19850-19854."

On December 13, 1984, Oakley Valley Stone Inc. (Oakley Valley), of which Burch is an officer, filed mineral patent application IDI-21357 seeking title to placer mining claims in sec. 10, T. 15 S., R. 22 E., Boise Meridian, Cassia County, Idaho. Although the application originally included the Rock Garden Quarry claims, Oakley withdrew its application for those claims by letter dated February 8, 1985. Two of the remaining claims, however, overlapped the Rock Garden Quarry claims, and, after publication of notice of mineral patent application, Idaho Quartzite filed an adverse claim against the patent application and commenced proceedings in Idaho State court to determine right of possession, naming Burch as well as Elden and Elsie Whittle and others as defendants.

Rodriguez was joined as a plaintiff in the State court proceeding, and ultimately became the sole party plaintiff in the quiet title action.

In a judgment quieting title to real property dated November 2, 1989, corrected February 1, 1990 (Case No. CI-85-8-139 in the Fifth Judicial District of the State of Idaho, in and for the County of Cassia), the court found that as between the parties to the lawsuit, Rodriguez was entitled to patent the Rock Garden Quarry placer mining claims, ordered that the warranty deed from the Whittles be delivered to Rodriguez, and enjoined the defendants, including Burch, from asserting any right, title, or interest in or to the claims adverse to Rodriguez (Tab 41, Adverse Claim File, IDI-21357 at 931-32, 986). The court found that Rodriguez derived his right to the claims from Elden and Elsie Whittles' location of those claims. *Id.* at 910, 918, 924-27. On August 6, 1991, the Idaho Supreme Court affirmed the district court's decision and remanded the case for further proceedings (1991 Opinion No. 105). On December 15, 1992, the district court issued a decision on remand, again finding in favor of Rodriguez. This decision was not appealed and became the final judgment terminating the law suit, attested by the January 29, 1993, certificate of the Cassia County Court Clerk (Tab 54, Adverse Claim File, IDI-21357).

On November 22, 1991, Rodriguez filed mineral patent application IDI-28366 for the Rock Garden Quarry Nos. 1 through 4 placer mining claims, amended to conform to legal subdivision and embracing most of the E $\frac{1}{2}$ SE $\frac{1}{4}$ sec. 10. On March 13, 1992, he filed a certificate of title to the mining claims. Oakley Valley protested Rodriguez' application on March 25, 1992, challenging the validity of Rodriguez' title to the claims. Although BLM apparently did not rule on Oakley Valley's protest, in a decision dated April 29, 1992, BLM adopted arguments raised in the Oakley Valley protest as grounds for rejecting Rodriguez' attempt to relate his claims back to those located by Elden and Elsie Whittle on September 22, 1974. BLM's decision found that the location notices filed by Rodriguez, IMC-35236 through IMC-35240, did relate back to the Whittle claims. Nonetheless it was concluded that they had been declared abandoned and void, and that therefore Rodriguez could only trace his chain of title to the September 10, 1979, location notices filed by Seehusen, IMC 19850 through IMC-19854. BLM concluded that there was no privity of title between the Whittles and Seehusen and that, therefore, the Rock Garden Quarry claims subject to Rodriguez' patent application could not be considered amended locations of the claims located by the Whittles in 1974 and did not relate back to the date of location of the Whittles' claims. BLM held that the claims constituted new locations, the earliest acceptable location date for which was August 24, 1979 (the date Seehusen executed the location notices), and stated that the patent application would be processed using August 24, 1979, as the location date for the subject claims.

Rodriguez appealed from the April 1992 BLM decision. By order dated February 10, 1993, the Board vacated BLM's decision (IBLA 92-447), concluding that BLM should not have determined the location date for the

claims absent an adjudication or contest of the validity of the claims. On February 25, 1993, Burch, on behalf of the Whittle family and heirs, filed a protest against Rodriguez' patent application. Burch challenged Rodriguez' attempt to trace his title to the unpatented mining claims to the claims located by Elden and Elsie Whittle in 1974. Burch asserted that the claims sold to Rodriguez were serialized by BLM as IMC-35236 through IMC-35240, and that BLM's August 30, 1982, decision declaring those claims abandoned and void extinguished the Whittle and Rodriguez titles. She contended that the claims sought to be patented, IMC-19850 through IMC-19854, cannot be related back to the Whittles' claims because there was no transfer from the Whittles to Seehusen, the co-locator of those claims. Accordingly, Burch argued that the earliest possible date of the location of the claims subject to the patent application was August 24, 1979, the date of their location by Seehusen. Burch acknowledged the adverse claim filed against Oakley Valley's mineral patent application and the consequent Idaho State court proceeding but averred that the case had not been appealed because of the April 29, 1992, BLM decision finding that Rodriguez' claims did not derive from the Whittles' claims. Burch further maintained that the Whittles would be irreversibly damaged if the patent application proceeded with the Whittles named as the original locators, and that if the processing of the application did proceed, the Whittles would look to BLM for reimbursement for damages suffered because their reliance on BLM's April 1992 decision caused them to relinquish any chance to appeal the Idaho district court decision.

In dismissing Burch's protest BLM relied on an unreported U.S. District Court decision captioned Clark v. Watt, Civil No. 83-1125 (D. Idaho Dec. 17, 1987). BLM concluded that the decision effectively barred BLM from determining whether there was an unbroken chain of title from the Whittles to the owner or owners of the 1979 claims. Accordingly, BLM dismissed the protest. In the instant appeal, Burch again challenges Rodriguez' chain of title. She asserts that BLM did not follow proper procedures for handling Rodriguez' patent application and that BLM's treatment of the Rodriguez claims unfairly differs from its treatment of the relinquished Oakley Valley claims. She also maintains that the 1979 Rodriguez claims filed by Seehusen were invalid from their inception. Burch insists that the matter of the chain of title should be resolved prior to publication of the application for patent to avoid the necessity that she file an adverse claim against Rodriguez' chain of title.

[1] Burch's protest and subsequent appeal collaterally attack the Idaho State court decision quieting title to the Rock Garden Quarry Nos. 1 through 5 placer mining claims in Rodriguez, by requesting that BLM rule on issues it has no authority to decide. Under 30 U.S.C. § 30 (1988), BLM has no statutory authority to determine validity of title or right of possession. American Colloid Co. v. Hodel, 701 F. Supp. 1537, 1542 (D. Wyo. 1988); see also John R. Meadows, 43 IBLA 35, 37 (1979). Such questions must be decided by a court of competent jurisdiction. 30 U.S.C. § 30

(1988); see, e.g., W. W. Allstead, 58 IBLA 46, 48 (1981). Under the doctrines of res judicata and collateral estoppel, repeated litigation of an issue is barred when that issue has already been litigated by the same parties and settled by a final judgment on the merits. State of Alaska, 113 IBLA 86, 90 (1990), and cases cited. The findings of a state court on the right of possession are binding on parties to the lawsuit. See Estate of Arthur C. W. Bowen, 14 IBLA 201, 210, 81 I.D. 30, 33 (1974). In this case, Burch is bound by the final Idaho court decision validating Rodriguez' chain of title and possessory right to the Rock Garden Quarry claims as against Burch and the Whittles. See Harvey A. Clifton, 80 IBLA 96, 98 (1984). The State court determination in favor of Rodriguez prohibits Burch from asserting her (or the Whittle's) adverse claims as objections to the issuance of Rodriguez' mineral patent. W. W. Allstead, supra.

Nor has Burch established that she has standing to appeal BLM's decision to the Board. Although the filing of her protest made her a party to the case under 43 CFR 4.410, she has failed to show that she has the required interest that will be adversely affected by BLM's dismissal of her protest. See, e.g., Donald Pay, 85 IBLA 283, 284-85 (1985), and cases cited. The State court decision prevents her from claiming standing because of an interest in the claims included in Rodriguez' application, and she has not alleged any other interest that might be affected by BLM's decision. A party cannot successfully claim to be adversely affected by a decision that requires her to follow statutory procedures for asserting adverse mining claims.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed.

Franklin D. Amess

Administrative Judge

I concur.

C. Randall Grant, Jr.
Chief Administrative Judge

