

UNITED STATES  
v.  
GERALD E. HOBBS

IBLA 2004-184

Decided September 26, 2006

Appeal from a decision by Administrative Law Judge William E. Hammett which dismissed the sole respondent to a mining claim contest for lack of evidence that he had an ownership interest in the mining claim and declared the claim null and void. CACA 40587.

Reversed.

1. Mining Claims: Generally

Transfers of mining claims are governed by State law. Under California law a quitclaim deed transferring an interest in a mining claim is effective to transfer the interest in the property upon the date the writing is delivered, and delivery is presumed to have taken place on the date the writing is executed.

2. Contests and Protests: Government Contest--Mining Claims: Contest--Mining Claims: Conveyances

A valid deed of conveyance requires a grantee in existence who is legally capable of accepting the deed and of taking and holding title to the property at the time of the conveyance. The rule that a deed is void that names a fictitious person as grantee applies only when the named grantee does not in fact exist and does not apply to the situation where a person in existence is described by a fictitious or assumed name. Where a quitclaim deed granted an interest in a mining claim to a business name assumed by an individual in existence at the time, the deed is effective to transfer to him a legal interest in the

claim for the purpose of participation in a mining contest brought by the Government.

APPEARANCES: Gerald E. Hobbs, San Bernardino, California, pro se; Robert M. Simmons, Esq., Rose Miksovsky, Esq., U.S. Department of Agriculture, Office of General Counsel, San Francisco, California, for the Forest Service, United States Department of Agriculture (USDA).

OPINION BY ADMINISTRATIVE JUDGE McDANIEL

Gerald E. Hobbs appeals from an order issued by Administrative Law Judge William E. Hammett (ALJ), dismissing Hobbs from a mining contest against the Eagle Eye placer claim, CAMC 108137, for lack of evidence that he had an ownership interest in the mining claim. Because no other contestee responded to the contest complaint, the ALJ declared the claim null and void.

On April 3, 2000, the Bureau of Land Management (BLM) initiated a mining contest on behalf of the Forest Service, USDA, against the Eagle Eye placer mining claim, which is located in the Six Rivers National Forest in Del Norte County, California. It sent notices of the contest to 21 contestees at their addresses of record, including one notice to Gerald Hobbs and two notices to “Wilderness Mining Co.” at two different addresses.<sup>1/</sup> Only Hobbs properly answered the complaint.<sup>2/</sup> By a preliminary ruling dated October 25, 2002, the ALJ deemed that the allegations of the complaint were admitted by all other contestees, leaving Hobbs as the only respondent to the Government’s contest.

The claim was originally located by eight individuals on February 24, 1982, but on August 10, 1982, four of those individuals, Thomas Pajak, Peter Bentz, George E. Johnson, and Peter Johnson, submitted an amended location notice reducing the size of the claim and listing only the four locators named above. George E. Johnson and Peter Johnson conveyed their interests in the claim to “Wilderness Mining” by quitclaim deed on June 20, 1995, a copy of which was filed with BLM on April 5, 2001.<sup>3/</sup>

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<sup>1/</sup> The record includes documents showing service of process of the contest on the claimants but does not include the claim file, itself.

<sup>2/</sup> One other individual, Barret Wetherby, attempted to answer but did not properly file his answer with BLM. Wetherby voluntarily withdrew that answer on Feb. 27, 2004.

<sup>3/</sup> It appears that BLM was aware of the transfer to Wilderness Mining prior to the  
(continued...)

Inclined to find that “Wilderness Mining,” and not Hobbs, was named in the quitclaim deed as the sole transferee of the Johnsons’ conveyance, the ALJ issued an order dated January 27, 2004, requiring Hobbs to show cause why he should not be dismissed from the contest for failure to establish a legal interest in the claim. In response, Hobbs argued that “Wilderness Mining” is a fictitious name he assumed for business dealings and that the quitclaim deed conveying the Eagle Eye placer mining claim from the Johnsons to “Wilderness Mining” actually conveyed the legal interest in the claim to him. He further argued that “Wilderness Mining” was not properly served with notice of the contest because the notices sent were addressed to “Wilderness Mining Co.” rather than “Wilderness Mining.”

The ALJ interpreted Hobbs’s argument to mean that “Wilderness Mining is not a Legal Entity” and determined that, as such, “Wilderness Mining” was a “fictitious grantee,” not eligible to receive the conveyance via quitclaim deed. Relying on an Arizona case,<sup>4/</sup> he reasoned that the quitclaim deed is a nullity, and that George E. Johnson and Peter Johnson retained their legal interests in the claim instead of Hobbs. Because the Johnsons had received notice of the contest, and neither had answered, and none of the other claimants had properly answered, the ALJ declared the Eagle Eye placer mining claim null and void.

On appeal, Hobbs makes essentially the same arguments, but also challenges the ALJ’s reliance on the Arizona case to determine the validity of a transfer that took place in California. During the course of this mining contest, Hobbs has made numerous arguments. We decide this appeal on the basis of his argument that the ALJ erroneously determined that he did not have a legal interest in the claim.

[1] Transfers of mining claims are governed by State law. See Tom L. Lee, 145 IBLA 272, 275 (1998). The notice regulations for transfers of mining claims require filing “[a] copy of the legal instrument or document that operates under State law to transfer the interest in the claim being sold, assigned, or otherwise transferred.” 43 CFR 3833.3(a)(3) (2003). The regulation further states that the “transfer will be deemed to have taken place on its effective date under State law.”

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<sup>3/</sup> (...continued)

filing of the contest, as BLM’s mineral examiner referred to a quitclaim transfer to the “Wilderness Mining Association” in a 1998 mineral report. Exhibit 7 at pg. 5.

<sup>4/</sup> Melni v. Custer, 781 P.2d 631, 633 (Ariz. Ct. App. 1989), ALJ’s Order, at 4.

43 CFR 3833.3(c) (2003). The language of these regulations shows that State law governs the validity of documents purporting to transfer mining claims.<sup>5/</sup>

California requires transfers of mining claims to be made in writing and signed by the transferor. Cal. Civ. Code § 1091 (2006). In California the transfer of property in writing is termed a “grant.” Cal. Civ. Code § 1053 (2006). The quitclaim deed granting the interests in the Eagle Eye placer mining claim held by George E. Johnson and Peter Johnson to Wilderness Mining was a grant. MacFarland v. Walker, 181 P. 248, 250 (Cal. App. 1919) (“the word ‘grant’ includes all sorts of conveyances, including quitclaim deeds”). A grant “takes effect” or “vest[s] the interest intended to be transferred” upon its delivery by the grantor. Cal. Civ. Code § 1054 (2006). A duly executed grant is presumed to have been delivered on its date. Cal. Civ. Code § 1055 (2006). It is not necessary to record a transfer to make it effective between the parties to the transfer. Cal. Civ. Code § 1217 (2006).

Thus, for purposes of participation in this mining contest, the quitclaim deed transferring the interests in the mining claim held by George E. Johnson and Peter Johnson was effective to convey to Wilderness Mining a legal interest in the claim. Hobbs claims that “Wilderness Mining” is his “fictitious” business name, or his “doing business as” name. The next question is whether his use of an assumed name affects the validity of that transfer.

[2] In general, conveyances to fictitious grantees, are treated as nullities. See Sky Pilots of Alaska, Inc., 40 IBLA 355, 366-67 (1979), for a survey of the law at that time regarding fictitious grantees. Hobbs correctly argues, however, that “Wilderness Mining” is not a fictitious grantee, but is instead a business name he assumed. In Sky Pilots of Alaska, Inc., we distinguished the legal effect of a grant to a fictitious grantee from a grant to an individual using an assumed name:

A valid deed of conveyance requires a grantee in esse who is legally capable of accepting the deed and of taking and holding title to the property at the time of the conveyance. \* \* \* The rule that a deed which names as grantee a fictitious person is void applies only when the named grantee does not in fact exist, and not to the situation where a person in existence is described by a fictitious or assumed name.

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<sup>5/</sup> BLM has since amended and reorganized its regulations governing mining claims, noting that “the legal effects of recordings and filings of legal documents (deeds, grants, etc.) are a state law issue.” 68 Fed. Reg. 61045, 61057 (Oct. 24, 2003). 43 CFR 3833.32(a) (2005) now specifically states that the transfer of interest is governed by state law.

Id. (quoting 23 Am. Jur. 2d Deeds §§ 22, 29). Here, the quitclaim deed purported to grant a mining claim to “Wilderness Mining,” a business name assumed by Hobbs, an individual in existence at the time.

California law specifically allows an individual to acquire real estate under an assumed name (Emery v. Kipp, 97 P. 17, 19-20 (Cal. 1908)), conduct business under an assumed name (Bank of America National Trust & Savings Assoc. v. National Funding Corp., 114 P.2d 49, 57 (Cal. Ct. App. 1941)), and be named under his assumed name as the defendant in a lawsuit. Vance v. Gilbert, 174 P. 42, 43 (Cal. 1918).<sup>6/</sup>

Here, Hobbs answered the contest complaint because Wilderness Mining, which has a partial interest in claim according to the quitclaim deed, is his assumed name. We find nothing in California law to convince us that Hobbs’s use of an assumed name in the quitclaim deed should undermine his ownership interest in the claim or the validity of the quitclaim deed. Thus, for purposes of participation in this mining contest, the quitclaim deed conveyed to Hobbs a valid legal interest in the claim.<sup>7/</sup>

To the extent not addressed herein, all other errors of fact or law asserted by the appellant have been considered by the Board and rejected as contrary to the facts and law or immaterial.

Therefore, we reverse ALJ Hammett’s order dismissing Hobbs from the mining contest. Because Hobbs is the holder of a legal interest in the claim for the purpose of participating in this mining contest and has timely answered the complaint, the contest must go forward. As a result, we also reverse ALJ Hammett’s order declaring Eagle Eye placer mining claim, CAMC 108137, null and void and remand the case to the Hearings Division for further proceedings.

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<sup>6/</sup> However, Hobbs cannot maintain an action in California courts to enforce contracts made under his assumed name until he has properly registered that name pursuant to the requirements of section 17910, et seq., of the California Business and Professions Code. See Bryant v. Wellbanks, 263 P. 332, 335 (Cal. Ct. App. 1927); Bank of America National Trust & Savings Assoc. v. National Funding Corp., 114 P.2d at 57.

<sup>7/</sup> Because we find that Hobbs has a legal interest in the claim for the purpose of participation in this mining contest and was actually served under both his real name and assumed business name, Hobbs’s argument regarding the adequacy of the notice provided to Wilderness Mining is moot.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision is reversed and the case is remanded to the Hearings Division.

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R. Bryan McDaniel  
Administrative Judge

I concur:

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James K. Jackson  
Administrative Judge