



INTERIOR BOARD OF INDIAN APPEALS

United States v. Acting Aberdeen Area Director, Bureau of Indian Affairs and  
Celina Young Bear Mossette and Geraldine Van Dyke

9 IBIA 151 (01/08/1982)

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# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

UNITED STATES

v.

ACTING AREA DIRECTOR, ABERDEEN AREA OFFICE, BUREAU OF  
INDIAN AFFAIRS, AND CELINA YOUNG BEAR MOSSETTE

and

UNITED STATES

v.

ACTING AREA DIRECTOR, ABERDEEN AREA OFFICE, BUREAU OF  
INDIAN AFFAIRS, AND GERALDINE VAN DYKE

IBIA 81-7-A and  
81-38-A

Decided January 8, 1982

Appeals by the United States from two decisions of the Acting Area Director, Aberdeen Area Office, Bureau of Indian Affairs, refusing to set off claims owed to the United States from money accruing to Individual Indian Money accounts.

Affirmed.

1. Indians: Fiscal and Financial Affairs--Indians: Indian Money Accounts

Under 25 U.S.C. § 410 (1976) and 25 CFR 104.9, the approval of the Secretary of the Interior is required before funds in an Individual Indian Money account derived from trust property may be applied against a debt owed by the individual Indian.

2. Claims by the United States--Indians: Fiscal and Financial Affairs--Indians: Indian Money Accounts

Nothing in the Federal Claims Collection Act of 1966, 31 U.S.C. §§ 951-953 (1976), and its implementing regulations in 4 CFR Chapter II repeals or overrides the

authority of the Secretary of the Interior to approve or disapprove the use of funds in an Individual Indian Money account for the payment of debts of the Indian owner.

3. Bureau of Indian Affairs: Administrative Appeals: Acts of Agents of the United States--Claims by the United States--Indians: Fiscal and Financial Affairs--Indians: Indian Money Accounts

A decision not to honor a setoff request against an Individual Indian Money account for a debt owed to another agency of the Federal Government is not arbitrary, capricious, or an abuse of discretion when it is based on an examination of the funds potentially available for setoff, the basic necessities of the individual involved, and the interest of the United States in collecting judgment claims.

APPEARANCES: Gary Annear, Esq., Assistant United States Attorney for the District of North Dakota, for appellant United States of America; Wallace G. Dunker, Esq., Field Solicitor, Department of the Interior, Aberdeen, South Dakota, for appellee Acting Area Director, Aberdeen Area Office, Bureau of Indian Affairs; John O. Holm, Esq., for appellee Celina Young Bear Mossette; and James B. Fitzsimmons, Esq., for appellee Geraldine Van Dyke. Counsel to the Board: Kathryn A. Lynn.

#### OPINION BY ADMINISTRATIVE JUDGE MUSKRAT

The United States through the Assistant United States Attorney for the District of North Dakota, has appealed from two decisions of the Acting Area Director, Aberdeen Area Office, Bureau of Indian Affairs (BIA), denying setoffs for judgment claims received by the United States against Clifford and Celina Young Bear Mossette and Purley W. and Geraldine Van Dyke from the Individual Indian Money (IIM) accounts of the two women. The United States sought setoffs against the IIM accounts under the Federal Claims Collection Act of 1966, Act of July 19, 1966, 80 Stat. 308, 31 U.S.C. §§ 951-953 (1976), and regulations found in 4 CFR Part 102. The Acting Area Director denied the requests under the authority of 25 U.S.C. § 410 (1976) and 25 CFR 104.9. Because these cases involve the same issue, they are hereby consolidated for purposes of decision.

#### Background

On October 16, 1979, the United States District Court for the District of North Dakota, Southwestern Division, entered judgment for the United States against Clifford Mossette and Celina Young Bear

Mossette in the amount of \$24,914. United States of America v. Mossette, Civ. No. A78-1031 (D.N.D. Oct. 16, 1979). The sale of certain secured property netted \$5,150 which was applied against the judgment amount. A balance of \$19,764 remained outstanding on the judgment. On January 18, 1980, the United States requested a setoff against the IIM account of Celina Young Bear Mossette, an enrolled member of the Three Affiliated Tribes, from the Superintendent of the Fort Berthold Agency, BIA. After receiving from Mrs. Mossette an objection to the setoff request and information regarding her income and living expenses, the Acting Superintendent declined to honor the setoff request on June 19, 1980. The United States (appellant) appealed this decision to the Acting Aberdeen Area Director who affirmed the Acting Superintendent's decision on July 30, 1980. Appellant then appealed to the Commissioner of Indian Affairs. That appeal was referred to the Board of Indian Appeals pursuant to 25 CFR 2.19 on November 4, 1980.

Similarly, on December 6, 1979, the same United States District Court entered judgment for the United States against Purley W. Van Dyke and Geraldine Van Dyke in the amount of \$33,653.99. United States of America v. Van Dyke, Civ. No. A78-1045 (D.N.D. Dec. 6, 1979). The sum of \$1,625.78, received in a foreclosure sale, was applied against the judgment, leaving a balance of \$32,028.21. Appellant requested a setoff against the IIM account of Geraldine Van Dyke, also an enrolled member of the Three Affiliated Tribes, from the Fort Berthold Agency Superintendent on April 17, 1980. The Superintendent initially approved the setoff on August 8, 1980, because he did not receive notification that Mrs. Van Dyke had timely objected to the request. Mrs. Van Dyke's objection to this decision was treated as an appeal to the Aberdeen Area Director. Subsequently, a letter from Mrs. Van Dyke objecting to any setoff was found in the agency's files and the case was returned to the Superintendent for appropriate action. 1/ On October 16, 1980, the Superintendent issued a second decision denying the setoff request. Appellant appealed to the Acting Area Director who, on May 5, 1981, affirmed the Superintendent's decision. The appeal filed with the Commissioner of Indian Affairs was referred to the Board of Indian Appeals under 25 CFR 2.19 on July 20, 1981.

#### Discussion and Conclusions

These cases present an apparent conflict between two Federal policies, each expressed in statute and regulations. One policy deals with the collection of debts owed to the Federal Government; the other concerns the special responsibility of the Federal Government to individual Indians. The question presented in both of these cases is whether the Department of the Interior has authority to determine that the funds in the IIM accounts of the individual appellees should not be

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1/ Appellant objects to this procedure on the grounds that there is no regulatory provision for returning a case to the Superintendent once he has made a decision. Although not couched in legal terminology, the Area Director, in effect, vacated the Superintendent's initial decision and remanded the case to him for appropriate action on the basis of newly discovered evidence. Such a procedure is within the Area Director's supervisory authority.

subjected to a setoff against judgment claims in favor of the United States. Consistent with the Federal Government's role as trustee for and guardian of the individual appellees and with the statutory and regulatory provisions effectuating this policy, the Board holds that the Acting Area Director had the authority to find that these funds should not be so applied and affirms his decisions.

[1] The Department of the Interior owes a fiduciary duty to those Indians, including the individual appellees here, for whom it holds property in trust. In particular, 25 U.S.C. § 410 (1976), a statute passed in 1906, provides that:

No money accruing from any lease or sale of lands held in trust by the United States for any Indian shall become liable for the payment of any debt of, or claim against, such Indian contracted or arising during such trust period, \* \* \* except with the approval and consent of the Secretary of the Interior. [2/]

Such funds, when placed in an IIM account, are available to the Indian owner and, under 25 CFR 104.9, "may be applied by the Secretary or his authorized representative against delinquent claims of indebtedness to the United States or any of its agencies." 3/ Thus, both the statute and the regulation require the approval of the Secretary before funds derived from trust property 4/ may be applied against a debt owed by an individual Indian. 5/

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2/ Cf. 25 U.S.C. § 354 (1976): "No lands acquired under the provisions of sections 331-334 of this title [allotment of reservation lands] shall, in any event, become liable to the satisfaction of any debt contracted prior to the issuing of the final patent in fee therefor." (Emphasis added.) This absolute prohibition against the use of allotted lands to secure personal debts evidences the congressional intent to protect trust land and its proceeds. This trust concept is further implemented, although less restrictively, in section 410.

3/ The section further provides that funds derived "from the sale of capital assets which by agreement approved prior to such sale by the Secretary or his authorized representative are to be expended for specific purposes, and funds obligated under contractual arrangements approved in advance by the Secretary or his authorized representative or subject to deductions specifically authorized or directed by Acts of Congress, shall be disbursed only in accordance with the agreements (including any subsequently approved modifications thereof) or acts of Congress."

Such funds would, therefore, not be available to be applied against a debt owed to the United States unless that use was the subject of the approved arrangement or act of Congress. For a similar conclusion, see Associate Solicitor's Opinion, M-36782 (Sept. 10, 1969).

4/ Appellant has not alleged and there is no evidence in the record that the IIM accounts of the individual appellees contain funds other than those derived from trust property.

5/ Cf., 25 CFR 11.26 and 11.26C which require the approval of the Secretary before IIM funds may be applied against a civil damage judgment rendered by a Court of Indian Offenses.

[2] Nothing in the Federal Claims Collection Act, supra, and its implementing regulations in 4 CFR Chapter II repeals or overrides the Secretary's trust responsibilities. The Federal Claims Collection Act and regulations establish general procedures to facilitate the collection of debts owed to the United States by authorizing an agency either to retain funds in its possession owed to the debtor or to request retention of such funds held by another agency. All agencies are enjoined by 4 CFR 102.3 to cooperate in the collection of debts owed to the Federal Government, and the Department of the Interior fully accepts this responsibility. See 344 DM 1.3(B)(3) and 2.2. This general statute, however, does not evidence any Congressional intent to alter the trust relationship between the Federal Government and the Indians or to remove the Secretary's authority to approve the use of IIM funds. 6/ In the absence of a clear expression of such intent, the trust responsibility remains intact and the Secretary retains authority to approve or disapprove the use of funds in an IIM account for the payment of debts of the Indian owner.

[3] Needless to say, in exercising this authority the Secretary should be cognizant of these dual and perhaps conflicting obligations. Any disapproval of a request for setoff against IIM funds should be well-considered and not arbitrary. 7/ In each of the present cases, the Superintendent or Acting Superintendent carefully reviewed the judgment claims and the financial circumstances of the individual appellees. In the case of Celina Young Bear Mossette, the Acting Superintendent's decision of June 19, 1980, affirmed by the Acting Aberdeen Area Director, recites:

Pursuant to 25 CFR 104.9 an indepth review has been made of your obligations or reasons why such disbursement should not be made, of your long range best interests and of the interest of the United States. My decision is that such application [for setoff] should be denied for the reason that such money is essential for your necessities including food, clothing, and shelter. I have reviewed your Individual Indian Money account and found that in the last sixteen months a total of \$422.53 has been deposited into your IIM account. 8/ In view of the large size of the judgment rendered, which includes interest, and the amount of money being deposited into your account, and in taking into consideration your other income [approximately \$6,000 per year], it is felt that this money is needed by you and your family.

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6/ Cf. Joint Tribal Council of the Passamaquoddy Tribe v. Morton, 388 F. Supp. 649, 663 n.15 (N.D. Me.), aff'd, 528 F.2d 370 (1st Cir. 1975): "It is clear, however, that termination of the Federal government's [trust] responsibility for an Indian tribe requires 'plain and unambiguous' action evidencing a clear and unequivocal intention of Congress to terminate its [trust] relationship with the tribe."

7/ See Associate Solicitor's Opinion, M-36782 (Sept. 10, 1969).

8/ Appellee's trust income of approximately \$26.40 per month would pay off her debt, excluding future interest, in a little over 62 years.

I should point out, however, that should the amount of your income change to any large degree, the United States Attorney will be notified and he may file another request for setoff.

Similarly, in the case of Geraldine Van Dyke, the Superintendent's October 16, 1980, decision, also affirmed by the Acting Aberdeen Area Director, states:

[P]ursuant to 25 CFR 104.9, a review has been made of your objections or reasons why such disbursement should not be made, of your long range best interest, and of the interest of the United States.

My decision is that the application by the United States is denied because the money derived from your trust properties is essential for your necessities including food, clothing, and shelter. 9/

In both cases, the decision not to approve the setoff request was thus based on an examination of the funds potentially available for setoff, the basic necessities of the individuals involved, and the interest of the United States in collecting quite substantial judgment amounts. 10/

These decisions are not arbitrary, capricious, or an abuse of discretion. They are well-reasoned exercises of the Secretary's authority to approve and disapprove disbursements from IIM accounts and to decide that the small amount of trust money involved is better applied to pay for appellees' necessities of life than for the particular debts owed to the Federal Government.

This holding in no way infringes upon any rights of the creditor agency and the Department of Justice to decide whether to continue, suspend, or terminate collection activities or to seek setoffs at a later time should the financial circumstances of either individual appellee change substantially.

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9/ Although the Superintendent's decision does not state how much money was being deposited into Geraldine Van Dyke's IIM account, undisputed letters from Mrs. Van Dyke show fixed expenses of approximately \$2,600 per year and an income of less than \$2,500, and state that there is only "a few hundred dollars" in her IIM account.

10/ These factors considered by the Superintendent should be compared with those listed in 4 CFR 104.3(a) and (c) for determining whether to terminate activity directed toward collecting a debt owed to the Federal Government. The Board recognizes that the decision whether to terminate collection activity is to be made by the creditor agency or, under appropriate circumstances, the General Accounting Office or Department of Justice, and is limited to claims of under \$20,000, exclusive of interest. The regulations, however, provide some standards against which these decisions not to honor setoff requests can be measured to determine whether or not those decisions were arbitrary or capricious.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

This decision is final for the Department.

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Jerry Muskrat  
Administrative Judge

We concur:

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//original signed  
Franklin D. Arness  
Administrative Judge

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//original signed  
Wm. Philip Horton  
Chief Administrative Judge