



INTERIOR BOARD OF INDIAN APPEALS

Roland Redfield v. Acting Deputy Assistant Secretary -
Indian Affairs (Operations)

9 IBIA 174 (02/18/1982)

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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

ROLAND REDFIELD

v.

ACTING DEPUTY ASSISTANT SECRETARY--
INDIAN AFFAIRS (OPERATIONS)

IBIA 81-47-A

Decided February 18, 1982

Appeal from decision of the Acting Deputy Assistant Secretary--Indian Affairs (Operations) granting fee patent title to certain Indian trust lands on the Crow Reservation in Montana.

Appeal dismissed.

1. Bureau of Indian Affairs: Administrative Appeals: Generally--
Rules of Practice: Appeals: Standing to Appeal

An appellant has standing to appeal a decision of a Bureau of Indian Affairs official granting fee patent title to Indian trust land only if he shows that the decision adversely affects his or her enjoyment of a legally protected interest.

APPEARANCES: Brenda C. Desmond, Esq., and D. Michael Eakin, Esq., Hardin, Montana, for appellant Roland Redfield; Kenneth L. Payton, Acting Deputy Assistant Secretary--Indian Affairs (Operations), Washington, D.C., and John W. Fritz, Deputy Assistant Secretary--Indian Affairs (Operations), Washington, D.C., for the Bureau of Indian Affairs; Douglas Y. Freeman, Esq., Hardin, Montana, for Oliver Redfield. Counsel to the Board: Kathryn A. Lynn.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

This appeal arises from the decision of the Acting Deputy Assistant Secretary--Indian Affairs (Operations) (appellee) to grant fee patent title to certain Indian trust lands on the Crow Reservation in Montana to Oliver Redfield. Roland Redfield, appellant here, is the brother of Oliver Redfield.

On September 30, 1981, appellee filed a motion to dismiss this case on the grounds that appellant has no standing to bring the appeal and that the Board lacks jurisdiction to consider the case. A similar motion was filed by counsel for Oliver Redfield on October 13, 1981. Appellant timely responded to both motions on October 21, 1981. For the reasons discussed below, the Board grants the motions to dismiss this appeal because of appellant's failure to show standing.

Standing to appeal to the Board of Indian Appeals from administrative actions of officials of the Bureau of Indian Affairs is governed by section 4.331 of the Board's regulations, 46 FR 7337 (Jan. 23, 1981), which states in pertinent part:

Any interested party affected by a final administrative action or decision of an official of the Bureau of Indian Affairs issued under regulations in Title 25 of the Code of Federal Regulations in a case involving a determination, finding, or order protested as a violation of a right or privilege of the appellant may appeal to the Board of Indian Appeals.

[1] Appellant asserts that in order to have standing under this section he must show only that he is an "interested party" as defined in 25 CFR 2.1 and must merely show that the decision will adversely affect him. This argument overlooks the requirement in section 4.331 that any adverse effect be in "violation of a right or privilege of the appellant." In order to have standing, appellant must show that the decision adversely affects his enjoyment of some legally protected interest. 25 CFR 2.1(f) and (g).

Appellant first argues that he has standing because as the guardian of his mother, Alice Redfield, he has instituted an action in the Crow Tribal Court to protect her interests in the land to which Oliver was granted a fee patent. The record indicates that the property at issue was originally purchased by Oliver's father, Perry Redfield, a non-Indian. In order to enjoy the advantages of holding this land in trust, the title was put jointly in the names of Alice and Oliver, the oldest son. These land purchases were largely financed through mortgages from the Farmers Home Administration and the Federal Land Bank. As a result of a partition, Oliver received 1,918.34 acres and assumed all of an outstanding mortgage to the Federal Land Bank. Alice received approximately 799 acres, mortgage-free. Appellant states that the complaint filed with the tribal court alleges that this partition was obtained through fraud or misrepresentation.

For purposes of this decision, the Board assumes that appellant was properly appointed Alice's guardian and that he has the right to bring legal actions on her behalf. Appellant's argument raises doubts as to whether Oliver properly holds beneficial title to all of the trust land for which he has been determined to be eligible to receive fee title.

The sale, exchange, partition, or other conveyance of Indian trust lands is governed by Federal, not tribal, law. Specifically, any conveyance must be approved by the Secretary of the Interior in accordance with the provisions of 25 CFR Part 121. Any decision of the Crow Tribal Court as to the ownership of this trust land is void; BIA is not required to give effect to any decision that might be rendered by the tribal court.

Even though appellant may have had standing at one time as the guardian of his mother to challenge the Department's partition of the mutual trust holdings of Oliver and his mother, that does not mean that he has standing now to question the issuance of a fee patent on those lands to which Oliver properly holds beneficial title. ^{1/}

Appellant further argues that, as a recorded leaseholder on one of the allotments at issue, he has standing to challenge the issuance of the fee patent as a competitor under Hardin v. Kentucky Utilities Co., 390 U.S. 1 (1968), and as a lessee of real property under Barlow v. Collins, 397 U.S. 159 (1970). In Hardin, the Supreme Court held that a private utility company competing for customers with the Tennessee Valley Authority (TVA) was a member of the class sought to be protected by a 1959 amendment to the TVA Act of 1933 that prohibited TVA from expanding its sales into new areas. Thus, the company had standing to challenge an alleged expansion. Likewise, in Barlow the Court found that tenant farmers were a protected group under the Food and Agriculture Act of 1965 and, therefore, had standing to challenge a change in Department of Agriculture regulations that would be detrimental to them while benefiting other land owners. Appellant here seeks to place himself in a protected class by arguing that section 2 of the Crow Allotment Act, 41 Stat. 751, 752 (1920), protects competition for land on the Crow Reservation by limiting the amount of land that can be conveyed to any one person.

Again assuming without deciding that the facts and the law are precisely as stated by appellant, they do not give standing in this case. Appellant does not and could not assert that section 2 of the Crow Allotment Act restricts Oliver's right to receive a fee patent on his trust lands. At most, appellant's argument is that the Act restricts Oliver's rights to dispose of the property. These restrictions would exist, however, whether or not Oliver had fee patent title. Should Oliver seek to convey this land in a manner prohibited by law, appellant might have standing to challenge that transaction. The possibility, however, that Oliver might attempt at some future time to convey his land improperly is insufficient to give appellant standing to oppose the issuance of a fee patent.

^{1/} See Hamlin v. Portland Area Director, 9 IBIA 16 (1981). Regulations of the Department which provide for finality in administrative proceedings cannot be avoided merely by initiating successive proceedings to prevent decisions of the Department from execution. The record indicates that partition of the lands to which fee patent is now sought occurred some time ago.

Appellant next cites In re Bulltail, 1 Tribal Court Reporter A-42 (1978), a decision of the Crow Tribal Court, for the proposition that the Crow Tribe recognizes the rights of family members to bring suit over an issue of family interest. Appellant asserts that the Board should recognize these rights created by tribal law under the doctrine of Erie R.R. Co. v. Tompkins, 304 U.S. 64 (1938).

In re Bulltail dealt with the jurisdiction of the tribal court in a child custody case. The court found that it had jurisdiction to decide custody under section 10.130 of Title 10 of the Crow Tribal Code, section 101(a) of the Indian Child Welfare Act, and the in rem nature of child custody proceedings. Standing was not at issue in this case, and it cannot be cited as establishing a general right of a person to bring suit in a tribal court, or any other judicial forum, against a family member in order to settle family disputes.

Appellant further argues that he has standing as a tribal member to challenge the issuance of this fee patent. There appear to be two aspects to this argument. First, appellant again assumes how Oliver will dispose of the property if he has fee patent title. Based on that assumption, appellant states that the value of land he owns will be depreciated by this transaction. He then asserts that section 2 of the Crow Allotment Act was intended to prevent such depreciation of value. As previously discussed, the possibility that Oliver might make an improper conveyance of the property does not give appellant standing to challenge the issuance of a fee patent to that property.

Second, appellant cites 25 CFR 121.2 as Departmental recognition that other tribal members may be adversely affected by the issuance of a fee patent. He argues that as a member of the Crow Tribe, he has an interest in protecting the tribe's land base and, therefore, has standing to oppose the issuance of a fee patent. The Department does recognize that the granting of a fee patent may have impacts on other Indians or the tribe. The Department has never recognized, however, any right of an individual member of a tribe to bring an action for the tribe based on a personal assessment of what is or is not in the best interests of the tribe. ^{2/}

Finally, appellant argues that the Department adopted a less demanding standing requirement in State of Alaska v. Sarakovikoff, 50 IBLA 284 (1980). That case, decided by the Interior Board of Land Appeals under the Alaska Native Claims Settlement Act and 43 CFR 4.450-2, held that the State of Alaska could protest against the allowance of an allotment to an Alaska Native even though the State had no cognizable interest in the specific land being sought.

^{2/} The record in this case reflects that at one time the Crow Tribe raised a challenge to the fee patent request of Oliver Redfield. See Notice of Appeal by Crow Tribe from decision of Acting Deputy Commissioner of Nov. 24, 1980, filed Jan. 19, 1981. This appeal was dismissed by the Board without prejudice by order dated Mar. 19, 1981, upon ascertaining that the Commissioner's office had elected to reconsider its Nov. 24, 1980, holding. See 8 IBIA 253 (1981).

The Appeals Boards of the Department of the Interior are governed by different statutes and regulations. Although there are many areas in which the laws governing the Boards converge and it is therefore appropriate for one Board to cite decisions of another Board, there are also many areas of difference. In distinction to 43 CFR 4.450-2, section 4.331, the regulation governing this appeal, specifically requires the violation of a right or privilege of the appellant. Appellant has not been able to show that any right or privilege of his will be violated by the issuance of a fee patent to Oliver.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals, 43 CFR 4.1, this appeal of the decision to issue a fee patent to Oliver Redfield is dismissed for appellant's failure to show that he has standing. 3/

This decision is final for the Department.

//original signed
Franklin D. Arness
Administrative Judge

We concur:

//original signed
Wm. Philip Horton
Chief Administrative Judge

//original signed
Jerry Muskrat
Administrative judge

3/ Because of this disposition, the Board does not reach appellee's second ground for dismissal, the Board's alleged lack of jurisdiction over this matter.