INTERIOR BOARD OF LAND APPEALS

Aileen Hayes

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AILEEN MAYES

IBLA 98-433 Decided August 30, 2000

Appeal from a decision of the Idaho State Office, Bureau of Land Management, declaring mining claims forfeited by operation of law. IMC 26084 et al.

Affirmed.

1. Mining Claims: Rental or Claim Maintenance Fees: Generally--Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption

Under 30 U.S.C. § 28f(a) (1994), the holder of an unpatented mining claim, mill site, or tunnel site is required to pay a claim maintenance fee of $100 per claim on or before Aug. 31 of each year for years 1994 through 1998, and failure to pay the fee renders the claim null and void by operation of law. The statute gives the Secretary discretion to waive the fee for a small miner who holds not more than 10 mining claims, mill sites, or combination thereof, and under 43 C.F.R. § 3833.1-7(d)(2), a claimant must file proof of conditions for waiver by the Aug. 31 immediately preceding the assessment year for which the waiver is sought.

2. Mining Claims: Rental or Claim Maintenance Fees: Generally--Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption

The failure to record a quitclaim deed conveying a mining claim in Idaho prior to Aug. 31 did not prevent title from passing to the grantee before that date, and where the grantee failed to pay the claim maintenance fee or qualify for a waiver, BLM properly declared the claims null and void.

APPEARANCES: Aileen Mayes, pro se.

OPINION BY CHIEF ADMINISTRATIVE JUDGE BYRNES

Aileen Mayes has appealed from a July 14, 1998, decision of the Idaho State Office, Bureau of Land Management (BLM), declaring 31 mining claims

forfeited by operation of law because certificates for waiver of the $100 per claim maintenance fee filed for the 1995 assessment year were rejected and no fees had been received. At issue are 10 mining claims for which Mayes filed a waiver certificate on August 15, 1994, plus 10 mining claims listed on a waiver certificate filed by Paul Mayes on August 23, 1994, 2 mining claims listed on a waiver certificate filed by Trent Chandler on August 29, 1994, and 9 claims listed on a waiver certificate filed by Don Droulard on August 29, 1994. 1/ All 31 claims are attributed by BLM to Aileen Mayes by virtue of quitclaim deeds dated September 14, 1993, transferring interest in 21 claims to her from Paul Mayes, Chandler, and Droulard.

This appeal involves three different BLM case files. The first file includes the records for those mining claims serialized as IMC 26078 through IMC 26100. 2/ These 23 claims were located between July 1952 and July 1974 by various combinations of Aileen Mayes, Alvin Mayes, George Eipp, and Jack Donnelson (acting as co-claimants or alone). Copies of the location notices were filed with BLM on October 5, 1979, at which time Aileen Mayes declared herself to be the sole claimant. By quitclaim deeds dated August 31, 1993, Mayes transferred title in the claims as follows: IMC 26078 through IMC 26083 to William Howell; IMC 26088 and IMC 26089 to Chandler; and IMC 26090 through IMC 26095 to Droulard.

The second case file includes the records for the Golden Dutchman #1-#16 mining claims, serialized as IMC 88114 through IMC 88099 (reverse order). These claims were located in July 1983 by Ken Clifford, LaJoy Clifford, Paul Mayes, and Janice Mayes. The Cliffords transferred their interests in the claims to Paul Mayes by quitclaim deed dated September 7, 1983. Although title in the claims became clouded through assorted quitclaim deeds and quiet-title actions in the mid-1980's, the record shows that on August 31, 1993, Aileen Mayes transferred title in IMC 88099 through IMC 88103 and IMC 88107 through IMC 88111 (10 claims) by quitclaim deed to Paul Mayes and title in IMC 88104 through IMC 88106 and IMC 88112 through IMC 88114 (6 claims) by quitclaim deed to Mary Holmes.

1/ The BLM-assigned serial numbers of the mining claims listed on each waiver certificate are as follows:
Aileen Mayes - IMC 26084 through IMC 26087, IMC 26096 through IMC 26100, and IMC 105541;
Trent Chandler - IMC 26088 and IMC 26089;
Don Droulard - IMC 26090 through IMC 26095 and IMC 105542 through IMC 105544; and
Paul Mayes - IMC 88099 through IMC 88103 and IMC 88107 through IMC 88111.

2/ The names of these claims are (in order): The Dutchess, Lucky Strike #1-#2, Blue Bell, Blue Bell #2-#3, Golden Star #1-#2, Bear Track #1-#2, Canuk #1-#2, West Annex #1-#3, East Annex #1-#3, Big Swede, Little Scotty, Calumet, Eager Beaver, Beaver Tail.

The third case file includes the records for the Little Princess #1-#4, serialized as IMC 105541 through IMC 105544. The claims were located in 1985 by Aileen Mayes. She transferred title in IMC 105542 through IMC 105544 to Droulard by quitclaim deed dated August 31, 1993.

The case files include, as BLM noted in its decision, waiver certificates filed in 1995 through 1997 on behalf of Chandler and Droulard and signed by Aileen Mayes as agent. BLM directed attention to the fact that there were no agent designations on file depicting those relationships when the certificates were filed. Droulard, by letter filed with BLM on September 13, 1996, ratified his "verbal permission" for Aileen Mayes to act on his behalf with respect to his claims, but he revoked that permission for all future actions by her. Moreover, waiver certificates were also filed in 1996 and 1997 on Paul Mayes' behalf by Aileen Mayes as agent, with no agent designation on file with BLM for that relationship. By notice dated June 10, 1998, BLM provided Aileen Mayes with 30 days to provide information regarding the waiver certificate she signed for Droulard, which had been received by BLM on August 11, 1997.

Then on June 30, 1998, the quitclaim deeds under review here were filed with BLM. With respect to the first set of deeds, which involve IMC 26088 and IMC 26089, the deed to Aileen Mayes was signed by Chandler, dated "9-14-93," and notarized on September 14, 1993. The deed was recorded with Idaho County, Idaho, on June 24, 1998. The second deed transferred title in the two claims from Aileen Mayes to Dan Durbin and was dated, notarized, and recorded on June 24, 1998. The second set of deeds involves IMC 26090 through IMC 26095 and IMC 105542 through IMC 105544. The deed from Droulard to Aileen Mayes was dated and notarized on September 14, 1993, but also was not recorded with Idaho County until June 24, 1998. The second deed in this set, transferring title in the nine claims from Aileen Mayes to Gregory Crisp, was dated, notarized, and recorded on June 24, 1998. The third set of deeds involves IMC 88099 through IMC 88103 and IMC 88107 through IMC 88111. The first quitclaim deed transferred title in the 10 claims from Paul Mayes to Aileen Mayes and was dated and notarized on September 14, 1993. It, too, was not recorded with Idaho County until June 24, 1998, when the second deed transferring these 10 claims, from Aileen Mayes to Jerald Bevington, was also executed and recorded.

In its decision, BLM concluded that, in accordance with the quitclaim deeds dated September 14, 1993, Paul Mayes, Chandler, and Droulard were not owners of the subject claims at the time they filed waivers in August 1994. BLM further observed that

> [t]he 1995 and 1996 waivers filed by Paul T. Mayes, Trent Chandler, and/or Don Droulard after September 14, 1993, the effective date of the deeds filed by Aileen Mayes, are hereby rejected. Waivers filed for the above listed claims owned by Mrs. Mayes and signed as agent by Mrs. Mayes for assessment

years 1996 through 1998, are hereby rejected. And the 1995 through 1998 waivers filed by Mrs. Mayes for her other ten claims are hereby rejected.

BLM therefore held that, since the applicable maintenance fees had not been paid, the 31 claims were forfeited by operation of law as of August 31, 1994.

With her statement of reasons, Mayes details the circumstances of the June 1998 recordings as follows:

> My husband and I and our partner moved to Warren almost 50 years ago to explore and work our claims. I have worked there every year since. During this time, we have developed our mines, acquired more claims and even, with the help of our kids, hand-cut more than five miles of road through the mountains so we could get our ore out.
>
> Since then our partner had died, along with my husband and the kids grew up and left home, I have held things together by myself, always with the dream of getting a profitable operation going again. I have worked to get the water rights I needed, worked with the environmentalists, worked with the Forest Service, posted bonds and worked on getting acceptable Plans of Operations filed.
>
> In 1993, the government told me I had to get rid of all but ten of my claims or pay them $100 per claim. I am over 70 years old and live on $420 per month Social Security. so paying $100 per claim was out of the question. I had to sell all but the ten best developed claims for whatever I could get for them.
>
> I found five people, including my son Paul, who were willing to buy them. The problem, however, was that, for the most part, these people were unable or unwilling to put much money up front; each one, though, had a skill or connections that would be useful to me in getting my mines operating again and in getting my ten claims patented.
>
> I had several long conversations with these people, both in groups and individually, to discuss what I wanted to accomplish and what they would do toward that end. They may have been short on money, but they were sure not short on enthusiasm. Anyway, it boiled down to this: the number of 20-acre claims each individual acquired from me would determine how much they would have to do on my ten claims to accomplish what I wanted. They would also get a share of the gold which came from my mines while they worked them. Again, the amount they got depended upon the amount they contributed. In addition, each person agreed to keep their claims active and legal to protect my equity until I was paid off.

> One of the five people, Bill Howell, who had some experience with contracts and deeds, suggested that I should at least get some Quitclaim Deeds back to be held at the bank to protect my equity in case of default or until such contract was fulfilled. All of the parties were agreeable with this idea, so that is what I did. As it turned out, the idea was sound because three of the five people defaulted on their contracts and it was necessary for me to find new people to take their places. I simply got the security deeds out of the bank in McCall, took them to Grangeville and recorded them, and then immediately recorded the deeds to the three new owners.
>
> You apparently think there is something wrong with the way I handled this situation and decided to strip me of my life's work over some misunderstanding and difference of interpretation of law.

In her statement of reasons, Mayes argues that BLM has incorrectly interpreted the operation of the three quitclaim deeds at issue. She asserts that these deeds acted only as security instruments, and, if she had title in the claims under them, it was only for the few moments it took the county recorder to record them and the corresponding deeds. 3/ With her appeal she has submitted affidavits from Paul Mayes and Trent Chandler attesting that the quitclaim deeds were executed to secure Aileen Mayes' equity position in the claims until Mayes and Chandler had fulfilled their obligations. They both declare: "In the event I defaulted on my obligations to her[,] she would then have the right to regain ownership by recording the said security instruments."

[1] Beginning in 1994, Congress, under 30 U.S.C. § 28f(a) (1994), required the holder of an unpatented mining claim, mill site, or tunnel site to pay a claim maintenance fee of $100 per claim on or before August 31 of each year through 1998. Failure to pay the claim maintenance fee "conclusively constitute[d] a forfeiture of the unpatented mining claim, mill or tunnel site by the claimant and the claim [for which payment was not timely received was] deemed null and void by operation of law." 30 U.S.C. § 28i (1994). Congress, however, provided the Secretary

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3/ Appellant also expresses concern that BLM "insinuated [in conversations] I had committed some kind of fraud." Indeed, BLM stated in its decision, that "[w]aivers signed by claimants who were **not** owners at the time of filing (Paul T. Mayes, Trent Chandler, and Don Droulard), or signed by someone acting as an agent when in fact they are the owner of such claims (Aileen Mayes), gives the appearance of filing a false, fictitious, or fraudulent document" and then iterated that the filing of a false, fictitious, or fraudulent document may result in a fine of up to $10,000 and/or a prison term not exceeding 5 years. However, as borne out by her explanation, the resulting waiver certificates were not the result of deceit but erroneous advice.

with discretion to waive the fee for any claimant who held not more than 10 claims on public lands (mining, mill site, or tunnel site claims, or combination thereof) and who had performed assessment work required under the Mining Law of 1872. 30 U.S.C. § 28f(d)(1) (1994). The statute, at 30 U.S.C. § 28f(d), mandated that the owner or owners seeking waiver "certify in writing," and was implemented by BLM with regulations at 43 C.F.R. § 3833.1-7(d) that required a claimant to file "proof of the * * * conditions for exemption * * * with the proper BLM office by the August 31 immediately preceding the assessment year for which the waiver is sought" and provide, inter alia, the names, addresses, and signatures of all owners maintaining an interest in the pertinent mining claims and sites.

Thus, a waiver certificate is considered a declaration of ownership of those claims listed. In addition, the Department requires a claimant to file notice of transfer within 60 days of when he or she "sells, assigns, or otherwise conveys all or any part of his [or her] interest in the claim." 43 C.F.R. § 3833.3. Neither condition, however, works to establish or dissolve legal title to a claim. Notwithstanding the waiver certificates filed or the deeds submitted to BLM in June 1998, at issue here is whether Aileen Mayes was the holder of 10 or 31 mining claims on August 31, 1994.

[2] The question we must resolve then is the effect of the three quitclaim deeds in light of the evidence and assertions presented by appellant. Under 30 U.S.C. § 30 (1988), the Department has no statutory authority to determine, with respect to adverse claims, validity of title or right of possession; such questions must be decided by a court of competent jurisdiction. See, e.g., W. W. Allstead, 58 IBLA 46, 48 (1981); John R. Meadows, 43 IBLA 35, 37 (1979). However, with respect to transfer of title, the Department has provided that "[t]he filing of a transfer of interest, when properly executed and recorded under State law, is placed on the BLM record when it is filed with the proper BLM office. The transfer will be deemed to have taken place on its effective date under State law." 43 C.F.R. § 3833.3(c). Mayes argues that transfer in this case did not take effect until the deeds were recorded. In Richard W. Cahoon Family Limited Partnership, 139 IBLA 323, 324-25 (1997), we made it clear that the effect of deeds, whether recorded or not, are governed by State law:

> The filing also included two quitclaim deeds executed on August 22, 1996, by which Pedersen and Southam conveyed their claims to Appellant. The BLM determined that the transfer to Appellant was effective on August 22, 1996, and that as the owner of 16 claims, Appellant did not qualify for the small miner exemption. Because no maintenance fees for the 16 claims were received, BLM deemed the claims forfeited.
>
> Appellant first contends that the quitclaim deeds had not been recorded and were not "intended to be recorded until after the small miners exemption certificates were filed in the BLM office." Appellant states that the reason why the fee was not paid was that the deeds were not recorded.

> Nevertheless, a delay in recording the deeds would not have postponed the effective date of the transfer. Although Departmental regulation 43 C.F.R. § 3833.3(c) provides that the filing of a transfer of interest, when properly executed and recorded under State law, will be placed on the BLM records when filed with the proper BLM office, the transfer itself "will be deemed to have taken place on its effective date under State law." * * * Thus, Appellant's failure to record the deed prior to August 31 did not prevent title from passing to Appellant before that date, and because Appellant failed to pay the claim maintenance fee or qualify for a waiver, BLM properly declared the claims abandoned and void.

Also quoted in Gold Road Red Top Mining Co., 145 IBLA 335, 339-40 (1998).

We find that the intent and timing of the subject deeds, the issues crucial to our review, are controlled by well-established principles of Idaho law. The Idaho Code, at § 55-601, provides that a conveyance of an estate in property may be made by an instrument in writing subscribed to by the party disposing of the same. The mining claims at issue were conveyed in writing, which conveyance was acknowledged by each grantor as evidenced by notary. See also Idaho Code § 55-805. To be valid, a conveyance of property requires delivery of an instrument. Defendant A v. Idaho State Bar, 978 P.2d 222, 224 (Idaho 1999). The instruments here are quitclaim deeds. The Idaho Supreme Court has concluded that a quitclaim deed conveys whatever interest, legal or equitable, which the grantor possesses at the time of the conveyance. Scogings v. Andreason, 418 P.2d 273, 277 (Idaho 1966); see also Dunham v. Dunham 910 P.2d 169, 172 (Idaho App. 1994) (it is intended to pass any title, interest, or claim which the grantor may have in the premise).

Appellant Mayes had possession of the deeds even though she delayed recording them. Possession of a deed by the grantee raises presumption of delivery, and therefore conveyance. See Estate of Courtright v. Robertson, 586 P.2d 265, 269-79 (Idaho 1978). Further, delivery is deemed to have occurred when the grantor parts with control of the deed and does not retain a right to keep it. Defendant A v. Idaho State Bar, supra. Even without recordation, an instrument is valid as between the parties thereto in accordance with the Idaho Code, at § 55-815. Thus, recordation of the deed is not essential to its validity (absent intervening rights). See Hartley v. Stibor, 525 P.2d 352, 355 (Idaho 1974). Because the subject quitclaim deeds were in writing, had been dated and notarized, and had been delivered to the grantee, they constituted legitimate conveyances. See Bliss v. Bliss, 898 P.2d 1081 (Idaho 1995).

Appellant contends that the subject documents were intended as security interests where conveyance was not intended until subsequent conditions (of nonperformance) occurred. It is generally accepted that Idaho courts, in construing deeds of conveyance, are to seek and give effect to the real

intention of the parties. Bumgarner v. Bumgarner, 862 P.2d 321, 329 (Idaho App. 1993); see also McCoy v. McCoy, 868 P.2d 527 (Idaho App. 1994) (fundamental legal principles regarding deeds of conveyance). However, the Idaho Supreme Court has most recently reaffirmed its position against extrinsic evidence where the language of the deed is unambiguous:

> [S]tatements regarding intent and consideration were inadmissible to contradict the deed's clear language. In Hall v. Hall, 116 Idaho 483, 484, 777 P.2d 255, 256 (1989), we reiterated that where a deed is plain and unambiguous, the intention of the parties must be determined from the deed itself. "Oral and written statements are generally inadmissible to contradict or vary unambiguous terms contained in a deed." Id.

Bliss v. Bliss, supra at 1085. Indeed, the Idaho Code, at § 55-604, provides that "[a] fee simple title is presumed to be intended by a grant of real property unless it appears from the grant that a lesser estate was intended." None of the quitclaim deeds state otherwise. With respect to conveyance, each deed reads as follows:

> **QUITCLAIM DEED**
>
> For Value Received [handwritten:] One Dollar And Other Considerations
>
> [handwritten:] Trent Chandler [or Don (Moose) Droulard-DBA-Woodland Gold ENT., or Paul T. Mayes] hereby conveys, releases, remises and forever quits claim unto [handwritten:] Aileen Mayes the following premises, to wit:
>
> [The names and serial numbers of the claims handwritten, along with the relevant survey description provided.] together with their appurtenances.
>
> Dated: [handwritten:] 9-14-93
>
> [signed:] Trent Chandler [or Don "Moose" Droulard DBA Woodland Gold Ent. or Paul T. Mayes]

As noted, all three were notarized on September 14, 1993, which printed statement provides that "the person who [sic] name is subscribed to the within instrument, and acknowledged to me that he executed the same."

We find nothing in the instruments or attendant notary contrary to BLM's construction that conveyance occurred when the deeds were signed and notarized, and we are confident that any court of competent jurisdiction would respond to appellant's assertions in a similar manner. Accordingly, we must affirm BLM in its decision despite appellant's ill-fated attempt to maintain her claims and protect her proceeds from claims conveyed in a

manner she hoped would avoid the consequences she now confronts. Although we sympathize with appellant in the loss of these claims, we however cannot ignore Congress' directive that failure to timely pay the required maintenance fee would automatically result in forfeiture of the mining claim. When a claimant fails to qualify for waiver of the required fees and no payment has been made, as in this case, forfeiture results from the statutory requirement. See Howard J. Hunt, 147 IBLA 381, 384 (1999). Even where extenuating circumstances are asserted, BLM and this Board are without authority to excuse lack of compliance with the maintenance fee requirement of the Act, to extend the time for compliance, or to afford any relief from the statutory consequences. Richard W. Cahoon Family Limited Partnership, supra at 326; Paul W. Tobeler, 131 IBLA 245, 249 (1994). In the absence of a timely-filed maintenance fee payment or valid waiver certification, BLM properly declared the subject mining claims forfeited. Harlow Corp., 135 IBLA 382, 385 (1996); Alamo Ranch Co., 135 IBLA 61 (1996). Unfortunately, appellant must bear the consequences for the method she chose to secure her interests.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is affirmed.

James L. Byrnes
Chief Administrative Judge

I concur:

James F. Roberts
Administrative Judge