

March 2013

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Recommended Citation

Sample, Alexa (2013) "Miami Tribe of Oklahoma v. United States," *Public Land & Resources Law Review*. Vol. 0 , Article 11.

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***Miami Tribe of Oklahoma v. United States*, 656 F.3d 1129 (10th Cir. 2011).**

Alexa Sample

I. INTRODUCTION

In *Miami Tribe of Oklahoma v. United States*,¹ two issues were before the court. The first issue was whether the Bureau of Indian Affairs' (BIA) appeal of the district court's affirmation of the BIA's own decision presents a "case or controversy" giving the appellate court jurisdiction,² and whether the BIA nonetheless forfeited its standing by not taking an immediate interlocutory appeal of the remand order (Order).³ The Tenth Circuit Court of Appeals held that since the Order directed the result of the BIA's decision on remand, the BIA retained an interest in the outcome sufficient to support an appeal.⁴ The court also held that immediate appeal of the Order was inappropriate because such a remand is not generally appealable as it is not a final decision,⁵ and it did not meet the exceptions for "practical finality."⁶ The second issue, on the merits of the BIA appeal, was whether the BIA's denial of the transfer application was "arbitrary and capricious, and contrary to law."⁷ The court found that the BIA did not abuse its discretion when it denied the Smith application based on the landholders best interests and the federal policy of avoiding fractionation of Indian lands.⁸

II. FACTUAL BACKGROUND

The Miami Tribe left Indiana in 1840.⁹ Through a series of treaties with the United States that split the Tribe and ceded vast amounts of land in both Kansas and Indiana, the Tribe

¹ *Miami Tribe of Okla. v. U.S.*, 656 F.3d 1129 (10th Cir. 2011).

² *Id.* at 1136.

³ *Id.* at 1137.

⁴ *Id.* at 1139.

⁵ *Id.*

⁶ *Id.* at 1139–1141.

⁷ *Miami Tribe*, 656 F.3d at 1142.

⁸ *Id.*

⁹ *Id.* at 1132.

finally settled in Oklahoma in 1867.¹⁰ In 1858, Maria Christiana DeRome petitioned Congress and was added to the list of Indiana Miamis even though she was not “considered of Miami blood.”¹¹ The DeRome family was not recognized among Western Miamis,¹² who were eventually compensated by Congress for money and land which was given to individuals, such as the DeRomes, and were erroneously added to the list in 1858.¹³ Smith, a descendent of Maria Christiana DeRome, inherited a 3/38 interest in the land now known as the Maria Christiana Reserve No. 35 (Reserve), which was held in restricted fee. A 1996 amendment to the Miami Tribe’s constitution, added Smith and all other owners of the Reserve now including them as tribal members.¹⁴

III. PROCEDURAL BACKGROUND

Smith wished to gift a one-third portion of his interest in the Reserve to the Miami Tribe under the Indian Land Consolidation Act (ILCA).¹⁵ He applied to the BIA for approval of the conveyance, as was required because of the restricted fee status of the land.¹⁶ The BIA denied the application and the Miami tribe brought a claim for abuse of discretion under the Administrative Procedures Act, among other claims.¹⁷ The district court found for the tribe on the reasoning that the tribe had jurisdiction over the land, and the BIA evaluation had failed to consider the Tribe’s best interests and the special relationship between Smith and the Tribe.¹⁸

The district court remanded to the BIA to reconsider the application, which, after the court

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* Western Miamis included only those individuals who left Indiana and settled on designated lands in Kansas under the first treaty with the United States. Those individuals who remained—the Indiana Miamis—are no longer recognized as members of the tribe. *Id.*

¹³ *Miami Tribe*, 656 F.3d at 1133–1134.

¹⁴ *Id.* at 1134.

¹⁵ *Id.* ILCA allows Indians to give lands to tribes for less than fair market value or no consideration. *Id.* at 1142–1143.

¹⁶ *Id.*

¹⁷ *Id.* at 1134. The action was bifurcated by the district court and the APA action given priority. *Id.* at 1134. These claims were stayed following the courts remand for further procedures. *Id.* at 1135.

¹⁸ *Id.*

rejected the BIA's request for a Rule 54(b) judgment¹⁹ on the Order, was finally approved.²⁰ The Tribe appealed the BIA's denial of the trust status of the conveyance, and the district court affirmed.²¹ After the final decision, the BIA appealed.²²

IV. ANALYSIS

A. Jurisdiction and Standing of BIA Appeal

Generally, the right to appeal is reserved for the aggrieved party.²³ However, the party that technically prevails may still meet this requirement if it “can demonstrate injury, causation, and redressability.”²⁴ The court articulated that the BIA could meet the injury requirement if the decision reached by the BIA which the district court upheld was one that the court had improperly imposed.²⁵ The district court had originally directed the BIA to approve the application but amended its remand ordering the BIA to simply reconsider the application, taking into account the prescribed factors.²⁶ The BIA argued that the district court's jurisdictional finding essentially prescribed its decision, and the Tenth Circuit agreed.²⁷

On the issue of whether the BIA should have immediately appealed the Order, the court articulated it would be better to wait for the final judgment.²⁸ Generally, interlocutory appeals are only appropriate in the case of “practical finality.”²⁹ That is, “when the lack of immediate review . . . would violate basic judicial principles,”³⁰ or if “the agency likely would be foreclosed

¹⁹ Fed. R. Civ. P. 54(b). Since the other claims had already been stayed, the BIA wished to have the Order declared a final judgment to make it immediately appealable. *Miami Tribe*, 656 F.3d at 1135.

²⁰ *Miami Tribe*, 656 F.3d at 1136. The BIA approved the conveyance but not the “land in trust status” of the conveyance and required that the tribe submit a request to transfer the land from restricted fee to trust. *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.* at 1138.

²⁴ *Id.* (quoting *Camreta v. Greene*, ___ U.S. ___, 131 S. Ct. 2020, 2029 (2011)).

²⁵ *Id.*

²⁶ *Miami Tribe*, 656 F.3d at 1135.

²⁷ *Id.* at 1138–1139.

²⁸ *Id.* at 1139–1141.

²⁹ *Id.* at 1139.

³⁰ *Id.*

from future appellate review.”³¹ The former is only applied to important legal threshold questions where delayed review will lead to further disputes and injustice.³² The court held it would not apply to this case.³³ Nor did the court find that the BIA would have been precluded from further appeal since two claims were still pending at the district court.³⁴

B. De Novo Review on the Merits of the BIA’s Denial of the Smith Application

The ILCA does not address the standard for BIA approval of land transactions, but the agency has promulgated its own regulatory guidelines which allow it to approve applications where, “the transaction appears to be clearly justified in the light of the long-range best interest of the owner.”³⁵

In reviewing the BIA’s decision, the court first addressed whether the Miami Tribe in fact had jurisdiction over the Reserve, as the district court found it had. If jurisdiction was proper, it would implicate a statutory policy in favor of gifts like the Smith conveyance.³⁶ A tribe’s jurisdiction must be based on congressional intent.³⁷ The court found that the 1873 treaty and congressional acts expressly abrogated the Tribe’s authority over its Kansas lands.³⁸ The Tribe’s active connection to the Reserve in recent years does not overcome such an abrogation.³⁹

Without the jurisdictional requirement to compel its decision under ILCA, the BIA has wide latitude over land transfer decisions.⁴⁰ The BIA decided that the transfer would not be in the best interests of the owners and that the existing lease with the Tribe could accomplish the

³¹ *Id.* at 1140.

³² *Miami Tribe*, 656 F.3d at 1140.

³³ *Id.*

³⁴ *Id.* at 1140.

³⁵ *Id.* at 1145–1146 (quoting 25 C.F.R. § 152.23 (2011)).

³⁶ *Id.* at 1143.

³⁷ *Id.* at 1144.

³⁸ *Miami Tribe*, 656 F.3d at 1144.

³⁹ *Id.* at 1145.

⁴⁰ *Id.* at 1146.

same benefits for the Tribe as a transfer would.⁴¹ It also cited concerns over transferring the land without compensation due to the “gaming-related aspects of the Reserve.”⁴² Moreover, the BIA argued that the lack of jurisdiction actually compelled it to deny the application based on another ILCA policy of avoiding further fractionalization of interests in Indian lands.⁴³ The BIA claimed that further fractionation of interests complicated tract management.⁴⁴ Citing *Downs v. Acting Muskogee Area Director*,⁴⁵ the court agreed with the BIA’s argument.⁴⁶ In *Downs*, the BIA denied a similar application for a gift of interest to the Miami Tribe, however, *Downs* is distinguished from the case at bar because the landowner in *Downs* was not a tribal member.⁴⁷ Based on *Downs*, the court of appeals vacated the Order, reversing the BIA, and remanded for further consideration.⁴⁸

⁴¹ *Id.*

⁴² *Id.* at 1146–1147. The opinion does not go into detail on what the BIA’s specific concerns were, except to cite a Realty Officer’s opinion relied on by the BIA that suggested the transaction might not be “without the expectation of compensation.” *Id.* at n. 18.

⁴³ *Id.* at 1148.

⁴⁴ *Miami Tribe*, 656 F.3d at 1149.

⁴⁵ *Downs v. Acting Muskogee Area Director*, 29 IBIA 94 (1996).

⁴⁶ *Miami Tribe*, 656 F.3d at 1149.

⁴⁷ *Id.* at 1149–1150.

⁴⁸ *Id.* at 1151.

V. CONCLUSION

While the novelty of this case lies primarily in the unique procedural posturing of the BIA's appeal, the history and the future of the case on the merits bears further discussion for Indian Law in general. This was not the first time the Maria Christiana Reserve was the subject of litigation,⁴⁹ and with the level of discretion that the BIA exercises in its land into trust authority under ILCA, it is likely not to be the last.⁵⁰ The court acknowledged that the statutory standard for the BIA's approval of these applications is somewhat paternal, but nonetheless held that it is the choice of Congress, not the courts, to constrain an agency's discretion.⁵¹

⁴⁹ *Id.* at 1134. The reserve has been the subject of much litigation involving the Miami Tribe. *Id.* at n. 7.

⁵⁰ *Id.* The circumstances of the Tribe's relationship to the reserve continue to change. With the tribe having recently acquired partial ownership of the Reserve through a beneficial life estate, the story seems far from over. *Id.* at n. 6.

⁵¹ *Id.* at 1146.