

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

ANGELA DELORME-GAINES,)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:20-cv-00081
)	
TARA SWEENEY, Asst. Secretary of)	
Interior, US Bureau of Indian Affairs, et al.,)	
)	
Defendant.)	

PLAINTIFF’S MEMORANDUM IN SUPPORT OF PLAINTIFF’S
RESPONSE TO BUREAU OF INDIAN AFFAIRS’ MOTION TO DISMISS

Angela Delorme-Gaines, Plaintiff, files this Memorandum in Support of Plaintiff’s Response to Bureau of Indian Affairs’ Motion to Dismiss.

The Bureau of Indian Affairs’ Memorandum, in the Introduction (Document 15, p. 1), references Plaintiff’s April 18, 2019 letter requesting a lien, and Plaintiff’s August 10, 2020 Petition for Writ of Mandamus. The Procedural History of that memorandum (Document 15, p. 3) references administrative action taken by Danks on March 31, 2020. In regard to that administrative action taken by Danks, the BIA previously wrote, “Since April 18, 2019, BIA has taken steps to evaluate that request (for a lien); but, the process is not completed.” (Document 10, p. 2).

The Declaration of Kayla Danks (Document 16) also makes the leap from April 18, 2019 to March 31, 2020, and then adds action taken on September 16, 2020, September 30, 2020, and October 21, 2020 (Document 16, pp. 2-3).

An attachment to the Declaration of Kayla Danks sheds a bit more light on that administrative process. On November 20, 2019 and December 19, 2019, Thomas Joseph Fox was given notice of Plaintiff's April 8, 2019 request for a lien (Document 16-1, p. 2). The underlying documents of that notice have not been provided us by the BIA. However, on February 25, 2020, the BIA, through Mr. Timothy LaPointe, Regional Director of the BIA, wrote in part, "We have consulted with the Superintendent and found that the administrative appeal period has expired and that the Individual Indian Monies account in question will be restricted and distribution plan prepared." (Document 7-7) (emphasis added). This would have been the administrative appeal period for Mr. Fox to appeal the decision against him, and that decision would be given the finality the BIA now espouses should apply to Plaintiff (see Document 16-2, p. 4).

When that distribution plan was not forthcoming, Plaintiff made inquiry on April 20, 2020 (Document 7-9). In response, the Deputy Regional Director of Trust Services for the BIA reiterated, "[T]here was no appeal by Fox." (Document 7-10).

The BIA's position now before this Court, that the administrative process started in March, 2020, is belied by the facts set forth above.

Going further, in the Declaration of Kayla Danks, Danks states, "An administration restriction was place on Fox's IIM account on March 31, 2020, in response to Plaintiff's April 8, 2019 request." (Document 16, p. 2, ¶ 4). First, this statement is not true in that the restriction placed as a result of Plaintiff's April 8, 2019 request became final against Mr. Fox before the date of March 31, 2020, as shown by the facts above. Second, the attachment to Danks' Declaration shows that in March, 2020, Danks received only a request from Fox's attorney for a hearing, and that no administrative action was taken (Document 16-1, pp. 2-3). Third, it was

only after Plaintiff's petition to this Court that Danks and the BIA "began" the administrative process the BIA now claims should end Plaintiff's petition (Document 16, p. 2, ¶ 4).

The BIA is doing an "end-around" in an attempt to get this Court to dismiss Plaintiff's petition, putting Plaintiff back into a position she was in before the BIA decision against Mr. Fox became final.

The BIA's legal justification for this end-round was 25 C.F.R. § 115.607 (copy attached) (see Document 16, p. 2, ¶ 4). Again, this "process" began on September 16, 2020, after Plaintiff's petition was filed with this Court.

The BIA does not show that the March 6, 2020 request by Fox (Document 16-1, p. 2) was made under 25 C.F.R. § 115.607.

The BIA does not show that the August 14, 2020 information given by Fox (Document 16-1, p. 3) was given under 25 C.F.R. § 115.607.

The BIA, in its Memorandum now before this Court (Document 15), although it once referenced 25 C.F.R. § 115.607 (Document 15, p. 3, first paragraph), does not give any argument that section justified the BIA's re-opening the final decision against Mr. Fox. In fact, nowhere in the BIA's Memorandum does the BIA actually inform the Court of the final decision against Mr. Fox.

And, finally, the BIA's Memorandum does not give any argument that 25 C.F.R. § 115.607 was properly and legally followed by the BIA.

Again, under Regional Director Timothy LaPointe's letter dated February 25, 2020, stating and admitting that the restriction on Mr. Fox's IIM account was final, a distribution plan was to be prepared. (Document 7-7). Ms. Danks has refused to prepare that distribution plan. Indeed, the BIA now, as a whole, is evidencing its refusal to prepare that plan.

The BIA has a clear duty to perform the distribution plan (see again Document 7-10).

And, Plaintiff has no adequate alternative remedy to make the BIA perform their clear duty except for this Court to intervene.

Wherefore, Plaintiff requests the Court to deny the BIA's motion to dismiss.

Dated: December 2, 2020.

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