

THOMAS DOYLE JONES, JR.

IBLA 90-528

Decided February 11, 1993

Appeal from a decision of the Eastern States Office, Bureau of Land Management, rejecting color-of-title application MOES 42949.

Affirmed.

1. Color or Claim of Title: Generally--Color or Claim of Title: Applications--Color or Claim of Title: Good Faith

An essential element of a color-of-title claim is the good faith requirement. Good faith is not established where a color-of-title applicant bases his ownership in part on a quitclaim deed issued to him some 18 months after the applicant learned that he did not have clear title. An applicant does not have good faith where he knows at the time he acquires partial title to those lands that the lands applied for were never patented by the Federal government.

2. Color or Claim of Title: Generally--Color or Claim of Title: Applications

Under 43 U.S.C. § 1068(b) (1988), a class 2 color-of-title claim requires, inter alia, that the tract applied for has been held in peaceful, adverse possession by the claimant, his ancestors, or grantors, under color or claim of title for a period commencing not later than Jan. 1, 1901, to the date of application. Where the chain of title is interrupted by a tax sale of the land in 1958, a new title is initiated for purposes of determining when claim or color-of-title commenced, and the class 2 claim is properly rejected.

APPEARANCES: John Z. Williams, Esq., Rolla, Missouri, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

Thomas DOYLE Jones, Jr., has appealed from an August 17, 1990, decision by the Acting Chief, Branch of Lands, Eastern States Office, Bureau of Land Management (BLM), rejecting his color-of-title application.

A class 1 color-of-title application (MOES 42949) was filed on May 25, 1990, by Jones' counsel. The application requested the purchase of land

described as the N $\frac{1}{2}$ NW $\frac{1}{4}$ , sec. 13, T. 39 N., R. 6 W., Fifth Principal Meridian, in Phelps County, Missouri. On the application, Jones indicated that he first learned on July 3, 1987, from BLM that he did not have clear title to the land.

The record shows that Jones and his then wife Martha L. Jones acquired title to the land by warranty deed dated May 12, 1986. According to the statement of reasons, appellant drilled a well, constructed a garage, and placed a mobile home on the land. He also cleared approximately 6 acres of scrub brush.

According to BLM's decision, the fact that Jones did not have clear title was discovered as a result of a request filed with BLM in July 1986 by his attorney for a certified copy of the original patent of the lands in question. Although the 1986 warranty deed to Jones and his wife included the N $\frac{1}{2}$ NW $\frac{1}{4}$  of sec. 13, neither BLM's tract book nor status plat showed that the lands had ever been patented out of Federal ownership. Although it is not clear how BLM notified Jones of that fact, he expressly acknowledged in his application that he knew of the title problem on July 3, 1987, and that he learned of it from BLM.

Jones and his wife were divorced on February 16, 1989. The divorce decree awarded the land to Jones, and on that date, his wife issued a quitclaim deed transferring her interest in the land to him in return for a cash payment. Jones filed his color-of-title application on May 25, 1990. On that application appellant asserts ownership to the land by virtue of the quitclaim deed from his former wife. In its decision, citing Board precedent, BLM denied the application because Jones knew of the title defect at the time he acquired his interest by quitclaim from his former wife, so that he could not "be said to hold the land in good faith."

In his/ statement of reasons, Jones (appellant) argues that he actually acquired the land by the May 12, 1986, warranty deed conveyance and not by the quitclaim deed issued as a result of the divorce. Appellant asserts that the material date for his good faith should therefore be May 12, 1986, and not February 16, 1989. Appellant explains that the quitclaim deed was not made for the purpose of the purchase of the property, but merely for confirming that the property had been awarded to appellant by the divorce decree. Appellant also contends that he meets the requirements for a class 2 color-of-title claim.

[1] The Color-of-Title Act, as amended, 43 U.S.C. § 1068 (1988), provides in part:

The Secretary of Interior \* \* \* shall, whenever it shall be shown to his satisfaction that a tract of public land has been held in good faith and in peaceful, adverse, possession, by a claimant, his ancestors or grantors, under claim or color of title for more than twenty years, and that valuable improvements have been placed on such land or some part thereof has been reduced to cultivation \* \* \* issue a patent for not to exceed one hundred and sixty acres of such land \* \* \*.

The regulations implementing that section, 43 CFR 2540.0-5(b), describe two different categories of color-of-title claim, referred to as "class 1" and "class 2" claims. As to the former, that section provides:

A claim of class 1 is one which has been held in good faith and in peaceful adverse possession by a claimant, his ancestors or grantors, under claim or color of title for more than 20 years, on which valuable improvements have been placed, or on which some part of the land has been reduced to cultivation. \* \* \* A claim is not held in good faith where held with knowledge that the land is owned by the United States. A claim is not held in peaceful, adverse possession where it was initiated while the land was withdrawn or reserved for Federal purposes.

A class 1 color-of-title applicant must demonstrate that the land was held in good faith and in peaceful, adverse possession by the applicant or his predecessors-in-interest for more than 20 years, based on an instrument which, on its face, purports to convey title to the claimed land. 43 CFR 2540.0-5(b); Louis Mark Mannatt, 109 IBLA 100, 103 (1989). As noted above, BLM ruled that Jones did not hold the land in good faith, because he was aware of the defect in the title when he acquired the land from his wife.

If appellant knew that the lands were owned by the Federal government at the time he acquired a partial interest in those lands, he is barred from relief under the Color of Title Act. See Kim C. Evans, 82 IBLA 319, 321 (1984). The critical date is the date the applicant "acquired [his] title to the land" (Purvis C. Vickers, 67 I.D. 110, 111 (1960)) or when he has "taken title." Patti L. Keith, 100 IBLA 89, 93 (1987). What is relevant is whether the applicant knew of the title problem "at the time of the conveyance to" him. Kim C. Evans, *supra* at 321. Although the date a party purchases a property may coincide with the date he acquires that property (see, e.g., Anthony S. Enos, 60 I.D. 106, 108 (1949)), good faith is also lost where a party receives conveyance of a partial interest as a result of the terms of a will. Kim C. Evans, *supra* at 321. That is, the application is properly rejected where the applicant has taken title to the lands, even by means other than purchase, with knowledge of the patent problem.

Appellant and his wife purchased the subject property on May 12, 1986. The December 16, 1988, Separation Agreement between appellant and his wife (Appellant's Exh. C), states with respect to the subject land:

The parties have agreed that said real estate and mobile home shall be the sole and exclusive property of [appellant,] and he agrees to assume and agrees to pay the unpaid balance \* \* \* owing on said real estate to [the lending bank.] \* \* \* [Appellant's former wife] does herewith assign, transfer and set over to [appellant] all of her right, title or interest in said real estate.

For [appellant's] marital interest in said real estate and to equitably divide all marital property of the parties, [appellant] shall pay to [appellant's former wife a sum of money] as

and for her equity interest in said real estate and the other marital property which is awarded to [appellant] and that [appellant's former wife] shall relinquish any right, title and interest she may have in said real estate. Said sum \* \* \* shall be a judgment against [appellant] and in favor of [appellant's former wife].

The subsequent quitclaim deed transferring to appellant his wife's interest in the subject land was an essential link in the chain of title as it existed at the time of his color-of-title application.

The timing of events is critical to the validity of a color-of-title application. Where the applicant learns that he does not have clear title to the land prior to receiving a conveyance of an interest in that land, the application must be rejected. See Patti L. Keith, supra at 93. A color-of-title applicant who knows that title to the land sought is in the United States at the time he acquires the land does not hold color or claim of title in good faith. Id.

There is no doubt that, at the time appellant took title from his former wife in February 1989, he had knowledge of the fact that no Federal patent had ever been issued for the lands he applied for. That is enough to disqualify his application.

Appellant argues that, for purposes of satisfying the requisite good-faith element of the Color-of-Title Act, we should look to the May 12, 1986, warranty deed conveyance to husband and wife, rather than to the February 16, 1989, quitclaim deed. This suggestion is untenable for several reasons. First, appellant in the application asserts ownership based on the quitclaim deed and not the 1986 warranty deed. Second, the 1989 quitclaim deed is the instrument by which appellant completed acquisition of all of the interest in the land. Third, appellant has provided us with no reason to ignore the 1989 quitclaim deed as an essential link in the chain of title. Appellant argues that the quitclaim deed "was not made for the purpose of the purchase of the property \* \* \* but only for the purpose of confirming that the property in question had been awarded to Mr. Jones by the decree dissolving the marriage" (Statement of Reasons at 2). Whatever terms of art are used, the salient effect of the quitclaim deed was to vest in appellant all of the interest in the subject land. The court decreed that he was to purchase this interest for value. It is undisputed that appellant acquired and purchased this interest, and that he did so without the statutorily required good faith. Accordingly, BLM properly rejected appellant's class 1 color-of-title application.

[2] In support of a class 2 color-of-title claim appellant, asserts that "the abstract of title to this property reflects a continuous chain of title \* \* \* from before January 1, 1901, to date with the exception of one tax sale which occurred on August 25, 1958" (Statement of Reasons at 3).

Under 43 U.S.C. § 1068(b) (1988), a class 2 color-of-title applicant is required to establish, inter alia, that the tract applied for has been

held in good faith and in peaceful, adverse possession by the claimant, his ancestors, or grantors, under claim or color of title for a period commencing not later than January 1, 1901, through to the date of application, during which time they have paid taxes levied on the land by state and local governmental units.

The requirements for a class 2 color-of-title claim have not been met. A tax sale and tax deed initiate a new title for purposes of determining when claim or color of title commenced and will defeat a class 2 color--of-title claim because the holder of the tax deed has no privity with the previous owner. Paul Marshall, 82 IBLA 298, 301 (1984), and cases cited. The tax sale here occurred after the January 1, 1901, cutoff for filing class 2 applications.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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David L. HUGHES  
Administrative Judge

I concur:

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Bruce R. Harris  
Deputy Chief Administrative Judge