



MIKE HOOK AND DR. ROBERT FLANNIGAN

174 IBLA 73

Decided: March 12, 2008



United States Department of the Interior  
Office of Hearings and Appeals  
Interior Board of Land Appeals  
801 N. Quincy St., Suite 300  
Arlington, VA 22203

MIKE HOOK AND DR. ROBERT FLANNIGAN

IBLA 2007-205

Decided: March 12, 2008

Appeal of decision by the Eastern States Office, Bureau of Land Management, rejecting an application made under the Color-of-Title Act. ARES 054388.

Affirmed.

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

The applicant under the Color of Title Act has the burden of establishing that the statutory requirements for purchase under the Act have been met. The applicant must establish each of the requirements for a class 1 claim, and a failure to carry the burden of proof with respect to any one of those elements is fatal to the application.

2. Color or Claim of Title: Adverse Possession -- Color or Claim of Title: Applications

An application for a class 1 color-of-title claim made pursuant to the Color of Title Act requires that the land be held in adverse possession for at least 20 years by the claimant or its predecessors-in-title. Acquiring title by tax deed initiates a new title for the purpose of determining when possession under the Act commenced.

APPEARANCES: Arlon Woodruff, Esq., Lake City, Arkansas, for appellants; J. Nicholas Holt, Esq., Field Solicitor's Office, U.S. Department of the Interior, Knoxville, Tennessee, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE JACKSON

Mike Hook and Dr. Robert Flannigan (appellants) submitted an application under the Color Of Title Act, 43 U.S.C. § 1068 (2000), to the Bureau of Land Management

(BLM) on October 2, 2006, seeking title to Lots 1 and 4, Sec. 23, T. 15 N., R. 6 E., Fifth Principal Meridian, Craighead County, Arkansas. Appellants' application was rejected by BLM's Eastern States Office on May 10, 2007, and this appeal followed.<sup>1</sup> For the reasons discussed below, we affirm BLM's rejection of appellants' color-of-title application.

### BACKGROUND

Appellants purportedly acquired title to the lands at issue by warranty deed from Clyde Eason, Robert Tacker, and Donna S. Tacker on August 13, 1998. AR at 14. Eason and the Tackers had acquired their title by tax deed from the State of Arkansas on October 2, 1992. *Id.* at 12, 40. Appellants later initiated a quiet title action against the State of Arkansas, the Arkansas Game and Fish Commission (Commission),<sup>2</sup> and BLM. *Robert Flannigan, Jr., et al., v. State of Arkansas, et al.*, No. 3:02-CV-00404 (E.D. Ark. filed Dec. 31, 2002). Appellants there claimed that these lands had been patented to their predecessors-in-title in 1856; BLM countered that these lands were first patented by the United States in 1965. The District Court rejected appellants' claims that the lands at issue had been patented in 1856 and that the United States was equitably estopped from issuing the 1965 patent to the Commission. *Id.*, Order at 3-7 (E.D. Ark. Mar. 24, 2006); Answer at Ex. 1. As between appellants and Arkansas, the Court held that the State lost title by failing to challenge the 1992 tax deed to Eason and the Tackers, but as between appellants and BLM, it held that title reverted to the United States under the terms of the 1965 patent. *Id.*, Order Granting Partial Summary Judgment (E.D. Ark. Sept. 29, 2004); AR at 40-41; *see also Flannigan v. Arkansas*, 427 F. Supp 2d 861, 866 (E.D. Ark. 2006); AR at 31-32. In response to entry of judgment in that case, the Commission appealed the District Court's decision to the U.S. Court of Appeals for the Eighth Circuit,<sup>3</sup> and appellants filed their color-of-title application on October 2, 2006.

Appellants' application asserted an "unbroken chain of title since 1941 to present,

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<sup>1</sup> Appellants filed a Statement of Reasons (SOR) on July 6, 2007; BLM filed its Answer on Aug. 8, 2007, appended several exhibits (Ex.) to its Answer, and submitted its Administrative Record (AR) [Arkansas] of the color-of-title application on appeal.

<sup>2</sup> The Commission acquired a patent from the United States in 1965 "for fish and wildlife management purposes only." Answer Ex. 1 at 8.

<sup>3</sup> Although the Eighth Circuit appeal was held in abeyance to facilitate efforts to resolve the dispute between the Commission and BLM through other avenues, appellants' color-of-title application and the instant appeal precipitated the Commission's request for a briefing schedule in that appeal. *See* Appellant's Status Report, *Robert Flannigan, Jr. v. Arkansas Game and Fish Commission*, No. 06-2873 (8th Cir.), dated Aug. 1, 2007, Answer at Ex. 2.

65 yrs [years] taxes paid to AR [Arkansas],” and stated that they first learned that they did not have clear title when judgment was entered in the above-described quiet title action. AR at 9. Appellants also represented that their predecessors-in-title made improvements valued at \$3,000, and that they had made improvements since 1998 which were then valued at \$5,000, including a duck blind. *Id.*; *see also* AR at 13. BLM rejected that application because “it does not meet the qualifications of a clear title for the required 20 years,” and because “you did not establish a valuable improvement on the land, [*Malcolm C. And Helena M. Huston,*] 80 IBLA 53 (1984).” *Id.* at 3.

### DISCUSSION

The Color of Title Act, 43 U.S.C. § 1068 (2000) (the Act), sets forth the requirements that a claimant must meet to receive a patent as follows:

The Secretary of the Interior (a) 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, or (b) may, in his discretion, 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 the period commencing not later than January 1, 1901, to the date of application during which time they have paid taxes levied on the land by State and local governmental units, issue a patent for not to exceed one hundred and sixty acres of such land upon the payment of not less than \$1.25 per acre . . . .

The method for obtaining a patent outlined in subsection (a) of section 1068 is known as a class 1 claim; a claim under subsection (b) is defined as a class 2 claim. *See* 43 C.F.R. § 2540.0-5(b). Appellants’ application presented a class 1 claim under the Act. AR at 9.

[1] An applicant under the Color of Title Act has the burden of establishing that the statutory requirements for purchase under the Act have been met. *See Albert H. Munhall*, 150 IBLA 171, 173 (1999); *Joe T. Maestas*, 149 IBLA 330, 333 (1999). The Board has repeatedly held that applicants must establish each requirement for a class 1 claim, as a failure to carry the burden of proof with respect to any one of those elements is fatal to the application. *Albert H. Munhall*, 150 IBLA at 173, and cases cited. Appellants must demonstrate, *inter alia*, that their possession was “under claim or color of title for more than twenty years.” 43 U.S.C. § 1068(a) (2000) (emphasis added). Appellants contend that this 20-year requirement was met by the payment of property

taxes for over 65 years and that it should not make any difference whether their predecessors-in-title acquired title by tax deed. SOR at 2.

[2] To satisfy the statutory element of adverse possession under claim or color of title for more than 20 years, applicants must submit a chain of title. Although appellants submitted such a chain, *see* AR at 12, we have repeatedly and consistently held that a tax deed breaks that chain and initiates a new chain of title for purposes of determining when a claim or color of title commenced. *See, e.g., Walter W. Bendel*, 146 IBLA 134, 137 (1998) (“Tax title has nothing to do with the previous chain of title and does not in any way connect with it. It is a breaking up of all previous titles, legal and equitable.”); *Thomas Doyle Jones, Jr.*, 125 IBLA 230, 234 (1993) (“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.”); *Estate of John C. Brinton*, 71 IBLA 160, 163 (1983) (holding that acquiring title to public lands by tax deed from a local taxing authority that mistakenly believes it has title initiates a new title for the purposes of determining when possession under color of title commenced); *see also Filadelfia Sanchez*, 147 IBLA 217, 220 (1999); *Estate of Edna Turney*, 123 IBLA 354, 358 (1992).

Since appellants’ predecessors-in-title acquired their title by tax deed on October 2, 1992, their possession under claim or color of title began on that date. Accordingly, we find that appellants have failed to demonstrate possession “under claim or color of title for more than twenty years.” 43 U.S.C. § 1068(a). Since this deficiency is fatal to appellants’ class 1 claim, we need not resolve whether the other elements of that claim were established (*e.g.*, “good faith” and either cultivation or placement of “valuable improvements” on the land claimed). *See* Answer at 6-11.<sup>4</sup>

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<sup>4</sup> It is not necessary to hold this appeal in abeyance pending the outcome of the Commission’s appeal to the Eighth Circuit. *See supra* note 3. If the Commission prevails in that appeal and is held to have good title as against BLM, any color-of-title claim against BLM in this case would then be moot; but if the United States prevails in the Eighth Circuit, appellants’ color-of-title claim fails for the reasons explained above.

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 May 10, 2007, decision by the Eastern States Office, Bureau of Land Management, rejecting appellants' color-of-title application is affirmed.

\_\_\_\_\_/s/\_\_\_\_\_  
James K. Jackson  
Administrative Judge

I concur:

\_\_\_\_\_/s/\_\_\_\_\_  
Geoffrey Heath  
Administrative Judge