

JUANITA J. ANDERSON

IBLA 70-408

Decided December 23, 1971

Equitable Adjudication: Generally -- Equitable Adjudication: Excusable Neglect -- Homesteads:
Generally -- Homesteads: Cancellation of Entry

When a homestead entry has been canceled for failure to submit timely final proof and reinstatement has been denied and it appears that there are mitigating circumstances for failure to file timely final proof, the entry will be reinstated and the case remanded for further consideration in accordance with equitable adjudication.

Withdrawals and Reservations: Generally -- Withdrawals and Reservations: Effect of

Public Land Order 4582, as amended, does not bar the reinstatement of a homestead entry where the record shows asserted valid settlement prior to December 14, 1968.

JUANITA J. ANDERSON : Homestead entry terminated
: Reversed, equitable
: adjudication required,
: case remanded

DECISION

Juanita J. Anderson has appealed from an action of the Fairbanks district land office, dated October 2, 1969, which is based upon a decision of that office issued on January 23, 1969. The January decision provided that the entrywoman was allowed 30 days from the receipt of the decision in which to submit her homestead final proof. The entrywoman's attorney, by a letter received in the land office on February 26, 1969, explained that the entrywoman and her mother were very ill and he requested an extension of time in which to submit the entrywoman's final proof. In a letter dated March 3, 1969, the land office advised the attorney that the "decision of January 23, 1969, is hereby amended to allow Juanita J. Anderson until March 28, 1969, to file final proof on her homestead. Failure to file proof by March 28 will result in cancellation of the entry without further notice." The entrywoman submitted her final proof on September 30, 1969, together with a letter from her attorney, dated September 19, 1969, which explains that the entrywoman had been in Stockton, California, where she looked after her mother who was suffering from physical and mental ailments, and that in 1968 the entrywoman was herself ill with Parkinson's disease, lost her powers of locomotion, and therefore was unable to return to Fairbanks to complete her final proof.

The October 2 decision of the land office states that the entry was officially cancelled on the land office records on April 29, 1969, and the case was closed. That decision further states that upon cancellation of the entry the land was withdrawn by Public Land Order 4582 of January 17, 1969, and that "The land is not subject to further entry by reinstatement of the prior entry so long as the withdrawal is in effect."

The appellant alleges that approximately \$14,500 was spent in clearing, cultivating and sowing crops and construction of dwelling and roadwork, and that "The only reason for her delay in the filing of final proof was the chronic illness of her mother, her [the appellant's] own illness which has become aggravated by Parkinson's disease."

The record indicates that originally Mrs. Anderson's husband had made entry on the land in 1959, but he died of cancer on April 14, 1962, during the third entry year.

On July 16, 1965, the entrywoman filed an application for reduction of the required area of cultivation because of "prolonged illness." This application was accompanied by a statement from a physician which states that, "She is physically unable, because of a prolonged illness, to comply with the Homestead Laws. She will require surgery in the near future." The land office, by letter of October 7, 1965, stated that consideration would be given to the application upon submission of final proof.

The threshold question is whether there is authority at this time to reinstate a homestead entry on land affected by Public Land Order 4582, as amended.

Public Land Order 4582 of January 17, 1969, 34 F.R. 1025 (January 23, 1969) withdrew all the public lands in Alaska from all forms of appropriation and disposition under the public land laws "for the determination and protection of the rights of the native Aleuts, Eskimos, and Indians of Alaska." The order further provided in applicable portion:

2. Unless otherwise required by law, all applications for leases, licenses, permits, or land title transfers which were pending before the Department of the Interior on the effective date of this order, will be given the same status and consideration beginning at 12 (noon) A.s.t., on April 2, 1971, as though there had been no intervening period, unless previously recalled by the applicant.

The effect of that provision was to suspend homestead land title transfers, inter alia, until April 2, 1971. By Public Land Order 4962 of December 8, 1970, 35 F.R. 18874 (December 11, 1970), Public Land Order 4582 was amended to provide in pertinent part:

6. Other provisions of this order to the contrary notwithstanding, applications for patents and allotments may be processed to conclusion in the following cases where the conditions herein stated are met and there has been compliance with all other applicable provisions of law:

a. Homesteads, pursuant to the Act of May 14, 1898 (30 Stat. 409; 48 U.S.C. 371, et seq.), as amended, where valid settlement was made prior to December 14, 1968. . . .

Public Land Order 5081 of June 17, 1971, 36 F.R. 5081 (June 24, 1971) extended the withdrawal until the adjournment of the First Session of the 92d Congress at 12 (midnight), prevailing Alaska time, or the day a native rights bill was enacted into law, whichever shall occur first. Thus Public Land Order 5081 does not affect the consideration of the case, apart from the fact that it extended the withdrawal from June 30, 1971. Since the appellant claims residence from May 3, 1964, her asserted residence clearly antedates December 14, 1968, the cut-off point for consideration under Public Land Order 4962. Thus the request for reinstatement may be considered on its merits.

The fact that the entry in this case was officially canceled on the land office records does not bar us from extending to the appellant another opportunity to have the final proof considered, particularly in view of the mitigating circumstances. William Dittman, A-30240 (January 26, 1965). The late-filed proof may be entertained under the equitable adjudication provisions of 43 CFR Part 1871 (1971). See Ruth Gary, A-30329 (August 6, 1965).

In view of the determination that the final proof will be considered on its merits, the request for the reduction in the area of cultivation due to misfortune will also be considered. See 43 CFR 2511.4-3(b)(2) (1971).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision cancelling the homestead entry is reversed, the

entry is reinstated, and the case is remanded to the Bureau of Land Management for further appropriate consideration in light of this decision.

Frederick Fishman, Member

We concur:

Edward W. Stuebing, Member

Anne Poindexter Lewis, Member

