

DeWITT W. FIELDS

IBLA 72-10

Decided November 22, 1972

Appeal from decision (Anchorage 062379) by Alaska State Office, Bureau of Land Management, refusing application for reduction of cultivation requirements, rejecting final proof of homestead, and canceling homestead entry.

Affirmed.

Alaska: Homesteads--Homesteads (Ordinary): Cultivation--Homesteads (Ordinary): Final Proof

Where the final proof submitted by a homestead entryman shows that the cultivation requirements of the homestead laws have not been met, the final proof is defective on its face and is subject to rejection unless a reduction in the cultivation requirements is warranted.

Alaska: Homesteads--Homesteads (Ordinary): Cultivation

An application for a reduction in the area required to be cultivated on a homestead entry is properly rejected where the conditions prescribed by regulation for such a reduction do not exist.

APPEARANCES: DeWitt W. Fields, pro se.

OPINION BY MR. FISHMAN

DeWitt W. Fields has appealed from a decision of the Alaska State Office, Bureau of Land Management, dated June 8, 1971, which denied an application for reduction of cultivation requirements for a homestead entry, rejected the entryman's final proof, and canceled his homestead entry.

On April 22, 1965, appellant filed a notice of location for a homestead entry on Kodiak Island in accordance with the provisions of the homestead laws, 43 U.S.C. §§ 161, 164, 270 (1970). The homestead claim was situated on lands which were held by appellant under a grazing lease (A-034760), and, at appellant's request, his grazing lease was canceled as to the 160 acres described in his

homestead location notice. On April 21, 1970, the appellant filed his final proof which did not show any cultivation of the lands embraced within his homestead entry from 1965 through 1969. In a letter attached to his final proof, appellant requested a reduction in the cultivation requirements, and gave the following reason for his failure to comply with the cultivation requirements of the homestead laws:

I would like to ask exemption under the homestead regulations \* \* \* for the following reasons. The land is more suitable for grazing. It's not economically feasible to plow up the grass and plant it into other seeds or grains, although I did sow oats on approximately 10 acres before I filed for the homestead. I have not farmed the land continuously. I do plan to disc in approximately 15 acres this year. [Emphasis added.]

On May 22, 1970, the Bureau informed the appellant that his final proof was defective and subject to rejection. An opportunity was extended to the appellant to set forth in detail all the facts and circumstances on which he based his application for a reduction in the cultivation requirements of the homestead laws. In response to this invitation, appellant, by letter dated May 29, 1970, informed the Bureau that he had several improvements on the entry, had plowed 20 acres of adjacent land, and was attempting to put some oats and grass on the entry, but that because of the conditions of the soil and the expense of fertilizer, it was not practical to farm the land.

The homestead laws and applicable regulations require that 1/16th of the entry be cultivated in the second year and 1/8th in the third and each year thereafter until submission of final proof. 43 U.S.C. § 164 (1970); 43 CFR 2511.4-3. Where, as in the case at bar, final proof submitted by a homestead entryman shows less than the required cultivation, the final proof is defective on its face and is subject to rejection, unless a reduction in the cultivation requirement is warranted. Donald M. Fell, A-30862 (February 21, 1968).

The regulation governing reduction of cultivation requirements, 43 CFR 2511.4-3(b)(1), states in pertinent part:

The requirements as to cultivation may be reduced if the land entered is so hilly or rough, the soil so alkaline, compact, sandy, or swampy, or the precipitation of moisture so light as not to make cultivation of the required amounts practicable, or if the land is generally valuable only for grazing.

When action is taken on an application for a reduction of the required area of cultivation, consideration will be given all the attendant facts and circumstances, and if it appears that at the date of the initiation of the claim the conditions were such as to indicate to a prudent person that cultivation of the required acreage was not reasonably practicable or that there was a lack of good faith on the part of the claimant in making the entry, the application will be subject to rejection. An application for reduction \* \* \* should set forth in detail the special conditions on which the claim to a reduction is based.

Appellant readily admits that the land embraced within his homestead is presently being grazed, and that it is not practical to farm the land. Only public lands adaptable to agricultural use are subject to homestead settlement or entry. See 43 CFR 2567.0-8. Therefore, the only question in the case at bar is whether appellant, at the time he initiated his claim, knew or should have known, as a prudent person, that cultivation of the required acreage was not reasonably practicable.

Appellant sowed approximately 10 acres of oats on lands embraced within his homestead claim before he filed his notice of location, but failed to cultivate the land in accordance with the homestead laws after he initiated his claim. In considering these facts, the decision below stated:

If the claimant found that cultivation, although marginal, was practicable and did not cultivate it as required, his actions were directly contrary to the requirements of the homestead laws. The Department has consistently held that "the cultivation requirement of the homestead law \* \* \* is mandatory, and no departure from its terms is authorized." Robert Uptrain, A-26956 (October 25, 1954). On the other hand, if Mr. Fields found, as a result of the oats planted several years before he filed notice of the claim, that cultivation was out of the question, then he proved at that time that the land was not subject to settlement and entry under the homestead laws, and only public lands adaptable to agricultural use are subject to homestead settlement or entry. (43 CFR 2567.0-8) He also proved that he was not entitled to the relief acquired by a reduction in cultivation requirements if he did attempt

to homestead, as the condition of the land was, prior to and at the time of filing of the notice, such as to indicate to a prudent person that cultivation of the required acreage was not practicable.

In the circumstances in this case, we are of the opinion that the appellant should have known that it was not reasonably practicable to cultivate the required acreage to perfect his homestead at the time he filed his notice of location. Appellant was given ample opportunity by the Bureau to demonstrate that he was entitled to a reduction in the cultivation requirements; however, our review of the record, and the appellant's statements fail to establish that a reduction of the cultivation requirements is warranted in the case at bar. See generally United States v. William Leonard Grediagin, 7 IBLA 1 (1972); Grady Allen Phillip, A-24188 (February 26, 1946).

Appellant asserts that his entry was "not taken out under the normal homestead regulations for Alaska" and asserts that he was permitted to file for his homestead under a "special act."

Although appellant does not identify the "special act" to which he refers, we believe appellant is referring to the Alaska Grazing Act of March 4, 1927, 48 U.S.C. §§ 471 et seq. (1958), now 43 U.S.C. §§ 316-316o (1970). The regulations issued under this Act provide that lands leased under the Act are not subject to settlement, location, or acquisition under the nonmineral public land laws applicable to Alaska, unless and until the authorized officer of the Bureau of Land Management determines that the grazing lease should be canceled or reduced. 43 CFR 4131.3-1.

Under that regulation the Bureau, at appellant's request, canceled part of his grazing lease in order to permit him to make a homestead entry on the same public lands. However, there is nothing in the Alaska Grazing Act which vitiates the requirements an entryman must meet in order to perfect a homestead entry under 43 U.S.C. § 164 (1970), including the cultivation of the lands.

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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Frederick Fishman, Member

We concur:

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Martin Ritvo, Member

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Joan B. Thompson, Member

