

CHARLOTTE LORRAINE (PONTZ) FURGIONE

IBLA 72-300

Decided December 21, 1972

Appeal from decision (A-056912), rendered by Alaska State Office, Bureau of Land Management, rejecting homesite purchase application and canceling claim.

Affirmed.

Alaska: Homesites -- Settlements on Public Lands

By section 5 of the Act of April 29, 1950, 43 U.S.C. § 687a-1 (1970), occupancy of a homesite claim prior to the filing of a notice of settlement or of an application to purchase will not be considered as meeting the occupancy requirements of that law.

Alaska: Homesites -- Applications and Entries: Generally -- Applications and Entries: Cancellation

Where the record shows that there has not been compliance with law within the life of a homesite claim i.e., within 5 years from the filing of the notice of location with the Land Office, the claim is properly canceled.

APPEARANCES: Francis M. Flavin, Esq., Alaska Legal Services Corporation, Anchorage, Alaska, for appellant.

OPINION BY MR. FISHMAN

Charlotte Lorraine (Pontz) Furgione has appealed from a decision of the Alaska State Office, Bureau of Land Management, dated January 25, 1972, rejecting her application to purchase a homesite and canceling the claim.

On April 9, 1962, appellant filed notice of location for the above-identified homesite settlement claim. On April 7, 1967, she filed her application to purchase claiming residence from "September 1957 to April 1958, September 1958 to April 1959, October 1959 to April 1960."

The decision below held that since she had not occupied the land for 5 months each year subsequent to April 9, 1962, the date

of filing of the notice of settlement, her purchase application could not be allowed. The decision also recited in part:

On January 10, 1972, we received a letter from Mrs. Furgione stating "my late husband, David Pontz, acquired the land in 1957 from Simon Josephson. We built a cabin on it and lived on it as these times 'from September 1957 to April 1958, September 1958 to April 1959, and from October 1959 to April 1960.' Shortly after my husband died in 1961, I was advised to have the land papers put in my name. I was sent claim notices from your office, which I completed and returned. However, I did not live on the land after that time as I left Alaska, and have financially not been able to return to live."

The gist of the appeal is the assertion that both 43 CFR 2563.2-1(c) and 48 U.S.C. § 461(a) (1958), now 43 U.S.C. § 687a-1 (1970), provide that notice must be filed with the Land Office within ninety days from the date of the initiation of the claim. Appellant suggests that her claim "did not arise until the death of her husband [in 1961]." Appellant asserts that the "notice must be filed within ninety days of the initiation of the claim, and not necessarily from the initiation of settlement."

43 U.S.C. § 687a-1 (1970), embodying section 5 of the Act of April 29, 1950, c. 137, 64 Stat. 95, reads:

All qualified persons, associations, or corporations now holding or hereafter initiating claims subject to the provision of section 687a of this title, shall file a notice describing such claim in the manner specified by section 270 of this title in the United States land office for this district in which the land is situated within ninety days from April 29, 1950, or within ninety days from the date of the initiation of the claim, whichever is later. Unless such notice is filed in the proper district land office within the time prescribed the claimant shall not be given credit for the occupancy maintained in the claim prior to the filing of (1) a notice of the claim in the proper district land office, or (2) an application to purchase, whichever is earlier. Applications to purchase claims, along with the required proof or showing, must be filed within five years after the filing of the notice of claim under this section.

Contrary to appellant's position, a homesite claim is not initiated by devise or intestacy, but rather is a right initiated by settlement. Vernard E. Jones, 76 I.D. 133 (1969). However, as the statute clearly states, unless a proper notice is filed with the

appropriate Land Office within 90 days from the date of settlement, the applicant cannot be given credit for the occupancy maintained in the claim prior to (1) the filing of a notice of the claim in the appropriate Land Office; or (2) the filing of an application to purchase, whichever is earlier. This principle is enunciated with approval in Lance H. Minnis, 6 IBLA 94 (1972).

Even assuming arguendo, the validity of appellant's argument that her "claim" commenced in 1961, she did not satisfy the residence requirements thereafter according to her own statement.

The cancellation of the claim was also proper, 1/ since 5 years had elapsed from the filing of the notice of location without compliance with such requirements. Cf. United States v. Keith O'Leary, 63 I.D. 341 (1956).

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

Frederick Fishman, Member

We concur:

Edward W. Stuebing, Member

Anne Poindexter Lewis, Member.

1/ See Pekka Merikallio, A-30892 (March 5, 1968); Gunnar Navjord, A-30637 (December 28, 1966); Severin F. Ulmer, Heir of Joseph Ulmer, Deceased, A-30375 (August 11, 1965).

