

ALVA M. KNORR

IBLA 72-456

Decided January 25, 1974

Appeal from Montana State Office, Bureau of Land Management, decision M-21191 (Minn.), rejecting an application to purchase land pursuant to the Color of Title Act.

Affirmed.

Color or Claim of Title: Generally

An application to purchase public lands under the Color of Title Act, 43 U.S.C. § 1068 et seq. (1970), is properly rejected when the applicant cannot show that title during the allowable period was derived from a source other than the United States.

Color or Claim of Title: Generally--Withdrawals and Reservations: Effect of

A claim under the Color of Title Act, 43 U.S.C. § 1068 et seq. (1970), may not be based upon a claim initiated on withdrawn or reserved lands.

APPEARANCES: Robert H. Magie, III, Esq., Applequist, Nolan, Donovan, Larson, Barnes and Mathias of Duluth, Minnesota, for appellant.

OPINION BY MR. GOSS

Alva M. Knorr has appealed to the Secretary of the Interior from a decision of the Montana State Office, Bureau of Land Management, dated May 16, 1972, which rejected her application filed pursuant to the Color of Title Act of December 22, 1928, as amended, 43 U.S.C. § 1068 et seq. (1970). Section 1 of the Act, 67 Stat. 228, provides in part:

That 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, \* \* \* 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 type of claim described above is designated in 43 CFR 2540.0-5(b) as a class 1 claim. Appellant filed a class 1 application on April 10, 1972, for an island described by metes and bounds in Lake County, Minnesota. 1/ Appellant and her husband, George W. Knorr, now deceased, claimed by virtue of a warranty deed of March 21, 1947, from Cyrille Fortier, Sr. 2/ The consideration was \$2,400. Appellant alleges that she added improvements valued at \$1,000; that she held the land in good faith and in peaceful adverse possession until the date of application; and that she paid taxes on the land for more than 20 years.

The records of the Montana State Office, Bureau of Land Management, contain a letter dated August 23, 1965, from George W. Knorr, in which he requested information regarding the survey of an island he had purchased in White Iron Lake. He stated he had a warranty deed, No. 59239, recorded May 16, 1947, and that he first received notice that the island could be government property in a letter from the Forest Service dated March 15, 1961.

The Bureau's survey records show a survey of the island was approved July 8, 1966, and notice of filing of the plat of survey was published in the Federal Register, August 31, 1966 (31 F.R. 11496). The Bureau sent Mr. Knorr a copy of the notice on September 26, 1966. A copy of the survey plat was enclosed along with a Color of Title circular and application forms. The notice of survey characterized lot 9 in sec. 32 as an omitted island in White Iron Lake. It stated that the island was in existence in 1858 when Minnesota was admitted to the union and that it was, therefore, public land.

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1/ By examining the metes and bounds description of the applied for lands, the Bureau established that the description is nearly identical to that of a surveyed island designated as lot 9, sec. 32, T. 63 N., R. 11 W., 4th P.M., Minnesota.

2/ Cyrille Fortier's name is also found throughout the documents spelled "Fourtier."

Appellant claims color of title through her predecessor, Fortier, and alleges that the island was originally a part of the shore of lot 8, sec. 32, to which he received patent in 1891. BLM determined by studies of the water level in White Iron Lake, the meander lines of the fast land, the lake bottom between lot 8 and the island, and the survey, that the island was omitted unsurveyed federal land. The Bureau records also show that Fortier on July 27, 1927, filed an incomplete request for a survey of the island. This request indicates Fortier may have been aware that a question existed as to the status of the island in 1891.

The land was withdrawn from all forms of entry or appropriation under the public land laws by the Act of July 10, 1930, 46 Stat. 1020-21. The land was included within the Superior National Forest in Minnesota, in accordance with the President's Proclamation No. 2213 dated December 28, 1936.

Based on these facts the Bureau rejected appellant's application, holding: (1) the time Fortier held the island cannot be added to that of appellant because title to lot 9 was derived from a government patent to lot 8 and color of title must originate from some other source than the United States; (2) a claim is not held in peaceful adverse possession where it was initiated when the land was withdrawn for federal purposes; and (3) the Knorr class 1 claim was not held in good faith and peaceful adverse possession for more than 20 years because George W. Knorr was informed by letter dated September 26, 1966, that the island was federal land.

On appeal, appellant denies that the island is omitted federal land. She contends the Bureau's decision fails to consider that C. Fortier, Sr., was the owner of record of the subject property from October 6, 1982, which precedes the Act of Congress dated July 10, 1930, and the Superior National Forest Proclamation dated December 20, 1936. She also asserts that the filing of the plat of survey in no way affects her ownership of the island, and that she has the right to "legal process or a court hearing."

If appellant is arguing that the patent to Fortier included the land in question and that she, rather than the United States, owns the land by virtue of that patent, her position is inconsistent with a color of title application, which presupposes that the land is unpatented federal land. In any event, appellant has not submitted convincing proof that the island was ever a part of the patented lot 8, and the Board holds that the island is unpatented federal land.

Appellant has likewise failed to establish a valid color or claim of title within the purview of the Color of Title Act, supra.

Fortier's period of possession cannot be added to appellant's possession, because any allowable period must be based on possession under a color or claim of title derived from some source other than the United States. Salmon River Canal Co., Ltd., 7 IBLA 182, 183 (1972). The Department held in Nina R. B. Levinson, 1 IBLA 252, 254-55, 78 I.D. 30, 32 (1971):

Color of title by definition is based upon a writing which upon its face professes to pass title but which does not, either through want of title in the grantor or a defective mode of conveyance. See BLACK'S LAW DICTIONARY 332 (4th ed. rev. 1968). A patent from the United States conveys title to all the land described in the patent. It is a well established principle that a patent in which land is described in accordance with the plat of survey conveys all the land within the limits so specified.

Levinson is in accord with the purpose of the Act as set forth in Day v. Hickel, 481 F.2d 473, 476 (9th Cir. 1973):

As indicated by S. Rep. No. 732, 70th Cong., 1st Sess. (1928), accompanying the bill, the purpose of the Act was to authorize the Secretary to deal with "cases \* \* \* where lands have been held and occupied in good faith for a long period of time under a chain of title found defective \* \* \*." (Emphasis added.) No mention was made of cases of possession of land where there was no such chain of title. Thus, the history would indicate that there should be excluded from the intent of the Act, land adversely possessed by one who knew that the title was in the United States, but who had no chain of title to it.

Since appellant's period of holding cannot be tacked on to that of her predecessor to establish the requisite 20 years of good faith possession, appellant must establish the 20-year period on her own. The Knorrs' title dates from March 21, 1947. The land was withdrawn and included within the Superior National Forest before

that date. A color of title claim may not be initiated upon withdrawn or reserved lands. 3/ 43 CFR 2540.0-5(b); 4/ Asa V. Perkes, 9 IBLA 363, 80 I.D. 209 (1973).

Appellant's other allegations have been reviewed and found not to warrant reversal of the decision below.

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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Joseph W. Goss, Member

We concur:

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Frederick Fishman, Member

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Joan B. Thompson, Member

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3/ For this reason, it is not necessary to discuss the Knorrs' knowledge of the government's claim of ownership. The record includes a Forest Service Memorandum dated August 18, 1961, which states that Mr. and Mrs. Knorr visited the Duluth, Minnesota, office on that date and were informed that "according to our records it looks as if their cabin is on an island that is Public Domain." In 1966 the Knorrs were furnished a copy of the notice that lot 9 is considered public land. Any period of time during which a claimant knows, or should know, that title is in the United States must be disregarded in determining the period of good faith possession. 43 CFR 2540.0-5(b), infra, note 4; Day v. Hickel, supra; Jacob Dykstra, 2 IBLA 177 (1971); Nora Beatrice Kelley Howerton, 71 I.D. 429 (1964).

4/ Section 2540.0-5(b) reads in part:

"\* \* \* 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."

