

JOE O. AMBERGER

IBLA 79-142

Decided September 28, 1979

Appeal from decision of the Alaska State Office, Bureau of Land Management, dismissing private contest complaint against a homestead application (F-19695).

Affirmed.

1. Alaska: Homesteads -- Homesteads (Ordinary): Contests -- Res Judicata -- Rules of Practice: Appeals: Failure to Appeal

A summary dismissal of a private contest against an Alaska homestead becomes a final administrative ruling on that contest when the contestant, instead of appealing the dismissal, files a second contest which must be considered an entirely new action. When a final departmental adjudication has been made, the doctrine of administrative finality, which is the administrative counterpart of the principle of res judicata, generally bars consideration of a new appeal arising from a later proceeding involving the same homestead and the same issue.

2. Alaska: Homesteads -- Homesteads (Ordinary): Contests -- Rules of Practice: Private Contests

A private contest brought against an Alaska homestead charging that the entryman had

failed to meet any of the residence or cultivation requirements of the law must be dismissed where the statutory life of the entry has previously expired without the entryman filing final proof and information was already of record in the BLM office that the entryman had done nothing during the life of the entry to perfect the claim. 43 CFR 4.450-1.

APPEARANCES: Joe O. Amberger, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Joe O. Amberger has appealed from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated December 13, 1978, summarily dismissing his contest complaint against the homestead entry of Ash W. Helgoe (F-19695).

On October 26, 1973, Ash W. Helgoe filed a notice of location of settlement for a homestead claim for 160 acres of land that he had located in unsurveyed secs. 16, 20, and 21, T. 16 N, R. 43 W., Seward meridian, Alaska. The record shows that an aerial field examination was conducted by BLM personnel April 3, 1974, which indicated as of that date, applicant had not made any attempt to clear the land for cultivation and settlement or cut timber for the construction of improvements. On April 21, 1978, BLM sent Helgoe a notice that final proof was due before statutory life of the entry was to expire October 25, 1978.

On July 12, 1978, Joe O. Amberger filed a contest complaint against Helgoe's homestead. The complaint charged essentially that (1) the Helgoe entry was in conflict with the adjacent homestead of William C. Howerton and (2) the entryman had not timely met any of the residence and cultivation requirements of the law. On October 24, 1978, BLM summarily dismissed Amberger's complaint for failure to submit proof that the complaint was served upon the contestee as required by the regulations in 43 CFR 4.450-5 and 4.422(c). Amberger did not appeal this summary dismissal. He did, however, submit additional information and photographs for the Bureau's consideration on October 5, 1978.

The record contains a memorandum also dated October 24, 1978, entitled "Compliance Report" which concluded Helgoe had failed to appropriate the lands in the contested homestead. The memorandum refers to a field examination of March 8, 1978, in which BLM personnel examined the claim and found "no evidence to indicate the applicant had made any attempt to settle on, or clear and cultivate the claim.

There were no structures or other improvements, and no land had been cleared for cultivation"

Amberger filed a second contest complaint against the Helgoe homestead October 31, 1978, reiterating the same charges set forth in his earlier contest.

On December 13, 1978, BLM summarily dismissed the second contest stating that Helgoe had failed to submit final proof within 5 years as required by 43 CFR 2511.3-4; that statutory life of the homestead ran out on October 25, 1978; and the case closed by action of law not of this contest.

In his statement of reasons appellant argues that in the first contest action he did, in fact, timely serve the contestee with his complaint July 14, 1978. He now submits with his appeal a copy of a return receipt signed by Mr. Helgoe which he mistakenly held, thinking he had already provided sufficient proof of service to BLM. Appellant contends that the statutory limits of the homestead should not be applied to cancel the claim but the case should be decided on the facts presented by his two contest actions.

[1] Appellant's failure to appeal the dismissal of his first contest resulted in the BLM decision relating to that contest becoming final. Even though the second contest was filed within the 30-day appeal period, the second contest is not a continuation of the first. In order to keep the first contest alive appellant should have appealed. In this instance, he elected to file a second contest which must be considered an entirely new action. Christee v. O'Glesbee, 23 IBLA 155, 156 (1975).

When a final Departmental adjudication has been made, the doctrine of administrative finality, which is the administrative counterpart of the principle of res judicata, generally bars consideration of a new appeal arising from a later proceeding involving the same homestead and the same issue. Wilfred Plomis, 35 IBLA 1 (1978); Loring Gamble, 26 IBLA 249 (1976).

[2] Next, as of the date appellant filed his second contest, October 31, 1978, the Helgoe homestead claim had already expired 6 days before, without the entryman filing final proof. As the State Office had properly indicated, there no longer was an active entry for appellant to contest. Moreover, on that date the official records of BLM contained the "Compliance Report" showing the entryman had done nothing during the life of his homestead to perfect his entry. Since such information was contained in the BLM records when the second contest was filed, the charges could not support the complaint and it

must also be dismissed for this reason. 43 CFR 4.450-1. 1/ Cristee v. O'Glesbee, supra; Gilbert v. Oliphant, 70 I.D. 128 (1963).

Therefore, 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.

Anne Poindexter Lewis
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Joan B. Thompson
Administrative Judge

1/ Section 4.450-1 by whom private contest may be initiated states:

"Any person who claims title to or an interest in land adverse to any other person claiming title to or an interest in such land or who seeks to acquire a preference right pursuant to the act of May 14, 1880, as amended (43 U.S.C. 185), or the act of March 3, 1891 (43 U.S.C. 329), may initiate proceedings to have the claim of title or interest adverse to his claim invalidated for any reason not shown by the records of the Bureau of Land Management. Such a proceeding will constitute a private contest and will be governed by the regulations herein."

