

UNITED STATES

v.

GERALD H. BRANIFF (ON RECONSIDERATION)

IBLA 81-420

Decided June 23, 1982

Petition for reconsideration of United States v. Braniff, 59 IBLA 337 (1981), affirming decision of Administrative Law Judge E. Kendall Clarke canceling homesite entry and rejecting application to purchase. F-20474.

Petition granted; decision reaffirmed.

1. Act of March 3, 1891 -- Alaska: Homesites -- Applications and Entries: Generally -- Contests and Protests: Generally -- Conveyances: Generally -- Patents of Public Lands: Generally

Although sec. 7 of the Act of Mar. 3, 1891, 43 U.S.C. § 1165 (1976), provides for issuance of a patent to an entryman upon a lapse of 2 years from the date of issuance of "the receipt," when no contest or protest of the entry is then pending, the 2-year period does not commence until issuance of the receipt evincing final payment of the purchase price of the land. When the statute was enacted, "the receipt" referred to what was known as "the final receipt of the Receiver," who was then an official of the General Land Office. The issuance of an interim receipt for payment of a \$10 filing fee submitted with an application to purchase a homesite in Alaska does not trigger that statutory mechanism.

Grewell v. Watt, 664 F.2d 1380 (9th Cir. 1982), distinguished.

APPEARANCES: Gerald H. Braniff, pro se; James R. Mothershead, Esq., Office of the Regional Solicitor, Anchorage, Alaska, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

On November 5, 1981, the Board issued its decision in United States v. Braniff, 59 IBLA 337 (1981), affirming the decision of Administrative Law Judge E. Kendall Clarke which canceled Braniff's homesite entry and rejected his application to purchase. On February 4, 1982, Braniff filed a "Motion to Amend and Change Judgment" in which he requested that the Board change its decision in light of the court decision in Grewell v. Watt, 664 F. 2d 1380 (9th Cir. 1982), issued on January 7, 1982. We have considered Braniff's motion as a petition to reconsider our decision in this case.

Initially, we will examine the facts in the Grewell case. In that case LaVonne Grewell initiated a 5-acre homesite claim pursuant to the same statute involved in this case, 43 U.S.C. § 687a (1976). In July 1970 she applied to purchase the site sending the \$12.50 purchase price. More than 4 years later BLM initiated contest proceedings by mailing a copy of the complaint to her address of record in BLM. The complaint was returned to BLM as undeliverable, Grewell having moved from that address more than 2 years earlier. BLM held the claim canceled and void when she failed to respond to the complaint. In 1975 Grewell learned of this action and, after exhausting her administrative remedies, she filed suit in United States District Court in Alaska. That court granted summary judgment for the Secretary of the Interior; however, on appeal the Ninth Circuit held that section 7 of the Act of March 3, 1891, as amended, 43 U.S.C. § 1165 (1976), barred the initiation of an administrative contest proceeding after 2 years and entitled Grewell to a patent to the homesite.

Braniff argues that, just as in Grewell, the Department took in excess of 2 years to contest his claim, and therefore, he also is entitled to patent of his homesite.

[1] Braniff's situation is, however, on all fours with our recent decision in United States v. Bunch (On Judicial Remand), 64 IBLA 318 (1982), and is distinguishable from Grewell.

In Bunch, which involved an application to purchase a trade and manufacturing site, the Board analyzed the applicable statutory language in order to determine precisely the event that triggers the beginning of the 2-year period. Therein the Board stated:

As originally enacted, the pertinent part of the 1891 statute read as follows, at 26 Stat. 1099:

Provided, That after the lapse of two years from the date of the issuance of the receiver's receipt upon the final entry of any tract of land under the homestead, timber-culture, desert-land, or pre-emption laws, or under this act, and when there shall be no pending contest or protest against the validity of such entry, the entryman shall be entitled to a patent conveying the land by him entered, and the same

shall be issued to him; but this proviso shall not be construed to require the delay of two years from the date of said entry before the issuing of a patent therefor. [Emphasis added.]

"[The] date of issuance of the receiver's receipt," which initiates the running of the 2-year term referred to the final receipt of the receiver. In the General Land Office (now BLM) there were in each land office two officials of apparently equal rank with separate and distinct responsibilities, known, respectively, as the register and the receiver. The register was in charge of the land title and status matters, and, as the title suggests, the registry of entries and claims. The receiver received payments, fees, and commissions, and issued receipts therefor. When an entryman had accomplished all of the acts prerequisite to the issuance of patent, such as the submission of final proof, publication, etc., the register issued his "final certificate." When all of the monies incident to the transaction, including the purchase price, had been paid by the entryman, the receiver issued his "final receipt." The statutory reference to "the receiver's receipt" was changed to read "the receipt of such officer as the Secretary of the Interior may designate upon final entry" by Reorganization Plan No. 3, by which the General Land Office and the Grazing Service were merged and became the Bureau of Land Management. See 43 U.S.C. § 1165 (1976), Historical Note. Case receipts are now issued by the accounting units in the various BLM offices. United States v. Jack Boyd, Jr., 39 IBLA 321, 328 (1979).

Nearly all of the judicial cases reported on the subject make it clear that the running of the 2-year period commenced with the issuance of the "final receiver's receipt." For example, in Work v. United States ex rel. Davis, 6 F.2d 690 (D.C. Cir. 1925), the Court noted that on May 23, 1917, relator "was given a final receiver's receipt and final register's certificate." In Lane v. Hoglund, 244 U.S. 174 (1917), the Court referred to the time for initiation of a contest as "within two years of the issuance of the final receiver's receipt." Identical language was again used by the Supreme Court in Payne v. United States ex rel. Newton, 255 U.S. 438 (1921).

A full and detailed exposition of the legislative history and the appropriate application of the proviso is contained in Stockley v. United States, 260 U.S. 532 (1923). [Footnote omitted.]

64 IBLA at 321-22.

After quoting liberally from Stockley, the Board stated:

From the foregoing, there can be no doubt that the 2-year period does not commence until issuance of the final receipt of

the receiver, or, in the modern context, the final receipt "of such officer as the Secretary * * * may designate." The "final receipt" evinces the full and final payment of the entryman of all monies due the United States, so that "no subsequent receipt [is] contemplated or required." Id.

In deciding Grewell v. Watt, supra, the Ninth Circuit conformed to the decision in Stockley v. United States, supra, which it cited. Although in Grewell no great point of the fact was made, it was established in the second sentence of the Court's opinion that at the time LaVonne Grewell submitted her application to purchase, she also sent in the purchase price of the land. Presumably, a final receipt was issued by the appropriate BLM officer, but even in the unlikely event a receipt was not issued it would have made no difference because, as stated in the Stockley opinion, supra, "Payment of which the receiver's receipt is but evidence, is therefore, the material circumstance that starts the running of the statute, inasmuch as a claimant is and always has been entitled to a receipt when payment is made."

The distinction between Grewell v. Watt, supra, and the case at bar lies in the fact that Evelyn M. Bunch has never paid nor tendered to BLM the purchase price of the land claimed, and nothing which could be considered a "final receipt" has issued to her or is due her. A "subsequent receipt" would be "contemplated and required" in her case only upon final payment. Stockley v. United States, supra. Although contestee asserts that the statute began to run with the filing of her application to purchase the T&M site, to quote again from Stockley v. United States, supra:

The plain provision is that the period of limitation shall begin to run from the date of the "issuance of the receiver's receipt upon the final entry." There is no ambiguity in this language and, therefore, no room for construction. There is nothing to construe. The sole inquiry is whether the receipt issued * * * falls within the words of the statute.

260 U.S. at 539.

64 IBLA at 324.

In the present case Braniff paid a \$10 filing fee to BLM on January 14, 1974, when filing his notice of location. BLM issued receipt No. 392804. On September 15, 1975, Braniff paid another \$10 filing fee when he filed his application to purchase. BLM issued receipt No. 394248. Braniff never paid the statutory purchase price for the land, and consequently no further receipt has been issued by BLM. Bunch involved the same factual situation, i.e., payment of two filing fees for which receipts issued but no payment of the purchase price of the land.

Thus, in this case, as in Bunch, the 2-year period of limitation provided by 43 U.S.C. § 1165 (1976) never commenced because there was no payment of the purchase price required by 43 U.S.C. § 687a (1976) and no issuance of a BLM receipt. Grewell v. Watt, supra, is not controlling.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the petition for reconsideration is granted, and the Board's prior decision United States v. Braniff, 59 IBLA 337 (1981), is reaffirmed for the reasons set forth above.

Bruce R. Harris
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Edward W. Stuebing
Administrative Judge

