

Appeal from decision of the Utah State Office, Bureau of Land Management, rejecting color-of-title application U-53424.

Affirmed.

1. Color or Claim of Title: Applications

BLM may properly reject a color-of-title application filed pursuant to sec. 1 of the Color of Title Act, as amended, 43 U.S.C. § 1068 (1982), where the applicant claims chain of title originating with a certificate of tax sale to the county, executed prior to the withdrawal for Federal purposes. A certificate of tax sale does not constitute a conveyance and does not establish color of title because the right of redemption had not expired and there can be no adverse possession.

APPEARANCES: Evan A. Schmutz, Esq., Salt Lake City, Utah, for appellant.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Richard F. Christensen has appealed from a decision of the Utah State Office, Bureau of Land Management (BLM), dated July 10, 1984, rejecting color-of-title application U-53424.

On July 13, 1983, appellant filed a class 1 color-of-title application for 39.18 acres of land situated in the NW 1/4 NE 1/4 sec. 15, T. 13 S., R. 4 E., Salt Lake Meridian, Sanpete County, Utah, pursuant to section 1 of the Color of Title Act, as amended, 43 U.S.C. § 1068 (1982). In his application, appellant stated that the property has been in his family since Sanpete County conveyed it to Elray Christensen, his father, by quitclaim deed dated March 14, 1945. Taxes have been paid since that time, a portion of the land was cultivated in 1979 and the property contains approximately \$500 worth of improvements. Appellant further stated that he did not become aware that he did not have clear title to the land until May 1982. Appellant also listed the conveyances upon which he relies to establish his claim of title, starting with a tax sale in 1921 to Sanpete County from Fritz Christofferson, a subsequent redemption by Christofferson and another tax sale in 1926.

By letter dated May 21, 1984, BLM asked appellant to provide copies of the various deeds in his chain of title. On June 18, 1984, appellant provided

a copy of an "Auditor's Tax Deed," dated April 21, 1931, transferring the property from the auditor of Sanpete County to the county. The auditor's tax deed indicates that the property was originally "sold" to Sanpete County; that a certificate of sale, dated December 20, 1926, was executed because of Christofferson's failure to pay delinquent taxes; and that the 1926 sale was subject to a statutory 4-year right of redemption. Appellant also provided copies of a quitclaim deed, dated March 14, 1945, from the county to his father; a warranty deed, dated June 16, 1949, from his father to his mother, Gladys G. Christensen; and a warranty deed, dated August 24, 1966, from his mother to him.

In its July 1984 decision, BLM rejected appellant's application because appellant's chain of title originated subsequent to the withdrawal of the land and, thus, the property had not been held in peaceful, adverse possession, as required by the Color of Title Act. BLM noted that the land had been temporarily withdrawn "from lease or other disposal" by Exec. Order No. 5327, dated April 15, 1930, and permanently withdrawn by Public Land Order No. (PLO) 4522, dated September 13, 1968 (33 FR 14349 (Sept. 24, 1968)).

In his statement of reasons for appeal, appellant contends that, although it is proper for BLM to reject a color-of-title application where the chain of title relied upon had originated subsequent to a withdrawal of the land, appellant's chain of title originated with the 1926 tax sale to the auditor of Sanpete County, prior to the April 1930 Executive order temporarily withdrawing the land.

[1] It is well established that BLM may properly reject a class 1 color-of-title application where the applicant's chain of title originated at a time when the land has been withdrawn or reserved for Federal purposes, because the land could, therefore, not be held in "peaceful, adverse possession" as required by 43 U.S.C. § 1068 (1982). John S. Cluett, 52 IBLA 141 (1981), and cases cited therein.

As we noted, appellant claims that his chain of title originated with a tax sale conveying the land to a predecessor-in-interest prior to the withdrawal. If that is true, the withdrawal would be subsequent to the origin of the chain of title and would not defeat appellant's application. Mary C. Pemberton, 38 IBLA 118 (1978), and cases cited therein. However, in order to establish that a chain of title originated as of a particular date, a color-of-title applicant must submit a document which, on its face, purports to convey title to the land to the applicant or his predecessor-in-interest. John S. Cluett, supra, and cases cited therein.

Appellant has submitted a copy of a tax deed dated April 21, 1931, which purports to convey title to the property in support of his color-of-title claim. Paul Marshall, 82 IBLA 298 (1984). The deed is dated subsequent to the April 15, 1930, withdrawal, but states that it is based on a certificate of sale, dated December 20, 1926, which is prior to the withdrawal.

The question then becomes whether appellant can take advantage of the period of time that the property was held by the county under the certificate of sale. In Estate of John C. Brinton, 25 IBLA 283, 286 (1976), we held that

a tax deed breaks "all previous titles" and initiates a new chain of title. Furthermore, we stated that "[p]eaceful, adverse possession * * * cannot include any time when the ostensible title was held by a political subdivision because of nonpayment of taxes." Id.; see also Beaver v. United States, 350 F.2d 4, 9-10 (9th Cir. 1965).

It might be argued that the Board's holding in Estate of John C. Brinton, supra, would indicate that, for purposes of determining initiation of a chain of title, a color-of-title applicant cannot take advantage of any period of time that a political subdivision holds title to land by virtue of tax sale proceedings or otherwise. We did not so hold. Rather, as a tax deed initiates a new chain of title, an applicant cannot take advantage of any time where the political subdivision had taken possession of the land, i.e., "ostensible title," for nonpayment of taxes and had not yet conveyed it. In Beaver, supra, the court expressed doubts as to whether the state, which was merely holding property taken for nonpayment of taxes, could be said to be in "possession" of the land, under "color of title," as required by 43 U.S.C. § 1068 (1982). The court concluded that, in any event, in the absence of a showing that the state exercised "actual, exclusive, continuous, open and notorious possession of the parcel," this period of time could not be considered as part of the color-of-title applicant's 20-year period of adverse possession. Id. at 10-11.

We are cognizant of the general rule that a county may acquire title to land by adverse possession. 3 Am. Jur. 2d Adverse Possession § 140 (1962). Moreover, in Bozievich v. Slechta, 109 Utah 373, 166 P.2d 239 (1946), the Supreme Court of Utah held that possession by a county under an auditor's tax deed was adverse possession under the state statute, despite certain defects in the tax sale proceeding. The court quoted from an earlier case, Home Owners' Loan Corp. v. Stevens, 98 Utah 126, 133, 97 P.2d 744, 747 (1940), which stated: "The title, by virtue of the sale for taxes and the auditor's deed executed subsequent thereto, was in the county." (Emphasis added.) Bozievich v. Slechta, 166 P.2d at 241. Thus, the State courts in the State of Utah have found that a successor in title can rely on adverse possession by a county pursuant to an auditor's tax deed.

However, in Bozievich, the Utah State court also recognized that a successor in title cannot rely on possession by a county under a tax sale certificate. The court stated that:

Such a certificate does not purport to convey title to the land. The purchaser of a tax sale certificate knows that the legal owner has a certain definite period within which he may redeem from the sale and until such period has passed it is presumed that when such purchaser takes possession he takes it in subordination to the right of the owner and not adversely to him. [Emphasis added.]

Bozievich v. Slechta, 166 P.2d at 241. Therefore, if we were to accept the Utah State court's determination regarding the effect of an auditor's tax deed, appellant's claim would still fail. A color-of-title applicant cannot use possession under a tax sale certificate as a basis for his color-of-title

claim. The rights under such certificate do not constitute adverse possession because the delinquent taxpayer's right of redemption has not expired. There can be no color of title in such circumstances.

In the present case, prior to the April 21, 1931, tax deed Sanpete County was not "holding" the property herein under color of title. The December 1926 certificate of sale did not purport to convey title to the land to the county and cannot be relied upon by appellant. Joe Stewart, 33 IBLA 225 (1977), and cases cited therein.

We conclude that appellant's chain of title originated subsequent to the April 15, 1930, Executive order withdrawing the land and that BLM properly rejected appellant's color-of-title application.

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.

R. W. Mullen
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

