



DALE F. FATTIG

90 IBLA 323

Decided February 25, 1986

Editor Note: Order; Denying Request for Review by Director, Oct 31, 1986, IBLA 85-41(D).



United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy St., Suite 300
Arlington, VA 22203

DALE F. FATTIG

IBLA 85-41

Decided February 25, 1986

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting color-of-title application, W-84575.

Affirmed.

1. Color or Claim of Title: Applications -- Color or Claim of Title:
Description of Land -- Surveys of Public Lands: Generally

BLM may properly reject a color-of-title application filed pursuant to section 1 of the Color of Title Act, as amended, 43 U.S.C. § 1068 (1982), where the document relied upon as initiating color of title does not on its face purport to convey the claimed land, regardless of whether a contemporaneous county survey included the land in the conveyance and claimant has subsequently occupied the land.

APPEARANCES: Gary D. Byrne, Esq., North Platte, Nebraska, for appellant; Lowell L. Madsen, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Dale F. Fattig has appealed from a decision of the Wyoming State Office, Bureau of Land Management, dated September 6, 1984, rejecting his color-of-title application, W-84575.

On March 24, 1983, appellant filed a color-of-title application for 24.04 acres of land which consist of accretions to lot 8, sec. 22, T. 12 N., R. 27 W., sixth principal meridian, Lincoln County, Nebraska, pursuant to section 1 of the Color of Title Act, as amended, 43 U.S.C. § 1068 (1982). Appellant stated that he had entered into possession of the land by a conveyance to him and his wife, pursuant to a warranty deed dated April 5, 1962, from Arlan A. Grau and Ruth Grau. That deed provided for the conveyance of "[a]ll of Lot four (4) of Section twenty-seven (27), Township twelve (12)

North, Range twenty-seven (27), together with accretions a part thereof, lying north of the north line of the east-west County Road No. 186 in Lincoln County, Nebraska." Appellant stated that: "A[t] the time of the said conveyance to applicant, the applicant had viewed the premises, the same which was completely surrounded by a boundary fence and was of the opinion that the above land was a part of the land which he was purchasing under the aforementioned conveyance." The application was listed as a Class II color-of-title application. On March 8, 1984, appellant filed an amended color-of-title application for the same 24.04 acres of land in lot 8 based on the April 1962 warranty deed, listing the application as a Class I color-of-title application. Appellant stated that he has grazed cattle, built roads, and operated a fish hatchery, since acquisition of the property in April 1962.

In its September 1984 decision, BLM rejected appellant's color-of-title application, under either Class I or Class II, because appellant had failed to submit a written instrument "which on its face purports to convey lot 8 * * * to him." BLM advised appellant that "representations made to you by your immediate predecessors in interest that lot 4 of sec. 27, and accretions thereto, included the lands in your color-of-title application" were insufficient, despite appellant's good faith reliance thereon.

In his statement of reasons for appeal, appellant contends that he has a valid Class I color-of-title claim to the land included in his application by virtue of the April 1962 warranty deed, which, he asserts, was based on a survey by the county surveyor, filed for record June 21, 1962. Appellant argues that this local survey indicates that the land embraced in his color-of-title application constituted part of the "accretions" to lot 4, sec. 27.

Based on documents submitted by appellant, the record indicates that in an 1869 survey of T. 12 N., R. 27 W., sixth principal meridian, Lincoln County, Nebraska, approved in 1870, lot 8, sec. 22, comprising .71 acres, is depicted as situated between lot 4, sec. 27, comprising 39.40 acres, and the south bank of the south channel of the Platte River. Apparently, in the early 1930's the south channel of the Platte River ceased to have actively flowing water and according to one Edwin O. Hoaglund, a 50-year resident of the area, landowners in lots 3 and 4 of sec. 27 have, since that time, "utilized the said accretion ground." In the county survey, referred to by appellant, the south bank of the south channel of the Platte River is depicted as the north line of lot 4, sec. 27, and the north line of County Road No. 186. The survey also depicts the land from that north line to the center line of the south channel of the Platte River as "accretions" to lot 4, sec. 27, with the total accreted acreage set at 47.53. This plat, however, contains no express reference to lot 8, sec. 22, nor does it allocate any of the accreted lands to lot 8, despite the fact that it can clearly be seen from the plat that a slice of the land in sec. 22 underlies the county road as it traversed the section corner.

Appellant argues that the April 1962 warranty deed in essence incorporated the county survey such that the reference to "accretions" in the deed is to the "accretions" depicted on the county survey plat. However, the deed

makes no specific reference to the county survey nor, for that matter, to a corresponding metes and bounds description or the fence line and, for that reason alone, cannot be held to incorporate by reference the survey plat. Rather, the deed merely states that it includes the "accretions" to lot 4, sec. 27, "lying north of the north line of the east-west County Road No. 186." The record indicates that with the drying-up of the south channel of the Platte River, accretions were formed to both lot 8, sec. 22, and lot 4, sec. 27. Appellant has introduced no evidence that the south bank of the river moved southward at any point in time prior to the early 1930's, thus covering lot 8, sec. 22, and making lot 4, sec. 27, alone riparian to the river. Accordingly, with the movement of the south bank northward during the early 1930's, land accreted to both lots. See generally Ralph F. Rosenbaum, 66 IBLA 374, 89 I.D. 415 (1982).

[1] Section 1 of the Color of Title Act, supra, requires that, whether a color-of-title claim is Class I or Class II, the claimant must establish that the land was held in good faith and in peaceful, adverse possession "under claim or color of title." See 43 CFR 2540.0-5(b). It is well established that this provision is satisfied only by a document which "on its face purports to convey the claimed land." Paul Marshall, 82 IBLA 298, 301 (1984), and cases cited therein. Moreover, as we said in Benton C. Cavin, 83 IBLA 107, 131 (1984): "A color-of-title claimant is necessarily limited to the land described in the documents on which his color of title is based, regardless of what land he actually occupies, since his rights are based only on occupancy under color of title." [Emphasis in original.] Thus, we concluded in Cavin that the claimant therein was entitled to land "actually described" in the original conveyance, with reference to an 1874 survey, *i.e.*, "the only official survey of record." Id. (emphasis in original.) We stated in Cavin that 1940 and 1980 administrative surveys of the Forest Service were "nonconclusive" of the boundaries of the color-of-title claim involved therein because they were not official surveys of the United States. Id. at 130-1.

In the present case, appellant's color-of-title claim is similarly limited to the land which the April 1962 warranty deed on its face purports to convey, with reference to the last official survey, which is the 1870 survey. The county survey, to which appellant refers, filed for record in June 1962, regardless of whether it was prepared prior to the April 1962 warranty deed, is not determinative of the extent of appellant's color-of-title claim. ^{1/} Therefore, where that deed makes no reference to lot 8, sec. 22, we must construe the reference to "accretions" to lot 4, sec. 27, as encompassing only those accretions to lot 4, sec. 27, as that lot is depicted on the 1870 survey. As such, those accretions do not include either lot 8, sec. 22, which appears as an independent tract of land on the 1870 survey plat, or the accretions to that lot.

^{1/} We do not regard the warranty deed as containing any latent ambiguity in the description of the land conveyed such that resort must be had to extrinsic evidence, including the county survey, to establish the meaning of the description, in accordance with our holding in Mable M. Farlow, 30 IBLA 320, 84 I.D. 276 (1977). The description clearly includes lot 4, sec. 27, and accretions thereto.

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.

Gail M. Frazier
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Will A. Irwin
Administrative Judge