

MABEL M. SHERWOOD

IBLA 92-375

Decided August 9, 1994

Appeal from a decision of the Albuquerque District Office, New Mexico, Bureau of Land Management, rejecting color-of-title application. NMNM-86656.

Affirmed.

1. Color or Claim of Title: Applications -- Color or Claim of Title:
Description of Land

BLM properly rejected a color-of-title application claiming peaceful, adverse possession in good faith for a period of 20 years when the applicant failed to offer an initial deed in her chain of title which, on its face, purported to convey the land claimed.

APPEARANCES: Ted J. Trujillo, Esq., Espanola, New Mexico, for appellant; Margaret Miller Brown, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Mabel M. Sherwood has appealed from a March 31, 1992, decision of the Albuquerque District Office, New Mexico, Bureau of Land Management (BLM), rejecting color-of-title application NMNM-86656.

On October 22, 1991, Sherwood filed a color-of-title application, pursuant to the Color of Title Act, as amended, 43 U.S.C. § 1068 (1988), seeking patent to 0.013 acre of public land described as lot 18, sec. 36, T. 21 N., R. 9 E., New Mexico Principal Meridian, Rio Arriba County, New Mexico. She indicated that lot 18 lay adjacent to a 0.312-acre parcel owned by her, as shown on private survey No. 3953-91 done by John P. Montoya in August 1991 and submitted with her application. Part of the Montoya survey is copied, by way of illustration, as Appendix A to this opinion. In addition to showing lot 18, the survey shows Sherwood's 0.312-acre parcel as tract 1 of SHC (small holding claim) No. 6209. A BLM dependent resurvey of lot 18 accepted on January 30, 1985, places it in the SE 1/4 NE 1/4 of sec. 36. See also Master Title Plat Supplement, secs. 34 and 36, T. 21 N., R. 9 E., New Mexico Principal Meridian, Rio Arriba County, New Mexico, dated May 1, 1992. Both BLM and Montoya accept a description of

lot 18 that runs from a point on the western boundary of tract 1 of SHC No. 6209, S. 1 degree 46' E. 0.444 chains, N. 84 degrees 2' E. 0.42 chains, N. 3 degrees 47' W. 0.216 chains, S. 82 degrees 56' W. 0.152 chains, N. 18 degrees 8' W. 0.255 chains, and S. 78 degrees 3' W. 0.191 chains.

Sherwood's was a class 1 application, meaning that she sought title by virtue of peaceful, adverse possession in good faith by her and her predecessors under claim or color of title for more than 20 years, resulting in the placement of valuable improvements on or the cultivation of some part of the land. See 43 U.S.C. § 1068 (1988); 43 CFR 2540.0-5(b); Paul Marshall, 82 IBLA 298, 299 n.1 (1984). She asserted that her claim of title to lot 18 originated with a December 17, 1948, warranty deed (No. 85035) from Juanita D. Trujillo to Jack Sherwood and his mother, Sostena P. Sherwood Trujillo, and that the land then passed to Sherwood and her husband Jack K. Sherwood (since deceased) under a December 17, 1968, special warranty deed (No. 11354) from Sostena P. Sherwood Trujillo. See Affidavit of Cipriano D. Trujillo, dated May 27, 1992, at 1.

Finding that the 1948 and 1968 deeds did not describe the land claimed, BLM rejected Sherwood's application because she had failed to produce documents in a chain of title that purported to convey lot 18:

The language of the [1948] deed is * * * vague in its description of the property [conveyed] * * * and therefore, on its face, does not show that the area described as lot 18 was conveyed to Jack and Sostena [P.] Sherwood [Trujillo], your predecessors in title. The 1968 deed * * * references the property described in the 1948 deed and for the same reason does not identify the area.

Sherwood appealed from the March 1992 BLM decision.

In order to be entitled to a patent of land under the class 1 provisions of the Color of Title Act, Sherwood must show that her chain of title consists of documents that purport, on their face, to convey the land from a source other than the United States, demonstrating that she and her predecessors-in-interest had reason to believe that they had good title to the land. Marcus Rudnick, 8 IBLA 65, 66 (1972). It must be shown that the instrument of conveyance initiating the chain of title described the land conveyed with such certainty that its boundaries may reasonably be ascertained, and included the land sought by the application. See Charles M. Schwab, 55 IBLA 8, 11 (1981). Evidence extrinsic to the instrument may be relied upon to show that the instrument in fact conveyed the land, if there is ambiguity in the description. Mable M. Farlow (On Reconsideration), 39 IBLA 15, 23, (1979), and cases cited. The burden of proving that the land sought was held under claim or color of title by the claimant and her predecessors-in-interest rests on the claimant; her failure to submit the necessary evidence requires rejection of her application. See Anthony T. Ash, 52 IBLA 210, 212-13 (1981).

Documents submitted with Sherwood's color-of-title application and BLM's dependent resurvey plat establish that lot 18 was once tract 1 of

SHC No. 6207. Included is a copy of part of a survey plat, covering sec. 36, T. 21 N., R. 9 E., New Mexico Principal Meridian, Rio Arriba County, New Mexico, prepared by U.S. surveyors in 1922. The plat depicts original small holding claims in the SE 1/4 NE 1/4 sec. 36, including tract 1 of SHC No. 6209. The holder of that 0.31-acre tract is identified as Ursulo Trujillo. In an indentation in the western boundary of tract 1 of SHC No. 6209 is tract 1 of SHC No. 6207, a 0.01-acre tract held by Espiriden Trujillo. Field notes prepared during a 1922 survey of tract 1 of SHC No. 6209 follow the boundaries of tract 1 of SHC No. 6207 and generally conform to directions and distances adopted by the Montoya survey and BLM in the dependent resurvey of lot 18. On the January 1985 dependent resurvey plat BLM states that lot 18 is tract 1 of SHC No. 6207. It therefore appears that the land in tract 1 of SHC No. 6207 (or lot 18) was never patented by the United States since there is no evidence that the land ever passed out of Federal ownership; BLM's dependent resurvey plat states the claim was "Cancelled."

Sherwood's color-of-title application states that her chain of title began with the 1948 deed from Juanita D. Trujillo. That deed purportedly conveyed the 0.312-acre parcel of land and lot 18 to her immediate predecessors-in-interest. The copy of the deed provided contains a description of the land conveyed in Spanish. An English translation, which BLM does not dispute, appears in a February 23, 1992, letter from Sherwood's attorney. The translation describes the boundaries of the land principally conveyed as follows:

[T]his land being from the main irrigation ditch to the measurements and stakes of the government, according to what was surveyed and following the patent; and whose lines are to the east, Enrique Trujillo; to the west, Thomas Trujillo, following the government stakes; to the north, the survey of the government, excepting the road that goes from Chimayo to Truchas; to the south, the main irrigation ditch or ditch of the wide canyon[.]

(Letter to BLM from Ted J. Trujillo, dated Feb. 23, 1992, at 2).

[1] It cannot be determined from the 1948 deed that lot 18 was included within the land principally conveyed. The deed does not provide any of the directions and distances of the boundary lines, does not convey any particular acreage, and does not refer to any particular small holding claim. It is difficult, as a consequence, to know exactly what land was included in the conveyance, let alone whether it included lot 18, and BLM's survey experts concluded that it did not. See Memorandum from Chief, Branch of Cadastral Survey, New Mexico, BLM, to District Manager, Albuquerque District, New Mexico, BLM, dated Mar. 25, 1992 ("The [1948] deed[] * * * [is] not specific enough for us to determine if [its] intent was to include the area we have defined as Lot 18").

The boundaries of the land principally conveyed by the 1948 deed may, however, be roughly ascertained. The deed conveyed, at the very least, the land in tract 1 of SHC No. 6209 quoted above. The 1922 survey plat

indicates that the land in tract 1 of SHC No. 6209 was bounded on the east by the claim of Toribio Trujillo (Tract 2, SHC No. 5767) and on the west by the claim of Espiridon Vigil (Tract 1, SHC No. 5694). A road appears to run through the northern half, and an irrigation ditch along the southern boundary, of tract 1 of SHC No. 6209. This is confirmed by the 1922 survey field notes. The Montoya private survey indicates that the tract to the east passed to Enrique Trujillo. It also indicates that a road ("County Road 088") runs through the northern half and an irrigation ditch runs along the southern boundary of tract 1 of SHC No. 6209. Sherwood stated in her February 1992 letter that the tract to the west had been held at one time by Tomas Trujillo. See Letter to BLM from Ted J. Trujillo, dated Feb. 23, 1992, at 4. On appeal, she provides a copy of an April 1924 deed by which Espiridon Vigil may have conveyed the tract to Tomas Trujillo. See Exh. D attached to Statement of Reasons for Appeal (SOR); SOR at 8-9. Presuming that Enrique and Tomas Trujillo held the claims to the east and west at the time of the 1948 deed, we conclude that the land principally conveyed by the deed was in fact tract 1 of SHC No. 6209, as generally bounded on the east by the land of Enrique Trujillo, on the west by the land of Tomas Trujillo, on the north by the Government-surveyed line north of the road, and on the south by the main irrigation ditch. This conclusion is fortified by the fact that Juanita D. Trujillo, who was the grantor under the deed, is identified in the deed as the successor-in-interest to Ursulo Trujillo, who was the owner of tract 1 of SHC No. 6209 (as identified on the 1922 survey plat and field notes). See Letter to BLM from Ted J. Trujillo, dated Feb. 3, 1992, at 2 ("[S]aid property, I possessed on part of my husband, Ursulo Trujillo, decedent").

Nonetheless, it cannot be concluded that the land principally conveyed by the 1948 deed also included tract 1 of SHC No. 6207 (lot 18). The 1948 deed states that the land "follow[s] the patent" (Letter to BLM from Ted J. Trujillo, dated Feb. 23, 1992, at 2). Since it refers to only one patent, one must conclude that this meant the patent to tract 1 of SHC No. 6209, since that is the land conveyed by the deed: the description of the land conveyed conforms so closely to a conveyance of SHC No. 6209 that it is as if the deed had expressly conveyed "Tract 1 of SHC No. 6209." The outstanding patent of that land must be found to define the land conveyed, in the absence of clear and unequivocal evidence that other land was intended. Mary C. Pemberton, 47 IBLA 373, 377 (1980). On its face, the 1948 deed does not encompass adjacent unpatented land in tract 1 of SHC No. 6207. See Mary C. Pemberton, 38 IBLA 118, 121-22 (1978).

In addition, the 1948 deed states that the western boundary of the land conveyed "follow[s] the government stakes" (Letter to BLM from Ted J. Trujillo, dated Feb. 23, 1992, at 2). This suggests that it was not sufficient for the deed simply to describe the boundary line by reference to the land held by Tomas Trujillo because the western boundary of tract 1 of SHC No. 6209 was only partly made up of the generally north-south eastern boundary line of the land of Tomas Trujillo. The remainder of the boundary was complicated by the lines delineating the boundaries of the indented tract, or tract 1 of SHC No. 6207 (lot 18). It must therefore be concluded that the western boundary of the land conveyed by the 1948 deed follows the

boundaries of lot 18 as then surveyed by the "government," and excludes that land (Letter to BLM from Ted J. Trujillo, dated Feb. 23, 1992, at 2). Sherwood has provided evidence that these boundaries were in fact surveyed by U.S. surveyors in 1922. While Montoya could find no evidence of government monuments in tract 1 of SHC No. 6209 (along the boundaries of tract 1 of SHC No. 6207), the 1922 survey field notes indicate that iron posts with marked brass caps were set in the ground at the corners of the small holding claims. We must therefore conclude that the deed intended to conform to those surveyed boundaries, thereby excluding lot 18. There is no evidence to suggest that the boundaries of tract 1 of SHC No. 6209 (the land principally conveyed) should be expanded to include tract 1 of SHC No. 6207.

For purposes of establishing what land was held under claim or color of title, when a claimant relies upon a deed that describes the land conveyed, either explicitly or implicitly, with reference to the official U.S. survey, her claim is properly limited to the land actually described by reference to the last official U.S. survey made prior to the conveyance. See Dale F. Fattig, 90 IBLA 323, 325 (1986), and cases cited. Such a description is not ambiguous and there is therefore no need to consider extrinsic evidence to determine what was conveyed. *Id.* The land found to have been conveyed, for color-of-title purposes, is defined by the last official survey. The 1948 deed states that the land principally conveyed was "surveyed" and implicitly refers to a government survey when describing the relevant western boundary of the land conveyed (Letter to BLM from Ted J. Trujillo, dated Feb. 23, 1992, at 2). It must therefore be presumed that the deed refers to the last official survey in the area prior to the conveyance. So far as is known, that is the 1922 U.S. survey of small holding claims. Consequently, the 1948 deed, which is otherwise found to encompass tract 1 of SHC No. 6209, will be presumed to follow the boundaries established by the 1922 survey for that tract. The deed therefore follows the eastern boundary of tract 1 of SHC No. 6207 (lot 18), thereby excluding that land. It must be concluded that since the deed included tract 1 of SHC No. 6209, it excluded all land outside the surveyed boundaries of that tract. See Hugh Manning, A-28383 (Aug. 18, 1960), at 3. There is no ambiguity; for color-of-title purposes, it is irrelevant that Sherwood or her immediate predecessors-in-interest may have believed that the 1948 deed also conveyed tract 1 of SHC No. 6207 (now lot 18).

Other evidence provided by Sherwood indicates that lot 18 was never intended to be part of the 1948 deed. There is no evidence that the land in lot 18 was intended to be conveyed to Sherwood's predecessors-in-interest under the deed. There is no mention of the tract in the deed, nor can the description in the deed be said to encompass the tract. Lot 18 had not been "surveyed" and "patent[ed]" (Letter to BLM from Ted J. Trujillo, dated Feb. 23, 1992, at 2). The 1948 deed states that the land conveyed was "possessed [by Juanita D. Trujillo] on [the] part of my husband, Ursulo Trujillo, decedent" (Letter to BLM from Ted J. Trujillo, dated Feb. 23, 1992, at 2). This suggests that the land sought to be conveyed was tract 1 of SHC No. 6209, which (according to the 1922 survey plat and field notes) was held by Ursulo Trujillo. Tract 1 of SHC No. 6207, held by Espiriden Trujillo, was distinguished from tract 1 of SHC No. 6209. There is no

evidence that Ursulo Trujillo ever had any interest in lot 18 or intended to convey it.

Since lot 18 was excluded from the conveyance by the terms of the 1948 deed it cannot be said to have been subsequently held under claim or color of title. See S. V. Wantrup, 5 IBLA 286, 289 (1972). Sherwood has therefore failed to establish that the 1948 deed originated her claim of title to lot 18. Because the 1968 deed by which lot 18 purportedly passed to appellant and her husband from Sostena P. (Sherwood) Trujillo simply stated that the land conveyed was the "same as described in Warranty Deed [No.] 85035," it also fails to describe lot 18 under the Color of Title Act.

On February 25, 1992, however, Sherwood submitted copies of two other deeds that she claims are earlier in her chain of title to all or part of lot 18, thereby amending her application. Although BLM did not discuss this aspect of Sherwood's claim in the March 1992 decision here under review, BLM has now responded to this material on appeal, and it is therefore apparent that no purpose would be served by referring the case back for further consideration. See Robert C. LeFaivre, 95 IBLA 26 (1986). Consequently, in the exercise of the review authority delegated by the Secretary, we proceed to consider the effect of the new material presented. See 43 CFR 4.1.

Remaining to be considered is a September 15, 1920, deed from Jesus Maria Salazar to Ursulo and Juanita D. Trujillo. See Exh. B attached Letter to BLM from Ted J. Trujillo, dated Feb. 23, 1992. The deed conveyed land described as the yard of a house measuring 30 by 23 feet and bounded on the east by the Trujillos, the west by Nicholas Trujillo, the north by Espiridon Vigil, and the south by an irrigation ditch. See Letter to BLM from Ted J. Trujillo, dated Feb. 23, 1992, at 3. The other is a copy of an October 1, 1920, deed from Jesus Maria and Anacleto Salazar to Ursulo and Juanita D. Trujillo. See Exh. C attached to Letter to BLM from Ted J. Trujillo, dated Feb. 23, 1992. This second deed conveyed a three-room house, measuring 48-1/2 by 78 feet and bounded on the east by the Trujillos, the west by the wall of Espiridon Vigil, the north by a public road, and the south by an irrigation ditch 4 yards distant. See Letter to BLM from Ted J. Trujillo, dated Feb. 23, 1992, at 3.

To show the location of the house and yard, Sherwood offered reported statements by Cipriano D. Trujillo, the sole surviving son of Ursulo and Juanita D. Trujillo, who is said to have been born on the Sherwood land in 1909 and recalls the locations. See Letter to BLM from Ted J. Trujillo, dated Feb. 23, 1992, at 1, 4. Cipriano D. Trujillo is reported to have said that the house and yard did overlap lot 18, but that the house has since collapsed or been removed. See Letter to BLM from Ted J. Trujillo, dated Feb. 23, 1992, at 4. The location of the house and yard are depicted on a copy of a portion of Montoya's private survey plat of tract 1 of SHC No. 6209, showing lot 18. See Exh. D attached to Letter to BLM from Ted J. Trujillo, dated Feb. 23, 1992.

Sherwood has also provided a May 27, 1992, affidavit by Cipriano D. Trujillo. See Exh. F attached to SOR. No mention of the house or yard is

made in the affidavit; he states only that his parents acquired lot 18 from the Salazar brothers in 1920, and thereafter regarded most, if not all, of the land as owned by them, later conveying it to appellant's immediate predecessors-in-interest Jack K. Sherwood and Sostena P. Sherwood Trujillo. See Affidavit of Cipriano D. Trujillo, dated May 27, 1992, at 2. He states that three buildings were to be found at one time on the lot. See id. In further support of the 1920 deeds, Sherwood has supplied a May 27, 1992, affidavit from Brent Schutz, a private title searcher, who states his opinion that the 1920 deeds conveyed all or part of lot 18. See Affidavit of Brent Schutz, dated May 27, 1992, at 2-3.

There is, however, no documentary evidence that either of the Salazar deeds conveyed any of the land in lot 18, nor is there any evidence that the Salazar brothers ever had an interest in lot 18. On the contrary, the 1922 survey plat of small holding claims in and around lot 18 indicates that, while they held nearby claims, neither brother had an interest in lot 18 at the time of the 1920 deeds; what does appear is that Anacleto Salazar once held tract 1 of SHC No. 5694 lying immediately west of and sharing a common boundary with both tract 1 of SHC No. 6207 and tract 1 of SHC No. 6209, but that it had been assigned to Espiridon Vigil by 1922. Nor is it possible to say that the Salazar Brothers inadvertently conveyed (by virtue of the 1920 deeds) lot 18 to appellant's previous predecessors-in-interest (Ursulo and Juanita D. Trujillo). This is also the position taken by BLM on appeal. See Answer at 1.

Sherwood seeks to locate the 3-room house and the yard conveyed by the 1920 deeds in such a way that they almost completely overlap lot 18. See Exh. D to SOR. The described location of the house and yard in the 1920 deeds is, to say the least, imprecise. The deeds refer generally to the property owners and the land features that form the boundaries of the house and yard. It is impossible, however, to state definitely what owners and land features are being referred to. It cannot be said with certainty that the reference to Espiridon Vigil is to his land in tract 1 of SHC No. 5694. Even if the owners and land features described were to be found in the immediate vicinity of lot 18, it is not known whether the house and yard are directly bounded by any of these owners and land features or whether they are located some distance away. It is not shown what land was covered by the 1920 deeds, or that either or both encompassed lot 18 to any extent. The deeds must therefore be rejected as without demonstrated value for Sherwood's color-of-title claim since the description in the deeds does not adequately identify the land conveyed. See Nora Beatrice Kelley Howerton, 71 I.D. 429, 430-32, 434 (1964), finding that "[t]he difficulty with appellant's contentions is that she does not satisfactorily explain the reference [in the deeds] * * * or show that there was some identification which could be relied on by anyone referring to the deeds to ascertain where the tract is located on the ground." Id. at 431.

The 1922 survey plat of small holding claims depicts claims surrounding lot 18 and what appears to be a road and an irrigation ditch running through the northern half and along the southern boundary of tract 1 of

SHC No. 6209. The location of the road and the irrigation ditch is confirmed by both the 1922 survey field notes and Montoya's 1991 private survey plat. The plat depicts, in the same relative position within the tract, "County Road 088" and an "[i]rrigation ditch." According to the September 1920 deed, the 30 by 23-foot yard is supposed to be directly bounded on the east by Ursulo and Juanita D. Trujillo, on the west by Nicholas Trujillo, on the north by Espiridon Vigil, and on the south by the main ditch. See Letter to BLM from Ted J. Trujillo, dated Feb. 23, 1992, at 3. Assuming that the deed referred to the small holding claims of the Trujillos (Tract 1, SHC No. 6209), Nicholas Trujillo (Tract 8, SHC No. 5607), and Espiridon Vigil (Tract 1, SHC No. 5694), and the irrigation ditch, all as depicted on the 1922 plat, this would have been impossible if the yard described was rectangular in shape. The yard must have been some distance away from all or some of the boundaries of these properties and features: The question is how far and in what direction.

The same thing is true of the October 1920 house deed. The 48-1/2 by 78-foot house is said to be directly bounded on the east by the Trujillos, on the west by the wall of Espiridon Vigil, on the north by the public road, and on the south by the main ditch 4 yards distant. See Letter to BLM from Ted J. Trujillo, dated Feb. 23, 1992, at 3. Again, assuming that the deed was referring to the small holding claims of the Trujillos and Vigil and the irrigation ditch and road, all as depicted on the 1922 plat, this would have been impossible if the house described was rectangular in shape. Again, the house must have been some distance away from all or some of the boundaries of these properties and features. In neither case can we say, based on the deeds, that the house or yard are any particular distance or direction from any pertinent properties or land features. Nothing in the record suggests that there are any traces of the house and yard on the ground that could confirm Trujillo's recollection of their placement, and his affidavit is the only connection in the record between the deeds and lot 18.

Nor can the statements of Cipriano D. Trujillo in his May 1992 affidavit be accepted as proof that the 1920 deeds in fact conveyed lot 18 to his parents. Evidence extrinsic to a deed may be relied upon to show that the deed in fact conveyed land claimed under color of title where there is ambiguity regarding whether the land was conveyed. However, it is clear that the description in the deed must be sufficient to include the land sought by the color-of-title claimant so that, with the aid of extrinsic evidence, what is ambiguous is made definite. Mable M. Farlow, 30 IBLA 320, 329 (1977); and see Green v. Trumbull, 26 P.2d 1079, 1080 (N.M. 1933), explaining that "[P]arol evidence is permissible to apply but not to supply description. * * * There must be at least a descriptive word in the written instrument relied upon as color of title which furnishes the key to the identity [of the land conveyed]." If a description is so vague or indefinite that it cannot be said the deed may have included the land sought, extrinsic evidence cannot be relied upon; in that situation, the claimant will have failed to establish that the land was held "under claim or color of title," as required by 43 U.S.C. § 1068 (1988). See Bryan N. Johnson, 15 IBLA 19, 22 (1974); Elsie V. Farington, 9 IBLA 191, 194-96 (1973). No

ambiguity can be found in the 1920 deeds as to whether they conveyed lot 18 since there is nothing in the descriptions in the deeds to suggest that they did. The fact that Cipriano D. Trujillo's parents may have believed that lot 18 was included in the 1920 deeds does not establish that the descriptions could be read to include that land.

Even if the 1920 deeds were ambiguous, resort to the statements of Cipriano D. Trujillo could not be made. If an ambiguous description in a deed is sought to be made definite by evidence regarding the practical construction by words or acts given to the description by the parties to the deed, such construction must be participated in by all of the parties. See, e.g., Garcia v. Garcia, 525 P.2d 863, 865 (N.M. 1974) and cases cited therein. In the instant case, there is no evidence regarding the practical construction given to the 1920 deeds by grantors or grantees. There is no evidence that any buildings remain on the land, or that their former location can be found. There is no evidence that any of the boundaries were ever marked on the ground by the parties to the deeds. All we have is the report of the Trujillos' son that his parents believed that the 1920 deeds covered lot 18 and acted accordingly, unsupported by evidence of practical effect demonstrated by acts of the parties to the deeds. This makes the report by Trujillo unsubstantiated hearsay. Trujillo's statements, by themselves, are not sufficient extrinsic evidence to resolve any ambiguity in the 1920 deeds as to whether the parties thereto intended to convey lot 18. The same is true of unsupported statements in the affidavit given by Schutz. Sherwood has therefore failed to establish that either or both of the 1920 deeds originated her claim of title to lot 18.

Were it to be assumed that the 1920 deeds conveyed lot 18 to Ursulo and Juanita D. Trujillo, Sherwood would still only be entitled to claim that land under the Color of Title Act if the land had passed to her under color of title. Her entire chain of title must therefore be examined, and inevitably the 1948 deed must be shown to convey lot 18. There is, however, nothing in the 1948 deed to suggest that the house covered by the October 1920 deed was conveyed to Sherwood's immediate predecessors-in-interest. No mention is made of the house. To the extent that the original site of the house partially overlaps lot 18, it would have been conveyed to Sherwood's predecessors-in-interest if it passed as part of the primary tract of land conveyed by the 1948 deed; nonetheless, it has already been decided that the 1948 deed excluded lot 18. The portion of lot 18 thought to have been covered by the house (whatever that may have been) did not pass to Sherwood's predecessors-in-interest under the 1948 deed, and whatever chain of title may have developed previously by the October 1920 deed was broken. Because Sherwood's claim to that portion of lot 18 under the Color of Title Act rests on the 1948 deed, it must be rejected.

The 1948 deed does, however, indicate that the yard conveyed to Ursulo and Juanita D. Trujillo under the September 1920 deed was conveyed by her under the 1948 deed, but not as part of the land principally described in that deed, i.e., the land bounded on the east by Enrique Trujillo, on the west by Tomas Trujillo (following the Government stakes), on the north by

the Government survey, and on the south by the main irrigation ditch. Instead, the deed indicates that the "yard of a house that was from Jesus Maria Salazar" was conveyed "in addition" to the land principally conveyed (Letter to BLM from Ted J. Trujillo, dated Feb. 23, 1992, at 2). (This suggests that the house covered by the October 1920 deed was not conveyed at all under the 1948 deed, since no specific mention is made of it.) In any case, assuming that the yard in the 1948 deed is the same yard conveyed in the September 1920 deed, we conclude, for the reasons outlined above, that it cannot be construed to encompass any part of lot 18, there being no proof that it did so for reasons previously stated. No other deed has been submitted that purports to have conveyed lot 18 to any predecessor-in-interest of Sherwood so as to originate her claim of title.

It is therefore concluded that BLM properly rejected appellant's color-of-title application. Despite that rejection, BLM is, of course, free to explore other means for conveying this small and isolated tract of public land to Sherwood. See Paul Marshall, 82 IBLA at 301-02.

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.

Franklin D. Arness
Administrative Judge

I concur:

David L. Hughes
Administrative Judge

Editor's note: It may be necessary to switch to graphics mode to see the map

APPENDIX A MONTOYA PRIVATE SURVEY



16



