

INTERIOR BOARD OF LAND APPEALS

Basilio R. and Armida D. Torres

129 IBLA 130 (*sic*, probably should be 129 IBLA 330) (May 31, 1994)

Title page added by:
ibiadecisions.com

BASILIO R. AND ARMIDA D. TORRES

IBLA 90-446

Decided May 31, 1994

Appeal from a decision of the Las Cruces District Office, New Mexico, Bureau of Land Management, rejecting color-of-title application NM 52185.

Affirmed.

1. Color or Claim of Title: Applications

To demonstrate possession under claim or color of title an applicant's claim of apparent ownership must be based on a document which, on its face, purports to convey title to the claimed land. Thus, the applicant can claim only the land actually described in the documents on which his color of title claim is based.

APPEARANCES: Basilio R. and Armida D. Torres, Alamogordo, New Mexico, pro sese; Emilio Pargas, San Antonio, New Mexico, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Basilio R. and Armida D. Torres have appealed from a June 1, 1990, decision by the District Manager, Las Cruces District Office, New Mexico, Bureau of Land Management (BLM), rejecting class 1 color-of-title application NM 52185. In his decision the District Manager found that deeds submitted in support of the application describe land other than the parcel sought by the Torreses. 1/

On February 16, 1982, the Torreses filed an application seeking to purchase a 5.70-acre tract described as "Lot 2 - also known as Tract 91, Map 176, [Middle Rio Grande Conservancy District (MRGCD)]," sec. 9, T. 5 S., R. 1 E., New Mexico Principal Meridian, New Mexico, pursuant to section 1 of the Color of Title Act (Act), 43 U.S.C. § 1068 (1988). On May 6, 1988, the Torreses amended their application, changing the description to lot 16, sec. 8, and lot 20, sec. 9, T. 5 S., R. 1 E., New Mexico Principal Meridian, New Mexico, but leaving the Tract 91 designation unchanged. 2/

1/ A June 1, 1990, BLM decision rejecting the application described the tract as containing 5.70 acres. That decision was amended on June 25, 1990, to state that the application was being rejected for 0.75 acre. As will be seen, the error was not a mere matter of transposition.

2/ Lot 16, sec. 8 contains 4.16 acres and lot 20, sec. 8, contains 10.18 acres. Both are shown to be public land administered by BLM. The land to the north and south appears to be patented.

The Torreses' application stated that the land had been in the family since 1952 and cultivated for 25 years, and that they have made improvements worth \$1,500. A February 12, 1987, property tax report indicates that the Torreses had paid taxes on a 5.70-acre parcel described as Tract 91, MRGCD Map 176 between 1957 to 1981, with the exception of 1964 to 1966 when the land was listed as exempt.

Although it is not obvious from the application, by examining the file as a whole, it becomes apparent that the land addressed in the BLM decision on appeal is a 60-foot wide parcel in Tract 88, MRGCD Map 176, containing 0.75 acre. This parcel is bounded on the north by a fence built by Emilio Pargas and the south by Tract 91, MRGCD Map 176. In their amended application the Torreses stated that they constructed an irrigation ditch on the tract in 1969. ^{3/} This ditch is shown on maps as being just south of Pargas' fence, and a photograph in the record also depicts a ditch running to the south of a fence.

[1] The conditions for purchase of title are set out in section 1 of the Act, 43 U.S.C. § 1068 (1988). That section states:

The Secretary of the Interior (a) shall, whenever it shall be shown to his satisfaction that a tract of public land has been held in good faith and in peaceful, adverse, possession by a claimant, his ancestors or grantors, under claim or color of title for more than twenty years, and that valuable improvements have been placed on such land or some part thereof has been reduced to cultivation, or (b) may, in his discretion, whenever it shall be shown to his satisfaction that a tract of public land has been held in good faith and in peaceful, adverse, possession by a claimant, his ancestors or grantors, under claim or color of title for the period commencing not later than January 1, 1901, to the date of the application during which time they have paid taxes levied on the land by State and local governmental units, issue a patent for not to exceed one hundred and sixty acres of such land upon the payment of not less than \$1.25 per acre * * *.

A claim under part (a) of section 1068 is defined by the Department as a class 1 claim and a claim under part (b) is defined as a class 2 claim. 43 CFR 2540.0-5(b).

An applicant must establish to the Secretary of the Interior's satisfaction that the conditions for purchase under the Act have been met. Delfino J. Borrego, 113 IBLA 209 (1990); John P. Montoya, 113 IBLA 8 (1990); Hal H. Memmott, 77 IBLA 399, 402 (1983). The Torreses filed a class 1 claim and they must show, inter alia, that the land has "been held in good faith and in peaceful, adverse, possession by [them], [their] ancestors, or grantors, under claim of color of title for more than twenty years." The failure to show that any one of the elements necessary to establish a

^{3/} On Mar. 2, 1982, BLM received color-of-title application NM 52188 for land described as Tract 88 of MRGCD Map 176.

class 1 claim is fatal to the application. See Delfino J. Borrego, *supra*; Lester Stephens, 58 IBLA 14 (1981).

The rights of one seeking title under a class 1 application must be based on occupancy under claim or color of title. To demonstrate possession under claim or color of title, an applicant's claim of apparent ownership must be based on a document which, on its face, purports to convey title to the claimed land. See Delfino J. Borrego, *supra*; Rebecca S. Knott-Gray, 112 IBLA 148, 151 (1989); Alvin E. Leukma, 103 IBLA 302, 305 (1988); Jerome L. Kolstad, 93 IBLA 119, 121 (1986). Thus, the applicant can claim only the land actually described in the documents on which his color of title claim is based. James E. Gaylord, Jr., 94 IBLA 392, 396 (1986); Benton C. Cavin, 83 IBLA 107, 131 (1984). The Torreses must show that their color of title claim originates in a document which, on its face, purports to convey the land in question.

The reference to tract numbers in the legal descriptions at issue is somewhat confused because the plots have been renumbered on at least one occasion. The land the Torreses seek was originally within a tract identified as Small Holding Claim 2785. This claim was apparently never perfected because that land remained in Federal ownership. A portion of Small Holding Claim 2785 was made subject to rights-of-way for MRGCD irrigation ditches and drains about the time MRGCD Map 176 was prepared. That portion of Small Holding Claim 2785 not made subject to MRGCD rights-of-way was identified as Tract 88 on the MRGCD Map 176. Similarly, land in Small Holding Claim 2792, which was patented, and is now owned by the Torreses, was subsequently identified as Tract 91 on MRGCD Map 176.

The Torreses have submitted nothing purporting to convey title to any part of Tract 88, MRGCD Map 176, the location of the 0.75-acre parcel in question. A warranty deed dated January 30, 1937, conveying land in Small Holding Claim 2972 was submitted to support their application. This warranty deed conveys approximately 5.70 acres in Tract 91, and does not purport to convey land in Tract 88. The case record also has a quitclaim deed dated August 7, 1952, from the MRGCD to Tomas Delgadillo for Tract 91, MRGCD Map 176, which is shown to contain 5.70 acres of land. The other records submitted by the Torreses also relate to Tract 91, MRGCD Map 176.

In their statement of reasons, the Torreses do not controvert BLM's conclusion that the documents they submitted with their application describe land outside Tract 88, nor have they submitted any other document on appeal which might establish a claim or color of title to land in that tract. When they failed to provide a document which on its face purports to convey title to the claimed land they failed to prove one of the elements needed for a class 1 claim. The BLM decision rejecting their claim must be affirmed. ^{4/}

^{4/} Under the circumstances, we do not find it necessary to discuss whether the Torreses satisfied the other requirements for a color of title claim. We also note that it would have been proper for BLM to reject the application as it applies to land in Tract 91. That land is patented and apparently is owned by the Torreses.

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.

R. W. Mullen
Administrative Judge

I concur:

David L. Hughes
Administrative Judge