

INTERIOR BOARD OF LAND APPEALS

Joseph E. Martell

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JOSEPH E. MARTELL

IBLA 96-399

Decided February 23, 1998

Appeal from a decision of the Eastern States Office, Bureau of Land Management, rejecting an application filed under the O'Konski Act and the Color of Title Act. ESWIES47907.

Affirmed.

1. Color or Claim of Title: Generally--Color or Claim of Title: Applications--Public Sales: Sales Under Special Statutes

The O'Konski Act, (43 U.S.C. § 1221 (1994)), is a remedial Act intended to correct a recognized error resulting from fraudulent or grossly erroneous cadastral surveys and allow those Wisconsin property owners who have, since Jan. 21, 1953, been in good faith and in peaceful and open possession of lands lying between the originally determined meander line and the actual meander line an opportunity to acquire omitted lands in the same manner as the lands would have been acquired if the original survey had been accurate. Applicants for a patent under 43 U.S.C. § 1221 (1994) have the burden of proving each of the requirements for patent to the satisfaction of the Secretary of the Interior.

2. Conveyances: Interest Conveyed--Patents of Public Lands: Generally--Public Lands: Generally--Public Lands: Disposals of: Generally--Public Sales: Generally--Surveys of Public Lands: Generally--Surveys of Public Lands: Omitted Lands

If an official plat depicts the boundary of a parcel as a water line, the meander line is not a line of boundary, and a patent for a tract of land bordering on a river or lake conveys the land to the water line. An exception to this rule of law is applied when either fraud or gross error is discovered in an existing survey. If either is found, the omitted lands are assigned new lot numbers, the previously

issued patent is deemed to have conveyed only those lands on the shore side of the meander line, and title to lands lying between the meander line and the actual water line is deemed to be the omitted land and the property of the United States.

3. Color or Claim of Title: Time for Filing

An application under the O'Konski Act, 43 U.S.C. § 1221 (1994), or the Act of Feb. 27, 1925, 43 U.S.C. § 994 (1994), must show that the land has been held in good faith and in peaceful, adverse possession by the applicant or his predecessors-in-interest for the requisite time period and that the application was timely filed. If the predecessors-in-interest did not file their application within the statutory time limit, they must be able to claim a good faith lack of knowledge caused by inadequate notice that would justify filing a claim outside the statutory time limit.

4. Color or Claim of Title: Generally—Color or Claim of Title: Applications—Color or Claim of Title: Description of Land

Occupancy and improvement of public lands without color of title create no vested rights as against the United States, because no adverse possession of Government property can affect the title of the United States, except as provided by the Color of Title Act, 43 U.S.C. § 1068 (1994). In order to satisfy the statutory requirement of possession of the land 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.

APPEARANCES: Joseph E. Martell, Ashland, Wisconsin, pro se.

OPINION BY ADMINISTRATIVE JUDGE TERRY

Joseph E. Martell (Martell or Appellant) has appealed an April 16, 1996, Decision of the Eastern States Office, Bureau of Land Management (BLM), rejecting his patent application ESWIES47907.

On March 29, 1996, Appellant filed an application with BLM under the Act of August 24, 1954, commonly known as the O'Konski Act, 43 U.S.C. § 1221 (1994), for a patent to certain lands in Wisconsin. Those lands were described by Appellant as lot 11, sec. 33, T. 45 N., R. 6 W., Fourth Principal Meridian, Bayfield County, Wisconsin.

[1, 2] The O'Konski Act at 43 U.S.C. § 1221 (1994), provides:

Whenever it shall be shown to the satisfaction of the Secretary of the Interior that a tract of public land, lying between the meander line of an inland lake or river in Wisconsin as originally surveyed and the meander line of that lake or river as subsequently resurveyed, has been held in good faith and in peaceful, adverse possession by a person, or his predecessors-in-interest, who had been issued a patent, prior to January 21, 1953, for lands lying along the meander line as originally determined, the Secretary of the Interior shall cause a patent to be issued to such person for such land upon the payment of the same price per acre as that at which the land included in the original patent was purchased and upon the same terms and conditions. All persons seeking to purchase lands under sections 1221-1223 of this title shall make application to the Secretary within one year from August 24, 1954, or from the date of the official filing of the plat or resurvey, whichever is later, and the Secretary of the Interior shall cause no patents to be issued for land lying between the original meander line and the resurveyed meander line until the conclusion of such periods.

The regulation at 43 C.F.R. § 2540.0-3(e) provides that the O'Konski Act directs the Secretary of the Interior to issue patents for public lands which lie between the meander line of an inland lake or river in Wisconsin as originally surveyed and the meander line of that lake or river as subsequently resurveyed.

The regulation at 43 C.F.R. § 2545.1(a) further provides:

To qualify under the Act of 1954, a person, or his predecessor-in-interest, (1) must have been issued, prior to January 21, 1953, a patent for lands lying along the meander line as originally determined, and (2) must have held in good faith and in peaceful, adverse possession since the date of issuance of said patent adjoining public lands lying between the original meander line and the resurveyed meander line.

The regulation at 43 C.F.R. § 2545.2 sets forth each of the requirements for applications under the O'Konski Act. One such provision, at 43 C.F.R. § 2545.2(a), provides: "Applications for public lands under the Act of 1954 must be filed within 1 year after August 24, 1954, or 1 year from the date of the official plat or resurvey, whichever is later."

The O'Konski Act, an Act peculiar to the State of Wisconsin, was prompted by inequities and chaotic conditions resulting from landowner reliance on fraudulent or grossly erroneous cadastral surveys of Wisconsin lands made in the mid-1800's. In many cases, after the cadastral survey conducted a resurvey of lands adjacent to lakes and rivers, the upland

landowners found that land considered to be in private ownership for over 100 years was Federal land. The O'Konski Act affords an equitable resolution of this problem for those who held the land between the originally determined meander line and the actual meander line in good faith and in peaceful, adverse possession prior to January 21, 1953. These owners could apply for a patent to the land and receive the land upon payment of the price that would have been paid if the original cadastral survey had been correct and the lands had been included in the original patent. ^{1/}

In its April 16, 1996, Decision, BLM rejected Appellant's application under the O'Konski Act for the following reason:

The Color-of-Title Regulations, 43 C.F.R. 2545.2(a), requires [sic] applications to [sic] for public lands to be filed one (1) year after [the] Act of 1954 or 1 year from the date of the official plat or resurvey, whichever is later. **Your application fails to meet the criteria specified under the color of title regulations, therefore, this application is rejected.**

(Decision at 2.)

On appeal, Appellant, who purchased lot 5 of section 33 in 1995, seeks to purchase and acquire title to a new Government lot, lot 11, created by a resurvey that took place in 1987. The resurvey placed 6-7 acres of land that had previously been believed to be in lot 5, in lot 11, as a result of the correction of the meander line under the "omitted lands" theory. ^{2/} In his appeal, Appellant provides title documents for lot 5 and a copy of a patent for lot 5.

[3] Appellant further contends that two of the three requirements of 43 U.S.C. § 1221 (1994), have been met, and that the third could not

^{1/} The applicant must pay a minimum of \$1.25 per acre if the original purchase price was less than that amount.

^{2/} The resurvey was undertaken and the meander line established in accordance with section 7-84 of the Manual of Instructions for the Survey of the Public Lands of the United States (1973), which states:

"7-84. Where lands have been determined to be erroneously omitted from the original survey, the original meander line is made a fixed and limiting boundary segregating the previously surveyed areas from the unsurveyed public lands. The line is reestablished and marked with permanent monuments at the old angle points. Retracement between successive meander corners nearly always will show differences from the record in latitude and departure. The positions of the angle points are adjusted by the broken boundary method described in section 5-43 under "Angle Points of Nonriparian Meander Lines." The angle points are serial numbers which do not duplicate numbers that may have been previously assigned in that section. The monuments are marked as shown in section 4-45.

"The position of the original meander line having been determined, the survey is extended across the unsurveyed areas. Finally, a new meander line is surveyed in the correct position."

be met because BLM violated due process when it did not provide Appellant's predecessor-in-interest adequate notice of the resurvey and its effect. This alleged failure to provide adequate notice, Appellant claims, precluded his predecessor from filing under the O'Konski Act, and he (Appellant) now claims this violation should not preclude his application from being approved. More specifically, Appellant claims that (1) a patent of lands lying along the meander line as originally determined had been issued prior to January 21, 1953, to the applicant's predecessor; and (2) the applicant and his predecessor have held that tract in "good faith and peaceful adverse possession." The third requirement, that this application was filed within 1 year of the official filing of the resurvey, is inapplicable here, Appellant claims, because the notice to his predecessor-in-interest of the effect of the 1987 resurvey was inadequate, did not reasonably place his predecessor on notice of the effect of the resurvey or the need to file under the O'Konski Act, and, thus, constituted a due process violation that dictates he should now receive a waiver of the time requirement on his O'Konski Act application. (SOR at 2.)

Section 33, T. 45 N., R. 6 W., Fourth Principal Meridian, Wisconsin, was initially lotted when a plat of survey was approved January 11, 1859. The survey established lotted legal subdivisions in that section for lands bordering on Lake Osborn. Lot 5 was first patented at least as early as December 9, 1885, when the State of Wisconsin granted lot 5 to the Chicago, St. Paul, Minneapolis and Omaha Railway Company. Lot 5 was conveyed on a number of occasions and was sold at a tax sale at least once. The Appellant purchased lot 5 through private sale in 1995.

In a letter dated December 26, 1995, Appellant sought information from BLM concerning ownership of portions of lots 1-6 inside the original meander line of Lake Osborn. The BLM advised Appellant by letter dated January 17, 1996, in pertinent part:

Records on file in this office indicate that the lands in question were surveyed as omitted land in 1985 in response to an application for survey dated September 23, 1982. Enclosed is a copy of the plat of survey dated May 1, 1987, showing new lottings.

Normally a meander line is not considered a boundary and riparian rights would extend to the actual ordinary high water mark. In an exception as in the instant case, the original meander line is held as a fixed and limiting boundary segregating the previously surveyed areas from the omitted public lands.

Status records indicate title for Lots 7 and 13 were applied for under the O'Konski Act (the Act of August 24, 1954, 68 Stat. 789) by Donald E. and Orvin L. Olson with a patent being issued on February 7, 1990. Lots 8 through 12 are federally owned public lands.

During the course of the resurvey described above, the cadastral survey either found gross error in the initial survey or found the survey to have been fraudulent, as the lands between the meander line of the original survey and the actual shoreline were deemed to be omitted lands and assigned lot numbers 7 through 13. The plat of survey of lots 7 through 13 was completed on August 20, 1985, and filed on May 1, 1987. On May 18, 1987, BLM placed a notice in the Federal Register announcing the filing of the plat of dependent resurvey and the survey of omitted land. See 52 Fed. Reg. 18617 (May 18, 1987). Audrey Keulman, Appellant's predecessor-in-title to lot 5, was personally advised by certified letter dated July 5, 1985, that BLM "will be making a preliminary examination and conditional survey of lands which may have been omitted from the original survey in Section 33, Township 45 North, Range 6 West, Fourth Principal Meridian, Wisconsin."

The notice, in the form of a certified letter and publication in the Federal Register, led at least two of the landowners adjacent to Lake Osborn, Orvin L. Olson and Donald E. Olson, to timely file an application for purchase of omitted land pursuant to the O'Konski Act. Appellant claims that the same notice provided to his predecessor was insufficient in law. We disagree.

Notice of the dependent resurvey of the meander line around Lake Osborn was published in the Federal Register on May 18, 1987, and certified letters advising landowners of the dependent resurvey were sent to each of the landowners with property around Lake Osborn. That this notice was effective is evident from the subsequent timely applications for purchase of omitted land by Orvin L. and Donald E. Olson. See Lanny Perry, 131 IBLA 1, 4 (1994). It is well established that one who deals with the Government is presumed to know the relevant statutes and duly promulgated regulations. Federal Crop Insurance v. Merrill, 332 U.S. 380 (1947); Lanny Perry, *supra*, at 4; Jack Hammer d.b.a. Hammer Oil Co., 114 IBLA 340, 343 (1990).

In BLM's April 16, 1996, Decision, the Chief, Lands Adjudication Team, also found that Appellant did not qualify to purchase lot 11 under the Color of Title Act, under the claim of Class 1 and 2. (Decision at 1.) No separate rationale was offered by BLM for the denial of the Class 1 and 2 Color of Title claims. See Decision at 2.

Two separate statutes must be analyzed in addressing Appellant's possible color-of-title claim to lot 11. The first, 43 U.S.C. § 994 (1994), codifies the Act of February 27, 1925 (Act of 1925). The Act of 1925 provides for sale of lands in Wisconsin "which were erroneously meandered and shown upon the official plats as water-covered areas, and which are not lawfully appropriated by a qualified settler or entryman claiming under the public land laws." The implementing regulation at 43 C.F.R. § 2545.1(b), provides:

(b) To qualify under the Act of 1925, a person must either (1) be the owner in good faith of land, acquired prior to

February 27, 1925, shown by the official public land surveys to be bounded in whole or in part by such public lands or (2) be a citizen of the United States who, in good faith under color of title or claiming as a riparian owner, had, prior to February 27, 1925, placed valuable improvements upon or reduced to cultivation any of such public lands.

Further, the regulation at 43 C.F.R. § 2545.2(a) provides: "Claimants under the Act of 1925 have a preferred right of application for a period of 90 days from the date of filing of the plat of survey of lands claimed by them."

The second color-of-title statute, 43 U.S.C. § 1068 (1994) (Color of Title Act), provides, in pertinent part:

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 20 years, and that valuable improvements have been placed on such land or some part thereof has been reduced to cultivation, *
* * issue a patent for not to exceed one hundred and sixty acres of such land upon the payment of not less than \$1.25 an acre.

The regulation at 43 C.F.R. § 2540.0-5(b) interprets this statute as follows:

(b) The claims recognized by the Act will be referred to in this part as claims of class 1 and claims of class 2. A claim of class 1 is one which 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 20 years, on which valuable improvements have been placed, or on which some part of the land has been reduced to cultivation. A claim of class 2 is one which 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 application, during which time they have paid taxes levied on the land by State and local governmental units. A claim is not held in good faith where held with knowledge that the land is owned by the United States. A claim is not held in peaceful, adverse possession where it was initiated while the land was withdrawn or reserved for Federal purposes.

Appellant cannot qualify as a purchaser of lot 11 under the Act of 1925 for the same reason he could not qualify under the O'Konski Act. The knowledge imputed to Appellant as a result of the notice to the predecessor owner of lot 5 precludes Appellant's successful application to purchase

omitted land in lot 11. As stated in 43 C.F.R. § 2540.0-5(b), "A claim is not held in good faith where held with knowledge that the land is owned by the United States." The notice in the Federal Register at 52 Fed. Reg. 18617 (May 18, 1987) and in the letter advising his predecessor, Audrey Keulman, that a dependent resurvey would be conducted of the meander line around Lake Osborn, as well as the filing of the cadastral survey on May 1, 1987, more than placed the riparian owners on notice that omitted land, and thus Federal ownership, was involved.

There are many decisions of this Board affirming rejection when knowledge held by the applicant or his predecessor-in-interest has precluded a finding of good faith. Felix F. Vigil, 129 IBLA 345, 349 (1994) (Appellant's predecessor-in-interest was aware of Government title to land); Louis C. Scalise, 129 IBLA 334 (1994) (Appellant advised by letter of Federal title to land); Louis Mark Mannatt, 109 IBLA 100 (1989) (Appellant sought lease for the land); Felix F. Vigil, 84 IBLA 142 (1984) (applicant held grazing lease); Earl Hummel, 44 IBLA 110 (1979) (applicant had previously filed a homestead application). We similarly find that Appellant's predecessor-in-interest was provided sufficient information that Appellant cannot claim lack of knowledge as a legally defensible excuse for failing to file his Act of 1925 application within the time prescribed by law.

[4] The deeds that Martell has submitted supporting a chain of title all describe the land being conveyed as "Government Lot Five (5), Section Thirty-Three (33), Township Forty-Five (45) North, Range Six (6) West." The lands he seeks under the Color of Title Act are located in Government Lot 11. The deeds that Martell has submitted describe land south and west of the requested parcel and not the parcel sought. Thus, there is no document of record which, on its face, purports to convey title to the claimed land, and nothing to support a claim or color of title under the Color of Title Act. While we accept as true the contention that Martell's predecessors-in-interest have been in adverse possession of the land for over 20 years, mere possession and improvement of the land do not satisfy the requirements of the Color of Title Act. That Act mandates that the claim be based upon a document purporting to convey title to the land applied for. See Estate of James J. Lee, Deceased, 26 IBLA 102, 103-04 (1976); Cloyd and Velma Mitchell, 22 IBLA 299, 302-303 (1975). Such occupancy and use of Federal land without color or right give no prescriptive rights against the United States. See, e.g., Loyla C. Waskul, 102 IBLA 241, 243 (1988). Because Martell has failed to provide a document which, on its face, purports to convey title to the requested parcel, his Color of Title Act claim fails. ^{3/}

^{3/} We note one exception. A document which, on its face, purports to convey title to a specific lot cannot be said to convey any portion of another, unless an appellant can show that the description was ambiguous and that resorting to extrinsic evidence would make the description definite and embrace the parcel of land being sought. See Loyla C. Waskul, 102 IBLA 241 (1988), and cases there cited.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision rejecting Appellant's OKonski Act application and color-of-title claim is affirmed.

James P. Terry
Administrative Judge

I concur.

R.W. Mullen
Administrative Judge