

INTERIOR BOARD OF LAND APPEALS

Archie Ledon Cole

155 IBLA 202 (July 18, 2001)

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ARCHIE LEDON COLE

IBLA 98-418 Decided July 18, 2001

Appeal from decision of the Cascade Area Manager, Boise Field Office, Bureau of Land Management, rejecting Color of Title application IDI-32606.

Affirmed.

1. Color or Claim of Title: Generally—State Laws

A right to federal lands cannot be created by state law pertaining to adverse possession of non-federal land. Where the basis for a claimant's asserted title to federal land is derived from state law, the claim is not cognizable under the Color of Title Act, as amended, 43 U.S.C. § 1068 (1994).

2. Color or Claim of Title: Generally

A claim under the Color of Title Act, as amended, 43 U.S.C. § 1068 (1994), must be predicated upon a deed or other instrument which on its face purports to convey title to the land sought by the applicant.

3. Color or Claim of Title: Generally

Knowledge that land belongs to the United States defeats an assertion that it was held in good faith.

APPEARANCES: Archie Ledon Cole, Emmett, Idaho, pro se; Kenneth M. Sebby, Esq., Office of the Solicitor, U.S. Department of the Interior, Boise, Idaho, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE PRICE

Archie Ledon Cole has appealed from a June 29, 1998, decision of the Cascade Area Manager, Boise (Idaho) Field Office, Bureau of Land Management (BLM), rejecting his class 1 application pursuant to the Color of Title Act, as amended, 43 U.S.C. § 1068 (1994), and implementing regulations at 43 CFR Subpart 2540.

The record shows that on April 10, 1998, Cole filed a class 1 Color of Title Application (Application) seeking 80 acres in the W¹/₂SE¹/₄ sec. 17,

T. 6 N., R.3 W. and 40 acres in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ sec. 18, T. 6 N., R. 3 W., Boise Meridian, Payette County, Idaho. In response to Question 6 on the Application, Cole checked a box to indicate that he was not the record title holder of the lands he had identified. Instead, he stated that "[t]he above named parcel of lands have been in possession of Applicant and his Grantors/Predecessors for more than 20 years, since 1958, to 1993." (Application at 1.)

The record contains a copy of a mortgage and Quitclaim Deed 218921, Form FMHA 1955-49, issued to Archie and Carol Cole by the Farmers Home Administration of the U.S. Department of Agriculture (USDAFHA) pursuant to a credit sale of government inventory property on May 7, 1987. The land thereby conveyed was described as follows:

TOWNSHIP 6 N, R 3 W, BM, Payette County, Idaho, to-wit:

Sec. 17: SW $\frac{1}{4}$

Sec. 18: NE $\frac{1}{4}$ of SE $\frac{1}{4}$ and N $\frac{1}{2}$ of SE $\frac{1}{4}$ of SE $\frac{1}{4}$.

(Quitclaim Deed 218921, at 1; Mortgage at 1.) Thus, it is apparent that none of the land Cole identified in his Application was conveyed to the Coles by the USDAFHA. ^{1/}

The record in this appeal contains extensive correspondence between the Coles and BLM from 1990 until the filing of the instant appeal, which we will summarize to provide the context for the issues raised by the Coles on appeal. On January 8, 1990, BLM received a report of unauthorized use of public land in the W $\frac{1}{2}$ SE $\frac{1}{4}$ of section 17 consisting of an agricultural trespass and an illegal fence. BLM consulted with the Coles, whose land adjoins federal land. They identified a survey monument at the boundary of their property and the federal lands. BLM conducted a field examination of the boundary line and the survey monument and determined that the only land farmed was the Coles' private property, and thus abandoned the allegation of agricultural trespass on federal land.

With respect to the second allegation, in a letter to Carol Cole dated April 27, 1990, the Cascade Area Manager advised that the Coles were expected to move the fence back to the boundary between their private land and the public land. However, according to a note to the file, Carol Cole disputed the assertion that she and her husband properly were responsible

^{1/} Other deeds contained in the record document Cole's chain of title to the same land described in the USDAFHA Quitclaim Deed, and likewise do not describe the public land Cole identified in his Application. USDAFHA obtained its title from Ronald Jay Davis and Nancy Lou Davis. The Davises had acquired title from Lee E. Graham and Josie Graham pursuant to Warranty Deed 175590. The Grahams acquired title from J.M. and Bertha Slusher by Warranty Deed 175588. By Warranty Deed 159012, the Slushers acquired title from Art I. Michel and Mary E. Michel. The Michels, in turn, obtained title from Louis E. and Mabel Kissell by Warranty Deed 159011.

for removing the fence, since they had not erected it. (E. Schultsmeier's note to file dated "5/90.") By letter dated August 26, 1993, BLM informed the Coles that it had suspended the fence trespass action, with an acknowledgment that it was not clear who had erected the fence or for what purpose. The Coles also were notified that BLM would remove the trespass fence in September 1993.

The record describes the meetings and correspondence between BLM personnel and the Coles regarding their interest in filing a Color of Title application for the federal land bordering their property. By letter dated July 2, 1993, the Cascade Area Manager informed the Coles that their claim did not meet the requirements specified by Congress in the Color of Title Act, as amended, 43 U.S.C. § 1068 (1994). The Area Manager explained that the Coles had provided no evidence that they had held title to the federal land for more than 20 years, that they had made valuable improvements or cultivated the land, or that they had paid state and local taxes. (Letter of July 2, 1993, at 1.)

On August 10, 1993, Cole submitted a letter in which he again asserted ownership of the federal land in question, relying on § 3-301 of the Uniform Commercial Code (UCC). BLM responded by letter dated August 26, 1993, in which the inapplicability of the UCC to public land law issues was noted and the reasons why the Coles' assertion did not satisfy the criteria for a color of title claim under 43 U.S.C. § 1068 (1994) were again explained. In response, Cole repeatedly issued written demands for payment from BLM for what he considered to be, among other things, BLM's trespass upon lands he had acquired by adverse possession. (See demands dated October 18, 1993, October 19, 1993, November 25, 1993, January 4, 1994, and January 10, 1994.) Thereafter, the Coles filed a lawsuit in State court, which was removed to federal court in March 1994. Cole's claims against the United States ultimately were denied on cross-motions for summary judgment because public property cannot be acquired through adverse possession and the Coles had not exhausted their administrative remedies. (BLM Answer at 2-3; Exhibit 1: Memorandum Decision and Order dated March 12, 1998, and attached Report and Recommendation dated December 17, 1997.)

Cole filed his Class 1 2/ Color of Title Application for the 120 acres of federal lands on April 10, 1998. With his application, he filed

2/ The classifications for color of title applications are found at 43 CFR § 2540.0-5(b), which reads in pertinent part:

"(b) The claims recognized by the [Color of Title Act] will be referred to in this part as claims of class 1, and claim[s] 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

Form 2540-2, Conveyances Affecting Color or Claim of Title, upon which he listed the grantors and grantees and dates of conveyance which he contended supported his adverse possession claim to the 120 acres of federal lands. Four affidavits were also appended to the Application. Josie E. Graham's affidavit acknowledges that she and her husband owned the Cole farm from 1960 to 1978, and that the federal lands adjoining the Cole farm were fenced at the time she and her husband took possession of the farm in 1960 and remained so until 1978. In his affidavit, Thomas Reukauf avers that he grazed livestock on the Coles' land during the winter months in 1972 or 1973, when it was owned by Lee and Josie Graham, and from 1990 until 1996. He also states that the subject federal lands were fenced. Lastly, the Coles each submitted identical affidavits in which they also attest to the presence in 1986 of fencing on the two parcels of federal land, when they inspected the farm prior to purchase, and in 1987 when they purchased and took possession of the farm. Notably, none of the four affidavits asserts that title to federal land had been conveyed or acquired by the Coles or their predecessors in interest.

Upon rejection of his Application by the decision of June 29, 1998, Cole filed a Notice of Appeal and a Statement of Reasons (SOR), in which he argues that the existence of the fence upon the federal parcels gave rise to a good faith belief by him and others that the federal land in the W $\frac{1}{2}$ SE $\frac{1}{4}$ of sec. 17 and the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of sec. 18, between his property line and the 35-year-old fence, had been acquired by adverse possession thereof, and that this gave rise to title under the laws of the State of Idaho and the Color of Title Act.

BLM filed its Answer to Cole's SOR, and relying on Manley Rustin and Betty Rustin, 28 IBLA 205, 83 I.D. 617 (1976), argues that "a color of title claim must be based upon a deed or other document which on its face purports to convey to the applicant the land he has applied for." (BLM Answer at 7.) BLM notes, however, that none of the conveyances listed in Cole's Application pertains to the federal land he seeks, and further notes that a claim of adverse possession under State law is insufficient to establish a color of title claim under federal law.

[1] Cole's assertion of title to the subject federal lands must fail. While a State statute may recognize a term of years to perfect a claim of adverse possession of non-federal lands, there is no equivalent right of adverse possession against the United States. Thus, possession of Federal land for a period specified by a State statute cannot divest the United States of its title to public lands. Manley and Betty Rustin, *supra*, at 208, 83 I.D. at 619, citing United States v. California, 332 U.S. 19 (1947); United States v. Gossett, 416 F.2d 565 (9th Cir. 1969).

[2] Moreover, the Color of Title Act requires the claimant to demonstrate that the land he claims was conveyed to him by an instrument

(fn. 2 continued)

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."

which on its face purported to convey the land in question. As the Board stated in Manley and Betty Rustin, supra, at 208, 83 I.D. at 619,

[u]nder the Color of Title Act there must be a claim or color of title. Mere adverse possession alone under state law has never been considered a claim of title under the Act, because there is no basis for any belief that a claimant can acquire title against the United States under a state statute of limitations. Cf. Beaver v. United States, 350 F.2d 4 (9th Cir. 1965), cert. denied, 383 U.S. 937 (1966), * * *

(Emphasis in original.)

[3] Finally, Cole admits that he knew the land belonged to the United States. However, "[a] claim is not held in good faith where held with the knowledge that the land is owned by the United States." 43 CFR § 2540.0-5(b). While appellant and his predecessors in interest may have used the federal lands adjoining their private holdings, the evidence shows that Cole had obtained no instrument purporting to transfer title to him and he recognized that the subject land did not belong to him. BLM properly rejected Cole'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.

T. Britt Price
Administrative Judge

I concur:

Lisa K. Hemmer
Administrative Judge