

Metis Settlements Act

METIS SETTLEMENTS APPEAL TRIBUNAL

Between:

Leslie Callioux

Appellant

-and-

Lawrence Aulotte

Respondent

-and-

Fishing Lake Metis Settlement

Affected Party

Concerning a Land Dispute on the SW-29-057-02-W4M.

DECISION

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The Hearing

Appeal heard by the following members of the Metis Settlements Appeal Tribunal:

Stan Delorme, Panel Chair
Wayne Cardinal, Panel Member
John Brosseau, Panel Member

Parties present at the hearing:

Leslie Callioux, Appellant

Lawrence Aulotte, Respondent
Joan Daniels, Respondent's wife

Fishing Lake Metis Settlement Council

Represented by: Donny Deschamps, Councillor
Jean Anderson, Councillor

Fishing Lake Metis Settlement Administration

Represented by: Susanne Calliou, Assistant Administrator
Shirley Calliou, Land and Membership Clerk

MSAT staff present:

Terri Quintal, Research and Development Officer
Sara Daniels, Executive Director/Tribunal Secretary

Place and date of the Hearing:

Elk Point Municipal Library Meeting Room
Elk Point, Alberta
September 12, 2002

Other matters at the hearing:

The Panel Chair asked if there were any objections to the composition of the Panel; there were none.

Leslie Callioux submitted to the Panel an invoice for improvements that she had paid for on the property.

Background

On December 4, 1997, Leslie Callioux applied for a new house on the Fishing Lake Metis Settlement. Ms. Callioux's common-law spouse, Lawrence Daniels, was the co-applicant on the housing application. At the time she applied for housing Ms. Callioux did not have a registered interest in land on the Fishing Lake Metis Settlement. Lawrence Aulotte, Lawrence Daniels' father, stated that he would transfer some of the land from the SW-29-057-02-W4M for the house to be built on.

On May 20, 1998, the Fishing Lake Metis Settlement Council granted Ms. Callioux a new home through motion #FLMSSCO029/98. On May 21, 1998, Ms. Callioux received a letter from the Fishing Lake Housing Department informing her that her housing application was successful and that she is required to pay \$1080 as down payment. The down payment was submitted on June 8, 1998.

On July 6, 1998, Brenda Calliou, Land and Resources Clerk for Fishing Lake, sent a letter to Lorraine Cardinal-Calliou, Housing Coordinator, advising that Lawrence Aulotte would be transferring 8 to 10 acres to Leslie Callioux from the SW-29-057-02-W4M. The letter also specifies that the actual transaction would take place after a descriptive plan has been drawn up and the application for subdivision has been completed.

An undated hand-drawn sketch plan outlining a 320 metre by 275 metre area on the SW-29-057-W4M was submitted to the Fishing Lake Metis Settlement with Lawrence Aulotte's signature.

On July 15, 1998, Terry Wywal, Geomatics Consultant for the Metis Settlements Land Registry, sent Brenda Calliou the Application for Subdivision Approval as well as a descriptive plan within the SW-29-057-02-W4M. Both the Application for Subdivision and the descriptive plan outline a 21.7 acre parcel. The 21.7 acre parcel is described as Lot1, SW-29-057-02-W4M. The Application for Subdivision Approval was signed by Lawrence Aulotte, Metis title holder on the SW-29-057-02-W4M, and a representatives from both Fishing Lake Council and the Subdivision Approving Authority. The descriptive plan, on the other hand, was signed only by Ms. Callioux. It was not signed by Lawrence Aulotte, nor the Fishing Lake Metis Settlement Chairperson nor by the Fishing Lake Metis Settlement Administrator.

On June 5, 2001, Ryck Chalifoux, Administrator for Fishing Lake, sent a memo to Shirley Calliou, Land and Membership Clerk for the Fishing Lake Metis Settlement and Leon Cardinal, Housing Coordinator, asking them to assist Leslie Callioux and Lawrence Aulotte in coming to an agreement in regards to transferring a portion of the land to Leslie Callioux.

The Fishing Lake Metis Settlement Housing Policy for 1998 states that in order to be eligible for a house, the applicant must have, or applied for, either a certificate of Metis title, or have any other form of Council-approved land allocation. The Fishing Lake Metis Settlement built Leslie Callioux's house on the SW-29-057-02-W4M even though she had not yet obtained a registered interest on the property.

Leslie Callioux asked that the Tribunal have Lot 1, SW029-057-02-W4M registered in her name. The Tribunal received Leslie Callioux's appeal letter on June 18, 2002.

Jurisdiction

The Tribunal has jurisdiction to hear this matter according to the *Metis Settlements Act*, the General Council Land Policy and the *Metis Settlements Land Registry Regulation*.

Metis Settlements Act

189(1) The Appeal Tribunal

...
(b) must hear appeals and references and perform any other function given to it or required to be performed by it under the regulations, by-laws, or General Council Policies...

General Council Land Policy

8.2 References

Any question or dispute as to the ownership or extent of an interest in land in a settlement area may be referred to the Appeal Tribunal for an active ruling or decision.

Metis Settlements Land Registry Regulation.

47 A person may apply to the Appeal Tribunal for an order directing the Registrar to register an interest based on a document in which the proof of signature is absent or defective, and on hearing the application the Appeal tribunal may make such an order.

Evidence

Appellant's Evidence

Leslie Callioux made the following comments:

- When I applied for a house I did not have any land; Lawrence Aulotte said he would give us some land.
- We moved into the house and Lawrence Aulotte did not sign the transfer papers for the land.
- I go out with Lawrence Daniels, Lawrence Aulotte's son, and we have some problems.
- Lawrence Aulotte wants the land to be in the grandchildren's names.
- We asked for the minimum to be put in my name to secure the land for my family.
- I make payments for the house that is in my name.
- I watch my kids and I pay the bills.
- I can't make improvements to the land where the house is built because I don't qualify for Settlement programs.
- A Councillor said that I couldn't get improvements because I am not the owner of the land.
- One of the Councillors took my application for Settlement funding out.

- We helped put the fence around the house.
- I have three kids ages 7, 4 and 2.
- The fenced area around the house is enough land for us.
- I don't want the land to be held in trust for my kids because I don't qualify for Settlement benefits.
- They [Lawrence Aulotte and Joan Daniels] are good people but I want to get stuff because we are our own family.
- I need enough land to accommodate the sewer system.
- Lawrence Daniels did not come to the hearing because he went to the dentist today.

Respondent's Evidence

Lawrence Aulotte made the following points:

- I have no problem with them staying there.
- She has a lot of trouble with the old man [Lawrence Daniels].
- I never go there to complain.
- If they cannot get along then I don't want either of them to have it; they can't fight over the house then.
- If they can't get along then I want to give the land to my grandkids and let them decide.
- We fenced the land and gave them money for the down payment.
- I don't know how much money has been invested, there is nothing for free.
- As far as that land goes I don't care what happens.
- He can't go home sometimes because of the RCMP.
- I don't want to sign the land over because they are always fighting.
- We don't live on the same quarter as them. We live one quarter over.
- I did sign the application for subdivision approval.
- When I signed the paper they were getting along and not fighting all the time.
- I don't want to pick a side that is why I want to give it to the grandkids.
- I love my grandkids and I want them to have a home.
- I am not sure how the plan became 21 acres; it was supposed to be 8 to 10.
- The house is on a hay field.
- I fenced the land and put in the materials and labour.
- Everyone helped build the fence; we worked together.
- I have cattle on the land.
- 21 acres would probably support 2 cows.
- You guys have the experience to settle this.
- Now I would not have done anything and they could live some place else.
- There is approximately 8 to 10 acres fenced around the house.

Joan Daniels made the following comments:

- We are going to leave it to the kids.
- We are not going to sign it [the final plan].
- Lawrence [Aulotte] gave them the down payment.
- We fenced around the house so that the cattle would not bother them.

- My son can't even go home sometimes.
- If she wants she can move the house.
- We don't have a problem with our neighbours right now. If she gets the land we could have problems. We have had problems with neighbours before.
- We paid half the down payment; we paid \$600.
- There was only supposed to be 8 to 10 acres, not 21 acres, transferred.
- There is a hay field there.
- We gave this land so that the kids could have a home.
- Just leave it in the kids' name; that is the reason we gave it so that the kids could have a home.

Fishing Lake Metis Settlement's Evidence

Donny Deschamps made the following comments:

- When this was brought to Council we looked at a few options.
- It costs lots of money to move a house.
- If Council moved Leslie's house then another member would not be able to have a house because the budget would be used up.
- There is no money in the budget to move a house.
- It is not Council's practice to build houses on land that is not owned by the homeowner.
- If Council holds something in trust we act in the best interest of the individual.
- Council would probably make the repairs if they held the land in trust.

Shirley Calliou made the following comments:

- I started in 1998 so I am not sure what the practice was before then.
- The practice now is that you have to be the registered titleholder either a provisional Metis title or Metis title to get a house.
- There can only be one registered titleholder on a piece of property, so it can't be in all the kids' names or in Leslie and Lawrence's names.
- In order for Council to be the trustee, the titleholder has to be deceased.

Findings of Fact

- Lawrence Aulotte is the Metis title holder to the SW-29-057-02-W4M.
- Lawrence Aulotte acknowledged that he had agreed to transfer land to Leslie Callioux for her house to be built on.
- Leslie Callioux applied for a new house on December 4, 1997.
- On May 20, 1998, the Fishing Lake Metis Settlement Council granted Ms. Callioux a new home through motion #FLMSSCO029/98.
- On July 6, 1998, Lorraine Cardinal-Calliou, Housing Coordinator for Fishing Lake, sent a letter to Brenda Calliou at the Land and Resources Department informing her that Lawrence Aulotte would be transferring 8 to 10 acres to Leslie Calliou from the SW-29-057-02-W4M.

- The Fishing Lake Metis Settlement Housing Policy for 1998 states:
 - To be eligible to receive a housing unit under this program a person must
 - (c) have, or applied for, either a Certificate of Metis Title, a Memorandum of Provisional Metis Title, or have any other form of Council approved land allocation.

- The Fishing Lake Metis Settlement built Leslie Callioux a house on land owned by Lawrence Aulotte.
- Lawrence Aulotte signed a sketched plan outlining an 275 metre by 320 metre area, (8 hectares or 21.7 acres) on the SW-29-057-02-W4M, that was sent to the Metis Settlements Land Registry.
- The Application for Subdivision Approval indicated Lot 1 as 21.7 acres, the same dimensions on the sketched plan signed by Lawrence Aulotte.
- Lawrence Aulotte, Fishing Lake Council and a representative from the Subdivision Approving Authority signed the Application for Subdivision Approval.
- The Subdivision Approving Authority approved Lawrence Aulotte's Application for Subdivision Approval on August 18, 1998.
- On August 18, 1998, Fishing Lake Metis Settlement Council Motion #FLMSRC187/98 moved to post the subdivision application on lands described as SW-29-057-02-W4M from Mr. Lawrence Aulotte to Ms. Leslie Callioux.
- Leslie Callioux signed the descriptive plan.
- Aulotte did not sign the descriptive plan.
- Neither the Administrator nor the Chairperson of the Fishing Lake Metis Settlement signed the descriptive plan.
- Section 3.6 (1) of the Metis Settlements General Council Land Policy states:
 - 3.6 No multiple holders of interests
 - (1) The Metis title, allotment or provisional Metis title in a parcel cannot be held by more than one person at a time.

- Lawrence Aulotte wants the land to be held in trust for his grandchildren so that they can decide if they want their mother to have the land.
- Lawrence Aulotte does not want to transfer the land to Leslie Callioux or Lawrence Daniels because they cannot get along.
- Leslie Callioux paid a contractor for landscape services on the property.
- Leslie Callioux, Lawrence Daniels and their families collectively constructed the fence that surrounds the house.

Decision

The Panel finds that the most fair and practical decision is to register Leslie Callioux as the Metis title holder of Lot 1, SW- 29-057-02-W4M, which measures 21.7 acres.

Reasons

The Panel found from verbal evidence and the information presented in the hearing package that it was the intent of Mr. Lawrence Aulotte to subdivide and transfer land from the SW-29-057-02-W4M to Leslie Callioux. It is also apparent that Council relied on the intentions of Mr. Aulotte to transfer the land when they awarded Leslie Callioux a new home.

Mr. Lawrence Aulotte gave the impression to all parties involved in the housing process that he was giving the land to Leslie Callioux and that he was going to carry through with the subdivision and subsequent land transfer. All parties involved in the housing process acted as though the land belonged to Leslie Callioux's

During the hearing Ms. Joan Daniels indicated that Leslie Callioux or the Fishing Lake Settlement could move the house onto another piece of property if they wished. The Fishing Lake Metis Settlement stated that they had discussed moving the house onto another piece of property but found the cost of moving the house to be out of the means of Council. The Panel found that moving the house is not practical nor does not make economic sense.

According to s.3.6(1) of the General Council Land Policy only one person can hold title to the land. Mr. Aulotte's idea to transfer the land to his grandchildren cannot happen nor does that solve the problem; it creates more problems and conflicts than already exist.

The Tribunal finds jurisdiction to make this decision under s.190(1)(o) of the *Metis Settlements Act*.

- 190 (1) The Appeal Tribunal may, in respect of any matter before it,
 ...
 (o) provide any remedy that, in all the circumstances, fairness requires.

Order

The Tribunal orders that:

- The Metis Settlements Appeal Tribunal submit the descriptive plan that was approved by the Subdivision Approving Authority as required by s. 9(4)(a) of the *Metis Settlements Subdivision Regulations* to the Registrar of the Metis Settlements Land Registry.
- The Registrar of the Metis Settlements Land Registry file the descriptive plan submitted by the Metis Settlements Appeal Tribunal.
- The Registrar of the Metis Settlements Land Registry transfer Lot 1, SW-29-057-02-W4M to Leslie Callioux and register Leslie Callioux as the holder of Metis title to Lot 1, SW-29-057-02-W4M.

Signed in the city of Edmonton in the Province of Alberta this 16th day of October 2002.

Stan Delorme
Panel Chair