

Before:

Metis Settlements Appeal Tribunal

Land Panel

Between:

Kelly Anderson

Appellant

-and-

Clayton Trottier

Respondent

-and-

Wayne Anderson, Land Trustee

Respondent

-and-

Fishing Lake Metis Settlement

Respondent

-and-

Metis Settlements General Council

Respondent

-and-

Metis Settlements Land Registry

Respondent

Concerning:

Land Dispute / Estate Matter

Hearing Date:

June 16, 2016

Decision Date:

October 19, 2016

DECISION

The Hearing – parties, place and date

MSAT Panel members:

Don Cunningham, Panel Chair
Phyllis Collins, Panel Member
Joyce Parenteau, Panel Member

Parties Present at the Hearing:

Kelly Anderson, Appellant
Clayton Trottier, Respondent
Tyson Anderson, Observer
Tina Shaw, Observer
Irene Pollom, Observer
Melissa Davie, Observer/Land Clerk
Morris Aulotte, FLMS Council
Terry Parenteau, FLMS Council

MSAT Staff Present:

Harry Cunningham, Dispute Resolution Officer

Place and Date of the Hearing:

Fishing Lake Community Hall
Fishing Lake Metis Settlement, Alberta
June 16, 2016

1.0 Context

[1] This matter involves the Allotment interest for the SE-30-057-01-4 (the SE-30) in the late Walter Anderson's (Walter's) estate and its transfer to Clayton Trottier, (Clayton) by way of a mediated agreement that was reached between Clayton and the Land Trustee, Wayne Anderson Sr., (Wayne) on July 14, 2015. By way of additional context, the July 14, 2015 mediated agreement was reached in *lieu* of the Appeal Tribunal hearing and deciding Clayton's earlier appeal concerning the Allotment interest in the SE-30.

[2] In this regard, Kelly Anderson (Kelly) wrote to the Metis Settlements Appeal Tribunal on November 9, 2015, saying that the mediated agreement between Clayton and Wayne should be set aside. Kelly said that Wayne did not meet his duties as Land Trustee when he agreed to transfer the Allotment interest to Clayton on July 14, 2015 and that FLMS Council—which had access to Walter's Estate Instructions—should have rejected instead of accepting the mediated agreement at its Council meeting on November 3, 2015.

[3] Kelly is right. The mediated agreement was done in haste and ought to be set aside because certain named beneficiaries (Kelly and his son, Jessie) were not present or consulted by Wayne when the mediated agreement was reached on July 14, 2015.

1.1 Evidence before the Panel

Kelly Anderson

[4] Kelly said that he expected the Allotment interest in the SE-30 to go to his son, Jessie, because Jessie was named as the beneficiary of the Allotment interest in Walter's Last Will and Testament dated November 25, 2008.¹ Kelly said that Jessie is turning 18 years old in July 2016 and would be able to take up the Allotment interest then.

[5] Failing that, Kelly confirmed that he is listed in Walter's Estate Instructions dated October 9, 2007 as Walter's first choice to receive his interests in the SE-30.²

[6] Kelly said that Wayne did not contact him on the day (July 14, 2015) he signed off on the mediated agreement to transfer the Allotment interest to Clayton. Kelly said he only found out about the transfer from his wife who saw FLMS Council's minutes from November 3, 2015 approving the transfer, and that he filed his appeal six days later on November 9, 2015.

¹ See hearing kit, Tab 17.

² See hearing kit, Tab 12.

[7] Kelly said that Wayne should have reviewed Walter's Will and/or Estate Instructions and contacted Jessie and him before making any decisions concerning Walter's Allotment interest in the SE-30.

Clayton Trottier

[8] Clayton said that he paid Walter \$900 (in two installments) for Walter's Allotment interest the SE-30. He did not get a receipt showing he paid Walter any money, nor did he do up a Bill of Sale with Walter.

[9] Clayton said that he used to own the land a long time ago and wants it back. A letter from Alberta Municipal Affairs, Metis Betterment Branch, at Tab 5 of the Hearing Kit shows that Clayton "abandoned" the S 1/2-30 (which includes the SE-30) by August 12, 1983.

[10] Some incomplete transfer documents (missing Walter's signature, amongst other things) were included in the hearing package for this matter. Clayton was asked about the documents and about one entry in particular [likely from the FLMS Land Clerk on MSLR01 Form, dated "August 2007," which reads "Talked to Walter. Clayton only leased this land [SE-30] from Walter. Walter won't transfer until it is paid in full. Don't take to 'RCM' [Regular Council Meeting] until deal is done."³ Clayton said he didn't know what the entry was about.

[11] Clayton said that the mediated deal should stand and that he is just waiting for transfer of the Allotment interest to be finalized by the Metis Settlements Land Registry (MSLR).

Fishing Lake Metis Settlement (FLMS) Council

[12] FLMS Council pointed out section 7.5(1) of the Metis Settlements General Council Land Policy (the Land Policy) says "no provision of a will relating to a member's interest in Metis settlement lands has any effect." Signifying that Walter's Last Will and Testament dated November 25, 2008 is not binding. It was further noted, though, that Walter's Will was kept on file at the FLMS' offices.

[13] FLMS Council asked whether the Estate Instructions for the SE-30 dated October 9, 2007—the one that says Kelly Anderson was Walter's first pick to receive the Allotment interest—were filed with the MSLR as required under section 7.2 of the Land Policy. FLMS also wondered whether Wayne was acknowledged by the MSLR as being the Land Trustee for Walter's estate. It was also confirmed that Walter's Estate Instructions were kept on file at the FLMS' offices.

³ See hearing kit, Tab 13

[14] FLMS Council also asked whether the duties of a Land Trustee were properly executed, as set out in section 7.10 of the Land Policy (and set out below for ease of reference):

7.10 Trustee's duties [MSGC Land Policy P9201]

(1) The Land Trustee holds the deceased's interest only for the purpose of dealing with the land according to the estate instructions, settlement by-laws, and this Policy.

(2) The Land Trustee must administer the interest and arrange for its transfer in a way that will, as far as possible, give effect to the wishes of the deceased as set out in the estate instructions.

(3) The Settlement Council can replace land trustees who fail to carry out their duties.

1.2 Findings of Fact

[15] Clayton abandoned the S-1/2-30-57-1-4 (which includes the SE-30) by August 12, 1983.⁴

[16] Walter held an Allocation interest in the SE-30 in November, 1992 and this interest was converted to a 10 year Allotment interest effective November 1992.⁵

[17] Walter's 10 year Allotment interest in the SE-30 was renewed and registered for a five year period, expiring on November 17, 2007.⁶

[18] Walter received another 10 year Allotment interest for the SE-30 effective November 20, 2007 through to November 19, 2017.⁷

[19] According to MSLR Land Search Report, the Allotment interest in the SE-30 is currently registered under Wayne Anderson's name [as Land Trustee].⁸

[20] There is no Bill of Sale, cancelled cheques, or any fully executed transfer documents to show that Clayton bought Walter's Allotment interest in the SE-30 in 2007. There is no

⁴ See letter dated August 12, 1983 from Alberta Municipal Affairs, Metis Development Branch, Tab 5 of the hearing kit.

⁵ See hearing kit, Tab 6.

⁶ See hearing kit, Tabs 7- 10.

⁷ See hearing kit, Tabs 11-16.

⁸ See hearing kit, Tab 21.

acknowledgement letter from the MSLR to show that any of the transfer documents from 2007 were sent to them. Clayton did not submit a claim/appeal concerning his purported 2007 purchase of the Allotment interest in the SE-30 until May 20, 2014.

[21] Walter's Estate Instructions dated October 9, 2007 were available in FLMS's land file for Walter, along with his Last Will and Testament, dated November 25, 2008. As determined after the hearing was concluded, Walter's Estate Instructions concerning the SE-30 dated October 9, 2007 (and which name Kelly Anderson and Wayne Jr. Anderson as Walter's first and second pick to receive his Allotment interest) were also filed with the MSLR.⁹

[22] FLMS Council resolved to transfer the Allotment interest in the SE-30 from Walter's estate to Clayton on November 3, 2015 and Kelly filed his appeal six days afterwards on November 9, 2015.

1.3 How the law applies to this matter

[23] Normally, the Appeal Tribunal does not get involved with estate matters unless the Settlement Council is acting as Land Trustee, or has been asked to decide the matter by the Land Trustee, and the Settlement Council refers it to the Appeal Tribunal.¹⁰

[24] However, section 8.1(1) of the MSGC Land Policy also allows a right of appeal "wherever this [MSGC Land] Policy requires a settlement council to make a decision related to the granting, transfer, or termination of interests in land in the settlement area" and that "any person affected by the decision, or lack of a decision, can appeal in writing to the Appeal Tribunal." As further set out in section 8.1(2) of the Land Policy, this right of appeal is open for 30 days¹¹ from the date that a settlement council makes a decision concerning the transfer of the interest in land.

[25] In the case at hand, FLMS Council passed a resolution approving the transfer of Walter's Allotment interest in the SE-30 to Clayton on November 3, 2015 and Kelly filed his appeal asking for Council's decision to be set aside on November 9, 2015. Given these facts—that Council exercised its authority over the transfer and that Kelly filed his appeal within 30 days—Kelly has properly executed his right of appeal (he has met the appeal criteria set out in section 8.1(1) of the

⁹ This "new" evidence was incorporated after the hearing was concluded because it answers the technical question posed by FLMS Council (in the affirmative), and to which no further submissions are necessary because there are no submissions that can change the fact that the Estate Instructions were filed.

¹⁰ See section 7.12(2) of the MSGC Land Policy which reads that "On receiving an application for direction the settlement council can either decide who should receive the deceased's interest or refer the matter to the Appeal Tribunal."

¹¹ Section 8.1(3) allows for extension in special circumstances.

MSGC Land Policy) and the Appeal Tribunal will determine what should be done with the Allotment interest.

[26] In determining what should be done with the Allotment interest, let's start by clarifying what an Allotment interest is. According to the Land Policy, an Allotment interest allows a member to operate a *farm, ranch* or *business* on settlement land. Allotment interests can only be held by a member who has signed a "Memorandum of Allotment" and must be in the form attached to the Land Policy.¹²

[27] The standard Memorandum of Allotment in the Land Policy limits the number of years that a member can hold an Allotment interest to 10 years. However, if the member is still using the land to operate a farm, ranch or business at the end of the 10 year period he or she can apply to renew the Allotment interest (before the 10 years is up) by another five years. If the member transfers or leaves the Allotment interest to another member, that member's interest is the same as the original holder's interest.¹³ Finally, any member who holds an Allotment interest can apply to the settlement office of the Metis Title interest in the land providing they have improved the land and met the conditions/restrictions set out in section 5.2(2) of the MSGC Land Policy, (such as not exceeding the maximum holdings allowed for Metis Title) or any other conditions set out in a settlement bylaw.

[28] While it is curious that Walter appears to have held an Allotment interest in the SE-30 since 1992 when the rules suggest that short of re-posting the interest in the land, that 15 years is the maximum length that one can continuously hold the same Allotment interest, what is clear is that subject to a five year renewal or application to convert to Metis Title, the current 10 year Allotment interest in the SE-30 *will expire* on November 19, 2017.

[29] What is also clear is that Walter filed estate instructions dated October 9, 2007 saying that Kelly was the first person he wanted to get the Allotment interest if he (Walter) passed away before the Allotment interest expired. That Walter later executed a Last Will and Testament on November 25, 2008 saying that the SE-30 be given to Kelly's son, Jessie, is not determinative of anything (other than perhaps that he wanted the interest to stay with Kelly's family) because as set out in section 7.5(1) of the MSGC Land Policy, "no provision of a will relating to a member's interest in Metis settlement land has any effect."

[30] Furthermore, what is clear in hindsight is that Wayne (the Land Trustee) did not fulfill his duties as Walter's Land Trustee when he agreed to transfer the Allotment interest to Clayton on

¹² See section 2.6 of the MSGC Land Policy.

¹³ See Memorandum of Allotment form in Schedule 1 of the MSGC Land Policy.

July 14, 2015. In particular, what got missed in the excitement of negotiating the mediated agreement was Wayne's duties under section 7.10 of the MSGC Land Policy to "hold the deceased's interest only for the purpose of dealing with the land according to the estate instructions... ." That some attention was not given to this duty on July 14, 2015 is not just Wayne's fault, though, and those involved in the negotiation should have paused to ask the question about Wayne's duties and whether there were any estate instructions that suggested a different outcome. Furthermore, it is something that might have been caught during FLMS Council's review of the transfer request, but was nevertheless caught during this final review by the Tribunal; and, which, perhaps is why this final right of appeal is in place.

[31] By way of additional context, Wayne was present on July 14, 2015 because Clayton had appealed the fact that the Allotment interest was made part of Walter's estate in the first place and Clayton's appeal was going to be heard by the Appeal Tribunal on July 14, 2015. However, what happened instead is that the matter was mediated and Wayne agreed to transfer the Allotment interest to Clayton.

[32] In our view, the failure to execute the Trustee's duties (again we do not lay the blame for this entirely at Wayne's feet), means that the mediated agreement should be set aside and that we should now determine whether Clayton actually has a good claim to the Allotment interest. Next, we need to determine what do about it if Clayton does have a good claim to the Allotment interest, and what to do with the Allotment interest if he doesn't.

[33] Does Clayton have a legitimate claim to the Allotment interest in the SE-30? We do not think so. Beyond making some lease payments to Walter, (the amount of which is not known) there is nothing in evidence to show that Clayton actually paid Walter for the Allotment interest. More importantly, the transfer documents on file are not complete. Walter did not sign any of the transfer documents and many of the documents are not properly dated. In short, there is nothing in the record to show that Walter wanted to transfer his Allotment interest to Clayton and from an "appeal" point of view, there is nothing in the record compelling FLMS Council to take any action on this so-called transfer, which is a prerequisite for most land appeals. Put another way, we do not think Clayton has a good claim to the Allotment interest in the SE-30 land and his documents did not require Council to do anything so he has no right of appeal in this matter.

[34] What this leaves is the question of what to do with the Allotment interest in the SE-30, which is set to expire on November 19, 2017.

[35] In this regard, Walter left clear estate instructions that were filed with the MSLR. These instructions say that Kelly should get the Allotment interest. There are no limits on the amount of Allotment interests that a member can hold—providing the member is using the land for farming,

ranching or a business—and we see no reason why we should not now order that the Allotment interest be transferred to Kelly without delay.

[36] Finally, by way of comment to the Registrar for MSLR, we recommend that the format of its Land Search Reports be amended to show when estate instructions have been filed.¹⁴ The contents of the estate instructions should remain confidential as required by the MSGC Land Policy,¹⁵ but when estate instructions are filed with the MSLR as required by the MSGC Land Policy, that fact (that estate instructions have been filed) should be easily discoverable by the Land Trustee, potential heirs and Settlement Councils upon quick review of the MSLR's Land Search Reports, or through other MSLR records that are available to the public.

1.4 Order

[37] Kelly Anderson's request is granted. The mediated agreement dated July 14, 2015 is set aside and, by virtue of this Order¹⁶ the existing Allotment interest in the SE-30-057-01-4 (which is set to expire on November 19, 2017) is to be immediately transferred from Wayne's care as Land Trustee to Kelly Anderson for use as a farm, ranch or business. Wayne and Kelly will fill out the necessary transfer documents—including the Memorandum of Allotment (which will show an expiry date of November 19, 2017 in keeping with the nature of the Allotment interest in Walter's estate) with the assistance of the FLMS Land Clerk—and submit the documents to the FLMS Administrator for processing and potential review by FLMS Council in accordance with the requirements of the MSGC Land Policy. Furthermore, all parties are to apply best efforts to ensure that this transfer is done correctly and that it is registered with the MSLR in a timely fashion.

Dated in the City of Edmonton, in the Province
of Alberta on this 19th day of October 2016.



for Don Cunningham
Panel Chair

¹⁴ The Appeal Tribunal also recommends that dates be included on Land Search Reports to show when instructions and other things, including the date when Metis Titles, and other interests in land, are first registered.

¹⁵ See section 7.7 of the MSGC Land Policy.

¹⁶ See section 190(1) and (f) in particular of the Metis Settlements Act [RSA 2000 Chapter M-14] for Tribunal's powers to issue this type of order.

