IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-5355

Summary Calendar

DAVID L. LASYONE, SR.,

Plaintiff-Appellant,

v.

UNITED STATES OF AMERICA and
U.S. DEPARTMENT OF AGRICULTURE,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Louisiana
(92-CV-2056)

(July 13, 1994)

Before KING, HIGGINBOTHAM and BARKSDALE, Circuit Judges.

PER CURIAM:*

David L. Lasyone, Sr., appeals the district court's dismissal of his complaint on the ground that it was barred by the applicable statute of limitations. Finding no error, we affirm.

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*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

I.

On November 13, 1992, David L. Lasyone, Sr., proceeding pro se, brought suit in the United States District Court for the Western District of Louisiana to quiet title to real property in which the United States claimed an interest, pursuant to 28 U.S.C. § 2409a. The property consists of approximately 160 acres located in the Kisatchie National Forest in Grant Parish, Louisiana.

In his complaint, Lasyone alleged that he is the owner of the property through an inheritance and that his grandfather, William M. Lasyone, purchased the property in 1919 from James D. Young pursuant to a cash sale without warranty recorded in the public records of Grant Parish. Lasyone acknowledged that the United States also claimed ownership of the property by two instruments of public record: (1) a warranty deed dated November 18, 1930, which was recorded in the conveyance records of Grant Parish on November 22, 1930, and (2) a condemnation judgment rendered by the United States District Court for the Western District of Louisiana on July 2, 1937, which was recorded in the conveyance records of Grant Parish on July 8, 1937.

The government filed a motion to dismiss Lasyone's complaint on the ground that it was barred under 28 U.S.C. § 2409a(g)[1]

[1] This section provides that
[a]ny civil action under this section, except for an action brought by a State, shall be barred unless it is commenced within twelve years of the date upon which it accrued. Such action shall be deemed to have accrued on the date that the plaintiff or his predecessor in interest knew or should have known of the claim of the United States.

because Lasyone commenced the instant action more than twelve years after it had accrued. The district court granted the motion to dismiss, specifically determining (1) that Lasyone or his predecessor in interest had "at least constructive notice of the government's claim at the latest in 1937" and (2) that Lasyone's grandfather, his predecessor in interest, had actual notice of the claim in 1961, based on a June 1961 letter written by his attorney which explicitly discussed the United States' ownership of the property pursuant to the 1930 warranty deed and the 1937 condemnation judgment.

On September 17, 1993, Lasyone sought leave of the district court to file an untimely notice of appeal, which the district court granted on September 23, 1993.[2] Lasyone's notice of appeal was filed that same day.

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28 U.S.C. § 2409a(g).

[2] Lasyone's motion to file his untimely appeal was filed more than thirty days after the expiration of the time prescribed by Federal Rule of Appellate Procedure 4(a). He stated his reason for filing the motion:

> [T]he clerk's office did not use the correct ad[d]ress and your letter was returned to them. After phone call[]s and two visit[]s to the clerks[sic] office your letter was found. I recieved[sic] it the second week of September. I don't understand after much mail and several certified letters why the address was missed at this important time.

His certificate of service also indicates that he gave notice of the motion to the government. See FED. R. APP. P. 4(a)(5). Although the district court made no explicit factual findings in granting his motion, the district court implicitly recognized (1) that Lasyone did not receive notice of the judgment from the clerk within twenty-one days of its entry, (2) that the government would not be prejudiced by the allowance of the untimely appeal, and (3) that Lasyone's notice of appeal had been filed within seven days of the court's receipt of his motion. Accordingly, the district court did not err in allowing the notice of appeal to be filed on September 23, 1993.

II.

Lasyone argues that the district court erred in dismissing his complaint on the ground that it was time barred because he was unaware until June 1992, when he learned of a prospective real estate swap which included the property in question, that the United States actually claimed ownership of the property. He also asserts that prior to that time, he did not have knowledge of "any other evidence that revealed the Defendants [sic] full intent to undermine the Supreme Court of the United States, and bring such a hardship for the Appellant as the deed holder and heir to said property."

We review de novo the district court's determination that a claim is time-barred. Barrow v. New Orleans S.S. Ass'n, 10 F.3d 292, 299 (5th Cir. 1994); Hickey v. Irving Indep. Sch. Dist., 976 F.2d 980, 982 (5th Cir. 1992). The statute of limitations in § 2409a(g) is jurisdictional. See Groz v. Andrus, 556 F.2d 972, 975 (9th Cir. 1977). Any findings of fact necessary to a determination of jurisdiction are reviewed under the clearly erroneous standard. Williamson v. Tucker, 645 F.2d 404, 413 (5th Cir.), cert. denied, 454 U.S. 897 (1981).

The United States as the sovereign is immune from suit except to the extent it consents to be sued. United States v. Sherwood, 312 U.S. 584, 586 (1941). The United States waived its sovereign immunity in quiet title actions by enacting the Quiet Title Act (the Act), 28 U.S.C. § 2409a, which is the exclusive means by which an adverse claimant can challenge the United

States' title to real property, Block v. North Dakota, 461 U.S. 273, 286 (1983). This waiver, however, is not unlimited, for an action to quiet title under the Act must be brought within twelve years of the date on which the action accrues. See 28 U.S.C. § 2409a(g).

To succeed on its statute-of-limitations defense, the government was required in the instant case to show that Lasyone or his predecessor in interest had actual or constructive notice of the United States' claim to the disputed property more than twelve years prior to the commencement of the instant action to quiet title. See 28 U.S.C. § 2409a(g). The government need not have shown that Lasyone or his predecessor in interest had full knowledge of the United States' claim to the property, for a showing that he or his predecessor in interest had a reasonable awareness that the United States claimed an interest in the property is all that is required. See D.C. Transit Sys., Inc. v. United States, 717 F.2d 1438, 1441 (D.C. Cir. 1983); Tadlock v. United States, 774 F. Supp. 1035, 1042 (S.D. Miss. 1990); Vincent Murphy Chevrolet Co. v. United States, 561 F. Supp. 1233, 1235 (D. Colo. 1983), aff'd, 766 F.2d 449 (10th Cir. 1985).

The district court expressly found, and it is undisputed, that Lasyone's grandfather, Lasyone's predecessor in interest, had actual knowledge of the United States' interest in the property at issue no later than June 1961 when his lawyer wrote the United States Forest Service on his behalf with respect to resolution of the title dispute. Hence, as of June 1961 the

"knew or should have known" prong of the accrual test was satisfied by actual notice, and the § 2409a(g) limitations period commenced. See United States v. Mottaz, 476 U.S. 834, 841-44 (1986). The district court therefore did not err in dismissing Lasyone's complaint on the ground that it was time barred.

III.

For the foregoing reasons, we AFFIRM the judgment of the district court.