

FILE

In re Marina Martin

Lenzini and Roth

Attorneys at Law

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Orado, Franklin 00123

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TO: Applicant
FROM: Phil Lenzini
DATE: February 25, 1999
SUBJECT: In re Marina Martin

We represent Ms. Marina Martin in a dispute involving 100 acres of mountainous land in Giles County. I have attached a partial transcript of an interview with her, as well as several other items, including the case law that seems to apply.

I am going to meet with Ms. Martin to discuss her options. I need your help in preparing for that meeting.

I don't know whether Ms. Martin would be successful if she asserted claims based on adverse possession or prescriptive easement or both. I realize that the facts are somewhat sketchy for these claims, but they are all we have at this stage. It is not clear whether, if she has claims, they can lie against the entire 100 acres or just the land surrounding the cabin site. There's also a question whether claims can be based on the period Ms. Martin's father used the land or the period the family used it after the father's death.

Please draft a memo to me in which you analyze the legal and factual bases on which she might assert claims to the property, and tell me what you believe the probable outcome will be and why.

EXCERPTS FROM INTERVIEW WITH MARINA MARTIN

- Martin: Well, we are having this problem using my father's 100 acres of land.
- Attorney: Tell me about it.
- Martin: For the last 35 years of his life, my father, Steve Bailey, lived in a four-room log cabin located in a clearing on the south slope of John's Creek Mountain.
- Attorney: When did he die?
- Martin: Dad died in 1978.
- Attorney: So the problem is what?
- Martin: The owners of Mountain Lake Hotel say they own the property and we have to get off the land.
- Attorney: Do you have a deed to the property or did your dad leave it to you in a will?
- Martin: No, I don't have either, but I do have a deed to an adjacent five acres we inherited from Mom and Dad. Dad moved out of the cabin and off the five acres soon after my youngest brother was born, after Mom and Dad got divorced. That's when he started living on the 100 acres. The rest of us moved to Nova City soon after. We just started using the whole 105 acres for vacations when Dad died. You know, a bit during the summer. Couple of weekends during the winter to cross-country ski.
- Attorney: To whom are you referring to when you say "we"?
- Martin: Me, my husband, Chris, and my two brothers, Gene and Paul Bailey, and their wives.
- Attorney: Do you use the cabin?
- Martin: Not the one Dad built. It was destroyed by fire soon after Dad's death. We do use the cabin we lived in before the divorce.
- Attorney: Did your father own the 100 acres?
- Martin: Well, we always thought so, but now I'm not so sure.
- Attorney: Did he have a deed to the property?
- Martin: Not one we can find. See, we got this letter that says we're trespassing on the land and that we are to keep off it.
- Attorney: May I look at that?
- Martin: Sure. Dad always told me how he began using the property when he was brought there at age 10 by his aunt and uncle. Then he and Mom got married and began living on the adjacent five acres.

Attorney: Other than living on the 100 acres after the divorce, was there anything else that would have indicated your Dad owned it?

Martin: Dad always told us that he owned the land because he got it from his uncle.

Attorney: Anything else?

Martin: Well, he just treated it like his own. He gave neighbors permission to hunt on the land, and as a matter of fact, Dad said a neighbor gave him—Dad, that is—a deed for a right-of-way across the neighbor's property so Dad could get on and off the 100 acres without bothering Mom by crossing the five acres.

**Mary Moody Northern, Inc.
a charitable foundation
John's Creek Mountain Road
Creel Springs, Franklin 00124**

February 4, 1999

Ms. Marina Martin
743 78th Ave.
Warren, Franklin 00125

Dear Ms. Martin:

As we have previously discussed when you have visited John's Creek Mountain, your trespassing must end.

Should your unauthorized use of the property continue, Mary Moody Northern, Inc. will find it necessary to institute appropriate legal action.

Thank you for your cooperation.

Sincerely,

Donald Sanders
General Counsel

Ripka Investigation Services
1216 Meade Street
Reading, Franklin 00122
555-777-6309

John Paul Ripka
Licensed Civil/Criminal Investigator

TO: Phil Lenzini
FROM: J.P. Ripka
DATE: February 16, 1999
RE: John's Creek Mountain

As per your request, we have conducted a preliminary investigation of the matters surrounding the John's Creek Mountain property.

The 100 acres occupied by Steve Bailey are part of a 2,475-acre parcel on which Mountain Lake Hotel is situated. The 100 acres are located in the northeast corner of the 2,475-acre parcel. It is bounded on three sides by Afton Creek and on the north by a five-acre parcel owned by Marina Martin and her two brothers.

A title search indicates the following. The five-acre parcel was granted by deed to Steve Bailey and his wife, parents of Martin. Martin and her brothers inherited the five-acre parcel after the deaths of the mother and father.

Since the early 1900s, the Moody family, through various corporate entities, has owned the hotel and surrounding property. W.L. Moody, Jr. owned the property until his death. His daughter, Mary Moody Northern, bought the property and hotel in 1969. Upon her death, the present legal title holder, Mary Moody Northern, Inc., a charitable foundation, succeeded to her interest. There are no deeds listing Steve Bailey as either a grantor or grantee of any of the 2,475-acre parcel.

I spoke to representatives of the only two surveying companies within 100 miles of the Hotel/Bailey property. One company had no record of ever having performed a survey. The other company had been hired by Mountain Lake Hotel to do a survey. I was actually able to talk to the supervisor of a survey party who had talked with Bailey while the surveyors measured the Bailey cabin's location for the plat. The supervisor said Bailey did not disrupt or otherwise question this survey.

I visited the property in dispute and, other than the stream, there are no monuments or markers delineating the boundaries of the 100 acres claimed.

I located the resident caretaker of the hotel from 1939 to 1969, Mr. George Norwood. He was out of town visiting relatives. The manager of the hotel from at least 1946 to 1961 was the owner, W.L. Moody, Jr., deceased. Moody's wife is in ill health and was able to tell me only that Bailey lived on the land with Mr. Moody's permission.

EXCERPTS FROM INTERVIEW WITH GEORGE NORWOOD

- Attorney: Thank you for coming in today, Mr. Norwood. It is my understanding from Mr. Ripka that you worked at the Mountain Lake Hotel for a number of years.
- Norwood: I was the hotel's caretaker between 1939 and 1969.
- Attorney: During that time were you acquainted with Mr. Bailey?
- Norwood: Oh, sure. We weren't exactly buddies, mind you. Bailey kept to himself pretty much.
- Attorney: Do you remember where Mr. Bailey was living when you began working at the hotel?
- Norwood: Bailey always lived in the same place—up there on the south slope of John's Creek Mountain.
- Attorney: To your knowledge did he ever leave?
- Norwood: You mean on vacation?
- Attorney: No, move away.
- Norwood: Bailey was always there.
- Attorney: Could you describe any contact Mr. Bailey might have had with you during the period between 1939 and 1969?
- Norwood: Well, we spoke on a pretty regular basis. He kept to himself, but he was around.
- Attorney: What do you mean?
- Norwood: He was out chopping firewood, working in a garden, that kind of thing.
- Attorney: Who were your bosses when you worked at the hotel?
- Norwood: Only had one, W.L. Moody, Jr. He owned the hotel and ran the place the entire time I worked there.
- Attorney: Was Mr. Moody aware that Mr. Bailey lived on the south slope?
- Norwood: Sure.
- Attorney: How do you know that?
- Norwood: Bailey sold produce to the hotel and hauled away garbage. Moody would have had to write the checks to pay Bailey.
- Attorney: Anything else?
- Norwood: At one point, Bailey helped chop ice for the hotel and repaired the hotel's cottages.
- Attorney: Was there ever anything that indicated Moody knew Bailey actually lived on the south slope?
- Norwood: There was the time Moody told me to ask Bailey to get his firewood from fallen trees rather than by chopping down trees.

Attorney: When was that?

Norwood: Must have been around 1960.

Attorney: Did the hotel ever try to evict Mr. Bailey?

Norwood: Not that I know, though there were a couple of times when Bailey got pretty angry over some fences and such.

Attorney: What do you mean?

Norwood: Must have been in the early 1950s. They passed some law or something about fences, and a fence was erected along the boundaries of the entire hotel property up there.

Attorney: The entire 2,475-acre parcel?

Norwood: Yeah, and Bailey tore down part of the fence because he said it interfered with getting to his home.

Attorney: Was Moody aware of this?

Norwood: Matter of fact he was. *In fact, Moody told Bailey that he had to let the fence stay up or he would be put off the land.*

Attorney: Were you there when Moody told him this?

Norwood: Sure.

Attorney: What did Bailey say?

Norwood: Bailey was mad. He said something like, "You can't do that to me, you can't do that to me."

Attorney: What did Moody say?

Norwood: Moody said, "I don't want to do that, but you just have to let the fence stay up."

Attorney: Then what happened?

Norwood: Bailey walked down and came back, he had tears in his eyes, and he said, "I have a family."

Attorney: Did the fence stay up?

Norwood: No. I think Mr. Moody probably decided to give Bailey another chance and he just overlooked the fence. In fact, about a year later I asked about the fence and Moody just said to leave it alone so Bailey could get in and out.

Attorney: Had the boundaries of the entire 2,475-acres been marked before that?

Norwood: Beginning in about 1940, Moody had me mark the entire boundary of the hotel's land by marking the trees with white paint. That line was periodically repainted.

Attorney: Did Bailey ever question those markings?

Norwood: Not to me.

Attorney: Was the property ever surveyed?

Norwood: Wouldn't know about that.

Attorney: Did Bailey ever put up his own fence around the property he lived on?

Norwood: Not around the property, but there were some enclosed areas for farm stock, chickens and such.
