20100256

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT
NOVEMBER 12, 2010
STATE OF NORTH DAKOTA

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Michael Sorenson, Plaintiff/Appellant, vs. Barbara J. Felton, Defendant/Appellee.	)	Supreme Court No. 20100256

Appeal from the Judgment entered on July 28, 2010
Civ. No. 31-08-C-00105
County of Mountrail, Northwest Judicial District
Honorable William W. McLees, Presiding

APPELLEE'S BRIEF

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STATEMENT OF THE FACTS

A. Stipulated Facts.

[¶ 1] The parties submitted to the trial court Stipulated Facts, which, for the convenience of the Court, are set forth below:

[¶ 2] 1. Plaintiff Michael Sorenson ("Sorenson") owns the surface of the following described real property in Mountrail County, North Dakota, and he owned it immediately prior to January 17, 2007:

Township 155 North, Range 93 West
Section 12: SW1/4NW1/4, NW1/4SW1/4

(the "Subject Lands"). (App. 20.)

[¶ 3] 2. Defendant Barbara J. Felton ("Felton") acquired an interest in the minerals in and under the Subject Lands via a Mineral Deed of Personal Representative, dated May 25, 1984 and filed with the Mountrail County Recorder on August 23, 1984, in Book 519 of Deeds, page 579 ("Mineral Deed of Personal Representative"). (*Id.*) The Mineral Deed of Personal Representative identifies Felton's address as "5200 Brittany Drive South, St. Petersburg, FL 33730." (*Id.*) A true and correct copy of said deed is attached to the Stipulated Facts as Exhibit "A." (App. 20, 25-26.)

[¶ 4] 3. Prior to January 9, 2008, Felton had not "used" the minerals in and under the Subject Lands, as the term is defined by N.D.C.C. § 38-18.1-03 (2005). (App. 21.)

[¶ 5] 4. On January 17, 24 and 31, 2007, attorney Wade Enget ("Enget"), on behalf of Sorenson, caused to be published in the official newspaper of Mountrail County, North Dakota, a "Notice of Lapse of Mineral Interest Pursuant to Chapter 38-18.1 North Dakota Century Code" (the "Notice of Lapse") regarding minerals in and

under the Subject Lands and directed to "Barbara J. Felton, 5200 Brittany Dr S, St. Petersburg, FL 33730." (*Id.*) The Notice of Lapse and its supporting documents were recorded in the Mountrail County Recorder's Office on March 22, 2007, as Document No. 327080. (*Id.*) A true and correct copy of said documents is attached to the Stipulated Facts as Exhibit "B." (App. 21, 27-31.)

[¶ 6] 5. On February 2, 2007, Enget, on behalf of Sorenson, caused a copy of the Notice of Lapse to be mailed to "Barbara J. Felton, 5200 Brittany Dr. S., St. Petersburg, FL 33730." (App. 21.) Said mailing occurred within 10 days of the last publication of the Notice of Lapse. A true and correct copy of the Affidavit of Service by Mail is included in Exhibit "B." (App. 21, 27-31).

[¶ 7] 6. As of January 17, 2007, when the Notice of Lapse was first published, the records in Mountrail County (including those records in the office of the Recorder, the Clerk of District Court, and the County Auditor) did not contain any address for Felton other than the address of "5200 Brittany Drive South, St. Petersburg, FL 33730," as set forth in the Mineral Deed of Personal Representative. (App. 21.)

[¶ 8] 7. Felton never resided in North Dakota at any time after May 25, 1984. (*Id.*) At the time Enget published the Notice of Lapse and mailed the same to Felton, Felton no longer lived in Florida. (*Id.*) Instead, Felton lived in Carlsbad, California. (*Id.*)

[¶ 9] 8. Prior to the filing of the Notice of Lapse, Sorenson did not know Barbara Felton, and he did not know of any "Feltons" living in Mountrail County or elsewhere except as set forth in the Mineral Deed. (App. 22.) Prior to the filing of the Notice of Lapse, Michael Sorenson conducted a Yahoo! People search for Barbara

Felton. (*Id.*) He found no entries for a Barbara Felton in Florida. (*Id.*) He expanded his search to the entire United States and found over twenty "Barbara Felton" entries, but none in North Dakota and none for "Barbara J. Felton." (*Id.*)

[¶ 10] 9. In 2004, John Schmitz ("Schmitz"), a landman and owner of Schmitz Oil Properties, acquired an interest in minerals in and under the Subject Lands that are not at issue in the above-captioned action. (*Id.*) When exploration and development in the area around the Subject Lands began to increase, Schmitz became interested in leasing additional mineral interests and determined that Felton's interest in the minerals in and under the Subject Lands was not leased. In order to contact Felton about leasing her interest, Schmitz reviewed the documents of record, including the Mineral Deed of Personal Representative. (*Id.*) Schmitz was unable to locate Felton at the Florida address listed in the Mineral Deed of Personal Representative. (*Id.*) Schmitz noticed that the two other people named in the Mineral Deed of Personal Representative, Melva Chierichetti and Donald Lott, were listed on the deed as having addresses in California. (*Id.*) Thinking that Felton may be in California as well, in December of 2007, Schmitz searched on whitepages.com and located "Barbara J. Felton," as well as Felton's son, George B. Felton, Jr., in California. (*Id.*) Schmitz then contacted Felton regarding leasing her mineral interests in and under the Subject Lands. (*Id.*)

[¶ 11] 10. On January 9, 2008, Felton entered into an Oil and Gas Lease with Schmitz Oil Properties covering her interests in the minerals in and under the Subject Lands. (*Id.*) This document was recorded with the Mountrail County Recorder on January 16, 2008, as Document No. 335854, and a true and correct copy is attached to the

Stipulated Facts as Exhibit "C." (App. 22-23, 32-33.) This document identifies Felton's address as "2524 B. Navarra Drive, Carlsbad CA 92009-7034." (App. 23.)

[¶ 12] 11. Felton filed a Statement of Claim, dated January 17, 2008, with respect to her interests in the minerals in and under the Subject Lands. (*Id.*) This document was recorded with the Mountrail County Recorder on February 1, 2008, as Document No. 336507, and a true and correct copy is attached to the Stipulated Facts as Exhibit "D." (App. 23, 34-35.) This document identifies Felton's address as "2524 B. Navarro, Carlsbad, CA 92009-7034." (App. 23.)

[¶ 13] 12. On September 18, 2008, Felton executed a Mineral Deed in favor of her son, George B. Felton, Jr., covering her interests in the minerals in and under the Subject Lands. (*Id.*) Said Mineral Deed was recorded with the Mountrail County Recorder on September 25, 2008, as Document No. 346505, and a true and correct copy is attached to the Stipulated Facts as Exhibit "E." (App. 23, 36-38.) This document identifies Felton's address as "2524B Navarra Drive, Carlsbad, CA 92009-7034." (App. 23.)

[¶ 14] 13. Felton filed a second Statement of Claim, dated September 18, 2008, covering her interest in the minerals in and under the Subject Lands, which was recorded with the Mountrail County Recorder on September 25, 2008, as Document No. 346506, and a true and correct copy is attached to the Stipulated Facts as Exhibit "F." (App. 23, 39-40.) Said document identifies Felton's address as "2524 B. Navarra Drive, Carlsbad, CA 92009-7034." (App. 23.)

B. Trial Court's Determination.

[¶ 15] The parties agreed to submit the matter to the trial court for trial based on the stipulated facts and briefs. Each party submitted an initial trial brief and a response trial brief.

[¶ 16] In his trial briefs, Sorenson argued that mailing notice to Felton's last address of record was sufficient to satisfy the requirements of N.D.C.C. § 38-18.1-06 (2005). Furthermore, Sorenson argued that, even if a reasonable inquiry were required, he had conducted a reasonable inquiry. Thus, Sorenson contended that he had complied with the requirements of N.D.C.C. Ch. 38-18.1 (2005), that he held title to the mineral interests at issue, and that title to said mineral interests should be quieted in him. (*See* App. 70-71, 74-76, Trial Court's Opinion.)

[¶ 17] In her trial briefs, Felton argued that Sorenson was not entitled to claim the mineral interests at issue pursuant to N.D.C.C. Ch. 38-18.1 (2005). First, Sorenson failed to satisfy the notice mailing requirement set forth in N.D.C.C. § 38-18.1-06(2) (2005). Sorenson's mailing of the notice of lapse to the Florida address of record for Felton did not satisfy the notice mailing requirement because that address was not Felton's address at the time of mailing, and Sorenson knew or had reason to know that the Florida address of record was not Felton's address at the time of mailing the notice of lapse. In addition, Sorenson was required and failed to conduct a reasonable inquiry to try to determine Felton's address. Second, Felton recorded timely statements of claim to the mineral interests at issue and otherwise used said mineral interests. Thus, Felton asserted that title to the mineral interests should be quieted in George B. Felton, Jr., Felton's successor in interest. (*See* App. 66-74, Trial Court's Opinion.)

[¶ 18] The trial court agreed with Felton and held that Sorenson failed to comply with the notice requirements set forth in N.D.C.C. Ch. 38-18.1 (2005) necessary to succeed to the ownership of the mineral interests at issue and, therefore, his claim to the mineral interests at issue failed. The rationale for the trial court's decision is set forth in the Opinion of the Court. (*See* App. at 76-80, Trial Court's Opinion.)

LAW AND ARGUMENT

I. The Trial Court Did Not Err In Concluding That Sorenson Was Required to Strictly Comply With the Notice Requirements Set Forth in N.D.C.C. § 38-18.1-06 (2005), and the Trial Court Applied the Act in a Manner Consistent With Its Purpose.

[¶ 19] Contrary to what Sorenson contends, the trial court did not err in concluding that Sorenson had to strictly comply with the notice requirements set forth in N.D.C.C. § 38-18.1-06 (2005) in order to successfully lay claim to the mineral interests at issue. Strict construction of the notice requirements set forth in N.D.C.C. § 38-18.1-06 (2005) is consistent with this Court's prior decisions, and is not inconsistent with N.D.C.C. § 1-02-01. Moreover, while Sorenson implies otherwise, the trial court's application of N.D.C.C. Ch. 38-18.1, the North Dakota Termination of Mineral Interest Act ("Act"), was consistent with the intended purpose of the Legislature for the Act.

A. Requiring strict compliance with the requirements set forth in the Act is consistent with past precedent.

[¶ 20] In rendering its decision, the trial court noted that Sorenson was required to strictly comply with the requirements set forth in the Act, which is consistent with the standard applied by this Court in prior cases applying the Act. (*See* App. 76-77.) For instance, in *Spring Creek Ranch, LLC v. Svenberg*, 1999 ND 113, ¶ 10, 595 N.W.2d 323, 326, this Court specifically stated that the requirements of N.D.C.C. Ch. 38-18.1 must be strictly construed by both trial courts and this Court:

> At common law, mineral interests were not extinguished by lapse of time. *See generally* Vitauts M. Gulbis, J.D., Annotation, *Validity and Construction of Statutes Providing for Reversion of Mineral Estates for Abandonment or Nonuse*, 16 A.L.R. 4th 1029, § 2[a] (1982); 53A Am.Jur.2d *Mines and Minerals* § 178 (1996). Chapter 38-18.1 was a legislative change to the common law rule. Statutes created in derogation of the common law which create a forfeiture are strictly construed. *See Goodman Inv., Inc. v. Swanston Equip. Co.*, 299 N.W.2d 786, 788 (N.D. 1980). Therefore, trial courts and this court must review for strict construction and application of statutory requirements.

Likewise, in the recently issued decision in *Halvorson v. Starr,* 2010 ND 133, ¶ 13, 785 N.W.2d 248, 253, this Court rejected the surface owner's arguments with respect to calculating the time within which the notice of lapse must be mailed to mineral owners following publication under N.D.C.C. § 38-18.1-06(2) (1989), stating that "the Halvorsons' arguments do not conform to the strict construction of a statute that creates a forfeiture in derogation of the common law and with the review our Court must undertake to ensure compliance with that statute's requirements." *See also Miller v. Diamond Resources, Inc.*, 2005 ND 150, ¶ 5, 703 N.W.2d 316, 319 (noting that in a quiet title action, the district court determined that the surface owners had no claim to the mineral interests at issue because of a failure to strictly comply with the notice mailing requirement set forth in N.D.C.C. § 38-18.1-06(2) (1989)).

[¶ 21] This Court has also recognized in other contexts that statutes that result in a forfeiture should be strictly construed. *See Ridl v. EP Operating Ltd. P'ship*, 553 N.W.2d 784, 788 (N.D. 1996) (adhering to precedent set in prior North Dakota cases that forfeiture statutes should be strictly construed in favor of the person whose property is sought to be forfeited); *Johnson v. Gray*, 265 N.W.2d 861, 864 (N.D. 1978) (noting in

case involving contract for deed cancellation statute that "[t]he law abhors a forfeiture, and if the meaning of a cancellation statute is ambiguous and susceptible of two constructions, that interpretation which mitigates against forfeiture should be adopted."). In addition, this Court has noted specifically that strict compliance with notice provisions in statutes that result in a forfeiture is appropriate. *Cowl v. Wentz*, 107 N.W.2d 697, 700 (N.D. 1961) (noting that "[w]here giving of notice is relied on to sustain forfeiture or divestiture of one's rights, statutory directions as to how such notice shall be given must be strictly complied with"). Moreover, this Court has also recognized in a number of cases the general principle that equity and the law abhor a forfeiture. *See Hasper v. Center Mut. Ins. Co.*, 2006 ND 220, ¶ 12, 723 N.W.2d 409, 415; *Keller v. Bolding*, 2004 ND 80, ¶ 18, 678 N.W.2d 578, 584; *Ehrman v. Feist*, 1997 ND 180, ¶ 16, 568 N.W.2d 747, 753 (N.D. 1997); *Nelson v. TMH, Inc.*, 292 N.W.2d 580, 584 (N.D. 1980).

[¶ 22] Sorenson contends that strict construction of the notice requirements set forth in the Act is contrary to N.D.C.C. § 1-02-01, which provides that "[t]he rule of the common law that statutes in derogation thereof are to be construed strictly has no application to this code." In reality, however, determining that the notice requirements set forth in the Act are to be strictly construed is not inconsistent with N.D.C.C. § 1-02-01. In *Spring Creek Ranch* and *Halvorson*, this Court determined that the notice provisions of N.D.C.C. Ch. 38-18.1 had to be strictly construed not just because the statute is in derogation of the common law, but more specifically because the statute results in a forfeiture. *Spring Creek Ranch*, 1999 ND 113, ¶ 10, 595 N.W.2d at 326; *Halvorson,* 2010 ND at ¶ 13, 785 N.W.2d at 253. As noted above, it is a generally accepted principle that equity and the law abhor forfeitures, and this Court has strictly

construed the requirements set forth in forfeiture statutes in a number of cases. While N.D.C.C. § 1-02-01 may provide a general rule of statutory construction, it does not speak specifically to the interpretation of statutes that effect a forfeiture of rights or property; as such, compliance with N.D.C.C. § 1-02-01 does not require deviating from the prior precedent established by this Court. Moreover, Sorenson's reliance upon non-binding California caselaw is not persuasive, particularly considering that *Blevins v. Palmer*, 342 P.2d 356 (Cal. Ct. App. 1959), has not been cited in subsequent caselaw for the proposition quoted by Sorenson.

[¶ 23] Moreover, regardless of whether this Court determines that the Act should be "strictly construed," Sorenson must, at the very least, comply with the specific requirements set forth in the plain language of the Act – including the notice provisions in N.D.C.C. § 38-18.1-06 – in order to successfully lay claim to the minerals. While it is evident that Sorenson disagrees with the outcome, he has pointed to no evidence that indicates that the trial court did anything other than apply the plain language of the Act. As will be discussed further below, since Sorenson failed to comply with the provisions of the Act, the trial court properly determined that Sorenson had no right to claim title to the mineral interests at issue.

B. The trial court construed and applied the Act consistently with its purpose.

[¶ 24] Sorenson implicitly asserts that the trial court did not construe the Act in a manner that was consistent with the Act's purpose. However, Sorenson's argument is based upon a misinterpretation of the purpose of the Act, which stems from his reliance upon the language of distinguishable statutes from different states and caselaw interpreting one of those statutes, rather than the plain language and the legislative history

of the Act. When the actual purpose of the Act, as determined from the Act's plain language and legislative history, is considered, it is evident that the trial court construed and applied the Act in a manner that was consistent with the Act's purpose.

1. Based upon the plain language and the legislative history of the Act, the purpose of the Act is to allow certainty regarding ownership of unused minerals while simultaneously ensuring adequate protection of mineral owners' rights.

[¶ 25] Sorenson contends that the purpose of the Act is to allow mineral development while protecting only the "vigilant" mineral owner. However, the plain language of the Act indicates that the real purpose of the Act is to allow certainty regarding ownership of unused minerals so as to allow development, while simultaneously ensuring adequate protection of all mineral owner's rights.

[¶ 26] At the time that Sorenson attempted to lay claim to the minerals, the Act provided, in pertinent part, as follows:

> **38-18.1-02. Statement of claims – Recording – Reversion.** Any mineral interest is, if unused for a period of twenty years immediately preceding the first publication of the notice required by section 38-18.1-06, deemed to be abandoned, unless a statement of claim is recorded in accordance with section 38-18.1-04. Title to the abandoned mineral interest vests in the owner or owners of the surface estate in the land in or under which the mineral interest is located on the date of abandonment.
>
> * * *
>
> **38-18.1-04. Statement of claim – Recording – Time.** The statement of claim provided for in section 38-18.1-02 must:
>
> 1. Be recorded by the owner of the mineral interest or the owner's representative prior to the end of the twenty-year period set forth in section 38-18.1-02, or within two years after July 1, 1983, whichever is later. A joint tenant, but not a tenant in common,

may record a claim on behalf of oneself and other joint tenants.

2. Contain the name and address of the owner of the mineral interest, and a legal description of the land on, or under which, the mineral interest is located as well as the type of mineral interest involved.

3. Be recorded in the office of the recorder in the county in which the mineral interest is located.

The mineral interest is deemed to be in use at the date of recording, if the recording is made within the time provided by this section.

38-18.1-05. Failure to record the statement of claim. Failure to record the statement of claim within the time period provided in section 38-18.1-04 will not cause a mineral interest to be extinguished if the owner of the mineral interest meets all of the following requirements:

1. Owns one or more mineral interests in the county in which the mineral interest in question is located at the time of the expiration of the time period provided in section 38-18.1-04.

2. Has failed to preserve the mineral interest in question.

3. Within sixty days after first publication of the notice provided for in section 38-18.1-06, recorded a statement of claim.

38-18.1-06. Notice of lapse of mineral interest – Method.

1. Any person intending to succeed to the ownership of a mineral interest upon its lapse shall give notice of the lapse of the mineral interest by publication.

2. The publication provided for in subsection 1 must be made once each week for three weeks in the official county newspaper of the county in which the mineral interest is located; however, if the address of the mineral interest owner is shown of record or can be determined upon reasonable

inquiry, notice must also be made by mailing a copy of the notice to the owner of the mineral interest within ten days after the last publication is made.

3. The notice must state:

   a. The name of the record owner of the mineral interests;

   b. A description of the land on which the mineral interest involved is located; and

   c. The name of the person giving the notice.

4. A copy of the notice and an affidavit of service of the notice must be recorded in the office of the recorder of the county in which the mineral interest is located and constitutes prima facie evidence in any legal proceedings that such notice has been given.

N.D.C.C. Ch. 38-18.1 (2005).

[¶ 27] In interpreting a statute, the primary objective is to ascertain and give effect to the intent of the Legislature. *See Harter v. N.D. Dept. of Transp.*, 2005 ND 70, ¶ 7, 694 N.W.2d 677, 679 (noting that the court's "primary objective in the interpretation of a statute is to ascertain the intent of the legislature"); *Public Serv. Comm'n v. Wimbledon Grain*, 2003 ND 104, ¶ 20, 663 N.W.2d 186, 193 (noting that, when construing a statute, the court's "duty is to ascertain the Legislature's intent, which initially must be sought from the statutory language itself"); *Holtz v. N.D. Workers Comp. Bureau*, 479 N.W.2d 469, 470 (N.D. 1992) (noting that in construing a statute, the court must "construe statutes to effectuate the intent of the legislature"). In ascertaining the Legislature's intent, courts must first look to the language of the statute and, "[i]f the language of a statute is clear and unambiguous, the letter of the statute cannot be disregarded under the pretext of pursuing its spirit." *Harter*, 2005 ND 70, ¶ 7, 694

N.W.2d at 679. Further, extrinsic aids can only be considered where a statute's language is ambiguous or of doubtful meaning. *Harter*, 2005 ND 70, ¶ 7, 694 N.W.2d at 679-80.

[¶ 28] Here, it is evident from the plain language of the Act that the Legislature intended to permit surface owners to lay claim to abandoned mineral interests only after reasonable attempts to locate the mineral owners and permit the mineral owners to claim the mineral interests had failed. For instance, the Act provides that, in order to lay claim to an abandoned mineral interest, the surface owner must first provide the mineral owner with notice by: (1) publishing a notice of lapse once each week for three weeks in the official newspaper for the county in which the mineral interest at issue is located; and (2) mailing the notice of lapse to the mineral owner "if the address of the mineral interest owner is shown of record or can be determined upon reasonable inquiry." N.D.C.C. § 38-18.1-06(2) (2005). The notice must satisfy the content requirements specified in the Act, and the surface owner must also record a copy of the notice of lapse and an affidavit of service of the notice with the office of the recorder for the county in which the mineral interest is located. N.D.C.C. § 38-18.1-06(3) and (4) (2005). Notably, the Act provides that recording of the notice of lapse and an affidavit of service of the same only constitutes prima facie evidence that the requisite notice has been given and, thus, specifically preserves the mineral owner's right to challenge the sufficiency of the notice in a legal proceeding. *See* N.D.C.C. § 38-18.1-06(4) (2005).

[¶ 29] In addition to requiring prior notice, the Act also provides mineral owners with an opportunity to prevent extinguishment of their mineral interests even if they failed to file a statement of claim or otherwise "use" their mineral interest within the prior twenty years. Specifically, N.D.C.C. § 38-18.1-05 (2005) provides mineral owners with

a "second chance" to preserve their mineral interests by filing a statement of claim within sixty days after first publication of the notice provided for in N.D.C.C. § 38-18.1-06 (2005).

[¶ 30] Considering that the Act specifically requires that surface owners provide mineral owners with notice of the lapse of a mineral interest before acquiring title the interests, and that the Act provides mineral interest owners with a "second chance" to preserve their mineral interests, it is evident that the Legislature did not intend for the Act to protect only those persons who are "vigilant" and file statements of claim prior to the expiration of twenty years, as Sorenson contends. Rather, the very purpose of the notice and "second chance" provisions is to protect those persons who *did not* file statements of claim or otherwise "use" their mineral interests prior to the expiration of twenty years, since those are the only persons whose mineral interests would be subject to lapse and could be claimed by surface owners under the Act.

[¶ 31] Although it is unnecessary to review the Act's legislative history since the Legislature's intent is clear from the plain language of the Act, it is noteworthy that the Act's legislative history further supports the conclusion that the Legislature intended for the Act to provide reasonable protection for mineral owners' rights. Comments in the legislative history regarding 1983 H.B. No. 1084, which was the bill enacted as the Act, include that the bill "will locate many lost owners," is a "Very fair bill. Notice feature in this bill," and "Follow same type notice procedure as in other legal matters." *Hearing on H.B. 1084 before the Senate Finance & Taxation Committee*, 48th N.D. Leg. (Mar. 8, 1993). The legislative history also indicates that one of the proponents of certain

amendments to the bill noted that, presumably, North Dakotans "don't like to take property from someone." *Id.*

[¶ 32] Subsequent amendments to the Act further indicate that its purpose was not to protect only the "vigilant" mineral owner who records a statement of claim. For instance, in 2009, the Act was amended to specifically define what constitutes a "reasonable inquiry" for purposes of the notice mailing requirement set forth N.D.C.C. § 38-18.1-06(2), and specifically requires surface owners to conduct searches outside of the records maintained by the county recorder. N.D.C.C. § 38-18.1-06(6). Also in 2009, a new section was added regarding actions to quiet title to abandoned mineral interests, which provides that a surface owner may initiate a quiet title action "[u]pon completion of the procedure provided in section 38-18.1-06," and that, in such an action, the surface owner "shall submit evidence to the district court establishing that all procedures required by this chapter were properly completed and that a reasonable inquiry as defined by subsection 6 of section 38-18.1-06 was conducted." N.D.C.C. § 38-18.1-06.1. These amendments further clarify that the Act was intended to protect the rights of all mineral owners – not just those who record statements of claim to preserve their mineral interests prior to the expiration of twenty years of non-use – and to only permit forfeiture of abandoned mineral interests to surface owners after reasonable attempts to locate the mineral owners have failed. *See State v. Novak*, 338 N.W.2d 637, 640 (N.D. 1983) (noting that subsequent enactments or amendments may be utilized as an aid to determining the correct meaning of a prior statute).

[¶ 33] Finally, it is important to note that a key purpose of the Act, *i.e.*, to promote development of unused mineral interests, is accomplished regardless of whether

surface owners successfully lay claim to abandoned mineral interests by complying with the requirements of the Act, or the owners of the mineral interests are located. Either way, those interested in developing the mineral interests know who owns the minerals and can coordinate with the mineral owner(s) regarding development.

[¶ 34] Considering the plain language, as well as the legislative history, of the Act, the trial court interpreted and applied the Act so as to give effect to the Legislature's intent by requiring Sorenson to comply with all of the notice provisions set forth in N.D.C.C. § 38-18.1-06 (2005).

2. The Indiana and Michigan dormant mineral statutes are distinguishable, both in their texts and in their purpose, and do not aid in determining the purpose of the Act.

[¶ 35] Sorenson's inaccurate assertion that the Act was intended to protect only "vigilant" mineral owners who file statements of claim stems from his reliance upon the Indiana and Michigan dormant mineral statutes and caselaw discussing the Indiana statute, rather than the plain language and legislative history of the Act itself. While it is true that the Act was modeled after dormant mineral statutes in Indiana and Michigan, significant differences exist between the Act and the Indiana and Michigan statutes that make Sorenson's references to those statutes and caselaw interpreting them inapposite, particularly in light of the contrary intent evident from the Act's plain language and legislative history. *See Trinity Medical Center, Inc. v. Holum*, 544 N.W.2d 148, 153 (N.D. 1996) (noting that "even where another jurisdiction's law serves as the basis for [a North Dakota] statute, [this Court] will not presumptively apply a similar construction if our legislature has made substantive changes in the statute").

[¶ 36] Unlike the Act, neither the Indiana statute nor the Michigan statute require that notice be provided to mineral owners before title to abandoned mineral interests vest in the surface owner. *See* IND. CODE § 32-23-10-6 (2010); MICH. COMP. LAWS §§ 554.291 and 554.292 (2010). In addition, while the Act provides mineral owners who fail to file a statement of claim within twenty years from when the mineral interest was last used with a "second chance" to lay claim to the minerals, the Michigan statute contains no second chance provision, and the Indiana statute only provides a limited second chance for minerals owners who own ten or more mineral interests in the same county as the mineral interest at issue and inadvertently omitted the abandoned interest from a previously filed statement of claim. *See* MICH. COMP. LAWS §§ 554.291 and 554.292 (2010); IND. CODE § 32-23-10-5 (2010).

[¶ 37] The differences between the Indiana statute and the Act were specifically noted in an opinion issued by the North Dakota Federal District Court in *Nichols v. Satkin Corp.*, 2010 WL 2560417 (D.N.D), in which the court ruled on a motion for summary judgment in a quiet title action where the plaintiffs claimed title to mineral interests under the Act. Although the main issue before the court was whether the plaintiffs had conducted a reasonable inquiry as a matter of law, the defendants also raised constitutional issues regarding the Act. *Nichols*, 2010 WL 2560417, *5-7. In addressing the constitutional issues, the court discussed *Texaco, Inc. v. Short*, 454 U.S. 516 (1982), in which the United States Supreme Court determined that the Indiana dormant mineral statute is constitutional. *Nichols*, 2010 WL 2560417, *5-7. In concluding that the Act is likewise constitutional, the court noted that the Act provides more notice to mineral owners than the Indiana statute:

> The North Dakota Dormant Minerals Act differs from the Indiana Dormant Mineral Interests Act in that North Dakota includes a notice requirement. N.D.C.C. § 38-18.1-06.
>
> * * *
>
> The North Dakota Dormant Minerals Act requires more than both statutes at issue in *Mullane* and *Texaco*. It requires that notice be given by newspaper publication and by mail "if the address of the mineral interest owner is shown of record or can be determined upon reasonable inquiry." N.D.C.C. § 38-18.1-06(2) (2005).

Nichols, 2010 WL 2560417, *5, 7.

[¶ 38] Not only do differences exist between the Indiana and Michigan statutes and the Act, the fact that the Indiana and Michigan statutes do not require notice and either have no or only a limited "second chance" provision also indicates a clear difference in the level of protection of mineral owners' rights that was intended as compared to the Act. This difference was noted by the Michigan Supreme Court in *Energetics, Ltd. v. Whitmill*, 497 N.W.2d 497, 503 n.17 (Mich. 1993):

> ***Other states with statutes providing for the termination of severed mineral interests afford more protection to the interest owner than is available under our statute.*** For example, some states require a court action before a severed interest may be deemed abandoned. See, e.g., Conn.Gen.Stat.Ann. § 47-33q(a); Cal.Civ.Code Ann. §§ 883.210, 883.240; Neb.Rev.Stat. § 57-228; see also Uniform Dormant Mineral Interests Act, 7A ULA, § 4(a), 1992 Supp. 56. ***Other states provide that notice to the owner be served personally or by publication after the dormancy period expires, see, e.g., N.D.Cent.Code 38-18.1-06***; Or.Rev.Stat. 517.180(1), ***and that abandonment cannot be effective unless the owner fails within a short time thereafter to claim the interest.*** See, e.g., Cal.Civ.Code Ann. § 883.230(c)(2); Kan.Stat.Ann. 55-1604(b); ***N.D.Cent.Code 38-18.1-05***; Or.Rev.Stat. 517.180(8); S.D.Cod.Laws 43-30A-5; Wash.Rev.Code Ann. 78.22.050(2)(f); Wis.Stat.Ann. 706.057(5). ***As this***

> ***background suggests, the statutes of sister jurisdictions reflect a deep-rooted concern about the process by which the state takes such a property interest from one person and gives it to another.***

(Emphasis added). When the rationale behind the differences in the level of protection afforded to mineral owners is considered, it is evident that the purpose of the Indiana and Michigan statutes is not indicative of the purpose of the Act.

[¶ 39] In addition, this Court has previously recognized that relying on caselaw and statutory history interpreting another state's statute to interpret a North Dakota statute is not appropriate where differences exist between the North Dakota statute and the other state's statute. For instance, in *Trinity Medical Center*, 544 N.W.2d at 153-55, this Court rejected arguments that North Dakota's medical peer review privilege statute should be interpreted based upon caselaw and legislative history interpreting Minnesota's medical peer review privilege statute. This Court concluded that, because the North Dakota statute contained language that creates a narrower privilege than in the Minnesota statute, caselaw and legislative history interpreting the Minnesota statute were not persuasive when interpreting the North Dakota statute; instead, this Court relied specifically upon the language and legislative history of the North Dakota statute. *Id.* at 154-55.

[¶ 40] Similarly, here, *Texaco* has no relevance when determining the purpose of the Act because it is interpreting the Indiana statute, which, as noted above, differs significantly from the Act. Rather, as in *Trinity Medical Center*, the plain language of Act, as well as its legislative history, are the appropriate indicators of the purpose of the Act. *See id.* at 154.

II. The Trial Court Did Not Err in Holding That Sorenson Failed to Satisfy the Notice Mailing Requirement Set Forth in N.D.C.C. § 38-18.1-06(2) (2005) By Mailing the Notice of Lapse to the Address of Record For Felton.

[¶ 41] Contrary to what Sorenson asserts, the trial court did not err in holding that mailing the notice of lapse to the address of record for Felton was insufficient to satisfy the notice mailing requirement set forth N.D.C.C. § 38-18.1-06(2) (2005). Not only is Sorenson's assertion inconsistent with the plain language of N.D.C.C. § 38-18.1-06(2) (2005), it would lead to absurd and unintended results and is inconsistent with Sorenson's own actions. In addition, none of Sorenson's other arguments in support of his interpretation are persuasive.

A. The trial court's application of the notice mailing requirement set forth in N.D.C.C. § 38-18.1-06(2) (2005) is consistent with the plain language of the Act.

[¶ 42] N.D.C.C. § 38-18.1-06(2) (2005) establishes a two-prong notice requirement with which surface owners seeking to lay claim to abandoned mineral interests must strictly comply, which consists of the surface owner publishing the notice of lapse for three weeks and mailing the notice of lapse to the mineral interest owners. With respect to the notice mailing requirement, N.D.C.C. § 38-18.1-06(2) (2005) states as follows: "[I]f ***the address*** of the mineral interest owner ***is shown of record or can be determined upon reasonable inquiry***, notice must also be made by mailing a copy of the notice to the owner of the mineral interest within ten days after the last publication is made." (Emphasis added). Contrary to what Sorenson contends, N.D.C.C. § 38-18.1-06(2) (2005) does not state that the notice need only be mailed to the mineral interest owner's address of record. In fact, under N.D.C.C. § 38-18.1-06(2) (2005), mailing the notice of lapse to the mineral interest owner's address of record would only be sufficient

if that address is, in fact, the mineral interest owner's address at the time of mailing. *Id.* ("[I]f ***the address*** of the mineral interest owner is shown of record . . .") (emphasis added). Otherwise, N.D.C.C.§ 38-18.1-06(2) (2005) requires the surface owner to conduct a "reasonable inquiry" to attempt to find the mineral interest owner's address.

[¶ 43] Here, it is undisputed that Sorenson mailed the notice of lapse to the Florida address provided for Felton in the 1984 Mineral Deed of Personal Representative, but that Felton actually lived in Carlsbad, California at the time the notice was mailed and, thus, the Florida address was not Felton's address. (*See* App. 20-21, Stipulated Facts, ¶¶ 2, 5, 7.) Based on the plain language of the statute, mailing the notice of lapse to the Florida address of record did not satisfy the notice mailing requirement because Sorenson did not mail the notice of lapse to "***the address*** of the mineral interest owner," as required under N.D.C.C. § 38-18.1-06(2) (2005). Instead, Felton needed to conduct a reasonable inquiry in order to try to determine Felton's address, which the trial court held he did not do.

[¶ 44] Not only is this approach consistent with the plain language of the Act, it also does not render any portion of the statute superfluous or automatically require a reasonable inquiry in every case, as Sorenson contends. Assuming, hypothetically, that the address of record for Felton was also her current address, and Sorenson mailed the notice of lapse to that address within ten days of the final date of publication, Sorenson would have complied with the notice mailing requirement of N.D.C.C. § 38-18.1-06(2) (2005) regardless of whether he conducted a reasonable inquiry. In the hypothetical, the address of the mineral owner was "shown of record," while, in the instant case before the Court, the address of the mineral owner was not shown of record but could be determined

upon reasonable inquiry. In either case, whether the notice mailing requirement was satisfied is determined by whether "the address of the mineral owner" was available to the surface owner and the notice of lapse was mailed to that address – not whether a reasonable inquiry was conducted.

B. Adopting Sorenson's interpretation would lead to absurd results not intended by the Legislature.

[¶ 45] If this Court were to adopt Sorenson's argument that mailing to the address of record is, in and of itself, always sufficient to satisfy the mailing notice requirement of N.D.C.C. § 38-18.1-06(2) (2005), it would lead to absurd results that were never intended by the Legislature. When interpreting a statute, the courts may consider the consequences of a particular construction. *Holtz*, 479 N.W.2d at 470. In addition, the courts "must presume that the legislature did not intend absurd and ludicrous results or unjust consequences." *Resolution Trust Corp. v. Dickinson Econo-Storage*, 474 N.W.2d 50, 52 (N.D. 1991); *see also Harter*, 2005 ND 70, ¶¶ 7-9, 694 N.W.2d at 680 (rejecting interpretation of a statute that would have been "ludicrous and absurd").

[¶ 46] Under Sorenson's interpretation, a surface owner would only have to conduct a reasonable inquiry if none of the documents of record with the county provided an address for the mineral interest owner. However, if any address at all is provided, even if it is over twenty years old and the surface owner knows or has reason to believe that it is not the mineral interest owner's current address, the surface owner can still satisfy the notice mailing requirement simply by mailing the notice to the address of record. In both situations, "the address" for the mineral interest owner at issue is not shown in the records, but only in the situation where no address is provided at all would a reasonable inquiry be required. Thus, according to Sorenson's reading of N.D.C.C. § 38-

18.1-06(2) (2005), a mineral interest owner would have a better chance of actually receiving notice if she provided no address in the documents she recorded, than if she provided an address that was outdated by the time the surface owner mailed a notice of lapse – which is highly likely, considering that mineral interests are only considered abandoned if "unused" for at least twenty years and, thus, the documents of record would generally be over twenty years old at the time a notice of lapse is mailed. The Legislature certainly could not have intended that a mineral interest owner who lists her address in recorded documents should be less likely to receive notice than a mineral interest owner who provides no address at all.

[¶ 47] Furthermore, under Sorenson's interpretation of N.D.C.C. § 38-18.1-06(2) (2005), surface owners would be permitted to ignore actual knowledge that a mineral interest owner lives somewhere other than the address of record. This case is a prime example. Here, Sorenson's mailing of the notice of lapse would be sufficient even though he conducted an internet search for "Barbara Felton" prior to filing the notice of lapse that did not identify any Barbara Feltons living in Florida and, thus, Sorenson knew or had reason to believe that the Florida address of record for Felton was not Felton's address at the time he mailed the notice of lapse. (*See* App. 22, Stipulated Facts, ¶ 8.) Such situations demonstrate why the Legislature did not limit the notice mailing requirement in N.D.C.C. § 38-18.1-06(2) (2005) to simply mailing to the address of record, and why the Legislature specifically included the reasonable inquiry requirement.

[¶ 48] Finally, Sorenson's proposed interpretation of the notice mailing requirement is also inconsistent with Sorenson's own actions. Based on the stipulated facts, Sorenson conducted an internet search for Felton prior to filing his notice of lapse.

(App. 22, Stipulated Facts, ¶ 8.) If Sorenson truly believed that all he had to do to fulfill the notice mailing requirement was to mail the notice to the last address of record for Felton, there would have been no reason for Sorenson to conduct an internet search to try to locate Felton.

C. None of Sorenson's other arguments in support of his interpretation are persuasive.

[¶ 49] None of Sorenson's other arguments in support of his interpretation of N.D.C.C. § 38-18.1-06(2) (2005) are persuasive. For instance, *Grabow v. Estate of Niarkos*, No. 31-08-C-0015 (Northwest Judicial District Jan. 14, 2009) cited by Sorenson in his brief, does not stand for the proposition for which Sorenson cites it. *Grabow* involved a motion to vacate a default judgment in a quiet title action involving abandoned mineral interests. (Appellant's Add. 7.) The mineral owner of record was deceased, and the plaintiffs had named his estate as a defendant in the quiet title action. (Appellant's Add. 1-6.) After a default judgment was issued, the daughter of the mineral owner of record sought to vacate the judgment. (Appellant's Add. 7.) As part of her argument for vacating the judgment, the daughter asserted that the plaintiffs had failed to satisfy the notice mailing requirement of N.D.C.C. § 38-18.1-06(2) (2007). (Appellant's Add. 7-8.) The plaintiffs had mailed a notice of lapse to the address of record for the deceased mineral owner within ten days of the last date of publication, and the mailing was returned with a notation of "insufficient address." (Appellant's Add. 7-8.) The daughter argued that while N.D.C.C. § 38-18.1-06(2) (2007) presumed that notice is received upon mailing, the statute is silent where the notice is returned as being undeliverable and that, because the letter was returned, notice was not given and a reasonable inquiry was required. (Appellant's Add. 8.)

[¶ 50] The trial court denied the daughter's motion to vacate the judgment. (Appellant's Add. 25.) The trial court first determined that the daughter was not a representative of her father's estate and, as such, had no standing to bring the motion. (Appellant's Add. 18-22.) Then, with respect to the notice issue, the trial court rejected the daughter's argument that actual delivery of the notice of lapse was required under N.D.C.C. § 38-18.1-06(2) (2007):

> Requiring that ***actual delivery*** of the Notice of Lapse of Mineral Interest occur within ten (10) days of the final publication of the notice would, for all intents and purposes, mean that any abandoned minerals claim against a deceased mineral owner whose estate has not been probated, or for whom no legal representative has been appointed, could not succeed. This cannot be the type of "notice" which the drafters of N.D.C.C. ch. 38-18.1 intended to require. Accordingly, the court finds that an appropriate basis has *not* been shown for vacating the quiet title judgment in question on the basis of inadequate notice.

(Appellant's Add. 23.) (Emphasis in original).

[¶ 51] Sorenson contends that the *Grabow* decision indicates that "the plain language of the statute supports a finding that notice sent to the address of record is sufficient" and that determining otherwise would promote litigation in every case where a reasonable inquiry was not conducted. Appellant's Brief at ¶ 20. As noted above, however, the issue in *Grabow* was not whether notice sent to the address of record was sufficient, but whether actual delivery of the notice is required. As such, *Grabow* does not speak to the issues before this Court.

[¶ 52] In addition, Sorenson takes certain testimony presented by Representative David Drovdal regarding the Act out of context to support his assertions. Sorenson fails to note that Representative Drovdal's 2007 testimony was given specifically in

conjunction with his proposal to amend the Act to provide that surface owners who succeed to abandoned mineral interests be entitled to record a statement of succession of interest with respect to those mineral interests. *See Hearing on H.B. 1045 before the Senate Judiciary Committee*, 60th N.D. Leg. (Feb. 13, 2007). Representative Drovdal proposed the amendment because of his frustration with having no guidance regarding filing a claim to abandoned minerals after complying with the requirements of the Act:

> Let me explain why I think this is helpful. It comes from personal experience but I have found that when one person has a problem usually others are experiencing the same problem. Back about 1918 a widow sold a quarter of land and in the sale she withheld 4 acres of minerals she wanted donated to a rural school that was located on that quarter. She then moved on and passed away but she forgot to will the 4 acres to the school or anyone else. After completing all of the steps to try to locate any heirs and the proper notices in the paper I wanted to file claim to the minerals as surface owner. There was nothing in the Century Code that told me how, so I went to a lawyer and explained what I had done and what I needed. . . . My comment was that attorneys are needed many times but I don't believe our Century Code should be used as job security for attorneys and that the law should be plain enough so if a person wishes to do their own paperwork they could. I asked that this bill be drawn up to answer the question as to what the final step was to claim the minerals.

Id. When placed in context, it is apparent that Representative Drovdal's testimony was not intended to comment on the notice requirements of the Act, nor do they imply that the trial court's interpretation of the notice requirements in this case is difficult to apply or contrary to the plain language of the Act.

[¶ 53] Sorenson also asserts that the current value of mineral interests "will motivate those whose interests have expired to make belated and untimely claim to their abandoned mineral interests." Appellant's Brief at ¶ 22. However, the current value of

mineral interests is likewise the catalyst for surface owners to attempt to lay claim to mineral interests and provides a strong motivation *not* to try to locate the owners of those interests.

[¶ 54] Finally, it is inappropriate for Sorenson to attempt to excuse his failure to satisfy the notice mailing requirement of N.D.C.C. § 38-18.1-06(2) (2005) by contending that Felton was obligated and failed to update her address in the Mountrail County records by recording a statement of claim. What Felton did or did not do has nothing to do with Sorenson's obligation to comply with the notice requirements set forth in N.D.C.C. § 38-18.1-06(2) (2005). First of all, if Felton had filed a statement of claim, there would have been no lapse and no reason for Sorenson to mail Felton a notice of lapse. *See* N.D.C.C. § 38-18.1-04 (2005).

[¶ 55] Second, N.D.C.C. § 38-18.1-05 (2005) specifically gives mineral interest owners who fail to file a statement of claim or otherwise "use" their minerals within a twenty-year period a "second chance" to reclaim their mineral interests by filing a statement of claim within sixty days of the first date of publication of the notice provided for in N.D.C.C. § 38-18.1-06 (2005). Thus, implicitly, a mineral interest owner's right to notice is to be protected regardless of inaction; otherwise, the second chance provided by N.D.C.C. § 38-18.1-05 (2005) would be meaningless. *See Trinity Medical Center*, 544 N.W.2d at 157 (noting that "[s]tatutes must be read to give effect to all of their provisions, so that no part of the statute is inoperative or superfluous.")

[¶ 56] Third, the Legislature's recent amendment to N.D.C.C. § 38-18.1-06, which specifically identifies the searches required in order to conduct a "reasonable inquiry," includes searches outside of the county land records. *See* N.D.C.C. § 38-18.1-

06(6). The fact that the Legislature imposed a requirement that surface owners must look outside of the county land records to locate mineral interest owners directly contradicts the notion that mineral interest owners are not entitled to notice if they do not file a statement of claim pursuant to N.D.C.C. § 38-18.1-04 (2005) or otherwise update their address in the county records. *See Novak*, 338 N.W.2d at 640 (noting that subsequent enactments or amendments may be utilized to aid in determining the correct meaning of a prior statute). Sorenson was obligated to comply with all provisions of the Act. Nothing that Felton did or did not do excuses Sorenson from his obligation.

CONCLUSION

[¶ 57] For the reasons set forth above, the trial court's judgment quieting title to the mineral interests at issue in George B. Felton, Jr., Felton's successor in interest, should be affirmed.

DATED this 12th day of November, 2010.

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IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Michael Sorenson, Plaintiff/Appellant, vs. Barbara J. Felton, Defendant/Appellee.	)	Supreme Court No. 20100256 **CERTIFICATE OF SERVICE**

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF BURLEIGH)

I hereby certify that on November 12, 2010, I electronically filed the foregoing with the Clerk of the North Dakota Supreme Court and served the same electronically as follows:

Mr. Robert G. Hoy rhoy@ohnstadlaw.com

Dated: November 12, 2010

Mollie M. Smith

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