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STATE OF NORTH DAKOTA

IN THE SUPREME COURT

FOR THE STATE OF NORTH DAKOTA

Estate of Edyth M. Christeson, aka Edyth M. Christison, Estate of Emmett C. Christeson, Estate of Ronald J. Christeson, and Patricia Mary Christeson, Dennis Piper, Betty Horn, Estate of Eleanor Christeson, Dublin Company, and Lario Oil and Gas Company,	)	Supreme Court No. 20120328
Plaintiffs and Appellees,	)	Mountrail County District Court No. 31-11-C-00046
vs.	)	
Wade Gilstad, Trustee under Irrevocable Trust Agreement dated 2/3/1993, Wade Gilstad, Charles E. Gilstad, and Ruth Marie Smith,	)	
Defendants and Appellants.	)	

APPEAL FROM THE JUDGMENT QUIETING TITLE ENTERED JUNE 20, 2012, PURSUANT TO THE LETTER OPINION DATED JUNE 7, 2012,

MOUNTRAIL COUNTY DISTRICT COURT, NORTHWEST JUDICIAL DISTRICT
THE HONORABLE WILLIAM W. McLEES, PRESIDING

BRIEF OF APPELLANTS

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¶4 B. Whether the trial court erred in finding that a lease executed by one not a record owner is a "use" of a mineral interest under N.D.C.C. § 38-18.1-03 and that the minerals were not abandoned?

¶5 **II. STATEMENT OF THE CASE**

¶6 In 2007, Defendants/Appellants Wade Gilstad, Trustee under Irrevocable Trust Agreement dated 2/23/1993, Wade Gilstad, Charles E. Gilstad, and Ruth Marie Smith (collectively "Gilstads"), the surface owners, complied with the statutory requirements of N.D.C.C. Chapter 38-18.1 to claim certain abandoned mineral interests. (App. pp. 56-59) On March 28, 2011, Plaintiffs Estate of Edyth M. Christeson, aka Edyth M. Christison, Estate of Emmett C. Christeson, Estate of Ronald J. Christeson, and Patricia Mary Christeson (collectively "Christesons") brought Civil No. 31-11-C-00046 against Wade Gilstad, Trustee, to quiet title in the same mineral interests. (Docket, Doc. ID #1 and 2) On April 15, 2011, the Christesons filed their Amended Complaint adding Wade Gilstad, individual, Charles E. Gilstad, and Ruth Marie Smith as Defendants. (Docket, Doc. ID # 5 and 6) The Gilstads filed their Answer and Counterclaim on May 10, 2011 (Docket, Doc. ID # 8); on May 12, 2011, the Christesons filed their Reply to Counterclaim (Docket, Doc. ID # 10). On June 22, the Gilstads filed a motion for joinder, requesting that Dennis Piper and Betty Konen Horn be added as additional Plaintiffs (Docket, Doc. ID # 12 - 15); they were joined by Order of

July 14, 2011. (Docket, Doc. ID # 16) On July 25 the Christesons filed their Second Amended Complaint, adding party Plaintiffs Dublin Company and Lario Oil and Gas Company, who claim leasehold interests in the subject property. (Docket, Doc. ID # 17) On July 29, 2011, the Christesons filed their Corrected Second Amended Complaint, adding party Plaintiff Estate of Eleanor Christeson. (Docket, Doc. ID # 18) The Gilstads filed their Answer to Second Amended Complaint and Counterclaim on August 3, 2011 (Docket, Doc. ID # 19), and on December 6, 2011, filed motion papers requesting summary judgment. (Docket, Doc. ID # 22-27) The Christesons filed an opposition to the Gilstads' motion and also requested summary judgment. (Docket, Doc. ID # 28-30) A hearing was held on May 14, 2012 before Judge William McLees, and on June 7, 2012, he issued his letter opinion ruling in favor of the Christesons. (Appendix p. 40) Findings of Fact, Conclusions of Law, and Order for Judgment and a Judgment were filed on June 20, 2012. (Appendix p. 44) The Gilstads timely filed their Notice of Appeal on August 14, 2012. (Appendix p. 50)

¶7 The trial court's decision is erroneous and must be overturned by this Court. Edyth Christeson was the owner of record of the mineral interest; she died in 1983. (Appendix, p. 64) The court found that upon her death, the mineral interest devolved to her husband, Emmitt Christeson. (Appendix, p. 45) Emmitt and his new wife, Eleanor Christeson, leased the minerals in 1989. (Appendix, p. 54) However, Emmitt did not probate Edythe's estate and she remained the record owner in late 2007 when the Gilstads terminated the mineral interest. (Appendix, p. 56) Despite the fact that a lease was executed by one not in the chain of title, the trial court found that the 1989 lease was a "use" of the minerals and that no abandonment had occurred.

¶8 First, under the intent of and for the purposes of Chapter 38-18.1, the *record owner* of the mineral interest is the "owner"; an heir who does not record ownership of the mineral interest cannot be considered an "owner" under Chapter 38-18.1. In addition, one who is not an owner cannot "use" a mineral interest as defined under N.D.C.C. § 38-18.1-03 and so, contrary to the trial court's reasoning, the mineral interest *was abandoned.* Edyth M. Christeson was the record owner of the mineral interest; her last use was an oil and gas lease in 1977 and the Gilstads' termination of mineral interests procedure was effective to obtain title.

¶9 **III. STATEMENT OF THE FACTS**

¶10 Appellants Gilstad are the surface owners of the following real property in Mountrail County:

Township 152 North, Range 92 West
Section 30: SE¼ less NE¼NE¼NE¼SE¼
Section 31: NE¼

(hereafter referred to as "the subject property"); they also own a mineral interest underlying the subject property.

¶11 According to the Mountrail County records, which veracity is undisputed, Edyth M. Christeson, aka Edyth M. Christison, was also a record owner of a mineral interest underlying the subject property. She received a 1/8 interest in the subject property by a Final Decree and Distribution dated April 9, 1963, and filed for record in Book 350, page 284. She conveyed the surface to Charles L. Gilstad and Helen M. Gilstad, and reserved her interest in the minerals by a warranty deed dated May 4, 1964, and filed for record in Book 351, page 429. The records also show her last use of the mineral interest was an oil and gas lease dated

October 3, 1977, recorded on November 14, 1977, in Book 449, page 359. Mrs. Christeson spelled her name "Edythe" on this lease, which lease was also executed by her husband E.C. (Appendix p. 52)

¶12 On November 21, 28, and December 5, 2007, the Gilstads published in *The Mountrail County Promoter* a Notice of Lapse of Mineral Interest dated November 13, 2007. On December 11, 2007, the Notice of Lapse was mailed by certified mail, return receipt requested with restricted delivery to Edyth M. Christeson, record owner of the mineral interest, and Emmit C. Christeson, at the following address:

Edyth M. Christeson aka Edyth M. Christison
2600 NE 144th Ave.
Portland, OR 97230-3814

Emmit Christeson
2600 NE 144th Ave.
Portland, OR 97230-3814

¶13 The address in Portland, Oregon, was obtained both from the October 3, 1977 oil and gas lease and from an oil and gas lease executed by Chris Christeson and Eleanor Christeson dated August 9, 1989, recorded on December 4, 1989, in Book 581, page 172. (Appendix p. 54)

¶14 The Notice of Lapse of Mineral Interest was recorded with the Mountrail County Recorder on December 12, 2007. The Notice of Lapse of Mineral Interest, Affidavit of Publication, and Affidavit of Mailing were recorded with the Mountrail County Recorder as Document 334732. (Appendix pp. 65-61) A Statement of Claim and Succession in Interest dated March 4, 2008, was recorded with the Mountrail County Recorder as Document No. 338280. (Appendix p. 62) No statement of claim of mineral interest was filed by or on behalf of Edyth M. Christeson, record owner of the mineral interest, within 60 days after the first publication of the Gilstads' Notice of Lapse.

¶15 The Plaintiffs also claim ownership of Edyth M. Christeson's mineral interest in the subject property. Patricia M. Christeson, as heir to the estate of Ronald Christeson, executed an oil and gas lease dated December 13, 2007, and recorded February 19, 2008, as Document No. 337261. (Appendix p. 63)

¶16 Patricia M. Christeson, as a daughter-in-law of the decedent, petitioned the Court for an Order Determining Heirship and Establishing Title in the Matter of the Estate of Edythe Marie Christeson, which Order states that, upon her death on May 20, 1983, title to all of her mineral interest in the subject property passed to her husband Emmitt C. Christeson. The Order was dated March 24, 2011, and was recorded on April 8, 2011, as Document No. 378249. (Appendix p. 64) Patricia M. Christeson also petitioned the Court for an Order Determining Heirship and Establishing Title in the Matter of the Estate of Emmitt C. Christeson, which Order states that, upon his death on September 17, 2000, title to all of his mineral interest in the subject property passed to his son Ronald J. Christeson. The Order was dated March 24, 2011, and was recorded on April 8, 2011, as Document No. 378250. (Appendix p. 66) Finally, Patricia M. Christeson petitioned the Court for an Order Determining Heirship and Establishing Title in the Matter of the Estate of Ronald J. Christeson, which Order states that, upon his death on June 9, 2005, title to all of his mineral interest in the subject property passed to his wife Patricia M. Christeson. The Order was dated March 24, 2011, and was recorded on April 8, 2011, as Document No. 378251. (Appendix p. 68)

¶17 Patricia Christeson was actually a step-daughter-in-law of Edythe M. Christeson. According to Ronald Christeson's death certificate, his mother was Lillian Lundberg, not

Edythe M. Christeson. (Appendix p. 80)

¶18 Plaintiff Dennis Piper, as heir to the estates of E.C. Christeson and Eleanor Christeson, and Edythe M. Christison, executed an oil and gas lease dated December 13, 2007, and recorded on January 2, 2008, as Document No. 335252. (Appendix p. 70) Dennis Piper executed a Proof of Death and Heirship on behalf of Emmitt C. Christeson, which states Emmitt was married to Piper's natural mother, Eleanor Christeson, at the time of Emmitt's death. The Proof was recorded on February 6, 2008, as Document No. 336811. (Appendix p. 72) Dennis Piper also executed a Proof of Death and Heirship on behalf of Edythe M. Christeson, stating that Piper never knew Edythe, but his mother, Eleanor, married Emmitt after Edythe died. The Proof was recorded on February 6, 2008, as Document No. 336812. (Appendix p. 74) Dennis Piper executed a Proof of Death and Heirship on behalf of Eleanor Piper aka Eleanor Christeson, stating that Eleanor was Dennis Piper's natural mother. The Proof was recorded on February 6, 2008, as Document No. 336813. (Appendix p. 76)

¶19 Plaintiff Betty Konen Horn, as heir to the estates of E.C. Christeson, Edythe M. Christison, and Eleanor Christeson, executed an oil and gas lease dated December 13, 2007, and recorded on January 14, 2008, as Document No. 335709. (Appendix p. 78)

¶20 **IV. LAW AND ARGUMENT**

¶21 **A. STANDARD OF REVIEW**

¶22 "The question of how to interpret and apply chapter 38-18.1, N.D.C.C., is a question of law; therefore, the standard of review is de novo." Johnson v. Taliaferro, 2011 ND 34, ¶9, 793 N.W. 2d 804, 806, *citing* Wheeler v. Gardner, 2006 ND 24, ¶ 10, 708 N.W.2d 908

("Interpretation of a statute is a question of law, fully reviewable on appeal.").

¶23 **B. THE TRIAL COURT ERRED IN FINDING THAT AN HEIR WHO DOES NOT RECORD OWNERSHIP OF THE MINERAL INTEREST CAN BE CONSIDERED AN "OWNER" FOR THE PURPOSES OF CHAPTER 38-18.1.**

¶24 **1. The Trial Court Erred in Finding That Heir Emmitt Christeson Was the "Owner" of the Mineral Interest Under N.D.C.C. § 30.1-12-01.**

¶25 The trial court erred in analyzing this case under N.D.C.C. § 30.1-12-01, the statute providing that "ownership"of property devolves upon death, and under the Uniform Probate Code. The Gilstads do not dispute the principle that property automatically devolves to the deceased's heirs upon death, subject to administration. However, the Gilstads *do* dispute the trial court's finding that because Edyth was dead, Emmitt became the "owner" of the minerals for purposes of Chapter 38-18.1. Put another way, while Emmitt Christeson may have had legal title via devolution upon Edyth's death, for the purposes of Chapter 38-18.1 he was not the "owner."

¶26 **a. The trial court thwarts the intent of the Termination of Mineral Interest statutes.**

¶27 Review of the legislative history that led to Chapter 38-18.1 reveals that the legislature's main purposes, as shown by testimony from legislators and testifying citizens, was to cure uncertainties in titles and to facilitate the use of valuable mineral resources. *See Hearing on H.B. 1084 before the House Natural Resources Committee*, 48th Legislative Assembly (January 21, 1983). [1] (Rep. Jack Murphy, sponsor, testifying that "no one has

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[1] Rather than transcribed verbatim, testimony was paraphrased by Wanda Scheid, Committee Clerk, for the written record. Quoted language in this brief is from the written record.

kept track of the lost mineral owners, unless an extensive mineral owner serch *[sic]* has come about because of clearing a title" and that people "need to get the minerals back into the hands of the people who would use it to the best of its ability."); (Jim Moend, proponent, testifying that "the mineral rights should be given to someone who can manage them."); (Emil Wingenbach, proponent, testifying that he "doesn't believe that the mineral, something so valuable, should be left unattended by the owner."). The Senate Committee deliberating the bill also noted the importance of getting minerals into productive use. *See Hearing on H.B. 1084 before the Senate Finance & Taxation Committee*, 48th Legislative Assembly (March 8, 1983).[2] (Rep. Jack Murphy, sponsor, testifying that the law "Would get the royalty back into hands who will make better use of it. If don't use for 20 years - lose it."); (Arthur Bauer, testifying that "If don't use (at least file statement of claim) then lose it."); (Rep. Jack Murphy, sponsor, testifying that "Reason for getting mineral interest back into surface owner, to get some use out of it."). Clearly, the purpose of Chapter 38-18.1 was to encourage surface owners to obtain title to and use abandoned minerals by following the procedures set out therein.

¶28 One way the Legislature encouraged the transfer of minerals that have been unused for 20 years was to allow the surface owner to rely on record title. When the termination of abandoned mineral interests statutes were introduced as H.B. 1084, Section 5, subsection 4 provided for "actual knowledge" of the lapsed mineral right. However, the Legislature deleted the proposed "actual knowledge" or notice requirement, which is indicative that the

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[2] Rather than transcribed verbatim, testimony was paraphrased by Alice Zako for the written record. Quoted text in this brief is from the written record.

intent was for the surface owner to rely on the record title. A Bismarck attorney testified and submitted a written recommendation that the Legislature delete language allowing a mineral owner to file a statement of claim "within sixty days after receiving actual knowledge that the mineral interest has lapsed." *Proposed Amendments to H.B. 1084*, submitted by Arthur C. Bauer. As Mr. Bauer colorfully stated, requiring the sixty-day period within which a mineral interest owner must file a claim conditional upon the owner's *actual knowledge* or notice of the lapse "would provide a legal loophole in the bill large enough to hold a Greyhound bus." *Id.* Put another way, under the original language, every mineral owner who did not record and did not use the interest in twenty years could file an action against the surface owner and claim that the owner did not receive "actual knowledge" or notice of the lapse. Put yet another way, if one could not rely on the record and had to consider far-flung unknown heirs as the trial court did here, the surface owner would never obtain abandoned minerals. The Legislature agreed with Mr. Bauer and deleted the "actual knowledge" provision, requiring instead that the mineral owner file a statement of claim within sixty days after the first date of publication of the notice of lapse. N.D.C.C. § 38-18.1-05. This permits the surface owner and the legal owner of the minerals to rely on a *record* that is publicly available. This is also the rationale of the United States Supreme Court in Texaco, Inc. v. Short, 454 U.S. 516 (1982) when it noted the similarity between abandoned mineral statutes and recording statutes in that both "provide a valid transfer of property may be defeated by a subsequent purported transfer if the earlier transfer is not properly recorded." *Id.* at 528.

¶29 In sum, the legislative history and the plain language of the law clearly show that the Legislature's main purposes were to clear title and encourage the productive use of

abandoned minerals. This end was accomplished through laws that permit the surface owner to obtain abandoned minerals without a complicated legal process but rather by simply mailing the Notice of Lapse to the address of record. This establishes that the only "owner" under Chapter 38-18.1 is the owner of record.

¶30 **b. The "owner" means the "owner of record" for real property.**

¶31 The term "owner" is not defined in the termination of mineral interest statutes, but this Court has found it to mean only real property owners "of record." *See* Cass County Joint Water Resource Dist. v. 1.43 Acres of Land in Highland Tp., 2002 ND 83, ¶ 11, 643 N.W.2d 685 ("Thus, to comport with due process, property owners of record must be given notice and an opportunity to be heard in the condemnation action." (*citing* N.D.C.C. § 32-15-18(2), which provides that condemnation complaint must include "[t]he names of all owners and claimants of the property, if known, . . . who must be styled defendants"); Gruebele v. Geringer, 2002 ND 38, ¶ 10, 640 N.W.2d 454, *citing* Ellison v. Strandback, 62 N.W.2d 95, 100 (N.D. 1953) (discussing notice required to assert adverse possession, the Court noted that "Possession, which is permissive in its inception can become adverse only where there is a disclaimer of the true owner's title, or there are acts of such an unequivocal nature on the part of the user, that notice of the hostile character of the possession is brought home to the record owner."); Kunick v. Trout, 85 N.W.2d 438, 447-48 (N.D. 1957) (noting that "[a]s long as the plaintiffs were the owners of record of the minerals covered by the deeds they were entitled to the delay rentals in proportion to the mineral ownership that they still retained" and that "[i]t is common knowledge that delay rentals under an oil and gas lease follow the title interest of the owner or owners of the minerals."). Clearly, with regard to real

property and minerals the word "owner" means the "owner of record"; concluding otherwise nullifies the purposes of the recording statutes.

¶32 **2. The Trial Court Disregards the Purpose of the Recording Laws.**

¶33 **a. There was an address of record.**

¶34 The trial court's foundation for its decision is N.D.C.C. § 30.1-12-01, the Uniform Probate Code, and a discussion of the devolution of property to heirs upon death. While this may be correct in determining ownership in some circumstances, it is erroneous under N.D.C.C. Ch. 38-18.1. The Gilstads saw the name of the record owner, saw that she had not used the minerals since 1977, (Appendix p. 52) and saw the only address of record. The Gilstads knew Edythe was married to Emmitt C. Christeson and that an E.C. Christeson executed the 1977 lease with Edythe. Because Edythe was deceased, and there was no record of Edythe having transferred her mineral interest, the Gilstads made a reasonable presumption that Emmitt C. Christeson, E.C. Christeson, and Chris Christeson were the same person. The Portland address was the most current and last address of record when the notice of lapse was published. The Gilstads mailed the notice of lapse to Emmitt not as an *owner* of the mineral interest, but as Edythe's surviving spouse. Because there was no probate of Edythe's estate, Emmitt was in the best position to preserve her mineral interest; as far as the world knew, she was the owner; Emmitt never bothered to undertake any act indicative of ownership, that being probating the estate and obtaining record title. As this Court stated in Hanson v. Zoller, 187 N.W.2d 47 (N.D. 1971),

> "The fundamental purpose of the recording statutes is to protect potential purchasers of real property against the risk that they may be paying out good money to someone who does not actually own the property that he is purporting to sell. The recording acts operate by making the history of the

> title involved in a real estate transaction readily available to a prospective purchaser, and by providing that the history so disclosed by the record is binding upon a prospective purchaser whether he consults the record or not.
>
> At the time North Dakota adopted its recording acts, many states were still utilizing only grantor-grantee indexes as the chief aids in title search. This is a cumbersome way of digging out the history of the title to a given tract of land.

Id. at 54-55. Indeed, this Court is protective of the recording statutes and their purpose in making the history of the title readily available; the trial court's finding ownership in the *widow* of the *step-son* of the record owner, a stranger to the title, is inimical to the recording statutes.

¶35 The current value of mineral interests in northwestern North Dakota is a great motivator to make untimely claims to abandoned mineral interests; this type of litigation is exactly what the abandoned mineral statutes were meant to deter. The trial court did not even note in passing that the Christesons should have acted in the years since Edythe Christeson died in 1983 to make sure they were of record. The failure to show ownership in the 24 years between the death of Edythe Christeson and the time the Gilstads sent the Notice of Termination is their omission and they must bear that burden.

¶36 To further the important purposes of facilitating mineral development and clearing title uncertainties, North Dakota's statute places a *minimal* burden on the owner of a mineral interest to preserve his interest by filing a statement of claim every 20 years. As explained by the U.S. Supreme Court: "It is the part of common prudence for all those who have any interest in a thing, to guard that interest[.]" Texaco, Inc. v. Short, 454 U.S. 516, 536, n. 28, 102 S.Ct. 781, 70 L.Ed. 2d 738 (1982) *(citations and internal quotations omitted)*. Despite this obligation, the Christesons did not meet that minimal burden. No one ever bothered to

probate Edythe's estate or even record a statement of claim under N.D.C.C. § 38-18.1-02. As the U.S. Supreme Court has stated: "What right has any one to complain, when a reasonable time has been given him, if he has not been vigilant in asserting his rights?" Texaco, Inc., 454 U.S. at 526 (*citations omitted*); *see also* N.D.C.C. § 31-11-05(18) ("The law helps the vigilant before those who sleep on their rights.") The Christesons' negligence in protecting their rights should not be rewarded.

¶37 C. THE TRIAL COURT ERRED IN FINDING THAT A LEASE EXECUTED BY ONE NOT A RECORD OWNER IS A "USE" OF A MINERAL INTEREST UNDER N.D.C.C. § 38-18.1-03 AND THAT THE MINERALS WERE NOT ABANDONED.

¶38 The trial court stated that as "the 'Owner' of that mineral interest, Emmitt possessed the entire 'bundle of rights' commonly associated with the ownership of real property, including the right to lease the same for oil and gas exploration . . . " and that "[w]ith the execution of this oil and gas lease, Emmitt "used this mineral interest for the purpose of the Termination of Mineral Interest statute." (App. p. 43) However, if a requirement of Chapter 38-18.1 is to give the *record owner* Notice of Lapse, it follows that the record owner is the *only* one who can use the mineral interest.

¶39 As set out above, the purposes of North Dakota's Termination of Mineral Interest statutes are to cure uncertainties in titles and to facilitate the use of valuable mineral resources. The efficient transfer of real estate title can only be accomplished when ownership interests are recorded; aiding that efficient transfer is the primary goal of Chapter 47-19, Record Title: The "purpose of the recording statutes is to give notice of and to protect rights, as against subsequent purchasers or encumbrancers, not to create rights not possessed, either of record or in fact." Westgard v. Farstad Oil, 437 N.W.2d 522, 526, (N.D. 1989), *quoting*

Magnuson v. Breher, 284 N.W. 853, 855 (N.D. 1939). That is, when multiple parties claim adverse interests in the same estate in land, the date of recording provides a means to determine priority among those claims. *See, e.g.* N.D.C.C. § 47-19-41. Therefore, to further the purposes of Chapter 38-18.1, which is to cure uncertainties of title and facilitate the use of minerals, a bright-line rule that allows reliance upon the address of record as the owner is consistent with due process and Chapter 38-18.1.

¶40 It follows, then, that only interests that are in the "chain of title" can be considered to have "used" the minerals. Edythe Christeson was the owner of the interest; her husband was never an "owner" in the chain of title and so cannot be considered an "owner" under Chapter 38-18.1. Describing the concept of "chain of title" to a tract of land, this Court has stated:

> A person is deemed to have an unbroken chain of title to an interest in land when the applicable public records show a conveyance or other title transaction dated and recorded more than twenty years earlier, which purports to create an interest in that person or that person's immediate or remote grantors with nothing of record purporting to divest that person of the interest.

Locken v. Locken, 2011 ND 90,¶ 11, 797 N.W.2d 301 (*citing* N.D.C.C. § 47-19.1-02(1)). Plainly, Edyth continued to have an unbroken chain of title to the minerals, meaning that no one else is entitled to "use" the mineral interest as defined under N.D.C.C. § 38-18.1-03.

¶41 The relevant statutory provision defining when a mineral interest is deemed to be used provides as follows:

> The mineral interest on any tract is subject to a lease, mortgage, assignment, or conveyance of the mineral interest recorded in the office of the recorder in the county in which the mineral interest is located.

N.D.C.C. § 38-18.1-03(1)(d) (2006) (*emphasis added*) The mineral interest recorded in the

office of the recorder was the mineral interest of Edyth Christeson, *not* Emmitt Christeson or Eleanor Christeson. Under the meaning of "use", Emmitt's lease is not a "use" under N.D.C.C. § 38-18.1-03(1)(d). The trial court's finding of a "use" does not conform with the Legislature's deliberate employment of the words "mineral interest recorded in the office of the recorder" in § 38-18.1-03(1)(d) and ignores a goal of the termination of mineral interest statutes, which is to cure the problem of a failure to keep record title current. In addition, accepting a lease by a non-record owner as a "use" of the minerals disregards this Court's directive that "38-18.1-06, N.D.C.C., requires reasonable inquiry only when the mineral owner's address does not appear of record." Johnson v. Taliaferro, 2011 ND 34, ¶ 11, 793 N.W.2d 804. Put another way, when a surface owner terminates an abandoned mineral interest, the only "owner" is the *owner of record* – here Edythe Christeson.

¶42 In order to give proper notice to the world, a mineral interest can only be deemed to be "used" under N.D.C.C. § 38-18.1-03(1)(d) when it is used by the record owner rather than by one who holds non-record title. In fact, the tangle illustrated by the Christeson's claims is *exactly* why the "owner" under Chapter 38-18.1 must be and can only be the owner of record:

1.) Record owner Edyth M. Christeson aka Edyth M. Christison aka Edythe M. Christeson was married to Emmitt C. Christeson aka Emmett C. Christeson aka E.C. Christeson aka Chris Christeson. Edyth died May 20, 1983.

2.) Emmitt had a son, Ronald Christeson, who was *not* the issue of Edythe Christison, but was the issue of Lillian Lundberg.

3.) After Edythe's death, Emmitt C. Christeson married Eleanor Christeson. She had

two children, *not* issue of Emmitt, named Dennis Piper and Betty Horn.

4.) Emmitt died on September 17, 2000, while married to Eleanor.

5.) Eleanor died on July 9, 2002.

6.) Emmitt's son Ronald died on June 9, 2005, while married to Patricia M. Christeson.

7.) Patricia Christeson claims the minerals through Ronald Christeson, son of Emmitt (but not Edythe), though Emmitt was survived by Eleanor.

8.) Betty Horn and Dennis Piper claim the minerals through Eleanor, who survived Emmitt.

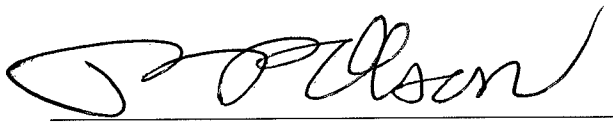
¶43 Not only are the parties who claim an interest in the minerals not heirs of record-owner Edyth and so are unknowable and "unfindable" under a reasonable inquiry, *none* of these individuals recorded an interest in the minerals prior to the Gilstads' termination. If a surface owner cannot rely on the record owner as the "owner," tracking down the trial court's "owner" is impossible. One must confront the spellings of Edythe and Edyth, figure out the identities of Emmitt, Emmett, E.C., and Chris, determine whether one is looking for a Christeson or a Christison, identify Ronald and Eleanor, and determine if the heir is a Christeson or a Piper or perhaps a Horn. Chapter 38-18.1 was meant to provide a relatively painless way for surface owners to reclaim abandoned mineral interests, without the benefit of a lawyer and a team of detectives spread out across the country; the trial court's analysis and holding frustrates this purpose. It was not the intent of the Legislature to burden the courts with litigation over whether the surface owner did or did not properly terminate an abandoned mineral interest when the *record* owner had shown no use in twenty years.

¶44 **V. CONCLUSION**

¶45 For all of the reasons set out above, the Gilstads respectfully request that this Court reverse the trial court, and grant them summary judgment quieting title in the minerals under the subject property as a matter of law.

Dated this 18th day of October, 2012.

OLSON & BURNS, P.C.



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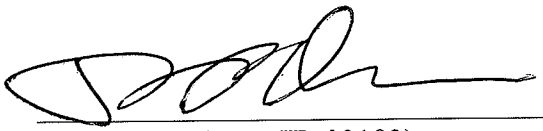
¶46 **CERTIFICATE OF SERVICE**

I, Richard P. Olson, attorney for Appellants do hereby certify that on the 18th day of October, 2012, a copy of the BRIEF OF APPELLANTS and APPELLANTS APPENDIX were served on the following by electronic mail transmission, per N.D. Sup.Ct. Admin. Order 14(D):

Steven J. Wild	sjoewild@yahoo.com	Steven J. Wild P.O. Box 260 Bowman, ND 58623

Dated this 18th day of October, 2012.

OLSON & BURNS, P.C.



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¶47 **CERTIFICATE OF COMPLIANCE**

I, Richard P. Olson, attorney for the Appellants, do hereby certify that the above brief complies with all type-volume limitations as set forth in the North Dakota Rules of Appellate Procedure.

I further certify that the attached Brief of Appellant contains fewer than 10,500 words, and was prepared using WordPerfect 10.0, Times New Roman font, size 12.

Dated this 18th day of October, 2012.

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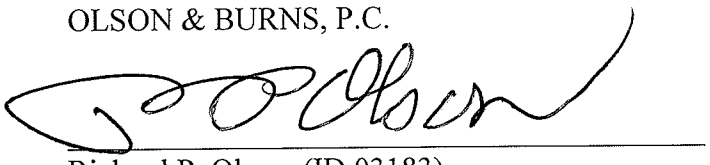

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NORTH DAKOTA CENTURY CODE

30.1-12-01. (3-101) Devolution of estate at death - Restrictions.
The power of a person to leave property by will, and the rights of creditors, devisees, and heirs to the person's property, are subject to the restrictions and limitations contained in this title to facilitate the prompt settlement of estates. Upon the death of a person, the decedent's real and personal property devolves to the persons to whom it is devised by the decedent's last will or to those indicated as substitutes for them in cases involving lapse, renunciation, or other circumstances affecting the devolution of testate estate, or in the absence of testamentary disposition, to the decedent's heirs, or to those indicated as substitutes for them in cases involving renunciation or other circumstances affecting devolution of intestate estates, subject to homestead allowance, exempt property, and family allowance, to rights of creditors, elective share of the surviving spouse, and to administration.

31-11-05(18). Maxims of jurisprudence - How to be used and applied - List.
The maxims of jurisprudence set forth in this section are not intended to qualify any of the provisions of the laws of this state, but to aid in their just application:

18. The law helps the vigilant before those who sleep on their rights.

32-15-18(2). What complaint must contain.
The complaint must contain:

2. The names of all owners and claimants of the property, if known, or a statement that they are unknown, who must be styled defendants.

47-19-41. Effect of not recording -- Priority of first record -- Constructive notice -- Limitation and validation.
Every conveyance of real estate not recorded shall be void as against any subsequent purchaser in good faith, and for a valuable consideration, of the same real estate, or any part or portion thereof, whose conveyance, whether in the form of a warranty deed, or deed of bargain and sale, or deed of quitclaim and release, of the form in common use or otherwise, first is deposited with the proper officer for record and subsequently recorded, whether entitled to record or not, or as against an attachment levied thereon or any judgment lawfully obtained, at the suit of any party, against the person in whose name the title to such land appears of record, prior to the recording of such conveyance. The fact that such first deposited and recorded conveyance of such subsequent purchaser for a valuable consideration is in the form, or contains the terms, of a deed of quitclaim and release aforesaid, shall not affect the question of good faith of the subsequent purchaser, or be of

itself notice to the subsequent purchaser of any unrecorded conveyance of the same real estate or any part thereof. This section shall be legal notice to all who claim under unrecorded instruments that prior recording of later instruments not entitled to be recorded may nullify their right, title, interest, or lien, to, in, or upon affected real property. No action affecting any right, title, interest, or lien, to, in, or upon real property shall be commenced or maintained or defense or counterclaim asserted or recognized in court on the ground that a recorded instrument was not entitled to be recorded. The record of all instruments whether or not the same were entitled to be recorded shall be deemed valid and sufficient as the legal record thereof.

HISTORY: Civ. C. 1877, § 671; R.C. 1895, § 3594; R.C. 1899, § 3594; S.L. 1903, ch. 152, § 1; R.C. 1905, § 5038; C.L. 1913, § 5594; R.C. 1943, § 47-1941; S.L. 1959, ch. 334, §§ 1 to 4.

47-19.1-02(1). Definitions.

As used in this chapter:

1. A person shall be deemed to have the unbroken chain of title to an interest in real estate when the official public records of the county wherein such land is situated disclose a conveyance or other title transaction dated and recorded twenty years or more prior thereto, which conveyance or other title transaction purports to create such interest in that person or that person's immediate or remote grantors, with nothing appearing of record purporting to divest that person and that person's immediate or remote grantors of such purported interest.

2. Title transaction means any transaction affecting title to real estate, including title by will or descent from any person who held title of record at the date of that person's death, title by a decree or order of any court, title by tax deed or by trustee's, referee's, guardian's, executor's, master's in chancery, or sheriff's deed, as well as by direct conveyance.

HISTORY: S.L. 1951, ch. 280, § 2; 1957, ch. 312, § 2; R.C. 1943, 1957 Supp., § 47-19A02.

N.D.C.C. CHAPTER 38-18.1 (2006)

38-18.1-01. Mineral interest defined.

In this chapter, unless context or subject matter otherwise requires, "mineral interest" includes any interest in oil, gas, coal, clay, gravel, uranium, and all other minerals of any kind and nature, whether created by grant, assignment, reservation, or otherwise owned by a person other than the owner of the surface estate.

HISTORY: S.L. 1983, ch. 413, § 1.

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.
HISTORY: S.L. 1983, ch. 413, § 2; 1989, ch. 441, § 1.

38-18.1-03. When mineral interest deemed to be used.

1. A mineral interest is deemed to be used when:

a. There are any minerals produced under that interest.

b. Operations are being conducted thereon for injection, withdrawal, storage, or disposal of water, gas, or other fluid substances.

c. In the case of solid minerals, there is production from a common vein or seam by the owners of such mineral interest.

d. The mineral interest on any tract is subject to a lease, mortgage, assignment, or conveyance of the mineral interest recorded in the office of the recorder in the county in which the mineral interest is located.

e. The mineral interest on any tract is subject to an order or an agreement to pool or unitize, recorded in the office of the recorder in the county in which the mineral interest is located.

f. Taxes are paid on the mineral interest by the owner or the owner's agent.

g. A proper statement of claim is recorded as provided by section 38-18.1-04.

h. The owner or lessee utilizes the mineral interest in a manner pursuant to, or authorized by, the instrument creating the mineral interest.

2. The payment of royalties, bonus payments, or any other payment to a named or unnamed interest-bearing account, trust account, escrow account, or any similar type of account on behalf of a person who cannot be located does not satisfy the requirements of this section and the mineral interest is not deemed to be used for purposes of this section. Interest on such account must be credited to the account and may not be used for any other purpose. A named or unnamed interest-bearing account, trust account, escrow account, or any similar type of account that has been in existence for three years is deemed to be abandoned property and must be treated as abandoned property under chapter 47-30.1. A lease given by a trustee remains valid.
HISTORY: S.L. 1983, ch. 413, § 3; 1989, ch. 441, § 2; 2001, ch. 120, § 1; 2005, ch. 320, § 1.
NOTES: Effective Date.

The 2005 amendment of this section by section 1 of chapter 320, S.L. 2005 became effective August 1, 2005.

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.
HISTORY: S.L. 1983, ch. 413, § 4; 2001, ch. 120, § 1.

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.
HISTORY: S.L. 1983, ch. 413, § 5; 1989, ch. 441, § 3.

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.
HISTORY: S.L. 1983, ch. 413, § 6; 1989, ch. 441, § 4; 2001, ch. 120, § 1.

38-18.1-07. Waiver prohibited.
The provisions of this chapter may not be waived at any time prior to the expiration of the twenty-year period provided in section 38-18.1-02.
HISTORY: S.L. 1983, ch. 413, § 7.

38-18.1-08. Applicability.
This chapter does not apply to any mineral interest owned by any governmental body or agency thereof and this chapter is both prospective and retrospective in its application.
HISTORY: S.L. 1983, ch. 413, § 8.

Hearing on H.B. 1084 before the House Natural Resources Committee,
48th Legislative Assembly (January 21, 1983)

HB 1084 A bill for Act to provide for the termination of mineral rights in land owned by persons other than the owners of the surface and for the vesting of title to dormant mineral rights in the surface owners in the absence of appropriate developmental activities or the filing of a notice of claim of interest within a specified period.

REP. JACK MURPHY, REPRESENTATIVE FROM THE 36TH DISTRICT, KILLDEER, PROPONENT; He said there are many mineral interests out and lost from years back. He said that up to now, no one has kept track of the lost mineral owners, unless an extensive mineral owner search has come about because of clearing a title. He said that trying to keep the abstracts up to date is an absorbatant cost, but he feels that we need to get the minerals back into the hands of the people who would use it to the best of it's ability. This bill does not attempt to take mineral rights away from anyone.

MARK SCHROEDER, DAKOTA RESOURCE COUNCIL, BISMARCK, PROPONENT; He said that his association supports this bill. They feel that with absorbatant abstracting costs, the dormant minerals should be brought together with the surface owner

JIM MARSDEN, NORTH DAKOTA FARM BUREAU, BISMARCK; He said his organization recommends support of the dormant mineral legislation. Not only would this be a landowners godsend, but it would also be easier for the leasing companies.

ARTHUR C. BAUER, ATTORNEY, BISMARCK; PROPONENT; He said that we could also take this legislation and carry it one step further, and make notice requirements to any mineral owners giving them a second chance to retrieve their minerals. He also had some information from other states and how their laws were drawn.

JIM MOEND, NORTH DAKOTA FARMERS UNION, JAMESTOWN, PROPONENT; He said that his organization supports the bill. He said that the mineral rights should be given to someone who can manage them.

EMIL WINGENBACH, CARSON NORTH DAKOTA; PROPONENT; He said that he is in favor of this bill. He said that the mineral rights should be given to someone who can manage them.

There were many landowners in the audience that signed the roster in favor of the bill.

WILLIAMS COUNTY, REGISTER OF DEEDS, OPPONENT; She said that this would be an unfair tax burden on the county. She said that any type of legal index and the interpretation of the paperwork would add another person to most of the counties.

She also said that as a suggestion, I.R.S. forms should also be made out for the extra bonus money from these files, and that most of the bonus money received would be going to out of the state. Thus, no money going to the county to pay for the extra expense of the filing and interpretation of said paperwork.

DENNIS SCHULTZ, REGISTER OF DEEDS OF LOGAN COUNTY; He felt that caution should be exercises when considering this bill. He said that only the first and second lines of the bill are clear. He said that it could become a real burden and nightmare when it came to some of the fractional interests. He said that it could cost millions of dollars to implement such a program, plus the costs of the courts and the costs of county staff. He said that he feels that the fee should be extracted from the cost of the abstract.

REP. R. MEYER said that that policy could break a landowner.

REP. R. WILLIAMS asked who would get the mineral right if the mineral owner doesn't file a claim.

MR. SCHULTZ He believes that this is a good start, a step in the right direction. But, he believes that the indexing would cause a major problem. He said that many of the farmers get minerals and some don't.

HB 1084 was held from committee action at a latter date.

Hearing on H.B. 1084 before the Senate Finance & Taxation Committee,
48th Legislative Assembly (March 8, 1983)

Rep. Murphy - objection always was "unconstitutional"
This one passed supreme court of Indiana and Michigan and U.S. Very few people who sold mineral rights owned by landowner; others are by railroads, etc. This bill will locate many

lost owners. People who do not even know they own these. Would get the royalty back into hands who will make better use of it. If don't use for 20 years-lose it.

Arthur Bauer, attorney, Bismarck. Involve with this type of bill for 10 years. "using" is defined in bill. If don't use (at least file statement of claim) then lose it. Very fair bill. Notice feature in this bill. Has amendment to engrossed bill - in favor even though it will cost him $10,000 for fees. No tax in this bill. Biggest cost will be recording fees - if they are not high enough. Amend to raise them. Could include mandatory title quiet. Sec.1 - very important definition of mineral interest - typographical error. Follow some type notice procedure and 12 in the House. He mentioned big loophole. Reviewed some states because don't like to take property from someone.

Jim Marsden, Farm Bureau. Answers concern many of our landowners have. Supports this bill.

Florence Holmes, Burleigh County Registrar of Deeds. Not in favor or opposed. Just need to use "recorded" instead of probably end up getting attorney opinions. Object only to research work not paid for. This bill does not do this. Same letters opposed but that was regarding Sec. 7 which has been deleted. That referred to "search".

Ron Soderberg, County Assn., No problem as amended.

Bernice Asbridge, Burleigh County. She raised question "What assurance is there you have aimed all interest back in surface owners name. Didn't understand reply.

Murphy: Reason for getting mineral interest back into surface owner, to get some use out of it.

COMMITTEE DISCUSSION: March 15, 1983

Arthur Bauer attended the meeting to anser question ant etc. He states the law fundamentally " the down of the state is still mineral, but face it - in ND the down of the state is still the surface. By law it isn't but in reality it is - emotionally. They discussed the expense of getting this 20 year activity. (4 tracts at 5$ each = $20 plus another $5 for labor) Not always would you need an attorney to prepare - just depends. All this discussion is on tape. He explained in anser to Sen. Adams question: If one party owns surface an others own mineral rights - the mineral rights owner would have to record them. They will be sent notice - if mineral rights owner does not receive it, or be notified or find out in some way - (he didn't finish sentence but Sen. Lee mentioned two year cushion). First part of his amendments is to clarify. People used to be opposed philosophical because giving from one to another. Action can't be by predecessor, has to be by present owner. (There is a lot of discussion on tape, which was not clear to me). He referred to 1st page, line 12, make sure this bill is re: severed owner - not taking away from surface owner - re: ambiguity makes it in conformity to preamble (line 1-5) This is to clarify. (this was a little unclear to me). Sen. Adams

moved the amendment as was penned in on engrossed bill. A lot of the amendment was changing "file" to "record". Sen. Lee seconded the motion, Ken Jakes: question sec. 8 - will have to take a look at what happens in the 20 years. Re: retrospective statement. VOTE: All in favor. Reference was made to sending notice to paper and last shown address. Reference was made to "surface owner could take away mineral rights from mineral owner because of retro before 20 year are up. This was also not real clear to me. Would have to listen to tape to get it clear. Reference was made to the retrospective part of the act. VOTE: all in favor, except Sen. Wright. Sen. Adams assigned to the bill on the floor. (it was discussed earlier about getting it into a conference committee and Art Bauer coming and explaining it some more)

Proposed Amendments to H.B. 1084, submitted by Arthur C. Bauer

On page 1 in Section 1 after word "otherwise" insert the words "owned by a person other than the owner of the surface"

Reason: Although the preamble to the bill provides for the termination of mineral interests in land owned by persons other than the owners of the surface, the definition of mineral interest in Section 1 describes any interest in the minerals and a legal question of ambiguity could arise.

On page 2 in Section 3, Sub-Section 5 following the words "subject to an order or an agreement to", delete the words "an order or an agreement to"

Reason: The deleted words are repeated and are an obvious typographical error.

On page 3 in Section 5 delete lines 8 through 12 which is following: "Preserved or diligently tried to preserve, all of the mineral interests which were not being used, and within ten years prior to the end of the period provided in section 4, preserved other mineral interests in that county by filing a statement of claim"

Reason: In the Indiana statute, from which this bill is modeled, the notice provisions were applicable to only owners of one or more mineral interests. This bill provides for notice to owners of one or more mineral interests within a county. Should the above paragraph remain in the bill it would be impossible for a person owning only one mineral interest within a county to preserve other mineral interests in the county by filing a statement of claim.

On page 3 in Section 5, Sub-Section 4 following the numeral "6" delete the words "or within sixty days after receiving actual knowledge that the mineral interest has lapsed"

Reason: To allow the filing of a statement of claim within sixty days after receiving actual knowledge that the mineral interest had lapsed would provide a legal loophole in the bill large enough to hold a Greyhound bus.