

IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

Jack M. Peterson, Eugene H. Peterson, )

Plaintiffs/Appellees, )

vs. )

Lester Jasmanka and all persons )  
unknown, claiming any estate in or )  
lien or encumbrance upon the )  
property described in the Complaint, )

Defendant/Appellant. )

**SUPREME COURT NO. 20130162**Mountrail County Case No.  
31-1990-CV-07556

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APPEAL FROM ORDER DENYING MOTION  
TO VACATE JUDGMENT DATED APRIL 1, 2013  
MOUNTRAIL COUNTY DISTRICT COURT  
NORTHWEST JUDICIAL DISTRICT  
THE HONORABLE GARY H. LEE PRESIDING

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**BRIEF OF APPELLEES JACK M. PETERSON, LILLY PETERSON,  
LACEY MINERAL AND ROYALTY GENERAL PARTNERSHIP,  
JOHN R. LACEY, RAMONA LACEY, MICHAEL LACEY,  
CHERYL LACEY, AND JOHN SATERMO A/K/A LEE JOHN SATERMO**

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OLSON & BURNS, P.C.  
Richard P. Olson (ID #03183)  
Andrew T. Forward (ID #06348)  
PO Box 1180  
Minot, ND 58702-1180  
Telephone: (701) 839-1740  
Attorneys for Plaintiffs and Appellees  
[rpolson@minotlaw.com](mailto:rpolson@minotlaw.com)  
[atforward@minotlaw.com](mailto:atforward@minotlaw.com)

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¶1

**STATEMENT OF THE ISSUES PRESENTED FOR REVIEW**

- I. Whether Appellees, as surface owners, strictly complied with the notice requirement in N.D.C.C. § 38-18.1-06(2) when they mailed the notice of lapse of mineral interest to Lester Jasmanka's address of record.
- II. Whether the district court abused its discretion when it concluded that Appellees complied with the notice requirement in N.D.C.C. 38-18.1-06(2) by mailing the notice of lapse of mineral interest to Lester Jasmanka's address of record.

¶2

## STATEMENT OF THE CASE

¶3 On September 20, 1990, Jack and Eugene Peterson obtained a default judgment quieting title to certain mineral interests owned by Lester Jasmanka. See Docket #14. On September 21, 2012, Hanna Boys Center (“HBC”) filed a motion to vacate the default judgment entered on September 20, 1990. Id. at #34. HBC served the motion to vacate on Jack M. Peterson, Lilly Peterson, Ramona Lacey, personal representative of the Estate of Eugene H. Peterson, deceased, Lacey Mineral and Royalty General Partnership, John R. Lacey, Ramona Lacey, Robert E. Zimmerman, Cody Oil & Corporation, Albert G. Metcalf III, Lario Oil & Gas Company, Michael Lacey, Cheryl Lacey, Montana Oil Properties, Inc., Whiting Oil & Gas Corporation, Hal Nestaval, Darlene Nestaval, Jerry Nestaval, Sylvia M. Holst, John Satermo a/k/a Lee John Satermo, Yvonne Hilbern, Billie C. Blake, and ZRC Minerals, LP. Id. at #36.

¶4 On October 29, 2012, Jack M. Peterson, Lilly Peterson, Lacey Mineral and Royalty General Partnership, John R. Lacey, Ramona Lacey, Michael Lacey, Cheryl Lacey, and John Satermo a/k/a Lee John Satermo (“Peterson”) filed a brief in opposition to HBC’s motion. Id. at #21. On November 7, 2012, Hal Nestaval, Darlene Nestaval, Jerry Nestaval, Sara Nestaval, and Kirk Nestaval (“Nestaval”) filed a response in opposition to HBC’s motion. Id. at #39. On November 8, 2012, a hearing was held on HBC’s motion. On February 14, 2013, Judge Lee sent a letter to the parties explaining the parties would have until March 8, 2013, to file additional briefs. Id. at #45. On March 8, 2013, Sylvia Holst, Veneda Yeager, Gary Yeager, Michelle Riddle, Daniel Riddle, Jon Holst, and Karen Holst (“Holst”) filed a brief in opposition to HBC’s motion. Id. at #46. On March 12, 2013, HBC filed a

supplemental brief in support of its motion. Id. at #50. On March 13, 2013, Whiting Oil and Gas Corporation (“Whiting”) filed a brief in opposition to HBC’s motion. Id. at #52.

¶5 On April 1, 2013, the district court issued its order denying HBC’s motion to vacate the default judgment. Id. at #53. On May 24, 2013, HBC filed its notice of appeal. Id. at #56.

¶6

## STATEMENT OF THE FACTS

¶7 The facts of this case are undisputed, however, Peterson disputes the characterization of the facts as stated in HBC's brief. In ¶ 12 of its brief, HBC states 5505 Modoc Avenue was Jasmanka's wrong address. In ¶ 14 of its brief, HBC states "[t]here was not a single entry in the Memorandum of Title, other than the Notice of Lapse filed by Peterson in their attempt to gain the minerals, that lists Jasmanka's address of record as 5505 Modoc Avenue." To the contrary, the Memorandum of Title does contain the 5505 Modoc Avenue address. The 5505 Modoc Ave address is listed as Jasmanka's address on an oil and gas lease dated March 10, 1959, filed March 30, 1959, in book 333, page 304, and an oil and gas lease dated April 26, 1959, filed June 12, 1959, in book 343, page 4. See Docket #6, Memorandum of Title, p. 12, entries 2 and 4, see also Docket #35, HBC's Brief in Support of Motion to Vacate Default Judgment, Exhibit 9.

¶8 In ¶ 16 of its brief, HBC states "[t]hese [1959] leases were not part of the record before the trial court, . . . ." As discussed above, the 1959 leases executed by Jasmanka were part of the record before the district court. They were contained in the Memorandum of Title, which was filed with the district court on August 3, 1990, as Docket entry #6.

¶9 Peterson will further explain the facts underlying the 1990 notice of lapse and subsequent quiet title action. Jack M. Peterson and Eugene H. Peterson were the surface owners of the Property (as described in HBC's brief) when the dormant mineral claim was brought against Lester Jasmanka in 1990. Jasmanka retained a 50 percent mineral interest in the Property by virtue of a warranty deed dated September, 1952, and acknowledged on September 25, 1952.

¶10 Peterson published the notice of lapse for three consecutive weeks in the Mountrail County Promoter. See Docket #11, Affidavit of Charles L. Donlin, Exhibit 1. Peterson mailed the notice of lapse to Jasmanka at 5505 Modoc Ave, Richmond, CA 94802. Id. at Exhibit 2. As stated above, this address was shown of record in the Memorandum of Title. Peterson recorded the notice of lapse and affidavit of service of the notice in Mountrail County on February 16, 1990, as Document No. 276339. Id.

¶11 Peterson filed the quiet title action on March 29, 1990. Peterson was unable to personally serve Jasmanka, so the summons was published for three consecutive weeks in the Mountrail County Promoter. See Docket #5, Affidavit of Publication. Peterson also mailed the summons and complaint to Jasmanka's 5505 Modoc Ave Address. See Docket #4, Affidavit of Service by Mail. Jasmanka did not answer the complaint. Peterson obtained a default judgment quieting title to the severed mineral interest owned by Jasmanka on September 20, 1990. See Docket #14.



¶12

## LAW AND ARGUMENT

¶13 **I. The district court did not abuse its discretion when it concluded Peterson complied with the notice requirement of N.D.C.C. § 38-18.1-06.**

¶14 Under N.D.C.C. § 38-18.1-02, a mineral interest is deemed to be abandoned if it is unused for a period of twenty years immediately preceding the first publication of the notice of lapse. Title to the abandoned mineral interest vests in the owner of the surface estate in the land under which the mineral interest is located on the date of abandonment. Id.

¶15 Here, whether the mineral interest owned by Jasmanka was unused for the statutorily-mandated twenty years prior to the first publication of the notice of lapse is undisputed. It is also undisputed that Peterson complied with the publication requirements of N.D.C.C. § 38-18.1-06. HBC's sole argument regarding Peterson's compliance with N.D.C.C. § 38-18.1-06 is that the notice of lapse was sent to the wrong address.

¶16 Section 38-18.1-06, N.D.C.C., as it existed in 1990, set forth the process for a surface owner to succeed to a lapsed mineral interest:

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 interest;
  - 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 register of deeds 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. § 38-18.1-06 (*emphasis added*).

¶17 HBC argues Peterson did not comply with N.D.C.C. § 38-18.1-06(2) because the notice of lapse was not mailed to Jasmanka's 5506 Modoc Avenue address. HBC argues Peterson and the 1990 court relied on the 1952 warranty deed to establish Jasmanka's address; therefore, Peterson was required to mail the notice of lapse to the address shown on the 1952 warranty deed.

¶18 Section 38-18.1-06(2), N.D.C.C., only required Peterson to mail the notice of lapse to Jasmanka's address of record. Peterson mailed the notice of lapse to Jasmanka at 5505 Modoc Ave, Richmond, CA 94802. That address was on the records of the Mountrail County Register of Deeds; it was listed as Jasmanka's address on two oil and gas leases dated March 10, 1959, and April 26, 1959. The 1959 leases were included in the Memorandum of Title, which was part of the record in the 1990 quiet title action. Jasmanka's address from the 1959 leases was more current than his address from the 1952 warranty deed. Although there was another address of record, the statute did not require Peterson to mail the notice of lapse to both addresses. Peterson complied with N.D.C.C. § 38-18.1-06(2) by mailing the notice of lapse to Jasmanka's address of record.

¶19 HBC's claim that the 1952 warranty deed was relied on by Peterson and the 1990 court to establish Jasmanka's address is inaccurate. None of the documents in the record

before the 1990 court stated the 1952 warranty deed was used to establish Jasmanka's address. The 1952 warranty deed was not used to establish Jasmanka's address, it was used to show that Jasmanka owned a 50 percent mineral interest in the Property. Section 38-18.1-06(2) does not require a surface owner to mail the notice of lapse to a particular address; it only requires the notice to be mailed to the mineral interest owner's address of record. Peterson was not required to mail the notice of lapse to Jasmanka's address on the 1952 warranty deed. The district court did not abuse its discretion when it concluded Peterson complied with N.D.C.C. § 38-18.1-06(2) by mailing the notice of lapse to Jasmanka's address of record.

¶20 HBC appears to interpret the phrase "shown of record" as used in N.D.C.C. § 38-18.1-06(2) to mean the record before the district court. The "record" referred to in the statute is the record contained in the office of the recorder of the county in which the mineral interest is located. See also N.D.C.C. §§ 38-18.1-04(3), 38-18.1-05, 38-18.1-06(4). The procedure to succeed to the ownership of a lapsed mineral interest is not a judicial procedure. The statutes in N.D.C.C. Ch. 38-18.1 make no mention of the record before the district court. Under N.D.C.C. § 38-18.1-02, title to an abandoned mineral interest vests in the surface owner upon the first publication of the notice of lapse, not when a quiet title action is completed. A surface owner generally starts a quiet title action after he or she succeeds to an abandoned mineral interest under N.D.C.C. Ch. 38-18.1. See N.D.C.C. § 38-18.1-06.1(1) ("Upon completion of the procedure provided in section 38-18.1-06, the owner or owners of the surface estate may maintain an action in district court in the county in which the minerals are located and obtain a judgment in quiet title in the owner or owners of the surface

estate.”). In this case, having followed the procedure outlined in N.D.C.C. § 38-18.1-06, title to Jasmanka’s lapsed mineral interest vested in Peterson before the quiet title action. HBC’s interpretation of “record” is incorrect; the “record” as used in N.D.C.C. § 38-18.1-06(2) is not the record before the district court.

¶21 **II. The default judgment is not void due to a jurisdictional defect.**

¶22 HBC argues the quiet title default judgment is void because Peterson’s failure to serve the notice of lapse at Jasmanka’s 5506 Modoc address created a jurisdictional defect. HBC does not argue there was defective service of the summons and complaint. HBC only argues the notice of lapse was mailed to the wrong address; thus, the 1990 court did not acquire jurisdiction over Jasmanka. See ¶ 28 of HBC’s brief.

¶23 HBC appears to be blending the mailing requirement of N.D.C.C. § 38-18.1-06(2) with the service requirements of N.D.R.Civ.P. 4. Peterson complied with N.D.C.C. § 38-18.1-06(2) by mailing the notice of lapse to Jasmanka’s address of record. As discussed below, Peterson also complied with the service requirements of N.D.R.Civ.P. 4.

¶24 Peterson served the summons by publication under N.D.R.Civ.P. 4(e). Under N.D.R.Civ.P. 4(e)(4), a copy of the summons and complaint must also be mailed to the defendant at the defendant’s last reasonably ascertainable address. Peterson mailed the summons and complaint to Jasmanka’s 5505 Modoc Avenue address. According to the Memorandum of Title, the 5505 Modoc Avenue address was Jasmanka’s last reasonably ascertainable address of record in the relevant chain of title. The leases containing the 5505 Modoc Avenue address were dated over six years after the 1952 warranty deed was acknowledged. Peterson mailed the summons and complaint to Jasmanka’s last reasonably

ascertainable address; therefore, Peterson complied with the service requirements of N.D.R.Civ.P. 4, and HBC's jurisdictional argument is without merit.

¶25 **III. Peterson did not obtain the default judgment through fraud, misrepresentation, or misconduct.**

¶26 HBC argues Peterson obtained the quiet title judgment through fraud or misrepresentation. A movant under N.D.R.Civ.P. 60(b) must establish fraud or misrepresentation by clear and convincing evidence. Soli v. Soli, 534 N.W.2d 21, 23 (N.D. 1995). HBC supports its fraud argument by claiming five affidavits filed by Peterson and Peterson's attorney were false. See Docket #4, 9, 10, 11, and 17. HBC argues the affidavits were fraudulent because they stated Jasmanka's "only" address was 5505 Modoc Avenue.

¶27 Two of the affidavits do not state what HBC claims they do. Docket #4 is an affidavit of service by mail stating the summons and complaint were mailed to Jasmanka. The affidavit states the 5505 Modoc Avenue address was the "actual post office address" of Jasmanka. It does not state the address was Jasmanka's only address. Docket #9 is an affidavit of Jack M. Peterson. The affidavit does not state anything about Jasmanka's address.

¶28 Although Jasmanka had another address of record, the three affidavits stating the 5505 Modoc Avenue address was Jasmanka's only address should not be considered fraudulent. Peterson mailed the notice of lapse and quiet title documents to Jasmanka's last reasonably ascertainable address. Jasmanka's 5505 Modoc Avenue address was an address of record. Peterson did not state the documents were mailed to Jasmanka at an address that did not exist. Neither N.D.C.C. § 38-18.1-06(2) nor N.D.R.Civ.P. 4 required Peterson to

mail the documents to both addresses. Other than stating Jasmanka's "only" address was 5505 Modoc Avenue, HBC offers no further evidence Peterson was attempting to defraud anyone. This is not clear and convincing evidence of fraud or misrepresentation.

¶29 **IV. The finality of the default judgment should not be disturbed.**

¶30 The quiet title default judgment has been in effect for nearly 23 years, and has been relied on by many parties. A party seeking Rule 60(b) relief "bears the burden of establishing sufficient grounds for disturbing the finality of the decree, and relief should be granted only in exceptional circumstances." Johnson v. Bronson, 2013 ND 78, ¶ 34, 830 N.W.2d 595 (quoting Follman v. Upper Valley Special Educ. Unit, 2000 ND 72, ¶ 10, 609 N.W.2d 90). HBC has not established sufficient evidence to vacate the default judgment. HBC relies on inaccurate statements of fact in an attempt to show that Peterson did not comply with N.D.C.C. § 38-18.1-06. The record shows Peterson did comply with N.D.C.C. § 38-18.1-06. Default judgment was appropriate because Peterson, having properly followed all statutory procedures, succeeded to the mineral interest owned by Jasmanka, the record owner at the time of the first publication of the notice of lapse. The default judgment should not be disturbed.

¶31

## CONCLUSION

¶32 For the reasons explained in this brief, Peterson requests the Court to affirm the district court's order denying HBC's motion to vacate the judgment.

Dated this 15th day of September, 2013.

OLSON & BURNS P.C.



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Richard P. Olson (ID #03183)  
Andrew T. Forward (ID #06348)  
Attorneys for Plaintiffs/Appellees  
17 First Avenue SE  
PO Box 1180  
Minot, ND 58702-1180  
(701) 839-1740  
[rpolson@minotlaw.com](mailto:rpolson@minotlaw.com)  
[atforward@minotlaw.com](mailto:atforward@minotlaw.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on September 17, 2013, I served the foregoing BRIEF OF APPELLEES on the following by electronic mail transmission, pursuant to N. D. Sup. Ct. Admin. Order 14(D):

Joshua A. Swanson  
[jswanson@vogellaw.com](mailto:jswanson@vogellaw.com)

H. Patrick Weir, Jr.  
[hpweir@vogellaw.com](mailto:hpweir@vogellaw.com)

Charles L. Neff  
[cneff@nefflawnd.com](mailto:cneff@nefflawnd.com)

Zacharey E. Pelham  
[zep@pearce-durick.com](mailto:zep@pearce-durick.com)

Sandra B. Dittus  
[sandradittus@northdakotalaw.net](mailto:sandradittus@northdakotalaw.net)

John W. Morrison  
[jmorrison@crowleyfleck.com](mailto:jmorrison@crowleyfleck.com)

I also certify that copies of the BRIEF OF APPELLEES were served via U.S. Mail on the following:

Yvonne Hilbern  
4724 NE 107<sup>th</sup>  
Portland, OR 97220

Robert E. Zimmerman, Jr.  
PO Box 570174  
Houston, TX 77257

Montana Oil Properties, Inc.  
PO Box 3194  
Billings, MT 59103

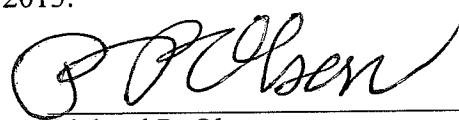
ZRC Minerals, LP  
PO Box 570174  
Houston, TX 77257-0174

Billie C. Blake  
2121 South Pantano Rd., #16  
Tucson, AZ 85710

Cody Oil & Gas Corporation  
PO Box 597  
Bismarck, ND 58502

Albert G. Metcalfe III  
550 West Texas, Suite 640  
Midland, TX 79701-4241

Dated this 17<sup>th</sup> day of September, 2013.



Richard P. Olson