

**SUPREME COURT
OF THE
STATE OF NORTH DAKOTA**

Supreme Court No. 20160319

Craig and Barbara Sorenson,

Plaintiffs/Appellees,

vs.

**Bakken Investments LLC, Creeping Cedar Oil, LLC,
XTO Energy, Inc., Black Stone Minerals Co., LP, Pierce
Exploration and Production Corp., Emile-Jean, Baesch-
Muller, Ann-Marie Kienz Baesch, Milton S. Olson,
Palmer and Doris Norby, Donald Karst, Wendell and
Carole Tasker, Neal "Tuke" P. Burgess as Personal
Representative for the Estate of Alan D. Burgess, Neal
Burgess, Claire and Lois Bjorgen, William R. Anderson,
LEAF Minerals, LLC, Ryan Masset, Peter Masset,
Tricia Steffan, Kristi Anseth, Jay Anseth, Siri Njos,
Avalon North, LLC, Red Rhino Resources, LLC,
Dakota West Energy, Stallings Properties Ltd., Joe Gieb
III, Sara Gieb, Peggy Helphrey, Wayne Sorenson,
Richard Cernosek, Sacred Heart Church, Cyrill Kallus,
Elizabeth Kallus, Marilyn Kallus Kothmann, Mike
Kulhanek, Harry Mazurkiewicz, Joseph Hild, Gus
Lindemann, David Machala, Kenneth Stevenson,
William Everett, Danny Gumm, Randy Gumm, Bryan
Gumm, Bakken Oil LLC, Sundance Oil and Gas, LLC,
Albert Frisch, Madeline Frisch, Marie Louise Frisch,
Continental Resources, Inc., Newfield Production Co.,
Ashley Resources, Inc., Kodiak Oil and Gas, North
Plains Energy, LLC, Maitre Fabienne Mondot, Theresa
Pryor, and persons unknown claiming any estate of
interest in, or lien or encumbrance upon, the mineral
acres described in the complaint,**

and

Defendants,

**William Everett, Sara A. Gieb, Marilyn Kallus
Kothmann, Elizabeth A. Kallus, Richard Cernosek,
Bryan Gumm, Randy Gumm, Gus F. Lindemann, Harry
Mazurkiewicz, David F. Machala, Joe Gieb III, Stallings
Properties Ltd., Joseph C. Hild, Mike Kulhanek and
Kenneth Stevenson,**

Defendants/Appellants.

APPELLANTS' REPLY BRIEF

**Appeal from the Order granting summary judgment
dated January 11, 2016, and
Judgment entered January 29, 2016
District Court of McKenzie County
Northwest Judicial District
The Honorable David W. Nelson
Civil Case No. 27-2012-CV-74**

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LAW AND ARGUMENT

[1] Appellants, William Everett, Sara Alexander Gieb, Marilyn Kallus Kothmann, Elizabeth Anne Kallus, Richard Cernosek, Bryan Gumm, Randy Gumm, Gus F. Lindemann, Harry Mazurkiewicz, David F. Machala, Joe Gieb III, Stallings Properties Ltd., Joseph C. Hild, Mike Kulhanek, and Kenneth Stevenson (hereinafter the “Fifteen Defendants”) submit the following Reply requesting that this Court reverse the District Court’s Order denying the Fifteen Defendants’ Motion for Summary Judgment and granting Appellees Craig and Barbara Sorenson’s (“Sorensens”) Cross-Motion for Summary Judgment and the corresponding Judgment and remand for judgment in favor of the Fifteen Defendants.

A. The Fifteen Defendants have standing to challenge Sorensens’ interests in the Subject Minerals.

[2] Sorensens contend that the Fifteen Defendants do not have standing to challenge Sorensens’ interest in the Subject Minerals because the Fifteen Defendants do not have any interest, right, or title in the minerals. Sorensens argue that in the District Court’s Order and Judgment, it confirmed the validity of the Sorenson 1 Stipulations whereby the Fifteen Defendants voluntarily disclaimed any interest they may have had in the minerals. Sorensens also argue that the Fifteen Defendants did not appeal this issue and therefore this Court must accept the District Court’s decision that the Fifteen Defendants have no interest in the minerals. This argument is without merit. At the time of the action, the Fifteen Defendants had standing to dispute Sorensens’ claims for quiet title because they had an interest in the Subject Minerals and were named defendants in the action by Sorensens. Sorensens brought this action to quiet title because they believed they had an interest in the Subject Minerals pursuant to N.D.C.C. Ch. 38-18.1. This was the main

dispute between the parties. The Fifteen Defendants are now appealing the District Court's Order and Judgment quieting title to the Subject Minerals in favor of the Sorensons' as against the Fifteen Defendants.

[3] Sorensons brought this action to quiet title and named the Fifteen Defendants as defendants because the Fifteen Defendants had an ownership interest in the Subject Minerals. In its Partial Judgment, the District Court explained "[t]hat by Order for Adjudication of Intestacy and Determination of Heirs dated August 5, 2013, the McKenzie County District Court determined Theresa R. Pryor died intestate" and listed the sole living heirs of Theresa R. Pryor at the time of her death. (App. 36, ¶5). The District Court acknowledged that the Fifteen Defendants had a 4.637318% ownership interest in the Subject Minerals "via mesne conveyances and stipulation." (App. 38, ¶12). The District Court further explained that Sorensons continued to assert they were entitled to the 4.637318% interest of the Subject Minerals "purportedly disclaimed" by the Fifteen Defendants in Sorenson 1. (App. 40, ¶ 19). Finally, the District Court dismissed Sorensons' claims to the Subject Minerals, with the exception of any claim to the Subject Minerals in dispute between Sorenons and the Fifteen Defendants and any claims to the interests acquired by Alice Sorensons through Marcus Lee. (App. 43, ¶23).

[4] In its Order for Judgment and Partial Judgment, the District Court did not determine that the Fifteen Defendants, in fact, disclaimed any interest in the Subject Minerals through the Stipulations in Sorenson 1. The District Court acknowledged that the Fifteen Defendants had an ownership interest in the Subject Minerals and merely reiterated what the Sorenson 1 Stipulations stated. The record establishes that the Fifteen Defendants had an ownership interest in the Subject Minerals at the time Sorensons brought their action in

Sorenson 2. If the Fifteen Defendants did not have any interest, Sorensons would not have had to include them in their Complaint.

[5] Sorensons argue that because the District Court determined in its Order granting summary judgment that the “previously entered Judgments against the Fifteen Defendants remain as entered” strips the Fifteen Defendants of any right to challenge Sorensons’ ownership interests in the Subject Minerals. However, the Fifteen Defendants are appealing the District Court’s Order and Judgment quieting title to the Sorensons based solely on the Stipulations and Judgments which the Fifteen Defendants argue were misinterpreted by the District Court in Sorenson 2.

[6] To claim that the Fifteen Defendants lack standing to appeal the ruling in this case is illogical. By being parties to the action, they by nature have standing to appeal the ruling. The Fifteen Defendants, have a real interest in this cause of action and have an equitable right, title, or interest in the subject matter of this controversy and therefore have standing to appeal the District Court’s Order and Judgment quieting title to Sorensons.

B. The issues raised in this appeal are properly before the Court because the Fifteen Defendants raised these same issues before the District Court.

[7] On September 26, 2016, the Fifteen Defendants filed a notice of appeal. (App. 69-70). The notice indicated that the Fifteen Defendants were appealing the Order entered January 11, 2016, which denied the Fifteen Defendants’ Motion for Summary Judgment and granted Sorensons’ Cross-Motion for Summary Judgment and also appealing the Judgment entered January 29, 2016, which quieted title to the Subject Minerals in favor of Sorensons as against the Fifteen Defendants. (Id.) In its Appellate Brief, the Fifteen Defendants argue that the District Court erred as a matter of law for two reasons. First, the District Court erred because it relied solely on the Sorenson 1 Stipulations and

corresponding Judgments in making its decision even though the Sorenson 1 Stipulations and the corresponding Judgments did not convey the Fifteen Defendants' interest in the Subject Minerals to Sorensons, nor did they reflect that the Fifteen Defendants disclaimed any interest they had in the Subject Minerals. Second, the District Court erred as a matter of law because in its Cross-Motion for Summary Judgment, Sorensons failed to provide sufficient evidence that they complied with the lapsed mineral procedures required under N.D.C.C. Ch. 38-18.1, specifically, that they failed to provide any evidence that the Subject Minerals were abandoned.

[8] Sorensons insist that the Fifteen Defendants raised only a single issue to the District Court in its Motion for Summary Judgment – “the validity of the Stipulations [the Fifteen Defendants] entered into whereby they disclaimed any interest they have had in the minerals.” (Appellees’ Brief, ¶ 12). Thus, Sorensons argue that the two arguments raised by the Fifteen Defendants on appeal, were not properly raised before the District Court and therefore are barred from raising them on appeal. Sorensons’ argument is without merit.

[9] It is well established law, that this Court will only consider issues that were first presented to the district court, and, “if a party fails to properly raise an issue or argument before the district court, the party is precluded from raising that issue or argument on appeal.” Betz v. Hirsch (In re Hirsch), 2009 ND 135, ¶ 12, 770 N.W.2d 225 (quoting Rutherford v. BNSF Ry. Co., 2009 ND 88, ¶ 13, 765 N.W.2d 705. The rationale for the rule is that it would be “fundamentally unfair to fault the trial court for failing to rule correctly on an issue it was never given the opportunity to consider.” Gonzalez v. Tounjian, 2003 ND 121, ¶ 31, 665 N.W.2d 705 (quoting Messer v. Bender, 1997 ND 103, ¶ 10, 564 N.W.2d 291.

[10] Sorensons contend that the sole issue before the District Court in Sorenson 1 “was [the Fifteen Defendants’] claim that the Judgments entered against them should be set aside because they mistakenly entered into the Stipulations.” (Appellee’s Brief, ¶ 15). However, Sorensons fail to accurately reflect the issues and arguments that were in the parties’ competing motions for summary judgment and before the District Court. Sorensons’ claims against the Fifteen Defendants in Sorenson 2 were based on Sorensons obtaining relief under N.D.C.C. Ch. 38-18.1. The Fifteen Defendants moved for summary judgment and opposed Sorenson’s Cross-Motion for Summary Judgment for multiple reasons. One of the arguments, was in fact, that the Fifteen Defendants mistakenly entered into the Stipulations in Sorenson 1. However, this was not the only argument presented to the District Court. The Fifteen Defendants also argued that Sorensons were not entitled to the Subject Minerals because Sorensons’ claims against them were based solely on the Sorenson 1 Stipulations and Judgments which the Fifteen Defendants argued did not convey or award Sorensons with any interest in the Subject Minerals. See (ROA #171 at pp. 5-6; ROA #186 at pp. 2-3). The Fifteen Defendants further argued that Sorensons did not have any substantive claim to the Subject Minerals because they failed to prove that they had satisfied all of the lapsed mineral requirements under N.D.C.C. Ch. 38-18.1. See (ROA #171 at p. 6; ROA #186 at p. 3).

[11] Although the Fifteen Defendants presented both of these arguments to the District Court in its Motion for Summary Judgment and response to Sorensons’ Cross Motion for Summary Judgment, the District Court did not address either one of the issues in its Order granting Sorensons summary judgment. Instead the District Court stated “I find the Plaintiff’s brief persuading and accordingly GRANT Summary Judgment in favor of the

Plaintiffs.” (App. 44 at ¶2). After Judgment was entered, the Fifteen Defendants again raised these same issues before the District Court in a Motion for Reconsideration. See (ROA# 192 at ¶¶ 4-5, 9). Again, the District Court denied the Motion for Reconsideration without addressing either of the issues. (App. 50).

[12] Sorensons argument that the only issue raised before the District Court was the validity of the Sorenson 1 Stipulations is misguided. The Fifteen Defendants raised multiple issues and arguments in their Motion for Summary Judgment, response to Sorensons’ Cross-Motion for Summary Judgment and Motion for Reconsideration, including the issues raised by the Fifteen Defendants in this appeal. Therefore, the Fifteen Defendants should not be precluded from now raising them on appeal. Hirsch 2009 ND 135, ¶ 12.

CONCLUSION

[13] Sorensons, as Plaintiffs, had the burden to prove that as a matter of law they were entitled to the Subject Minerals that were owned by the Fifteen Defendants. In its Cross-Motion for Summary Judgment and in their Appellate Brief, Sorensons rely solely on the Sorenson 1 Stipulations and the corresponding Judgments in support of their argument. However, the Sorenson 1 Judgments which the District Court relied upon in granting Sorensons’ Cross-Motion for Summary Judgment did not convey the Subject Minerals to Sorensons. Furthermore, nothing in the record in Sorenson 1 or Sorenson 2 established that Sorensons had any other legal right to the Subject Minerals owned by the Fifteen Defendants. As Sorensons pointed out in their Appellee Brief, “[i]t is the settled law in this state that a plaintiff in an action to determine adverse claims must recover, if at all, on the strength of his own title and not on the weakness of the title of his adversary.” State v.

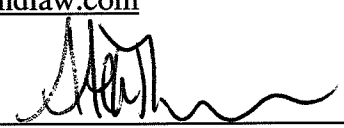
Rosenquist, 78 N.D. 671, 51 N.W.2d 767 , 788 (1952). Sorensons failed to provide any proof that the Subject Minerals were abandoned as required by N.D.C.C. §38-18.1-02. Therefore, the District Court erred as a matter of law in granting Sorensons summary judgment and quieting title to the Subject Minerals as against the Fifteen Defendants.

[14] The Fifteen Defendants respectfully request this Court reverse and remand for judgment in favor of the Fifteen Defendants as a matter of law.

Dated this 19th day of January, 2017.

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IN THE SUPREME COURT
STATE OF NORTH DAKOTA

AFFIDAVIT OF SERVICE

Supreme Court No. 20160319
McKenzie County Court No. 2012-CV-00074

Craig and Barbara Sorenson,

Plaintiffs/Appellees,

vs.

Bakken Investments LLC, Creeping Cedar Oil, LLC,
XTO Energy, Inc., Black Stone Minerals Co., LP,
Pierce Exploration and Production Corp., Miriam
Philippe-Reuter, Emile-Jean, Baesch-Muller, Ann-
Marie Kienz Baesch, Milton S. Olson, Palmer and
Doris Norby, Donald Karst, Wendell and Carole
Tasker, Alan Burgess, Neal Burgess, Claire and
Lois Bjorgen, William R. Anderson, Ryan Masset,
Peter Masset, Tricia Steffan, Kristi Anseth, Jay
Anseth, Siri Njos, Avalon North, LLC, Red Rhino
Resources, LLC, Dakota West Energy, Stallings
Properties Ltd., Joe Gieb III, Sara Gieb, Peggy
Helphrey, Wayne Sorenson, Richard Cernosek,
Sacred Heart Church, Cyrill Kallus, Elizabeth
Kallus, Marilyn Kallus Kothmann, Mike Kulhanek,
Harry Mazurkiewicz, Joseph Hild, Gus Lindemann,
David Machala, Kenneth Stevenson, William Everett,
Danny Gumm, Randy Gumm, Bryan Gumm, Bakken Oil
LLC, Sundance Oil and Gas, LLC, Albert Frisch,
Madeline Frisch, Marie Louise Frisch, Continental
Resources, Inc., Newfield Production Co., Ashley
Resources, Inc., Kodiak Oil and Gas, LEAF Minerals,
LLC, North Plains Energy, LLC, Maitre Fabienne
Mondot, Theresa Pryor, and persons unknown
claiming any estate of interest in, or lien or
encumbrance upon, the mineral acres described in
the Complaint,

Defendants,

and

William Everett, Sara A. Gieb, Marilyn Kallus
Kothmann, Elizabeth A. Kallus, Richard Cernosek,
Bryan Gumm, Randy Gumm, Gus F. Lindemann, Harry
Mazurkiewicz, David F. Machala, Joe Gieb III,
Stallings Properties Ltd., Joseph C. Hild, Mike
Kulhanek and Kenneth Stevenson,

Defendants/Appellants.

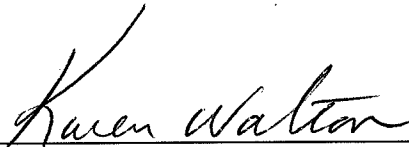
STATE OF NORTH DAKOTA)
 :SS
COUNTY OF STARK)

EBELTOFT
SICKLER
LAWYERS

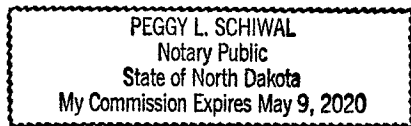
[1] Karen Walton, being duly sworn on oath, deposes and states that she is of legal age and that on January 19, 2017 she served **APPELLANTS' REPLY BRIEF** in the above matter electronically as follows:

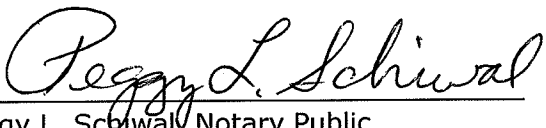
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Dated this 19th day of January, 2017.


Karen Walton

Subscribed and sworn to before me this 19th day of January, 2017.




Peggy L. Schiwal, Notary Public