20170034
FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT
JULY 7, 2017
STATE OF NORTH DAKOTA

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

In the Matter of the Estate of Leonhard F. Feldmann, Deceased - - - - - Gerald O. Feldmann, Former Personal Representative and Personal Representative of the Estate of Dena Feldmann, Petitioner and Appellee, v. Shannon Evans, Respondent and Appellant, and, Karlice E. Valencia, Dena Feldmann, deceased; American Trust Center, Successor Personal Representative, Respondents and Appellees.	**Supreme Court No: 20170034** **Golden Valley County Case No. 17-2011-PR-28**

BRIEF OF PETITIONER AND APPELLEE GERALD O. FELDMANN, INDIVIDUALLY

APPEAL FROM THE MEMORANDUM OPINION FILED DECEMBER 8, 2016, AND ORDER APPROVING THE INVENTORY AND APPRAISEMENT AND PROPOSED DISTRIBUTION OF ESTATE ASSETS FILED DECEMBER 30, 2016, BY THE GOLDEN VALLEY COUNTY DISTRICT COURT, SOUTHWEST JUDICIAL DISTRICT, HONORABLE RHONDA R. EHLIS.

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Paragraph No.

Cases

Statutes

Rules

I. STATEMENT OF THE ISSUES

[¶ 1] Whether the district court was clearly erroneous when it found that farm machinery once owned by decedent during his life was gifted to Gerald O. Feldmann prior to death of Leonhard O. Feldmann.

[¶ 2] Whether the district court abused its discretion when it found that proceeds from grain standing in the field on the date of decedent's death goes with the real estate that was devised to Gerald O. Feldmann in the will of Leonhard F. Feldmann.

II. STATEMENT OF THE CASE

[¶ 3] This is an appeal by Shannon Evans (hereinafter "Shannon") from the Order Approving the Inventory and Appraisements and Proposed Distribution of Estate Assets entered by the Southwest District Court, on December 30, 2016, reflecting the court's findings in its Memorandum Opinion dated December 8, 2016, granting the petition brought by American Bank Center as Personal Representative of the Estate of Leonhard F. Feldmann.

[¶ 4] A hearing was held on October 25, 2016, on the Personal Representative's petition. The district court took testimony and evidence during the hearing and allowed the parties to brief their closing arguments. After hearing testimony, reviewing evidence submitted and reviewing the post-hearing briefs of closing arguments submitted by counsel, the court rendered its decision.

[¶ 5] The district court found that the farm machinery was not part of the residual estate because it was transferred years prior to decedent's death in 2011 and was not decedent's asset as of the time of his death. The court approved the Amended Inventory and Appraisement excluding farm machinery and reflecting the court's finding. This Court should uphold the lower court's ruling as it was not clearly erroneous.

[¶ 6] The district court found that a portion of decedent's grain had been harvested from the real estate at the time of his death in 2011, that the value of that severed grain was $2,450.70, and that said severed grain is part of the residual estate. The court concluded that the remaining grain valued at $55,821.96 that was still standing in the field at the time of decedent's death was considered part of the real estate, and thus

went with the real estate given to the devisee in accordance with decedent's will. This Court should also find that the district court did not abuse its discretion in awarding the 2011 wheat crop proceeds to the devisee who received the crop land in decedent's will. The district court applied the proper legal precedent to the facts of this case. This Court should uphold this ruling as the district court did not abuse its discretion.

III. STATEMENT OF THE FACTS

[¶ 7] Leonhard F. Feldmann (hereinafter, the "Leonhard") died testate on September 4, 2011, at 93 years of age leaving one son, Gerald O. Feldmann (hereinafter, "Gerald"), and two daughters, Shannon Evans (hereinafter, "Shannon") and Karlice Valencia (hereinafter, "Karlice"). Appellant's App. 1-2.

[¶ 8] Leonhard executed his Last Will and Testimony on November 20, 2007. Appellant's App. 16-21. Pursuant to Article V of Leonhard's will, Gerald received described real property owned by Leonhard valued at approximately $240,000. Appellant's App. 17, Appellant's App. 22-24.

[¶ 9] Pursuant to Article VI, Leonhard gave "all of the rest of my property, of whatever character, to which I or my estate is in anyway entitled at the time of my death, hereafter referred to as my 'Residuary Estate', to my daughters: Shannon Feldmann Evans . . . and Carlice Feldmann Valencia . . . in equal shares and share alike." Appellant's App. 18. Leonhard's remaining other real property valued at valued at $157,50,0 along with personal property valued at $944,443, made up the residuary estate to be divided equally between Shannon and Karlice. Appellant's App. 22-24.

[¶ 10] On September 20, 2011, Leonhard's Last Will and Testament (hereinafter, the "will") was submitted to the district court by his son, Gerald. Appellant's Br. ¶ 11. At this

time, Gerald also filed his Application for Informal Probate of Will and Appointment of Personal Representative. Appellant's Br. ¶ 11.

[¶ 11] The district court issued Letters Testamentary appointing Gerald as Personal Representative of the Estate of Leonhard Frederick Feldmann. Appellant's Br. ¶ 12.

[¶ 12] On March 22, 2012, Gerald, as Personal Representative, signed an Inventory and Appraisement containing "all the property owned by the decedent at the time of his death on September 4, 2011, so far as is known to the personal representative." (hereinafter, "first Inventory"). Appellant's App. 22-24. Shortly thereafter, Shannon objected to the first Inventory taking the position that it did not include all of the machinery and farm equipment Leonhard owned at his death. Appellant's Br. ¶ 13.

[¶ 13] On October 25, 2012, Gerald signed a second Inventory and Appraisement (hereinafter, "second Inventory"). Appellant's App. 25-28.

[¶ 14] On November 13, 2012, Karlice executed a Bill of Sale in favor of Shannon, which transferred Karlice's ownership in "All personal property including tools, machinery, and remaining household goods from the Estate of Leonard F. Feldmann." Appellant's App. 31.

[¶ 15] On February 25, 2016, following Shannon's Petition to Remove Personal Representative for Breach of Fiduciary Duty and Conflict of Interest, Gerald agreed to resign as Personal Representative, and all parties stipulated to the appointment of American Trust Center, Dickinson, North Dakota as Successor Personal Representative. Appellant's Br. ¶ 18.

[¶ 16] On February 26, 2016, Successor Letters Testamentary were issued appointing Russell R. Murphy, American Trust Center, as Successor Personal Representative. Appellant's Br. ¶ 19.

[¶ 17] On October 25, 2016, the district court held a hearing regarding a final Inventory and Appraisement for Leonhard's estate and the proposed distribution of estate assets. Appellant's Br. ¶ 20. At the hearing, a final Inventory and Appraisement was submitted by American Trust Center as Personal Representative for the Estate of Leonhard Frederick Feldmann (hereinafter, "final Inventory"). Appellant's App. 11-13.

IV. STANDARD OF REVIEW

[¶ 18] Appellant argues the district court was clearly erroneous when it found Leonhard had gifted farm equipment and machinery to Gerald prior to Leonhard's death. Appellant's Br. ¶ 25. "Findings of fact… whether based on oral or other evidence, must not be set aside unless clearly erroneous, and the reviewing court must give due regard to the trial court's opportunity to judge the witnesses' credibility." N.D.R.Civ.P. 52. The district court's decision will only be set aside on appeal if "it is induced by an erroneous view of the law, no evidence exists to support it, or, on the entire record, we are left with a definite and firm conviction a mistake has been made." Vandal v. Leno, 2014 ND 45, ¶ 6, 843 N.W.2d 313 (emphasis added) (citing Smith v. Martinez, 2011 ND 132, ¶ 3, 800 N.W.2d 304); SNAPS Holding Company v. Leach, 2017 ND 140, ¶ 19, 895 N.W.2d 763 (citing Lagerquist v. Stergo, 2008 ND 138, ¶ 10, 752 N.W.2d 168).

[¶ 19] "A finding of fact is clearly erroneous if it is induced by an erroneous view of the law, if there is no evidence to support it, or it, after reviewing all the evidence, we are left with a definitely and firm conviction a mistake has been made." In re Estate of Loomer,

2010 ND 93, 2010 ND 93, ¶18, 782 N.W.2d 648, 653 (quoting Higgins v. Trauger, 2003 ND 3, 10, 656 N.W.2d 9).

[¶ 20] "The credibility of witnesses and the weight to be given their testimony is for the trier of fact" and not the appellate court. Klundt v. Pfeifle, 77 N.D. 132, 140, 41 N.W.2d 416, 420 (1950). Under the clearly erroneous standard, the Court does "not reweigh evidence, reassess witness credibility, retry a custody case, or substitute [the Court's] judgment for the trial court's decision merely because this Court may have reached a different result." Hammeren v. Hammeren, 2012 ND 225, ¶ 8, 823 N.W.2d 482 (citing Morris v. Moller, 2012 ND 74, ¶ 5, 815 N.W.2d 266; Miller v. Mees, 2011 ND 166, ¶ 12, 802 N.W.2d 153). The Court "defer[s] to the district court's opportunity to observe and assess the credibility of witnesses." Heinle v. Heinle, 2010 ND 5, ¶ 19, 777 N.W.2d 590 (quoting Dronen v. Dronen, 2009 ND 70, ¶ 12, 764 N.W.2d 675).

[¶ 21] "[W]hen the trial judge acts as the finder of fact, and where there is conflicting testimony, the trial judge is the ultimate arbiter of the credibility of the witnesses. Peterson v. Hart, 278 N.W.2d 133, 136 (N.D. 1979). When more than one reasonable inference can be drawn from the credible evidence, the reviewing court must accept the inference drawn by the trier of fact." Peterson, 278 N.W.2d at 136 (citing Bank of Sun Prairie v. Opstein, 273 N.W.2d 279, 282 (Wis. 1979)). The trial court is the judge of the credibility of the witnesses and the weight to be given their testimony. Peterson, 278 N.W.2d at 136. The trial court alone can observe the witnesses, judge their qualifications, appraise their credibility, and resolve the conflicts in the evidence. Id. When there is substantial evidence upon which the decision might have gone either way, it necessarily follows that a decision either one way or the other cannot be clearly

erroneous. Id. It is thus not sufficient to show that there is substantial evidence, which, if believed by the fact finder, would support the appellant's point of view. Id. Hence, "[a] choice between two permissible views of the weight of the evidence is not clearly erroneous." Hammeren, 2012 ND 225, ¶ 8, 823 N.W.2d 482 (citing Duff v. Kearns-Duff, 2010 ND 247, ¶ 5, 792 N.W.2d 916); Vandal, 2014 ND 45, ¶ 6, 843 N.W.2d 313.

[¶ 22] Appellant further argues that the district court abused its discretion when it awarded the proceeds from the 2011 standing grain crop to Gerald. Appellant's Br. ¶ 7. This Court reviews a district court's "determination of discretionary matters under an abuse of discretion standard." Kauk v. Kauk, 2017 ND 118, ¶ 10, 895 N.W.2d 295. A district court "abuses its discretion when its acts in an arbitrary, unreasonable, or unconscionable manner, or when it misinterprets or misapplies the law." Mid Dakota Clinic P.C. v. Livengood, 2017 ND 99, ¶ 6, 892 N.W.2d 888 (quoting Norberg v. Norberg, 2017 ND 14, ¶ 7, 889 N.W.2d 889). "An abuse of discretion by the district court is never assumed, and the burden is on the complaining party to affirmatively establish an abuse of discretion." In re Estate of Cashmore, 2010 ND 159, ¶ 21, 787 N.W.2d 261. The Appellant must show more than that the district court "made a 'poor' decision, but that it positively abused the discretion it has." Id.

V. LAW AND ARGUMENT

[¶ 23] This Court is presented with two issues. The first issue is whether certain farm equipment claimed by Gerald should be considered property of the estate or whether it is Gerald's separate property. The second issue is whether the proceeds from the sale of un-severed grain crop should be distributed to Gerald as part of the specific devise of the real property upon which the unharvested crop stood on the date of decedent's death.

A. The district court was not clearly erroneous in ruling that that farm machinery was gifted to Gerald O. Feldmann prior to death of Leonhard F. Feldmann and should be excluded from Estate inventory

[¶ 24] The district court was not clearly erroneous when it found that Leonhard gifted the farm equipment Gerald prior to Leonhard's death. Gerald argues that he owns certain specified items included on the March 23, 2012 Inventory filed with the district court, Appellant's App. 22-24, as well as specified items included on the unfiled Inventory dated October 25, 2012, Appellant's App. 25-28. Gerald argues that those items were transferred to him by his father prior to Leonhard's death under their informal agreement regarding the farm. See Pet. Hr'g Tr. 75:18-24, Oct. 25, 2016. Shannon argues that all of the farm equipment listed on the inventories should be included in the residue of the estate. However, at the October 25, 2016 hearing, Karlice testified contrary to her own self-interest as an equal devisee of the residue that Leonhard gave his farm machinery to Gerald prior to his death. Pet. Hr'g Tr. 13:15-19, 19:3-12.

[¶ 25] Karlice testified that she based her opinion on her conversations with her father, and in particular, one conversation in 2009 that she overheard when her father was talking to Gerald on the phone about some of the equipment. See Pet. Hr'g Tr. 17:21-25. After talking to Gerald, Leonard told Karlice that the equipment was "all Gerald's now." Pet Hr'g Tr. 22:11-15; see Pet. Hr'g Tr. 28:6-11. Karlice testified that she believed that it was her father's intent that Gerald receive all farm equipment, Pet. Hr'g Tr. 24:23-25, and that she believed the farm equipment belonged to Gerald at the time of their father's death, Pet. Hr'g Tr. 13:15-19.

[¶ 26] Karlice stated that she had read a separate handwritten list of equipment that was to go to Gerald that was part of Leonhard's Will, and that her father confirmed that the equipment belonged to her brother Gerald. Pet. Hr'g Tr. 19:5-12. However, Karlice stated

that version of her father's Will was never found and believes it may have been destroyed. Pet. Hr'g Tr. 19:14-17, 20:2-15; 21:2-3. Leonhard's handwritten list disappeared as well. Pet. Hr'g Tr. 19:9.

[¶ 27] Shannon gave to Gerald the decedent's will that Gerald filed with the district court. Pet. Hr'g Tr. 79:16-18. Tellingly, no handwritten list accompanied the will Shannon provided for filing. Pet. Hr'g Tr. 79:16-21; 80:6-18.

[¶ 28] Karlice acknowledged that she signed a Bill of Sale purportedly assigning her interest in the farm equipment to her sister, Shannon. Pet. Hr'g Tr. 15:1-7; see Appellant's App. 34-39. Karlice testified that she signed this Bill of Sale as part of a settlement to try to resolve the dispute between Shannon and Gerald, not because she believed the equipment should be part of the estate. Pet. Hr'g Tr. 15:6-16:5. The agreement between Shannon and Karlice was that in exchange for Karlice assigning the equipment and other estate property to Shannon, Shannon was to give the equipment to Gerald to resolve their dispute. Pet. Hr'g Tr. 15:9-13. Shannon not only accepted consideration from Karlice and failed to follow through on the purported agreement with Karlice, Shannon now essentially seeks to have Gerald's farm machinery given to her.

[¶ 29] At the Hearing on October 25, 2016, Gerald provided testimony that the only reason why the farm machinery was listed on the Decedent's tax returns was because they were already fully depreciated and it was merely an oversight not have removed them. It also makes sense that Gerald would not add this property to his depreciation schedules because it came to him with a zero ($0) basis and there was nothing to deduct on his returns. The tax returns, even if they had been admitted into evidence, do not in and of themselves demonstrate ownership on the date of death. The most

persuasive evidence of ownership of the farm machinery is the testimony of Gerald and Karlice that the farm machinery was in fact transferred to Gerald prior to Decedent's death. See Pet. Hr'g Tr. 13:15-19, 19:3-12. Karlice's testimony is especially persuasive because it goes against her own economic self-interest. The district court's determination that the farm machinery belongs to Gerald actually reduces the value of Karlice's inheritance.

[¶ 30] Gerald testified about the 2004 agreement with Leonhard under which Gerald was given all the farm machinery in exchange for Leonhard retaining all proceeds of any crops grown on Leonard's land. Pet. Hr'g Tr. 69:10-12; see also Pet. Hr'g Tr. 73:17-22; Pet. Hr'g Tr. 75:25-76:3. Gerald stated this was the agreement he had with his father since at least 2004, Pet. Hr'g Tr. 75:18-24, which was approximately when Leonard retired and Gerald did nearly all the farm work, see Pet. Hr'g Tr. 69:8-10. Gerald paid for all maintenance on the equipment, Pet. Hr'g Tr. 76:4-18, and treated the equipment as his property after that time, Pet. Hr'g Tr. 76:22-77:1. Gerald has not charged the estate for any repairs to the equipment since his father's death. Pet. Hr'g Tr. 76:19-21.

[¶ 31] While acting as Personal Representative, Gerald did sign and file an Inventory listing the equipment he now claims is his property. Appellant's App. 22-24. Gerald also signed an Inventory dated October 25, 2012, that included the disputed equipment, but this Inventory was never filed. Appellant's App. 25-28. Gerald testified that he did not agree with either versions of the Inventory that were prepared by his prior attorney, but felt obligated to sign them. Pet. Hr'g Tr. 64:6-12. Gerald also testified that he never authorized his prior attorney to send a written offer to purchase the disputed equipment to Shannon's attorney. Pet. Hr'g Tr. 65:21-66:7. Gerald did acknowledge making a later

offer to try settling this dispute, but believed he was effectively buying the equipment twice by doing so. Pet. Hr'g Tr. 5-8.

[¶ 32] Russ Murphy testified that after reviewing all the probate information he received and speaking with Gerald and Leonard's accountant, he was unable to determine what the agreement was between Gerald and Leonard with the respect to the equipment or the farming operation. Pet. Hr'g Tr. 43:14-19. Mr. Murphy acknowledged that in his experience as a trust officer, it is not uncommon for there to be no formal agreement between family members with respect to the operation of a family farm and that things are often handled very informally. Pet. Hr'g Tr. 39:5-10. Mr. Murphy did state that depreciation schedules on a tax return could indicate ownership of equipment. Pet. Hr'g Tr. 54:24-55:2. However, no tax returns or depreciation schedules were introduced as evidence at the hearing. See Pet. Hr'g Tr. 2. Notably, Gerald testified that because the farm equipment was fairly old and fully depreciated by Leonard, his accountant told him that there was no benefit to listing this equipment on Gerald's tax return, which is why he never bothered to do so. Pet. Hr'g Tr. 72:22-73:3, 81:23-82:5.

[¶ 33] It is only logical that Gerald would not add this property to his depreciation schedules because it came to him with a zero ($0) tax basis and there was thus nothing to deduct on his returns. The tax returns, even if they had been offered into evidence, do not in and of themselves demonstrate ownership on the date of death. The most persuasive evidence of ownership of the farm machinery is the testimony of Gerald and Karlice that the farm machinery was in fact transferred to Gerald prior to Decedent's death. Karlice's testimony is especially persuasive because it goes

against her own economic self-interest. That fact that the farm machinery belongs to Gerald reduces the value of Karlice's inheritance.

[¶ 34] Although Gerald did sign the original Inventory listing the disputed equipment as estate property, based on Gerald's and Karlice's testimony and the lack of any other credible evidence to the contrary, the district court was not clearly erroneous by ruling that the farm equipment had been gifted to Gerald prior to Leonard's death.

[¶ 35] Gerald testified that the arrangement with his father since at least 2004 was that the farm equipment was transferred to Gerald. Pet. Hr'g Tr. 69:10-12, 75:20-22. Gerald further testified that the only reason why the farm equipment was listed on Leonhard Feldmann's tax returns was because they were already fully depreciated. Pet. Hr'g Tr. 72:15-73:3. It was simply an oversite not to remove them since there was no further tax benefit to be gained by either Leonhard or Gerald.

[¶ 36] Although undisputed by any evidence offered by Shannon, Gerald's testimony could obviously be considered self-serving. However, Karlice also testified that she believed her father had already given the farm equipment to Gerald at least two years before their father's death. Pet. Hr'g Tr. 13:15-19, 19:3-12. As a devisee of the residue of the estate, Karlice's testimony actually hurts her own interests, and thus would seem to be the most credible evidence offered at the hearing. Therefore, the district court was not clearly erroneous in ruling that such farm equipment was Gerald's property at the time of Leonard's death and should not be included as estate assets.

B. The district court did not abuse its discretion when it ruled that the proceeds from unharvested crops should go to Gerald as devisee of the real estate

[¶ 37] The district court did not abuse its discretion when it ruled that the proceeds from unharvested crops should go to Gerald as devisee of the real estate where the crops were still growing at the date of Leonard's death.

[¶ 38] Shannon argues that the district court somehow abused its discretion by applying the law and the facts in evidence in this case and concluding that the un-severed crops belong to the Gerald upon the death of the Leonhard. Appellant's Br. ¶7. She failed to provide any evidence in the way or affidavits or testimony to support her argument that crops were already harvested at the time of Leonhard's death. Instead, Shannon argues that the court should have considered the farming arrangement between Gerald and Leonhard; i.e., the arrangement between tenant Gerald and landlord Leonhard. Id. at ¶ 46. However, upon the death of Leonhard, the land passed to Gerald and Gerald became both landlord and tenant. See Appellant's App. 17. Whatever benefit landlord Leonhard may have had in the farming arrangement with tenant Gerald during Leonhard's lifetime passed to Gerald with the land.

[¶ 39] Gerald's testimony regarding this issue is credible and undisputed. He testified that approximately 300 bushels of wheat were harvested prior to Leonard's death with a value of $2,450.70. Pet. Hr'g Tr. 75:2-9; Appellant's App. 4.

[¶ 40] The remaining bushels of wheat, valued at $55,821.96, were therefore unharvested at Leonard's death. Appellant's App. 4; Pet. Hr'g Tr. 38:3-11. Pursuant to Leonard's Will, Gerald was specifically devised the farmland. See Appellant's App. 17. Accordingly, the unharvested crops were also devised to Gerald pursuant to N.D.C.C. §

30.1-12-01 and applicable case law. See Noss v. Hagen, 274 N.W.2d 228 (N.D. 1979) (real property in intestate's estate passes immediately to heirs upon death of intestate); Schilichenmayer v. Luithle, 221 N.W.2d 77 (N.D. 1974) (growing crops are part of the real estate until severed); State v. Brakke, 474 N.W.2d 878 (N.D. 1991) (ownership of crops planted by cotenant in possession of property which is subsequently partitioned to another cotenant ordinarily passes with land to the other cotenant).

[¶ 41] The district court applied the proper legal precedent to the facts of this case to determine that Gerald was entitled to the proceeds of such unharvested crops. Therefore, the court did not abuse its discretion on this issue.

VI. CONCLUSION

[¶ 42] For all the forgoing reasons, the District Court's findings were not clearly erroneous when it determined that the farm machinery was owned by Gerald O. Feldmann prior to the death of Leonhard F. Feldmann, and thus this Court should not reverse district court's Memorandum.

[¶ 43] The District Court did not abuse its discretion when it concluded that the proceeds of the grain still standing in the field owned by Leonhard F. Feldmann at the time of his death is part of the real estate and under the decedent's Will, Gerald O. Feldmann receives this real estate, including the proceeds from the sale of standing crops in the amount of $55,821.96. Accordingly, this Court should not reverse the district court's Memorandum.

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Dated this 7th day of July 2017.

/s/ Gene W. Allen

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CERTIFICATE OF COMPLIANCE

[¶ 44] The undersigned, as attorney for the Appellee, American Trust Center, Successor Personal Representative, in the above-entitled matter, and as the author of the above brief, hereby certify, in compliance with Rule 32(a)(5) and Rule 32(8)(a) of the North Dakota Rules of Appellate Procedure, that the above Brief of Appellee was prepared with proportional typeface and the total number of words in the above Brief, excluding words in the table of contents, table of authorities, certificate of service and this certificate of compliance, totals 3,972.

Dated this 7th day of July 2017.

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IN THE SUPREME COURT
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In the Matter of the Estate of Leonhard F. Feldmann, Deceased - - - - - Gerald O. Feldmann, Former Personal Representative and Personal Representative of the Estate of Dena Feldmann, Petitioner and Appellee, v. Shannon Evans, Respondent and Appellant, and, Karlice E. Valencia, Dena Feldmann, deceased; American Trust Center, Successor Personal Representative, Respondents and Appellees.	**Supreme Court No: 20170034** **Golden Valley County Case No. 17-2011-PR-28**

CERTIFICATE OF SERVIE BY ELECTRONIC MEAMS AMD BY U.S. MAIL

The undersigned attorney certifies that he served the within Brief of Petitioner and Gerald O. Feldmann, Former Personal Representative and Personal Representative of the Estate of Dena Feldmann on July 7, 2017 on:

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by sending a true and correct copy thereof by electronic means to the above-listed email addresses; and on

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by U.S. Mail

Dated this 7th Day of July, 2017.

By: _____
Gene W. Allen (ND # 06887)