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STATE OF NORTH DAKOTA

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Supreme Court No. 20180283
Divide County No. 12-2016-CV-00065

Western Energy Corporation,
Plaintiff/Appellant

vs.

Cynthia J. Stauffer; Kenneth Stauffer; Kari Sue Stauffer; Kenneth Stauffer, Trustee of the Stauffer Grandchildren's Trust dated April 20, 2012; Martha J. Lee; Timothy R. Lee; Patience Mullendore McNulty Campbell Land and Mineral Trust, created on the 24th day of June, 1991; U.S. Petroleum Inc.; Thomas N. Berry & Company; Rex R. Byerly and Linda A. Byerly, as joint tenants; William Stauffer (deceased); Ethel Stauffer (deceased); Linda Myer; Robert Scott Stauffer (deceased); Robert W. Stauffer (deceased); Cassandra Stauffer; Katherine Stauffer; Stauffer Family Disclaimer Trust; Cody Stauffer,
Defendants/Appellees

Appeal from Judgment Entered on May 29, 2018,
In the District Court, Northwest Judicial District,
Divide County, North Dakota
The Honorable Paul W. Jacobson

BRIEF OF APPELLANT

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STATEMENT OF THE ISSUES

¶ 1 I. Whether the District Court erred when it determined that this quiet title is barred by the statutes of limitation in N.D.C.C. §§ 28-01-15(2) and 28-01-42.

¶ 2 II. Whether the District Court erred when it determined that this quiet title action is barred by laches.

¶ 3 III. Whether the District Court erred in its determination of the ownership of Subject Minerals between the parties.

STATEMENT OF THE CASE

¶ 4 This case concerns title to all of the oil, gas and other minerals in and under the following described real property situated in Divide County, North Dakota, to-wit:

Township 161 North, Range 101 West
Section 25: S½S½

(hereinafter, "Subject Minerals"). The parties dispute whether the Warranty Deed given in fulfillment of a Contract for Deed between the Plaintiff's predecessors and Defendants' predecessors mistakenly did not contain the oil, gas, and other mineral reservation as provided for in the Contract for Deed.

¶ 5 The Plaintiff is a successor in interest to L.M. Eckmann and C.S. Eckmann (hereinafter, the "Eckmanns") and brought this suit in order to determine ownership of the Subject Minerals.

¶ 6 The Defendants are successors in interest to William Stauffer and Ethel Stauffer. William Stauffer and Ethel Stauffer were husband and wife, and the parents of Defendant Robert Scott Stauffer a/k/a Robert S. Stauffer and Defendant Linda Myer. William Stauffer died on July 13, 2002, Ethel Stauffer died on November 18, 2010, and Robert S.

Stauffer died on February 9, 2014. Defendant Cynthia J. Stauffer was the wife of Robert S. Stauffer. Defendants Kenneth Stauffer, Kari Sue Stauffer, and Robert W. Stauffer, who is deceased, are the children of Robert S. Stauffer and Cynthia Stauffer. Defendants Cassandra Stauffer and Katherine Stauffer are the children of Robert W. Stauffer. Defendant Cody Stauffer is the grandson of Robert S. Stauffer. Defendants The Stauffer Family Disclaimer Trust and The Stauffer Grandchildren's Trust dated April 20, 2012, were both established by the Stauffer family.

¶ 7 Plaintiff initiated this action by serving its Summons and Complaint on the Defendants on November 3, 2016. Defendants Cynthia Stauffer, Kenneth Stauffer, Kari Sue Stauffer, Kenneth Stauffer, Trustee of The Stauffer Grandchildren's Trust dated April 20, 2012, William Stauffer (deceased), Ethel Stauffer (deceased), Linda Myer, Robert Scott Stauffer (deceased), Robert W. Stauffer (deceased), Cassandra Stauffer, Katherine Stauffer, Stauffer Family Disclaimer Trust, and Cody Stauffer (the "Stauffer Defendants") filed and served their Answer and Counterclaim on December 7, 2016. Plaintiff filed and served its Answer to the Stauffer Defendants' Counterclaim on December 20, 2016. Thereafter, Plaintiff and the Stauffer Defendants agreed to submit the case to the District Court on a stipulation of facts and on brief by March 9, 2018.

¶ 8 This appeal is taken from the District Court's Judgment dated May 29, 2018, and Findings of Fact, Conclusions of Law and Order from Judgment in favor of the Defendants dated May 16, 2018.

STATEMENT OF THE FACTS

¶ 9 Prior to 1959, the Eckmanns owned the entire fee interest in the following described real property located in Divide County, North Dakota described as:

Township 161 North, Range 101 West
Section 25: $S^1/_2S^1/_2$

(hereinafter the "Surface Property").

¶ 10 On or about May 25, 1959, the Eckmanns, as wife and husband, entered into a Contract for Deed with William Stauffer and Ethel Stauffer, as joint tenants, recorded on June 4, 1959 in Book 41 of Deeds at page 145 ("Contract for Deed"), excepting and reserving all of the oil, gas and other minerals. Appellant's App. at 12. The Eckmanns subsequently executed a Warranty Deed conveying the Property to William Stauffer and Ethel Stauffer on June 29, 1959 (hereinafter, "Warranty Deed"). Appellant's App. at 14. This Warranty Deed given in fulfillment of the Contract for Deed mistakenly did not contain the oil, gas, and other mineral reservation as provided for in the Contract for Deed; however, it stated the deed was given "**in fulfillment of a contract for deed issued on the 25th of May, 1959**". Id. (emphasis added).

STANDARD OF REVIEW

¶ 11 Statutory interpretation is a question of law and is fully reviewable on appeal. Words in a statute are given their plain, ordinary, and commonly understood meaning, unless defined by statute or unless a contrary intention plainly appears. N.D.C.C. § 1-02-02. Statutes are construed together to give effect to each word and phrase, and all parts of a statute must be construed to have meaning. N.D.C.C. § 1-02-07. If the language of a statute is clear and unambiguous, the language may not be disregarded under the pretext of pursuing its spirit. N.D.C.C. § 1-02-05.

Schmidt v. City of Minot, 2016 ND 175, ¶ 7, 883 N.W.2d 909 (citation omitted).

¶ 12 The standard review of a district court's findings of fact in a bench trial is under the clearly erroneous standard of review. Border Res., LLC v. Irish Oil & Gas, Inc., 2015 ND 238, ¶ 14, 869 N.W.2d 758. 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 if, after reviewing

all of the evidence, the Court is left with a definite and firm conviction a mistake has been made. Id.

LAW AND ARGUMENT

I. The Judgment should be reversed because the Plaintiff's claims are not barred by statutes of limitation or laches.

1. Statute of Limitations.

¶ 13 The District Court erred in ruling Plaintiff's reformation claim is barred by statutes of limitations. Statutes of limitation are intended to prevent a plaintiff from bringing a stale claim. Tarnavsky v. McKenzie County Grazing Ass'n, 2003 ND 117, ¶ 9, 665 N.W.2d 18. A statute of limitations begins to run when the underlying claim accrues. Id. When a claim accrues is usually a question of fact, but if there are no disputed facts, the determination of when the claim accrues is for the court. Id.

¶ 14 The District Court held that two statutes of limitation barred Plaintiff's claim in the instant case: N.D.C.C. §§ 28-01-15(2) and 28-01-42. Appellant's App. at 147-149.

¶ 15 Section 28-01-15 provides for a ten-year statute of limitations for an action upon a contract in any instrument affecting the title to real property. N.D.C.C. § 28-01-15(2). The District Court held the claim for relief accrued, and thus the statute of limitations began to run, in 1959 when Warranty Deed was executed. Appellant's App. at 148. This Court has specifically rejected the argument that a reformation claim accrues at the time of the underlying deed. In Ell v. Ell, 295 N.W.2d 143, 151 (N.D. 1980), this Court stated:

> [W]e follow the weight of authority and hold that a reformation action accrues, or comes into existence as a legally enforceable right, not at the time the instrument in question is executed, but at the time the facts which constitute the mistake and form the basis for reformation have been, or in the exercise of reasonable diligence should have been, discovered by the party applying for relief.

In the case at hand, the District Court determined that the alleged mutual mistake between the Contract for Deed and the Warranty Deed "should have been discovered with reasonable diligence in 1959 when the documents were executed" and "[b]ecause Western or its predecessors in interest failed to commence an action within 10 years after the 1959 Warranty Deed was executed, N.D.C.C. § 28-01-15(2) bars the present claim." Appellant's App. at 148. This holding is in clear contravention of Ell; the District Court made no finding as to when the discrepancy was discovered and as such, when the Plaintiff's claim accrued has not been determined. Accordingly, the District Court's ruling as to this issue should be reversed and remanded.

¶ 16 Further, the facts of the instant case are similar to those in Wehner v. Schroeder, 335 N.W.2d 563, 567 (N.D. 1983). In Wehner, the parties entered into a contract for deed in 1950 which contained a mineral reservation. Wehner, 335 N.W.2d at 564. The parties executed a warranty deed in fulfillment thereof the same year, and the warranty deed did not contain a mineral reservation. Id. Thereafter, the parties each executed mineral leases. Id. In 1978, twenty-eight years later, the parties discovered the discrepancy between the contract for deed and the warranty deed. Id. at 565. This Court held whether or not N.D.C.C. § 28-01-15(2) barred the plaintiff's claim depended on when the facts which constituted the mistake forming the basis for reformation were discovered or should have been discovered. Id. at 567. Under the facts presented and its previous decision in Ell, this Court held the Plaintiff's action accrued in 1978, when they discovered the discrepancy in the contract for deed and warranty deed, and not in 1950 when the deeds were executed. Id. Based on Ell and Wehner, Plaintiff's claim could not

have accrued in 1959, when the deeds were executed, and this Court should reverse and remand the District Court's Order and Judgment.

¶ 17 The District Court also held that N.D.C.C. § 28-01-42 barred Plaintiff's claim. Appellant's App. at 149. Section 28-01-42 states: "No action or proceeding may be maintained by a person out of possession to cancel or enforce any contract for the sale or conveyance of real estate, after twenty years from the date of said contract, as shown by the record of such instrument[.]" N.D.C.C. § 28-01-42. The District Court held that because Plaintiff's claim is based on the Contract for Deed, it was required to bring any action within twenty years of the date of the Contract for Deed, or May 25, 1959. Appellant's App. at 149. Plaintiff's claim sought to reform the Warranty Deed, not to cancel or enforce the Contract for Deed. As such, the appropriate statute of limitations to apply to Plaintiff's reformation claim is N.D.C.C. § 28-01-15(2), not N.D.C.C. § 28-01-42.

¶ 18 Further, N.D.C.C. § 28-01-42 applies to claims by a person out of possession. N.D.C.C. § 28-01-42 (emphasis added). Plaintiff has maintained possession of the Subject Minerals, as the chain of title reveals a mineral deed executed in its favor and by the fact that its interest is currently leased. See N.D.C.C. 38-18.1-03(d) (stating that a mineral interest is deemed used when it is subject to a lease or conveyance recorded in the county recorder's office). Therefore, N.D.C.C. § 28-01-42 is inapplicable to the instant case.

2. Laches.

¶ 19 The District Court erred in ruling that Plaintiff's claim was barred by laches. "Laches does not arise from a delay or lapse of time alone, but is such a delay in enforcing

one's right as to work a disadvantage to another." Wehner v. Schroeder, 354 N.W.2d 674, 676 (N.D. 1984). A case involving laches must be considered on its own facts and circumstances. Id. Further, "laches do not commence to run against an action for the reformation of an instrument, until the fraud or mistake had been or ought to have been discovered." Id. at 677 (quoting 106 A.L.R. 1338, 1345 (1937)).

¶ 20 The District Court held that Plaintiff's claim was barred by laches because "[t]he purported mistake underlying [Plaintiff's] claim either was or should have been discovered well before this action was commenced on or about November 3, 2016." Appellant's App. at 150. As with the statute of limitations issue, the relevant time period for laches is when the mistake was or ought to have been discovered. Wehner, 354 N.W.2d at 677. In the first Wehner case, this Court determined the Plaintiff's action accrued in 1978, when they actually discovered the discrepancy between the warranty deed and contract for deed. See Id. In the second Wehner case, this Court used that same timeline to determine that laches did not bar the Wehner's claim. Id. Using the same analysis here, Plaintiff's claim began to accrue when the mistake was discovered, and not when the deed was executed as held by the District Court. Appellant's App. at 150. Therefore, the District Court's determination that the Plaintiff's claim is barred by laches is erroneous and should be reversed and remanded.

II. The Judgment should be reversed because Reformation is appropriate.

1. The Parties' intent requires reformation of the Warranty Deed.

¶ 21 "[E]quity will grant remedial relief in the nature of reformation of a written instrument, resulting from a mutual mistake, when justice and conscience so dictate." Ell,

295 N.W.2d 143 at 150. "In considering whether or not a mutual mistake exists, the court can properly look into the surrounding circumstances and take into consideration all facts which disclose the intention of the parties." Id. (emphasis in original). Any evidence that tends to show the true intention of the parties, whether it be evidence of conduct or declarations of the parties extrinsic to the contract or documentary evidence, is admissible. See N.D.C.C. § 32-04-19.

¶ 22 In accordance with Spitzer v. Bartelson, 2009 ND 179, 773 N.W.2d 798, we must look to the parties' intent at the signing of the conveyance in satisfaction of the contract for deed; thus, the main issue before this Court is the intent of the Eckmanns and William Stauffer and Ethel Stauffer at the time of the execution of the Warranty Deed on or about June 29, 1959. A thorough review of the records clearly reflects that the parties intended the Eckmanns reserve the Subject Minerals. The Eckmanns and their successors in interest continuously and openly claimed ownership of the minerals, maintaining evidence the original parties' intent for the Eckmanns to own the minerals through numerous documents of record. William and Ethel Stauffers' intent regarding the Subject Minerals can be determined by the absence of their claim to continuous and open ownership, as well as not objecting to Eckmanns' claim.

a. Eckmanns and their successors in interest continuously and openly maintained evidence of their intent to own the Subject Minerals through numerous documents of record.

¶ 23 The Eckmanns, as well as their successors in interest, have continuously and openly claimed ownership of the Subject Minerals, maintaining evidence the original parties' intent for the Eckmanns to own the Subject Minerals through numerous documents of record. Specifically, Lillian Eckmann executed an oil and gas lease covering the Property

on September 7, 1978. Appellant's App. at 14. In furtherance of this oil and gas lease, the following documents were executed and placed of record by or with Lillian Eckmann's knowledge:

> 1) On September 25, 1978, Dean A. Eckmann and wife Gloria Eckmann executed a Ratification and Rental Division Order of the oil and gas lease Lillian M. Eckman executed. Appellant's App. at 42.
>
> 2) On September 25, 1978, Rolf W. Eckmann and wife Eleanor J. Eckmann executed a Ratification and Rental Division Order of the oil and gas lease Lillian M. Eckman executed. Appellant's App. at 43.
>
> 3) On September 25, 1978, John C. Eckmann and wife Elizabeth D. Eckmann executed a Ratification and Rental Division Order of the oil and gas lease Lillian M. Eckman executed. Appellant's App. at 44.
>
> 4) On September 7, 1978, an ineligible signatory and Lillian M. Eckmann executed a Ratification and Rental Division Order of the oil and gas lease Lillian M. Eckman executed. Appellant's App. at 45.

¶ 24 Further showing the intent of the parties, Lillian Eckmann, who was an original party to the Contract for Deed, executed a specific Mineral Deed conveying the Subject Minerals. Specifically, in 1980, Lillian Eckmann conveyed "all oil and gas and all other mineral rights" in or under the Property to herself, J.C. Eckmann, Rolfe W. Eckmann, and Dean A. Eckmann. Appellant's App. at 33. Lillian Eckmann would not have subsequently made a specific Mineral Deed conveyance if the original parties to the warranty deed had not intended that the minerals were retained with the Eckmanns. In other words, she would not have made a specific deed of the Subject Minerals had she thought she didn't reserve the Subject Minerals in the Warranty Deed. In viewing Lillian Eckmann's actions to evidence ownership as required by Spitzer, it is readily apparent Lillian Eckmann intended there to be a reservation of minerals at the time of executing the Warranty Deed.

¶ 25 The district court made a limited finding and held that "[w]hile there are other conveyances, oil and gas leases, and documents in the record, all of these documents were executed well after the time the Warranty Deed was signed. Therefore, these documents do not prove a mutual mistake at the time of the Warranty Deed." Appellant's App. at 51-52. The district court imputes that because these documents were signed after the Warranty Deed, they do not provide evidence as to the intention of the parties, which is contradictory to considering all relevant facts in determining the parties' intent. See Ell, 295 N.W.2d 143 at 150 (N.D.1980). The District Court made no other finding of fact as it relates to the intent of the Eckmanns.

¶ 26 It is well established that in considering whether or not a mutual mistake exists, the Court can properly look into the surrounding circumstances and take into consideration all facts which disclose the intention of the parties. Id. Any evidence that tends to show the true intention of the parties, whether it be evidence of conduct or declarations of the parties extrinsic to the contract or documentary evidence, is admissible. See N.D.C.C. § 32-04-19. Applying this standard to the case at hand illustrates the district court disregarded the fact that Lillian M. Eckmann, who was an original party to the Contract for Deed, executed a specific oil and gas lease, as well as a specific mineral deed for the minerals she intended to reserve. Lillian Eckmann would not have subsequently made a specific Mineral Deed conveyance if the original parties to the Warranty Deed had not intended that the minerals were retained by the Eckmanns. In other words, she would not have made a specific deed to the Subject Minerals had she thought she did not reserve them in the Warranty Deed. Because the District Court erroneously analyzed Eckmanns' intent and failed to consider extrinsic evidence of an

original party to the Contract for Deed, the District Court's ruling as to this issue should be reversed and remanded.

b. William and Ethel Stauffers' intent regarding the Subject Minerals can be determined by the absence of their claim to continuous and open ownership, as well as not objecting to Eckmanns' claim.

¶ 27 The District Court made a very limited finding as it relates William and Ethel Stauffer's intent. Specifically, the court stated that "…even if the Eckmanns or their successors in interest intended to reserve the minerals, there is nothing demonstrating the Stauffers shared that intent. See Johnson [v. Hovland], 2011 ND 64, ¶ 22 (holding the plaintiffs' "subsequent assertions of title in the record do not constitute evidence of [the grantee's] intent at the time of the original deed's execution.")." Appellant's App. at 52. This finding fails to consider or analyze extrinsic evidence of the original parties to the Contract for Deed, namely make a finding as to William and Ethel Stauffers' intent.

¶ 28 "Any evidence that tends to show the true intention of the parties, whether it be evidence of conduct or declarations of the parties extrinsic to the contract or documentary evidence, is admissible." Heart River Partners v. Goetzfried, 2005 ND 149, ¶ 14, 703 N.W.2d 330. "Each case involving the reformation of a contract on grounds of fraud or mutual mistake must be determined upon its own particular facts and circumstances." Ell, 295 N.W.2d at 150.

¶ 29 Subsequent to the Warranty Deed, William Stauffer and Ethel Stauffer, who were parties to the Warranty Deed, did not openly or notoriously make a continued claim to the Subject Minerals showing Eckmanns and Stauffers intended to reserve the Subject Minerals to Eckmanns, nor do they take any action to object to Eckmanns' claim to ownership. The only items of the record that show any apparent claim to ownership is a

1974 Oil and Gas Lease to the William Herbert Hunt Trust Estate that William Stauffer and Ethel Stauffer executed covering the Property and a Warranty Deed dated April 5, 1983 from Williams Stauffer and Ethel Stauffer to themselves as tenants in common. Appellant's App. at 38.

¶ 30 As it relates to the Oil and Gas lease in 1974, it was very common and known that during this time period, the William Herbert Hunt Trust Estate routinely obtained leases based off of surface real estate tax rolls and leased these owners. This lease is not a strong evidence of their claim to ownership. In addition, there were not any Ratifications or Rental Division Orders ever recorded for this lease.

¶ 31 As it relates to the Warranty Deed dated April 5, 1983, it is improbable that William Stauffer and Ethel Stauffer owned or claimed to own all the minerals within the ten Sections located in two separate Townships; it is more likely they were placing all or any of their interest listed in the warranty deed into tenancy in common status. It is dubious, at best, to argue that William and Ethel Stauffer's actions evidencing ownership of the Property support the claim that the parties intended to transfer the minerals to the William Stauffer and Ethel Stauffer.

¶ 32 Additional evidence of William and Ethel Stauffers' intent for the Eckmanns to reserve the Subject Minerals is their failure to object to Eckmanns' claim to ownership, all while not evidencing their claim to ownership. Specifically, the following conveyances appear of record during the William Stauffer and Ethel Stauffers' joint lives:

> 1) On August 3, 1989, J.C. Eckmann and Elizabeth D. Eckmann, husband and wife, Rolfe W. Eckmann and Eleanor J. Eckmann, husband and wife, and Dean A. Eckmann and Gloria Eckmann, husband and wife, individually and as sole heirs of Lillian M. Eckmann, Dec. executed a Mineral Deed conveying the Property to Marcus D. Lee. Appellant's App. at 48.

> 2) On September 1, 1989, Marcus D. Lee and Patricia C. Lee executed a Mineral Deed covering the Property to Timothy R. Lee, Marcus D. Lee, and Western Energy Corporation. Appellant's App. at 50.
>
> 3) On May 11, 1990, Marcus D. Lee and Patricia C. Lee executed a Mineral Deed in favor of Timothy R. Lee and Western Energy Corporation for an undivided 26.66667/160 interest in and to all oil, gas, and other minerals found under the Property. Appellant's App. at 52.

Because the District Court vaguely and erroneously analyzed William and Ethel Stauffers' intent, as well as failing to consider extrinsic evidence, the District Court's ruling as to this issue should be reversed and remanded.

CONCLUSION

¶33 Appellant submits the Judgment entered May 29, 2018, pursuant to the Findings of Fact, Conclusions of Law and Order for Judgment, should be reversed because this quiet title action is not barred by the statute of limitations in N.D.C.C. §§ 28-01-15(2) and 28-01-42, or laches, and a thorough review of such records clearly reflects the parties intended that L.M. Eckmann and C.S. Eckmann reserve the Subject Minerals under the Surface Property. Accordingly, the Judgment entered May 29, 2018, should be reversed.

Dated this 28th day of August, 2018.

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¶34 **CERTIFICATE OF SERVICE**

I, Ryan Geltel, attorney for Appellant, Western Energy Corporation, do hereby certify that on the 28th day of August, 2018, I electronically filed with the Clerk of the North Dakota Supreme Court the following documents:

1) Brief of Appellant
2) Appendix of Appellant

and served the same electronically upon the following:

Andrew Davis Cook acook@ohnstadlaw.com	Attorney for Linda Myer, Stauffer Family Disclaimer Trust, Cassandra Stauffer, Cody Stauffer, Cynthia J. Stauffer, Ethel Stauffer (deceased), Kari Sue Stauffer, Katherine Stauffer, Kenneth Stauffer, Robert Scott Stauffer (deceased), Robert W. Stauffer (deceased), and William Stauffer (deceased)
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and certify the same was served via U.S. Mail upon the following:

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Dated this 28th day of August, 2018.

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¶35 **CERTIFICATE OF COMPLIANCE**

The undersigned hereby certifies the Appellant's Brief is in compliance with Rule 32(A) of the North Dakota Rules of Appellate Procedure.

By: /s/ Ryan Geltel
Ryan Geltel (#06992)