

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Supreme Court Case No. 20220212
Williams County District Court No. 53-2019-CV-01515

Henry Hill Oil Services, LLC,
Plaintiff and Appellee,

v.

Abner C. Tufto, Eric Ted Tufto, Darla Tufto a/k/a Darla O'Donnell, Kris Bradley Tufto,
Defendants

and

RWS Holdings, LLC, and Regional Water Service, LLC
Defendants and Appellees,

and

Lane A. Knudsen, Marcia K. Talley and David H. Talley, Trustees of the Marcia K. Talley Living
Trust, Ann E. Gochmour,
Defendants and Appellants.

Regional Water Service, LLC,
Plaintiff and Appellee,

v.

Henry Hill Oil Services, LLC,
Defendant and Appellee,

APPEAL OF ORDER GRANTING HENRY HILL OIL SERVICE LLC'S MOTION FOR
SUMMARY JUDGMENT AGAINST LANE A. KNUDSEN AND DENYING LANE A.
KNUDSEN'S CROSS-MOTION FOR SUMMARY JUDGMENT DATED DECEMBER 16,
2021, FROM THE FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER FOR
JUDGMENT DATED MAY 5, 2022, AND FROM THE JUDGMENT ENTERED THEREON
DATED MAY 19, 2022, IN THE DISTRICT COURT, NORTHWEST JUDICIAL DISTRICT,
WILLIAMS COUNTY, STATE OF NORTH DAKOTA

THE HONORABLE JOSHUA RUSTAD, DISTRICT JUDGE

BRIEF OF DEFENDANT AND APPELLANT LANE A. KNUDSEN

ORAL ARGUMENT REQUESTED

Erich M. Grant (ID #07593)
McGee, Hankla & Backes, P.C.
P. O. Box 998
Minot, ND 58702-0998
Attorneys for Lane A. Knudsen

TABLE OF CONTENTS

TABLE OF AUTHORITIES	Pg. 3
STATEMENT OF THE ISSUES.....	¶1
STATEMENT OF THE CASE.....	¶5
STATEMENT OF FACTS	¶15
LAW AND ARGUMENT	¶24
I. The District Court erred in determining that the construction lien recorded against the property owned by Lane A. Knudsen by Henry Hill Oil Services LLC was valid under N.D.C.C. Chapter 35-27.....	¶24
II. The District Court erred in determining that Henry Hill Oil Services, LLC is entitled to foreclosure of the construction lien against the property owned by Lane A. Knudsen	¶37
III. The District Court erred in denying Lane A. Knudsen’s Cross-Motion for Summary Judgment against Henry Hill Oil Services, LLC.....	¶41
IV. The District Court erred in awarding interest and attorneys’ fees to Henry Hill Oil Services, LLC as against Lane A. Knudsen and allowing such fees to be added to the foreclosure judgment.	¶42
CONCLUSION.....	¶48
CERTIFICATE OF COMPLIANCE.....	¶49
CERTIFICATE OF SERVICE	¶50

TABLE OF AUTHORITIES

Cases

<u>Christianson v. Hughes</u> , 18 N.D. 282, 122 N.W. 384, 385-386 (1909).....	¶32
<u>N. Excavating Co. v. Sisters of Mary of the Presentation Long Term Care</u> , 2012 ND 78, 815 N.W.2d 280	¶46
<u>Palmer vs. Gentek Bldg. Prods.</u> , 2019 ND 306, ¶24, 936 N.W.2d 552	¶43
<u>Shaffer v. Smith</u> , 113 N.W.2d 688 (N.D. 1962)	¶24
<u>Wenco v. EOG Res., Inc.</u> , 2012 ND 219, ¶ 8, 822 N.W.2d 701.....	¶23

Statutes

N.D.C.C. § 35-27-01	¶36, 44
N.D.C.C. § 35-27-02.....	¶¶24, 31, 33
N.D.C.C. § 35-27-19	¶¶38, 39, 40
N.D.C.C. § 35-27-24.1	¶¶12, 42, 43
N.D.C.C. § 47-05-07	¶27

STATEMENT OF ISSUES

[¶1.] The District Court erred in determining that the construction lien recorded against the property owned by Lane A. Knudsen by Henry Hill Oil Services LLC was valid under N.D.C.C. Chapter 35-27.

[¶2.] The District Court erred in determining that Henry Hill Oil Services, LLC is entitled to foreclosure of the construction lien against the property owned by Lane A. Knudsen.

[¶3.] The District Court erred in denying Lane A. Knudsen's Cross-Motion for Summary Judgment against Henry Hill Oil Services, LLC.

[¶4.] The District Court erred in awarding interest and attorneys' fees to Henry Hill Oil Services, LLC as against Lane A. Knudsen and allowing such fees to be added to the foreclosure judgment.

STATEMENT OF THE CASE

[¶5.] This is an appeal from the order granting summary judgment to Henry Hill Oil Services, LLC ("Henry Hill") and denying a competing cross-motion for summary judgment by Lane A. Knudsen ("Knudsen"), and from the findings, conclusions, orders, and judgment issued thereon.

[¶6.] Henry Hill commenced their case against Knudsen by service of a summons dated October 10, 2019. (R1). Henry Hill's complaint requested that several construction liens recorded by Henry Hill, including a construction lien recorded against property owned by Knudsen, be foreclosed upon, and that the properties subject to the construction liens be sold through foreclosure sale. (R2)

[¶7.] Knudsen answered the Henry Hill complaint on November 18, 2019, denying that the construction lien against the Knudsen Property was valid and denying that Henry Hill

was entitled to foreclosure of the construction lien. (R35). Knudsen also brought a counterclaim against Henry Hill, alleging that the construction lien served to slander title to his property, and a cross-claim against RWS Holdings, LLC (“RWS”), alleging that RWS owed him indemnity and defense from the Henry Hill claim. (R35:3-¶23-4:¶32)

[¶8.] Henry Hill answered the counterclaim on December 9, 2019, denying that its lien was invalid or that it served to improperly slander title. (R43). RWS answered the cross-claim on December 9, 2019, denying that it owed Knudsen indemnity or defense. (R46).

[¶9.] Knudsen brought a motion for partial summary judgment against RWS on July 7, 2020, seeking summary judgment in his favor on the claims relating to RWS’ obligations of indemnity and defense against the Henry Hill lien. (R77-R85). RWS responded in opposition on August 6, 2020 (R89).

[¶10.] Henry Hill brought a motion for summary judgment against Knudsen (as well as the other landowner defendants in the case) on September 18, 2020. (R107-R116). Knudsen responded in opposition to Henry Hill’s motion on October 19, 2020. (R125). Knudsen also brought a cross-motion for summary judgment against Henry Hill. (R125-R128).

[¶11.] On December 16, 2021, the District Court issued its order granting Henry Hill’s motion for summary judgment against Knudsen and denying Knudsen’s cross-motion for summary judgment against Henry Hill. (R221). In its order, the District Court determined that the Henry Hill construction lien against the Knudsen Property was valid and that Henry Hill was entitled to foreclosure of the lien.

[¶12.] The District Court also held the attorney fee provisions contained in the construction lien statute, N.D.C.C. § 35-27-24.1, to be ambiguous. (R221:10:¶21-¶24).

Relying on legislative history and extrinsic aids to interpret the statute, the District Court determined that construction lien claimants seeking foreclosure are entitled to recover their costs and attorney fees in judgment as part of a foreclosure action. Id. The District Court thus awarded Henry Hill its costs and attorney fees against the property owners, determining their attorney fees to be \$89,709.79. (R250:2:¶4).

[¶13.] The District Court also granted Knudsen’s motion for partial summary judgment against RWS on December 16, 2021. (R220). The District Court’s ensuring order directed RWS to indemnify and defend Knudsen in the foreclosure suit and to satisfy the Henry Hill construction lien within 30 days after entry of the order, or alternatively, to post an undertaking as provided under N.D.C.C. Chapter 35-21 to protect the Knudsen Property from the lien claim. (R220:5). On June 24, 2022, the District Court entered an order of contempt against RWS, finding that RWS had failed to indemnify and defend Knudsen against the Henry Hill claims as directed. (R273). The contempt has not been remedied.

[¶14.] The District Court issued its findings of fact, conclusions of law, and order for judgment in the case on May 5, 2022. (R247). Judgment was entered on May 19, 2022. (R250). On July 22, 2022, Knudsen filed his notice of appeal. (R286).

STATEMENT OF FACTS

[¶15.] Lane Knudsen is the owner of the following described real property located in Williams County, North Dakota:

Township 154 North, Range 101 West
Section 11: W1/2NW1/4

(the “Knudsen Property”)

[¶16.] On August 18, 2014, Knudsen entered into a “Water Agreement and Memorandum of Understanding” with Lindale Pipeline, LLC. (R80:1:¶4). Through the agreement,

Knudsen agreed to provide Lindale Pipeline a water pipeline easement over certain portions of his property and to give Lindale Pipeline exclusive rights to pump and sell water from a natural reservoir on his property. (R80:1:¶3).

[¶17.] Lindale Pipeline defaulted on their water royalty obligations to Knudsen soon thereafter. (R80:1:¶5). However, on or about January 15, 2017 the principals of Lindale Pipeline approached Knudsen and negotiated a resolution of the default. (R80:1:¶6). They requested that Knudsen enter into a new “Water Agreement and Memorandum of Understanding,” this time with a separate entity they controlled, RWS Holdings, LLC. (R80:1:¶7). A new agreement was reached on or about January 15, 2017 between Knudsen and RWS. (R81)f

[¶18.] Along with the Water Agreement, Knudsen also executed three water pipeline easements in favor of RWS. (R80:1:¶8). The pipeline easements granted RWS a temporary construction easement and right of way running through certain portions of his property 75-feet in width, which expired upon construction of the contemplated water pipeline, plus a 30-foot permanent pipeline easement. (R82-R84). Knudsen did not grant RWS, or any related entity, rights to use his property for any purpose beyond those set out in the written agreements. (R128:2:¶4).

[¶19.] RWS defaulted on their obligations to Knudsen under the Water Agreement almost immediately. (R80:2:¶10). Nonetheless, RWS approached Knudsen at some point in 2018 to discuss digging an artificial reservoir on the Knudsen Property. (R128:2:¶7). Knudsen recalled the RWS representatives telling him that changes to state regulations meant they could no longer store water in the natural reservoir RWS had been using to that point. (R128:2:¶7). Knudsen did not agree to construction of the artificial reservoir, but suggested

to the RWS representatives that they bore into the soil to determine if such a project was even feasible. Id.

[¶20.] RWS never asked Knudsen permission to dig an artificial reservoir on the Knudsen Property, nor did Knudsen execute any new easements or agreements that would convey rights to RWS to construct an artificial reservoir on the Knudsen Property. (R128:2:¶8).

[¶21.] Soon thereafter, while Knudsen was traveling out-of-town, his sister informed him that work was being undertaken by Henry Hill on the Knudsen Property. (R128:2:¶9). Knudsen assumed that the work being done was the soil test boring that he had suggested. Id. However, when Knudsen returned home, he learned that Henry Hill had been commissioned to dig the artificial reservoirs and the work was largely already complete. (R128:2:¶10). Knudsen spoke with the Henry Hill equipment operators and told them that he had not agreed to allow the reservoir construction project to proceed. Id. The work was nonetheless completed. The water reservoirs encompass approximately 15 acres of space within the Knudsen Property, which itself is an 80-acre parcel.

[¶22.] On March 19, 2019, Henry Hill served RWS and Knudsen with a “Notice of Construction Lien,” warning that a construction lien would be filed ten days following service of the notice. (R3:12). On April 8, 2019, Henry Hill recorded a construction lien against the entire Knudsen Property – all 80 acres, including those areas unaffected by the reservoir project. Henry Hill claimed that it was owed \$360,000.00 for services and materials commissioned by RWS and provided by Henry Hill during construction of the reservoirs. (R4:5-R4:6).

STANDARD OF REVIEW

[¶23.] The standard of reviewing summary judgment is well established:

Summary judgment is a procedural device for the prompt resolution of a controversy on the merits without a trial if there are no genuine issues of material fact or inferences that can reasonably be drawn from undisputed facts, or if the only issues to be resolved are questions of law. A party moving for summary judgment has the burden of showing there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. In determining whether summary judgment was appropriately granted, we must view the evidence in the light most favorable to the party opposing the motion, and that party will be given the benefit of all favorable inferences which can reasonably be drawn from the record. On appeal, this Court decides whether the information available to the district court precluded the existence of a genuine issue of material fact and entitled the moving party to judgment as a matter of law. Whether the district court properly granted summary judgment is a question of law which we review de novo on the entire record.

Wenco v. EOG Res., Inc., 2012 ND 219, ¶ 8, 822 N.W.2d 701.

LAW AND ARGUMENT

I. The District Court erred in determining that the construction lien recorded against the Knudsen Property by Henry Hill Oil Services LLC was valid under N.D.C.C. Chapter 35-27

[¶24.] A lien is purely a creature of statute, and to be valid, the statutory requirements must be fairly met. Shaffer v. Smith, 113 N.W.2d 688 (N.D. 1962). N.D.C.C. § 35-27-02 governs the categories of persons entitled to a construction lien:

Any person that improves real estate, whether under contract with the owner of such real estate or under contract with any agent, trustee, contractor, or subcontractor of the owner, has a lien upon the improvement and upon the land on which the improvement is situated or to which the improvement may be removed for the price or value of such contribution. Provided, however, that the amount of the lien is only for the difference between the price paid by the owner or agent and the price or value of the contribution. If the

owner or agent has paid the full price or value of the contribution, no lien is allowed.

[¶25.] It is an undisputed fact of this case that Henry Hill did not do their work under contract with the owner of the Knudsen Property, Lane Knudsen. Instead, Henry Hill has argued that they performed work under contract with Regional Water Service, LLC. They argue (without apparent citation) that RWS Holdings, LLC commissioned Regional Water Service, LLC to build the reservoirs, and that Regional Water Service, LLC in turn hired Henry Hill. Henry Hill argues that RWS Holdings was authorized to build the water reservoirs on the Knudsen Property by virtue of the pipeline easements granted by Knudsen to RWS Holdings.

[¶26.] Henry Hill's argument disregards the plain language and scope of the pipeline easements. The easements grant a 75-foot temporary construction easement, followed by a 30-foot permanent pipeline easement. (R82-R84). In the District Court's order granting summary judgment, the court relies on language within the easements which specifies the allowable uses of the 75-foot temporary construction easement: "a temporary construction easement and right of way ... for the purpose of constructing, laying, repairing, and removing certain pipeline, and related pipes, pumps, equipment, fixtures and other appurtenances (collectively, and individually, GRANTEE's Facilities) to be used to transport water on, under and across the Property ... This temporary construction easement shall expire upon the completion of GRANTEE's construction and installation of the subject pipeline...." (R82-R84).

[¶27.] N.D.C.C. § 47-05-07 requires that the extent of an easement be determined by "the terms of the grant or the nature of the enjoyment by which it was acquired." The District

Court misinterprets the relevant easement provisions in its summary judgment order. (R221:7:¶15).

[¶28.] The plain language of the pipeline easements limits the easement to a temporary width of 75-feet during construction, and a permanent width of 30-feet after project completion. This is clearly not consistent with Henry Hill’s reservoirs, which encompass approximately 15 acres of space within the Knudsen Property. At minimum, there exists a material question of fact as to whether the Henry Hill reservoirs fall within the scope of the RWS easement.

[¶29.] The District Court erred further in determining that the approximately 15-acre wide reservoirs constitute an allowable “appurtenance” to the 30-foot width pipeline easement. The Court determined: “there can be no dispute that the water reservoirs dug by Henry Hill constitute an appurtenance of the saltwater disposal system.” (R221:7:¶15).

[¶30.] Taken as a whole, the water pipeline easement agreements contemplate no such 15-acre appurtenances. They are *water pipeline easements* and are limited in scope accordingly. Holding that inclusion of the word “appurtenances” within an easement description expands the easement to an indefinable, boundaryless scope is an error of interpretation. Henry Hill’s reliance on the “appurtenance” term to impute that Knudsen authorized work beyond the defined boundaries of the pipeline easement necessarily fails.

[¶31.] Henry Hill also argues that Regional Water Service, LLC was an agent of Knudsen for the purpose of building the reservoirs, and Henry Hill is thus entitled to a lien as a subcontractor under N.D.C.C. § 35-27-02. This argument is rebutted by the uncontradicted statement of Knudsen that he did not authorize the reservoir construction. Knudsen’s statement is corroborated by the additional undisputed fact that he did not grant RWS

Holdings, Regional Water Service, LLC an easement to build the reservoir on the Knudsen Property.

[¶32.] The situation is analogous to that reviewed by the Court in Christianson v. Hughes, 18 N.D. 282, 122 N.W. 384 (N.D. 1909). In Christianson, a husband, without the consent of his wife, contracted for the purchase of materials to repair and paint a house on land owned by the wife. Id. The plaintiff delivered the materials, and when he was not paid, recorded a mechanic's lien against the wife's property. Id. at 385. The plaintiff argued that the wife's knowledge that the house was being painted, and her firsthand knowledge of the improvements, were sufficient to charge her with the duty to either object to the improvements or suffer the lien. Id. This Court disagreed, holding:

She did nothing to mislead the plaintiff. If her husband could be allowed to incumber the estate of the defendant, against her will and protest, such rights in her separate property granted to her by law would be of little value, and the husband could readily, and in this manner, contract her estate away, and bring her to financial ruin. Under the circumstances, in this case to allow a lien, and thus permit her to be stripped of the title to her estate, and possibly deprive her of a shelter for herself and family, would be contrary to equity and subversive of that protection which the law intended should be thrown around her separate estate.... Mere acquiescence in the erection or alteration, with knowledge, is not sufficient evidence of the consent which the statute requires. There must be something more. Consent is not a vacant or neutral attitude in respect of a question of such material interest to the property owner.

Christianson v. Hughes, 18 N.D. 282, 122 N.W. 384, 385–86 (1909).

[¶33.] Likewise, Knudsen did nothing to mislead Henry Hill. The work undertaken by Henry Hill was not done at his request, nor was it done with his authority. He had not authorized or delegated RWS or Regional Water Service to undertake the work. Henry Hill's construction lien is inconsistent with the requirements set forth in N.D.C.C. § 35-27-02 and is therefore invalid.

[¶34.] Henry Hill’s argument that they undertook their work as a subcontractor of Regional Water Service, and worked within the scope of the pipeline easement granted by Knudsen to RWS Holdings, raises notable issues related to Henry Hill’s other claims.

[¶35.] It is undisputed that Knudsen provided no property rights to RWS beyond those set out in the pipeline easements. Henry Hill has argued that the same pipeline easements actually authorize their work on the reservoir project. If the Court follows this argument to the next step, then the real property interest improved by Henry Hill’s work is only the easement interest held by RWS – not the Knudsen Property as a whole. The improvement does not benefit the Knudsen Property beyond the easement, nor does it benefit Knudsen himself. Henry Hill’s construction lien encompassing the entire Knudsen Property is therefore overbroad.

[¶36.] Another question that must be addressed is whether Knudsen is an “Owner” (as defined by N.D.C.C. § 35-27-01(5)). Notably, with respect to the property subject to the pipeline easements, Knudsen cannot “build, construct or create any obstruction, building, engineering works or other structures on, over or under the herein granted easement and right of way...” He cannot interfere with RWS’s use of the easement. Knudsen does not have the ability to authorize improvements to the easement property. Accordingly, Henry Hill’s work was decidedly not for the “immediate use and benefit” of Knudsen. N.D.C.C. § 35-27-01(5). The work was solely for the benefit RWS, as owner of the pipeline easement. Accordingly, the construction lien should be limited to the easement real estate interest only.

II. The District Court erred in determining that Henry Hill Oil Services, LLC is entitled to foreclosure of the construction lien against the property owned by Lane A. Knudsen.

[¶37.] Based on arguments presented above, Knudsen disputes that Henry Hill is entitled to any construction lien at all. However, if the Court determines otherwise and finds that Henry Hill is entitled to a construction lien, then the scope of the construction lien must be determined. As it stands, the construction lien purports to extend to the entire 80-acre parcel through which the 30-foot pipeline easement runs. The lien is overbroad.

[¶38.] Henry Hill argues that certain provisions of N.D.C.C. § 35-27-19 apply favorably to their position in this case and serve to extend their construction lien over all adjacent lands owned by Knudsen. The statute provides:

The entire land upon which any building, structure, or other improvement is situated, or to improve which labor is done or materials furnished, including that portion of the land not covered thereby, is subject to all liens created under this chapter to the extent that all the right, title, and interest of the owner for whose immediate use or benefit the labor was done or materials furnished.

[¶39.] Henry Hill's interpretation of this statute would lead to absurd results and unjust outcomes. Consider the common situation in which a property owner grants an easement to a utility company for telephone, gas, or power lines. There may be a service call to a utility contractor to repair a damaged line. The utility company fails to pay their contractor and the contractor records a construction lien. Under Henry Hill's interpretation of N.D.C.C. § 35-27-19, the contractor would be entitled to a lien against the entire real property interest of the property owner who granted the easement – this despite the fact that the property owner has no ability to control the utility company or their utilities placed within the easement. Knudson's situation is analogous.

[¶40.] N.D.C.C. § 35-27-19 does not require such an absurd outcome, and this Court has never interpreted this statute in such a fashion. Henry Hill’s arguments relating to this statute should be disregarded.

III. The District Court erred in denying Lane A. Knudsen’s Cross-Motion for Summary Judgment against Henry Hill Oil Services, LLC.

[¶41.] Based on all the reasons stated above, Henry Hill’s construction lien against the Knudsen Property is invalid as a matter of law. Alternatively, if it is valid, then it is overbroad and should only apply to the property encompassed within the RWS pipeline easements. The District Court erred when failed to grant Knudsen’s cross-motion for summary judgment against Henry Hill and determine their construction lien to be invalid, or alternatively, overbroad.

IV. The District Court erred in awarding interest and attorneys’ fees to Henry Hill Oil Services, LLC against Lane A. Knudsen and allowing such fees to be added to the foreclosure judgment.

[¶42.] N.D.C.C. § 35-27-24.1 provides that “[a]ny owner that successfully contests the validity or accuracy of a construction lien by any action in district court must be awarded the full amount of all costs and reasonable attorney’s fees incurred by the owner.” Henry Hill is not entitled to their attorney fees under this statute because they are not the property owner and they are not contesting the validity or accuracy of their own construction lien.

[¶43.] “Absent statutory authority, the ‘American Rule’ requires each party to a lawsuit to bear its own attorney fees.” Palmer vs. Gentek Bldg. Prods., 2019 ND 306, ¶24, 936 N.W.2d 552. The District Court erred in its determination that N.D.C.C. § 35-27-24.1 is ambiguous and in its determination that extrinsic aids and legislative history call for plaintiffs to be awarded their attorney fees in a construction lien foreclosure action.

[¶44.] First, the District Court fails to consider that “owner” is a defined term within the construction lien statute: “Owner means the legal or equitable owner and also every person for whose immediate use and benefit any building, erection, or improvement is made, having the capacity to contract, including guardians of minors or other persons, and including any agent, trustee, contractor, or subcontractor of such owner.” N.D.C.C. § 35-27-01(5). The owner in this context is Knudsen and not Henry Hill.

[¶45.] Second, the party contesting the validity or accuracy of the Henry Hill construction lien is Knudsen, and not Henry Hill. To contest means to “make a defense to an adverse claim in a court of law. To oppose, resist, or dispute the case made by a plaintiff or prosecutor. To strive to win or hold. To controvert, litigate, call in question, challenge. To defend, as a suit or other proceeding.” *Contest*, Black’s Law Dictionary (5th ed. 1979). Henry Hill is clearly not contesting its own construction lien.

[¶46.] The attorney fee provision of N.D.C.C. § 35-27-24.1 plainly applies to the party opposing the construction lien, not the party seeking its enforcement. See N. Excavating Co. v. Sisters of Mary of the Presentation Long Term Care, 2012 ND 78, 815 N.W.2d 280. Henry Hill’s award of attorney fees should be reversed.

REQUEST FOR ORAL ARGUMENT

[¶47.] Knudsen respectfully requests oral arguments on his appeal. Oral argument will benefit the Court by allowing counsel to explain the unique facts and law involved in this case and to explain the lengthy procedural history.

CONCLUSION

[¶48.] For the reasons set forth herein, Knudsen respectfully requests that the Court reverse the District Court’s Order Granting Henry Hill’s Motion for Summary Judgment

Against Knudsen and Denying Lane A. Knudsen's Cross-Motion for Summary Judgment Against Henry Hill, that it orders the resulting Judgment vacated, and that it orders the case remanded to District Court with instructions to enter summary judgment in favor of Lane Knudsen.

DATED this 7th day of October, 2022.

McGEE, HANKLA & BACKES, P.C.

BY: /s/ Erich M. Grant
Erich M. Grant (ID No. 07593)
2400 E. Burdick Expy., Ste. 100
P. O. Box 998
Minot, ND 58702-0998
(701) 852-2544
egrant@mcgeelaw.com
Attorneys for Lane A. Knudsen

CERTIFICATE OF COMPLIANCE

[¶49.] The undersigned attorney for Appellant Lane A. Knudsen certifies that the attached brief complies with the page limitation stated in North Dakota Rule of Appellate Procedure 32(1)(8)(A). The page count of the filed electronic document is 17 pages, exclusive of this Certificate of Compliance.

/s/ Erich M. Grant

Erich M. Grant

DATED this 7th day of October, 2022.

McGEE, HANKLA & BACKES, P.C.

BY: /s/ Erich M. Grant

Erich M. Grant (ID No. 07593)

2400 E. Burdick Expy., Ste. 100

P. O. Box 998

Minot, ND 58702-0998

(701) 852-2544

egrant@mcgeelaw.com

Attorneys for Lane A. Knudsen

CERTIFICATE OF SERVICE

[¶50.] I hereby certify that, on October 5, 2022, I served the foregoing document on the following by electronic mail transmission, through the filing portal, and that notice of the filing and the documents will be sent to the following:

Lawrence Bender: lbender@fredlaw.com
Mark William Vyvyan: mvyvyan@fredlaw.com
Tyler J. Guldts: tgludt@fredlaw.com
Fredrickson & Byron, P.A., Attorneys for Plaintiff Henry Hill Oil Services LLC

Marissa Cerkoney: mcerkoney@ndlaw.com
Nick Grant: nggrant@ndlaw.com
Ebeltoft. Sickler. Lawyers PLLC, Attorneys for Marcia K. Talley Living Trust and Anne. E. Gochmour

I also hereby certify that a true and correct copy of the foregoing document was mailed to:

RWS Holdings, LLC
1001 S Main Street, Ste. 49
Kalispell, MT 59901

Regional Water Service, LLC
3003 32nd Ave S., Ste. 240
Fargo, ND 58103-6118

To the best of your affiant's knowledge, information, and belief, such addresses as given above are the addresses of the parties intended to be so served.

/s/ Erich M. Grant
Erich M. Grant

CERTIFICATE OF SERVICE

[¶50.] I hereby certify that, on October 7, 2022, I served the foregoing document on the following by electronic mail transmission, through the filing portal, and that notice of the filing and the documents will be sent to the following:

Lawrence Bender: lbender@fredlaw.com

Mark William Vyvyan: mvyvyan@fredlaw.com

Tyler J. Guldts: tgludt@fredlaw.com

Fredrickson & Byron, P.A., Attorneys for Plaintiff Henry Hill Oil Services LLC

Marissa Cerkoney: mcerkoney@ndlaw.com

Nick Grant: nggrant@ndlaw.com

Ebeltoft. Sickler. Lawyers PLLC, Attorneys for Marcia K. Talley Living Trust and Anne. E. Gochmour

I also hereby certify that a true and correct copy of the foregoing document was mailed to:

RWS Holdings, LLC
1001 S Main Street, Ste. 49
Kalispell, MT 59901

Regional Water Service, LLC
3003 32nd Ave S., Ste. 240
Fargo, ND 58103-6118

To the best of your affiant's knowledge, information, and belief, such addresses as given above are the addresses of the parties intended to be so served.

/s/ Erich M. Grant

Erich M. Grant

CERTIFICATE OF SERVICE

[¶1.] I hereby certify that, on October 12, 2022, I served the foregoing document on the following by electronic mail transmission, through the filing portal, and that notice of the filing and the documents will be sent to the following:

Lawrence Bender: lbender@fredlaw.com

Mark William Vyvyan: mvyvyan@fredlaw.com

Tyler J. Guldts: tguldts@fredlaw.com

Fredrickson & Byron, P.A., Attorneys for Plaintiff Henry Hill Oil Services LLC

Marissa Cerkoney: mcerkoney@ndlaw.com

Nick Grant: nggrant@ndlaw.com

Ebeltoft. Sickler. Lawyers PLLC, Attorneys for Marcia K. Talley Living Trust and Anne. E. Gochmour

I also hereby certify that a true and correct copy of the foregoing document was mailed to:

RWS Holdings, LLC
1001 S Main Street, Ste. 49
Kalispell, MT 59901

Regional Water Service, LLC
3003 32nd Ave S., Ste. 240
Fargo, ND 58103-6118

To the best of your affiant's knowledge, information, and belief, such addresses as given above are the addresses of the parties intended to be so served.

/s/ Erich M. Grant

Erich M. Grant