

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

**Supreme Court No. 20140377
Williams Co. Court No. 2012-PR-00480**

In the Matter of the Estate of Lyle M. Nelson, Deceased,

**First National Bank and Trust of Williston,
As personal representative of the Estate of Lyle M. Nelson,
Lavina Domagala, Trust Officer,**

**Appellee and
Petitioner**

vs.

**Glenn S. Solberg; Sharon Solberg Yoder; Bruce Solberg; Elaine
Solberg Olson; Gloria Dei
Lutheran Church; United Lutheran Church of Zahl; Dakota Boys
Ranch of Minot; Heritage Center of Williston; Sons of Norway Lodge
085 of Williston; James Memorial Preservation Society (Old
Library); Veterans and Friends of Old Armory; Douglas Murawski;
James Murawski; Sandra Barnum; Eric Olson; Adam Olson; Tracy
Solberg Willette; Angela Solberg; Russell Solberg.**

Respondents

Glenn Solberg

Appellant

**REPLY BRIEF OF APPELLANT
Glenn Solberg**

ON APPEAL FROM ORDER TO DISMISS PETITION
FOR ALLOWANCE OF CLAIM AND TO BAR CLAIM
ENTERED AUGUST 6, 2014 IN
DISTRICT COURT, NORTHWEST JUDICIAL DISTRICT,
WILLIAMS COUNTY, STATE OF NORTH DAKOTA
THE HONORABLE JOSH B. RUSTAD PRESIDING

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I. LAND IMPROVEMENT

1. [¶2]John wrote in his brief in [¶34]:

“47-02-33. Rights of owner of life estate. The owner of a life estate may use the land in the same manner as the owner of a fee simple, except that *the owner of a life estate must do no act to the injury of the inheritance.*” (*emphasis added*)

2. Glenn’s response is: Similarly, if the owner of a life estate improves the inheritance, *they can will their improvements.*

3. John *emphasized* in “47-02-33 to imply Lillian would deplete the remainder men's inheritance by willing minerals. *Because* of Glenn and Lillian's deal of breaking surface for minerals, the farmlands are more valuable.” Notice there is no space between farm and land above, so the noun *farmland* means both minerals and surface.

4. Lillian's 1995 breaking codicil, in SOLBERG ANSWER BRIEF, values rocky pasture at \$150 per acre. Lillian's 1997 codicil (also in Solberg Ans. Brief) values cultivated acres at \$275 per acre. Broke land is worth about double the value of pasture land. \$300. - \$150. = \$150. Increase in value.

5. Glenn broke about 300 acres of pasture, times \$150 per acre equals \$45,000. The value of the farmlands increased by substantially \$45,000 which is shared by all beneficiaries. Lillian's will is to take 100 of farmland, that were valued by the bank when Lillian died in 2003 as worth \$25.00 each X 100 = \$2,500. An improvement of \$45,000. - \$2,500. = a net \$42,500 improvement. Lillian and Glenn increased the beneficiaries' farmlands value by \$42,500. Lillian had a right to will Glenn \$45,000 worth of farmlands. Lillian did not will Glenn \$45,000 worth farmland instead she willed Glenn \$2,500 worth of farmland. \$2,500 is only .06% of \$45,000. Lillian only will.06% of what she had a right to will.

6. Glenn used the price of the minerals when Lillian died because that's when the bank assessed the value of the minerals.

7. In the bank's paragraph 11 John questions Lillian's competence, but we have to assume her competent, because the bank had Lillian sign POA to Lyle one year before she died. So, assuming Lillian was competent when she died, she would know the approximate value of land and minerals; and what she willed.

II. STATUTE OF LIMITATION MET

8. Lillian gave Lyle a life estate in all she had, so who gets all when Lillian dies? Lyle does. Lillian's farmland improvements were part of that 'all'. What 'all' did Lillian have? Lillian had 25 minerals; she had her share of a house and she had the right to will 100 minerals.

9. Lillian's 1985 will article 11 (1) states; 'all my estate, every kind and character, I give to the trust, said trust shall be called the Lillian Nelson family trust; the trustee shall pay the entire net income to Lyle as long as he shall live'. Every kind and character is not just minerals; it is 'all'. 'All' went to Lyle in a life estate, including her farmlands improvements, because all is everything.

10. Glenn met the statute of limitations, because Lillian's life estate to Lyle extended the statute until his death. Glenn breaking compensation cannot be until Lyle died.

11. From page 8 in SOLBERG ANS BRIEF: Lyle had a life estate in all Lillian's property, so the bank should not have given the 25 minerals to Glenn when Lillian died. The bank should give the income from the 25 minerals back to all 4 of Lillian's children, or the trust.

12. Where will the 100 minerals come from? All Sid's minerals were severed when Lillian died whether Lillian had a life estate in them or not. So; no child gets specific minerals from specific surface land. Each child gets a percentage of the total. By giving Glenn 100 minerals of what Lillian has remaining; it will just change the percentage of the total each will receive.

III. MINERAL LAW

13. Between improvements and the flaws in mineral law she had the right to will 6% of the farmlands. Now you add the fact that Judge Rustad only read part of Glenn's brief, because of equipment error, and it is obvious a retrial is necessary.

14. John wrote in his [¶17] The District Court properly dismissed Solberg's Claim there are no evidentiary facts in existence that could support Solberg's claim.

15. Glenn's response is: The District Court did not properly dismiss Glenn Solberg's Petition for Allowance of Claim, and Lillian's improvements are evidentiary facts in existence that support Solberg's claim.

16. Whether the willable improvement of the farmlands was subject to Lyle's life estate would be up to Lyle. When Lillian died,

the bank could have had Lyle sign off on all of his life estate; the bank did not do that, so we have to assume Lyle could take ownership of all Lillian's minerals when he was alive. Therefore, all 125 minerals were subject to Lyle's life estate, and Glenn could not get them until Lyle died, and Lyle's life estate must extend the statute of limitations until Lyle died.

IV. NON CONSENT

17. In SOLBERG ANSWR BRIEF page 14 - 19: The trust never had Lyle sign his life estate from Lillian to her children. Therefore, Lyle was alive when an oil well was drilled on his life estate property, so he went non consent by default, because Lyle lived past the oil companies 30 day deadline. The royalties Lillian's children received must be given back and distributed legally.

V. THREE YEAR STATUTE

18. In SOLBERG ANSWR Page 33 paragraph 5; Lillian's will article XV definitely states; Lillian's life estate to Lyle in all that she had, facilitates to extend her children's statute of limitations from 3 years to after Lyle's death. Bank's observatory word is *apparently*. Maybe the judge did not take that into consideration; if so it's improper dismissal.

19. Page 35 paragraph 1; In Ronald's dismissal letter page - 1- (3); 1. Lillian's minerals did not go in Lyle's estate, but were in the trust when Lyle had control. Glenn could not claim them until Lyle's life estate ended. This means Glenn has 3 years after Lyle's death to claim the minerals.

VI. LIFE ESTATE IN MINERALS

20. [¶3] The issue whether Lillian had a life estate on all the minerals:

21. [¶3] In paragraph 2 the bank asserts that Solberg failed to state a claim upon which relief can be granted and Solberg's claim is beyond the applicable statute of limitations.

22. Glenn's response is: he met the statute of limitations, because Lillian's life estate to Lyle extended the statute until his death. Glenn breaking compensation cannot be until Lyle died.

23. Where will the 100 minerals come from? All Sid's minerals were severed when Lillian died whether Lillian had a life estate in them or not. So; no child gets specific minerals from specific surface land. Lillian's children all get a percentage of the total. By giving Glenn 100 minerals of what Lillian has remaining; it will just change the percentage of the total each will receive.

24. [¶9] John writes in his ¶6; all of her other mineral land snapped over to the remaindermen upon her death.

25. Glenn's response is: Yes we are remaindermen, but only in the surface.

26. [¶10] John writes in his ¶6*; we ask the Supreme Court to take judicial notice of the 1965 Final Decree of Distribution in Sidney Solberg's Williams County District Court Probate Case File # 4066, which establishes the distribution of real estate and mineral interests in life estate form to Lillian.

27. ¶5] In paragraph 5 John states; He claims that his stepfather Lyle's estate has denied him access to and ownership of the 100 mineral acres promised to him by his mother in her Will.

28. Yes, by implying a life estate does not extend a statute of limitations:

29. Lillian's will, article 15, page 6, the second sentence: no beneficiary or Lyle, can sell or anticipate their interest or income produced from the trust until the distribution by the (the bank) trustee. (which cannot happen until Lyle dies.) The bank did not distribute the trust to Lillian's children until 3 years, so Glenn could not anticipate his interest until Lyle dies, by orders of Lillian's will.

30. If Lyle's life estate does not extend the statute, it would have to be legal for Glenn to claim Lyle's minerals when they were still his! Is that legal? To do what Lillian *did not* want; which was to claim minerals before Lyle died, to get what she *wanted*, which was to give Glenn minerals for breaking. It's a deadlock; Glenn would have to go against his mother's will to follow it.

31. There's something wrong with the statute, if Glenn would has to break his Mother's will, and infringe on Lyle, to obey the statute.

32. The only way to prevent this gridlock, is if Lyle's life estate extends the statute of limitations to the end of his life.

33. There are flaws in the mineral law that transfers minerals with the surface. These are pointed out in Glenn's district court brief document SOLBERG ANSR FIXED from the middle of page 8 to the middle of page 10. Between improvements and the flaws in the mineral law Lillian had the right to will 6% of her improvements. Now you add the fact that Judge Rustad only read part of Glenn's brief on the mineral flaws and the three year statute because of equipment error, and it's obvious a retrial is necessary.

34. [¶5] In paragraph 5 John states; He claims that his stepfather Lyle's estate has denied him access to and ownership of the 100 mineral acres promised to him by his mother in her Will.

35. In SOLBRG ANSRS BRIEF top of page 32: If Lyle's life estate doesn't extend the statute, it would have to be legal for Glenn to claim Lyle's minerals when they were still his! Is that legal? To do what Lillian *didn't* want; (which was to claim minerals before Lyle died), to get what she *wanted*, (which was to give Glenn minerals for breaking). It's an anomaly; I'd have to go against my mother's will to follow it.

36. There's something wrong with the statue If I would have to break my Mother's will, and infringe on Lyle's life estate property, to obey the statute.

37. The only way to prevent this gridlock, is if Lyle's life estate extends the statute of limitations to the end of his life.

38. By breaking Lillian's will by claiming minerals Glenn could not own, it would have upset Lyle, which would hurt all of us, and Lyle.

39. In SOLBERG ANSWR Page 33 paragraph 5; Lillian's will article XV definitely states; Lillian's life estate to Lyle in all that she had, facilitates to extend her children's statute of limitations from 3 years to after Lyle's death.

40. Lyle had a life estate in all Lillian's property, so the bank shouldn't have given the 25 minerals to Glenn when Lillian died. The bank must give the income from the 25 minerals back to all 4 of us, or the bank is at fault.

41. [¶9] John writes in his ¶6; all of her other mineral land snapped over to the remaindermen upon her death.

42. Glenn's response is: From SOLBERG ANSWR: Lillian did not have a life estate in minerals from Sidney, so she had minerals to support Glenn's claim for them; The bank's observatory word in its paragraph 14 is *apparently*. Maybe the judge dismissed my case because I missed the statute. Maybe he forgot to take into account Lyle's life estate, or he couldn't read that part in my flawed brief document SOLBERG ANSWERS BRIEF FLAWED DIST CRT 4-7-14 enclosed in my appendix including the fixed copy SOLBERG ANSR FIXED. The life estate would extend the statute, making the case an improper dismissal.

Respectfully submitted this 11th day of March, 2015.

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