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STATE OF NORTH DAKOTA

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Michael Sorenson, Plaintiff/Appellant, vs. Ken Alinder; Ken Alinder, Personal Representative of the Estate of Russell Alinder; Ken Alinder, Personal Representative of the Estate of Edna Alinder; Sharon Dragland; and Robert Alinder, Defendants/Appellees.	)	Supreme Court No. 20100254

APPEAL FROM JUDGMENT DATED JULY 28, 2010, IN THE DISTRICT COURT OF MOUNTRAIL COUNTY, STATE OF NORTH DAKOTA, THE HONORABLE WILLIAM W. McLEES, PRESIDING

PETITION FOR REHEARING

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STATEMENT OF ISSUE PRESENTED FOR REHEARING

[¶1] Ken Alinder, Ken Alinder, Personal Representative of the Estate of Russell Alinder, Ken Alinder, Personal Representative of the Estate of Edna Alinder, Sharon Dragland and Robert Alinder, appellees in this matter, respectfully petition the Court for rehearing pursuant to Rule 40 of the North Dakota Rules of Appellate Procedure. Specifically, the Alinders submit that the Court failed to recognize and consider the fact that there was no address of record for the mineral owners (Ken Alinder, Sharon Dragland and Robert Alinder) in this case and that the Court erred in concluding that no reasonable inquiry was required under Sorenson v. Felton, 2011 ND 33.

ARGUMENT

I. THIS COURT ERRED IN CONCLUDING THAT NO REASONABLE INQUIRY WAS REQURIED UNDER N.D.C.C. § 38-18.1-06 (2004) BECAUSE THERE WAS NO ADDRESS OF RECORD FOR THE MINERAL INTEREST OWNERS IN THIS CASE

[¶2] In Sorenson v. Felton, 2011 ND 33, ¶¶ 13-14, this Court held that a reasonable inquiry under N.D.C.C. § 38-18.1-06 (2004) is required where the mineral owner's address does not appear of record. Conversely, where the mineral owner's address is of record, no reasonable inquiry is required. Id. In the matter at hand, this Court reversed the trial court on the basis that no reasonable inquiry was required because a prior address of Russell Alinder and Edna Alinder was of record in Mountrail County.

[¶3] This ruling was incorrect because Russell Alinder and Edna Alidner were not the mineral owners at the time of Michael Sorenson's claim. North Dakota law is clear that upon death, an individual's property devolves to his devisees subject only to administration by the personal representative. N.D.C.C. § 30.1-12-01. Title to real

property passes immediately upon the testator's death, not upon distribution of the estate. Feickert v. Frounfelter, 468 N.W.2d 131, 132 (N.D. 1991). Russell Alinder died on March 9, 1980. *App.* 30, ¶ 9, *Stipulated Facts*. Russell Alinder's Will left all of his real property to his wife, Edna Alinder. Id. Edna Alinder died on November 28, 1999 and her Will left all of her real property to her three children, Ken Alinder, Sharon Dragland and Robert Alinder. Id. at ¶ 10. As such, Ken Alinder, Sharon Dragland and Robert Alinder were the owners of the mineral interest at the time of Sorenson's claim. N.D.C.C. § 30.1-12-01. As there was no address of record for Ken Alinder, Sharon Dragland and Robert Alinder, Sorenson was required to conduct a reasonable inquiry under N.D.C.C. § 38-18.1-06 (2004). See App. 28-31, *Stipulated Facts*; Sorenson, 2011 ND 33 at ¶¶ 13-14.

II. N.D.C.C. § 38-18.1-06(2) (2004) REFERS TO ALL MINERAL OWNERS AND IS NOT LIMITED TO MINERAL INTEREST OWNERS OF RECORD

[¶4] It is important to note that the statutory language at issue requires the published notice to state "[t]he name of the **record owner** of the mineral interest". N.D.C.C. § 38-18.1-06(3)(a) (2004) (emphasis added). Further, the notice must be mailed "if the address of the **mineral interest owner** is shown of record or can be determined upon reasonable inquiry". N.D.C.C. § 38-18.1-06(2) (2004) (emphasis added). This Court's ruling that no reasonable inquiry was required can only be correct if the language contained in N.D.C.C. § 38-18.1-06(2) (2004) is construed as referring to the mineral interest owner of record.

[¶5] When this Court interprets statutes, words should be given their ordinary meaning unless the drafters clearly intended otherwise. See N.D.C.C. § 1-02-02. Here,

there is nothing to suggest that the legislature intended N.D.C.C. § 38-18.1-06(2) (2004) to refer only to the mineral interest owner of record. Indeed, the legislature knew how to refer to the mineral owner of record as evidenced by N.D.C.C. § 38-18.1-06(3)(a) (2004) and it did not do so with regard to the mailing provision of the statute. This Court should construe N.D.C.C. § 38-18.1-06(2) (2004) in accordance with the rules of construction. See Fetzer v. Minot Park Dist., 138 N.W.2d 601, 604 (N.D. 1965). When those rules are applied in this case, it is clear that the legislature intended N.D.C.C. § 38-18.1-06(2) (2004) to refer to the mineral interest owner, not the mineral interest owner of record. Any other construction would result in this Court legislating, which it cannot do. Id.

III. CONCLUSION

[¶6] This Court erred in concluding that no reasonable inquiry was required in this case because there was no address of record for the mineral interest owners. The Alinders respectfully request that the Court reconsider its action, request such additional briefing or argument as it may deem advisable, and affirm the decision of the trial court.

DATED this 22nd day of February, 2011.

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CERTIFICATE OF SERVICE

I hereby certify that on February 22, 2011, I electronically filed the **Petition for Rehearing** with the Clerk of the Supreme Court by e-mailing a true and correct copy to supclerkofcourt@ndcourts.gov. Also on this same date, I served a copy of this document upon the following counsel of record for Plaintiff/Appellant, by the means designated below:

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