20120064

IN THE SUPREME COURT

FOR THE STATE OF NORTH DAKOTA

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT
MAY 11 2012
STATE OF NORTH DAKOTA

Joe Waldock, Plaintiff/Appellant, vs. Amber Harvest Corp., *et al.*, Defendants/Appellees,	Supreme Court No. 20120064 Mountrail County District Court No. 31-09-C-201

APPEAL FROM THE JUDGMENT ENTERED NOVEMBER 10, 2011
PURSUANT TO THE ORDER FOR SUMMARY JUDGMENT
DATED OCTOBER 17, 2011
IN THE MOUNTRAIL COUNTY DISTRICT COURT
NORTHWEST JUDICIAL DISTRICT

THE HONORABLE GARY H. LEE, PRESIDING

BRIEF OF APPELLEES JOHN H. HOLT OIL PROPERTIES, INC. AND CADE OIL & GAS LLC

and Addendum

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AND CADE OIL & GAS LLC

IN THE SUPREME COURT

FOR THE STATE OF NORTH DAKOTA

Joe Waldock,	)	
	)	
Plaintiff/Appellant,	)	
	)	Supreme Court No. 20120064
vs.	)	
	)	
Amber Harvest Corp., *et al.*,	)	Mountrail County District
	)	Court No. 31-09-C-201
Defendants/Appellees,	)	
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¶1 **I. STATEMENT OF THE ISSUES PRESENTED FOR REVIEW**

¶2 A. Did the 1954 Administrator's Deed specifically limit the conveyance to include only the mineral interest then owned by the decedent at the time of his death?

¶3 B. Where the 1954 Administrator's Deed did not purport to convey all of the mineral interest in the Subject Property, did the district court err in refusing to apply the Duhig Rule?

¶4 **II. STATEMENT OF THE CASE**

¶5 The statement of the case made by the Appellant Joe Waldock generally represents the course of the proceedings and the disposition by the district court. It should be noted this action is only related to the 25% mineral interest reserved by the 1954 Administrator's Deed to the Estate of W.C. Edwardson. The 25% mineral interest conveyed by the 1954 Administrator's Deed to the predecessor in interest of Joe Waldock, the 50% mineral interest owned by the United States of America, and the surface ownership are not disputed.

¶6 **III. STATEMENT OF THE FACTS**

¶7 This is a quiet title action related to a disputed 25% interest in the oil, gas, and other minerals in and under lands in Mountrail County described as:

Township 151 North, Range 90 West
Section 18: E½SW¼, Lots 3 and 4
(hereinafter "Subject Property")

¶8 The Subject Property was patented in 1919. Through mortgage foreclosure proceedings the Subject Property was acquired by the Federal Farm Mortgage

Corporation which obtained the entire surface and mineral estates.

¶9 The Subject Property was conveyed in 1943 by the Federal Farm Mortgage Corporation to Herman M. Kruse. This deed excepted and reserved 50% of all interest in the oil, gas and other minerals and the Federal Farm Mortgage Corporation later conveyed these reserved mineral interests to the United States of America. This 50% mineral interest is not disputed in this quiet title action and remains owned by the United States of America.

¶10 All parties agree Herman M. Kruse by this 1943 deed acquired the entire surface estate and an undivided 50% interest in the oil, gas and other minerals. In 1949 Herman Kruse conveyed the Subject Property to W.C. Edwardsen by a warranty deed containing no mineral reservation. All parties further agree W.C. Edwardsen aka W.C. Edwardson then acquired the entire surface estate and an undivided 50% interest in the oil, gas and other minerals in the Subject Property. W.C. Edwardson made no conveyance of any mineral interest in the Subject Property during his life.

¶11 W.C. Edwardson died intestate September 20, 1952. He was not survived by any spouse or children, but was survived by a number of siblings, nieces, and nephews. During the probate of his Estate there was a sale of the Subject Property as evidenced by an Administrator's Deed to Clark Van Horn dated October 6, 1954. Waldock now claims all interests conveyed to Clark Van Horn by this deed.

¶12 The granting language of this Administrator's Deed read:

> NOW THEREFORE, the said party of the first part as Administrator aforesaid pursuant to the order last aforesaid, and for and in consideration of the said sum of Four Thousand Seven

> Hundred ($4700.00) and no/100 Dollars, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey, unto the said party of the second part and his heirs and assigns, forever, all the right, title, estate and interest, of the said above named decedent, at the time of his death, and also all the right, title, and interest that the said estate, by operation of law or otherwise, may have acquired other than or in addition to, that of said deceased, at the time of his death, in and to all that certain lot, piece or parcel of land, situated, lying and being in said County of _____ and State of North Dakota and particularly described as follows, to-wit:

¶13 Immediately following the description of the Subject Property this Administrator's Deed contained the following mineral reservation language:

> "excepting and reserving unto said estate, its successors and assigns, forever, an undivided Twenty-five percent (25%) interest in all of the oil, gas, and other minerals upon, or in said land, together with such rights of ingress and egress as may be necessary for exploring for and mining or otherwise extracting and carrying away the same"

¶14 There were several heirs of the W.C. Edwardson Estate. On September 28, 1959 there was an Amended Final Decree of Distribution for the Estate of W.C. Edwardson conveying to these heirs mineral interests under several tracts including:

> "25% of minerals on following described property:
> E.½S.W.¼ & Lots 3-4 Section 18, Township 151, Range 90"
> (Affidavit of Connie Ferrell, Docket No. 140, Exhibit F)

¶15 Since this 1959 distribution, the 25% mineral interest conveyed from the Estate of W.C. Edwardson is owned by the Defendants/Appellees as set forth in the chain of title in the Mountrail County Recorder's Office.

¶16 Appellees John H. Holt Oil Properties, Inc. (hereinafter "Holt") and Cade Oil & Gas LLC (hereinafter "Cade") are the owners of 18 oil and gas leases purchased from

mineral owners claiming from the Estate of W.C. Edwardson. (Affidavit of Connie Ferrell, Docket No. 140, pages 3-4) Those leases have been included in the spacing unit of an oil well which includes the Subject Property.

¶17 An undivided 75% mineral interest in the Subject Property is not contested in this action. That includes the 50% interest owned by the United States of America and the 25% interest conveyed to Waldock's predecessor in title Clark Van Horn by the 1954 Administrator's Deed.

¶18 **IV. LAW & ARGUMENT**

¶19 **A. STANDARD OF REVIEW**

¶20 Summary judgment is appropriate if the only questions to be decided are questions of law. American State Bank & Trust Co. v. Sorenson, 539 N.W.2d 59 (N.D. 1995). On appeal, whether the district court properly granted summary judgment is a question of law that the Supreme Court will review de novo on the record. Kapperman v. Klipfel, 2009 ND 89, 765 N.W.2d 716.

¶21 No party has claimed that the Administrator's Deed is ambiguous or that there is any issue of a material fact. In fact, upon these same documents the Appellant Joe Waldock had also sought summary judgment.

¶22 It is the position of the Appellees Holt and Cade that the district court correctly applied the law in ruling that the 1954 Administrator's Deed effectively reserved a 25% mineral interest in the Subject Property.

¶23 **B. DID THE 1954 ADMINISTRATOR'S DEED SPECIFICALLY LIMIT THE CONVEYANCE TO INCLUDE ONLY THE MINERAL INTEREST THEN OWNED BY THE DECEDENT AT THE TIME OF HIS DEATH?**

¶24 **B.1. THE ADMINISTRATOR'S DEED CARRIED NO EXPRESS OR IMPLIED WARRANTY OF TITLE.**

¶25 The probate of the Estate of W.C. Edwardson and the Administrator's Deed now presented for consideration were completed prior to the adoption of the Uniform Probate Code in North Dakota. Waldock correctly set out the title requirements then in effect to establish a valid sale from an estate pursuant to a court order. The Practice Guide to the North Dakota Title Standards (2000) states for such a conveyance to be complete the record for the property must include specific documents:

> "Require:
>
> i. Certified copy of order confirming sale. (See NDCC 30-19-18); and
>
> ii. Executor's deed (See NDCC 30-19-20)."
> (App. pp. 290-291)

¶26 The Administrator's Deed is fully set out at pages 288-289 of the Appendix. This deed made specific reference to the certified copy of the order confirming sale dated June 10, 1954 which had previously been recorded with the Mountrail County Register of Deeds.

¶27 Waldock concedes the Administrator's Deed contains no express covenants or warranties of title. By use of the word "grant" or "granted", Waldock now proposes that the Administrator's Deed became the equivalent of a "quitclaim plus" deed or even a special warranty deed. Waldock makes these arguments while admitting there is no

statutory authority or case law to support his claims.

¶28 Waldock proposes that language found in N.D.C.C. §3-04-01 not only includes a warranty that the estate administrator had the authority to sign the deed but also that there was an implied warranty of title. Similar arguments were considered and rejected in the decision of Ihde v. Kempkes, 422 N.W.2d 788 (Neb. 1988) cited by the district court in its order. There the Nebraska Supreme Court stated:

> "The usual covenant of a personal representative's deed that a personal representative has the lawful power and authority to convey real property means only that the personal representative has been given the authority and has the legal capacity to sell real property on such terms as the decedent, as absolute owner, could sell....
>
> Accordingly, we hold that the covenant of a personal representative's deed of lawful power and authority to convey real property is not a warranty of title and contains no implication of a covenant warranting title."
> (Ihde, at 789, 790)

¶29 Similarly, N.D.C.C. §3-04-01 only confirms the signing authority by the representative party and should not be considered as implying any warranty of title.

¶30 Waldock's reliance upon N.D.C.C. §47-10-19 to make the Administrator's Deed into a variation of a special warranty deed is also misplaced. Waldock has not claimed:

- That the administrator had previously conveyed the same interests to another, or
- That the administrator had encumbered this property

¶31 Those would be the only claims protected under N.D.C.C. §47-10-19 which may have been actionable by the grantee. There was simply no express or implied warranty of title in this Administrator's Deed and Waldock has failed to offer any authority to now

suggest that this Administrator's Deed should be considered as any derivative of a special warranty deed.

¶32 **B.2. THE ADMINISTRATOR'S DEED CONVEYED ONLY THE RIGHT, TITLE, INTEREST, AND ESTATE OF THE DECEDENT IN THE SUBJECT PROPERTY MAKING IT COMPARABLE TO A QUITCLAIM DEED.**

¶33 The Practice Guide to the North Dakota Title Standards (2000) set out by Waldock (App. pp. 290-291) in requiring a deed from the executor or administrator, makes reference to N.D.C.C. §30-19-20. This statute was in effect at the time of the Administrator's Deed but was subsequently repealed as part of the adoption of the Uniform Probate Code. This statue was cited in Sittner v. Mistelski, 140 N.W.2d 360, 369 (N.D. 1966):

> "Our statute relating to the conveyance of land following a private sale in the probate of an estate reads as follows:
>
> 30-19-20. Land, how conveyed-Whole estate granted.-A conveyance of real property of an estate sold as provided in this chapter must be executed to the purchaser by the executor or administrator and must refer to:
>
> 1. The orders of the county court authorizing and confirming the sale of the property of the estate and directing conveyance thereof to be executed; and
>
> 2. The record of the order of confirmation in the office of the register of deeds, by the date, volume, and page of the record.
>
> Such reference shall have the same effect as if the orders were inserted in the conveyance. A conveyance so made conveys all of the right, title, interest, and estate of the decedent in the premises at the time of his death. If prior to the sale, by operation of law or otherwise, the estate has acquired any right, title, or interest in the premises other than, or in addition to, that of the decedent at the

time of his death, such right, title, or interest also passes by such conveyance.

North Dakota Century Code."

¶34 The 1954 Administrator's Deed now being reviewed contained the required provisions recited in this statute:

- Reference was made to the order of the county court authorizing the sale of the Subject Property dated December 21, 1953
- Reference was made to "an order confirming said sale, and directing conveyance of said real estate" from the county court dated June 10, 1954
- Reference was made to the recorded order of confirmation in the Office of the Mountrail County Register of Deeds, noting it had been filed October 6, 1954 at 4 o'clock p.m. and recorded in Book 322 of Miscellaneous on page 81

¶35 The Administrator's Deed further described the exact interest which was being conveyed:

> "...all the right, title, estate and interest, of the above named decedent, at the time of his death, and also all the right, title, and interest that the estate, by operation of law or otherwise, may have acquired other than or in addition to, that of said deceased, at the time of his death..." (App. p. 288)

¶36 The Administrator's Deed therefor strictly complied with every required provision of N.D.C.C. §30-19-20. The Supreme Court has already ruled that such a deed conveys only a limited interest:

> "This statute clearly indicates that a conveyance so made conveys only the right, title, interest, and estate of the decedent in the premises."
> Sittner, at p. 369. (emphasis added)

¶37 From cases decided near the same time as this 1954 Administrator's Deed, this

limitation upon the grant makes it very similar to the definition of a quitclaim deed:

> "A quitclaim deed is one which purports to convey, and is understood to convey, nothing more than the interest or estate in the property described of which the grantor is seized or possessed, if any, at the time, rather than the property itself." Frandson v. Casey, 73 N.W.2d 436 (N.D. 1955); Bilby v. Wire, 77 N.W.2d 882 (N.D. 1956)

¶38 Regardless of what other type of deed the Administrator's Deed was to be compared, it is the language of the deed which controls:

> "In construing a deed, the primary purpose is "to ascertain and effectuate the grantor's intent, and deeds are construed in the same manner as contracts". If a deed is unambiguous, this court determines the parties' intent from the instrument itself. In other words, "the language of the deed, if clear and explicit, governs its interpretation; the parties' mutual intentions must be ascertained from the four corners of the deed, if possible." Carkuff v Balmer, 2011 ND 60, ¶8, 795 N.W.2d 303. (citations omitted)

> "If a deed purports and is intended to convey only the right, title, and interest in the land, as distinguished from the land itself, it is a quitclaim deed; if it appears that the intention was to convey the land itself, then it is not a quitclaim deed, although it may possess characteristics peculiar to such deeds." Carkuff, at ¶10.

¶39 General authorities have also held there is no warranty of title from an administrator's or executor's deed:

> "As is stated in 31 AM Jur.2d Executors and Administrators §426 at 201-02 (1967):
>
> There is no implied warranty of title or of the soundness of an article of personalty sold by an executor or administrator acting in his representative capacity. So too, in sales of land by an executor or administrator, the purchaser, in the absence of a covenant in the deed, takes title without any warranty. An executor or administrator, not being bound to convey with any covenants except against encumbrances of his own making, conveys only the title of the decedent. In effect, the deed of the executor or

administrator is the equivalent of a quitclaim deed."

and

"As is stated in 34 C.J.S. Executors and Administrators §642b at 619 (1942):

The rule (of) caveat emptor applies to sales of decedent's property under order of court, and it is the general rule that the purchaser has no right to complain...because of defects in quantity, quality, or title, especially where...he had notice of, or could with reasonable diligence have discovered, the defects." Ihde, 422 N.W.2d at 789, 790.

¶40 The Administrator's Deed from the Estate of W.C. Edwardson complied with every requirement of N.D.C.C. §30-19-20. The interest granted by that deed included only:

- "all the right, title, estate and interest, of the said above named decedent, at the time of his death" - which the parties in this action agree was the entire surface estate and an undivided 50% mineral interest

- "and also all the right, title, and interest that the said estate, by operation of law or otherwise, may have acquired other than or in addition to, that of said deceased, at the time of his death" - which the parties agree was no additional interest

¶41 In a deed such as this, not claimed by any party to be ambiguous, the express language of the deed governs its interpretation. Based upon all of these cited authorities, the grantee in the Administrator's Deed took his title without warranty of title of any type, whether express or implied, and subject to the mineral reservation language. As decided in Sittner, such a deed from an administrator conveyed only the interest of the decedent in the property without any representation that it was conveying the land itself. That makes the language from this particular Administrator's Deed comparable to a quitclaim deed.

¶42 **C. WHERE THE 1954 ADMINISTRATOR'S DEED DID NOT PURPORT TO CONVEY ALL OF THE MINERAL INTEREST IN THE SUBJECT PROPERTY, DID THE DISTRICT COURT ERR IN REFUSING TO APPLY THE DUHIG RULE?**

¶43 **C.1. THE DUHIG RULE IS NOT APPLICABLE FOR INTERPRETING DEEDS WHICH DO NOT PURPORT TO CONVEY ALL OF THE MINERAL INTEREST IN A PROPERTY.**

¶44 The overall arguments made by Waldock in his brief are:

- Because W.C. Edwardson owned the surface and an undivided 50% mineral interest in the Subject Property, and
- Because the Administrator's Deed excepted and reserved a 25% mineral interest, then
- The Duhig rule automatically applies requiring the conveyance of the entire 50% mineral interest to Waldock's predecessor in title.

¶45 The reasoning of Duhig v. Peavy-Moore Lumber Co., 135 Tex. 503, 144 S.W.2d 878 (1940) has been adopted and applied to several cases in North Dakota. Many of those cases have somewhat similar factual backgrounds where the grantor owned the surface and an undivided 50% mineral interest. A subsequent conveyance by a contract for deed or warranty deed reserving an undivided 50% mineral interest in those cases resulted in a determination the grantor had conveyed all mineral interest in the property. Kadrmas v. Savageau, 188 N.W.2d 753 (N.D. 1971); Sibert v. Kubas, 357 N.W.2d 495 (N.D. 1984); Mau v. Schwan, 460 N.W.2d 131 (N.D. 1990); Miller v. Kloeckner, 1999 N.D. 190, 600 N.W.2d 881; Melchoir v. Lystad, 2010 N.D. 140, 786 N.W.2d 8.

¶46 Each of those cases is, however, significantly different from the factual setting and the language from the Administrator's Deed used in the case now before this Court.

Those cases dealt with contracts or deeds representing the conveyance of all of the mineral interests in the lands being conveyed. As noted in Miller, ¶9:

> "Under Duhig, a grantee receives that percentage or fractional interest in the land not reserved to the grantor, since the deed purports to deal with 100% of the minerals." (emphasis added)

¶47 Citing 1 Patrick H. Martin & Bruce M. Kramer, Williams & Meyers Oil and Gas Law §311, at 580.39 (1998), the decision in Miller, ¶9, also stated:

> "The Duhig rule says that where a grantor conveys land in such a manner as to include 100% of the minerals, and then reserves to himself 50% of the minerals, the reservation is not operative where the grantor owns only 50% of the minerals. The deed is construed as undertaking the transfer of 50% of the minerals to the grantee. Both this grant and the reservation cannot be given effect, so the grantor loses because the risk of title loss is on him."

¶48 Cited by the district court in its Order (App. p. 271), Miller, ¶17, stated:

> "What is important and controlling is not whether the grantor actually owned the title to the land it conveyed, but whether, in the deed, it asserted that it did, and undertook to convey it."

¶49 Legal treatises also note the difficulty in determining the interest conveyed or reserved in these situations:

> "A fecund source of confusion and litigation is found in mineral conveyances made by an owner of less than 100% of the minerals in a tract of land. In broad outline, the questions are these: (1) Where the grantor owns only a fraction of the minerals and grants away a fraction, is this a conveyance of a fraction of his fraction or of a fraction of 100%? (2) Where a grantor owns only a fraction of the minerals and makes a conveyance of the land, reserving or excepting a fraction, what has the grantor purported to convey and what has he purported to reserve? Again this question depends on interpreting the instrument as dealing with 100% of the minerals or with the grantor's fractional interest in them. (emphasis added)
> 1 Patrick H. Martin & Bruce M. Kramer, Williams & Meyers Oil and Gas Law, §308 p. 577 (2010).

¶50 Waldock's sole emphasis is on the reservation language found in the 1954 Administrator's Deed which reads:

> "excepting and reserving unto said estate, its successors and assigns, forever, an undivided twenty-five percent (25%) interest in all of the oil, gas and other minerals upon or in said land"

¶51 Waldock argues all it takes now is simple math to determine how the estate's mineral interest was to be distributed:

Starting point:	100% minerals
Interest reserved:	-25% minerals
Interest conveyed:	75% minerals

¶52 Because the Estate of W.C. Edwardson owned only a 50% mineral interest, Waldock's position is his predecessor received all of that 50% mineral interest leaving no mineral interest reserved by the Estate. Waldock spends a good portion of his brief arguing the Administrator's Deed contained warranty, whether express or implied, to make the Duhig rule applicable.

¶53 It is the position of Holt and Cade that the Duhig rule is not applicable in this situation, not only because of arguments about warranty, but more simply because the Administrator's Deed never purported to include 100% of the minerals in the conveyance. It is the position of Holt and Cade that the district court was correct in using its mathematical formula to determine:

Starting point:	50% minerals
Interest reserved:	-25% minerals
Interest conveyed:	25% minerals

¶54 What exactly did this Administrator's Deed purport to convey and what should be the correct "starting point"? The granting clause in the deed stated:

> "does grant, bargain, sell and convey, unto the said party of the second part and his heirs and assigns, forever, all the right, title, estate and interest, of the above named decedent, at the time of his death, and also all of the right, title, and interest that the said estate, by operation of law or otherwise, may have acquired other than or in addition to, that of said deceased, at the time of his death." (emphasis added)

¶55 Waldock has argued this language conveyed more interests than a typical quitclaim deed. Waldock stated: "what the estate had acquired "by operation of law or otherwise" was the real property itself." (Waldock Brief, ¶30) Waldock further claimed the Administrator's Deed "failed to account for the prior reservation of the United States". (Waldock Brief, ¶9 and 25)

¶56 Holt and Cade take the position that neither of these claims is supported by the evidence. The mineral interest owned by the United States had been reserved and severed in 1943, several years before W.C. Edwardson acquired the property. There has never been a conveyance of any portion of that mineral interest from the United States to any party. Waldock has failed to show how the Estate of W.C. Edwardson had acquired or could claim all or any portion of this severed mineral interest "by operation of law or otherwise". Similarly, because the Administrator's Deed conveyed only the interest owned by the decedent at the time of his death, that accounted for any outstanding mineral interests including the United States mineral interest.

¶57 Waldock has not made any argument that the reservation language found in the Administrator's Deed reserved less than 25% of the fee mineral interest in the property.

The reservation explicitly stated it was an undivided 25% interest "in all of the oil, gas, and other minerals". Not 25% of the grantor's interest but 25% of "all" the mineral interests in the Subject Property.

¶58 North Dakota has provided how grants and reservations are to be interpreted:

> **47-09-11. Interpretation of grants.** Grants shall be interpreted in like manner with contracts in general except so far as is otherwise provided by this chapter. If the operative words of a grant are doubtful, recourse may be had to it recitals to assist the construction, and if several parts of a grant are absolutely irreconcilable, the former part shall prevail. A clear and distinct limitation in a grant is not controlled by other words less clear and distinct.
>
> **47-09-13. Grant shall be interpreted in favor of grantee - Exceptions.** A grant shall be interpreted in favor of the grantee, except that a reservation in any grant, and every grant by a public officer or body, as such, to a private party, is to be interpreted in favor of the grantor.
>
> **47-10-13. Grant presumes fee simple title.** A fee simple title is presumed to be intended to pass by a grant of real property unless it appears from the grant that a lesser estate was intended. (emphasis added)

¶59 Holt and Cade would propose that all of these arguments support the conclusion that:

- The Administrator's Deed did not purport to convey 100% of the mineral interests as a lesser interest was intended and distinctly described
- The separate 50% mineral interest remains owned by the United States and there are no claims or issues of after acquired title
- The mineral reservation in the Administrator's Deed reserved 25% of all mineral interests
- Reservations are to be interpreted in favor of the grantor

¶60 After considering the arguments of all parties, the district court concluded:

> The calculation for the interest received by Clark Van Horn is based upon the fifty percent (50%) interest W.C. Edwardson held at the time of his death. This is also derivative of the language included in the Administrator's Deed. Clark Van Horn received the interest held by W.C. Edwardson at the time of his death, fifty percent (50%), minus the twenty-five percent (25%) reservation. Clark Van Horn, therefore, received a twenty-five percent (25%) interest in all of the minerals in the Subject Property as a result of the conveyance. (Appendix p. 277)

¶61 When considering the specific language used in this Administrator's Deed, the district court's decision was correct in view of these arguments that the Duhig rule does not apply for deeds such as this which do not represent that 100% of the mineral interests are to be included in the conveyance.

¶62 **V. CONCLUSION**

¶63 It is not the position of Holt and Cade that all deeds from an administrator, executor, or personal representative should automatically be exempt from the application of the Duhig rule. Like any other deed, it is not the title of the instrument but the express language from the deed itself which controls how it is to be interpreted.

¶64 In this case, the 1954 Administrator's Deed was clearly drafted to specifically comply with N.D.C.C §30-19-20. From this statute and the express language of this deed, the conveyance was limited to include only the right, title, interest, and estate of W.C. Edwardson in these mineral interests owned at the time of his death. All parties agree that was a 50% mineral interest.

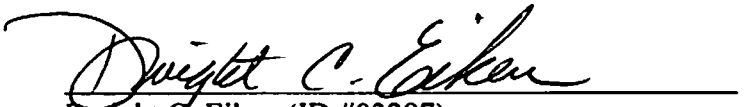
¶65 While including the 50% mineral interest in the grant, this Administrator's Deed also clearly excepted and reserved 25% of all interests in the oil, gas, and other minerals.

The district court was correct in determining the Administrator's Deed resulted in the Estate of W.C. Edwardson reserving a 25% mineral interest and Waldock's predecessor in title receiving the remaining 25% mineral interest.

¶66 There being no issues of any material facts, and these questions of law having been interpreted correctly by the district court, the summary judgment granted by the district court quieting title in the disputed 25% mineral interest in favor of Holt, Cade, and the other Defendants/Appellees should now be affirmed.

Dated this 14th day of May, 2012.

NEFF EIKEN & NEFF, P.C.



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NORTH DAKOTA CENTURY CODE

3-04-01. Agent warrants authority.

One who assumes to act as an agent thereby warrants to all who deal with that person in that capacity that the person has the authority which the person assumes.

30-19-20. Land, how conveyed - Whole estate granted.

A conveyance of real property of an estate sold as provided in this chapter must be executed to the purchaser by the executor or administrator and must refer to:

1. The orders of the county court authorizing and confirming the sale of the property of the estate and directing conveyance thereof to be executed; and

2. The record of the order of confirmation in the office of the register of deeds, by the date, volume, and page of the record.

Such reference shall have the same effect as if the orders were inserted in the conveyance. A conveyance so made conveys all of the right, title, interest, and estate of the decedent in the premises at the time of his death. If prior to the sale, by operation of law or otherwise, the estate has acquired any right, title, or interest in the premises other than, or in addition to, that of the decedent at the time of his death, such right, title, or interest also passes by such conveyance.

47-09-11. Interpretation of grants.

Grants shall be interpreted in like manner with contracts in general except so far as is otherwise provided by this chapter. If the operative words of a grant are doubtful, recourse may be had to it recitals to assist the construction, and if several parts of a grant are absolutely irreconcilable, the former part shall prevail. A clear and distinct limitation in a grant is not controlled by other words less clear and distinct.

47-09-13. Grant shall be interpreted in favor of grantee - Exceptions.

A grant shall be interpreted in favor of the grantee, except that a reservation in any grant, and every grant by a public officer or body, as such, to a private party, is to be interpreted in favor of the grantor.

47-10-13. Grant presumes fee simple title.

A fee simple title is presumed to be intended to pass by a grant of real property unless it appears from the grant that a lesser estate was intended. (emphasis added)

47-10-19. Covenants implied from use of word grant.

From the use of the word "grant" in any conveyance by which an estate of inheritance or fee simple is to be passed, the following covenants, and none other, on the part of the grantor for the grantor and the grantor's heirs to the grantee and the grantee's heirs and assigns, are implied unless restrained by express terms contained in such conveyance:

1. That previous to the time of the execution of such conveyance, the grantor has not conveyed the same estate, nor any right, title, or interest therein, to any person other than the grantee; and

2. That such estate, at the time of the execution of such conveyance, is free from encumbrances done, made, or suffered by the grantor, or any person claiming under the grantor. Such covenants may be sued upon in the same manner as if they had been inserted expressly in the conveyance.

¶68 **CERTIFICATE OF SERVICE**

Dwight C. Eiken, attorney for Appellees John H. Holt Oil Properties, Inc. and Cade Oil & Gas LLC, hereby certifies that on the 11th day of May, 2012, copies of the BRIEF OF APPELLEES were deposited into the United States mails, postage prepaid, at Williston, North Dakota, and addressed to the following counsel and parties:

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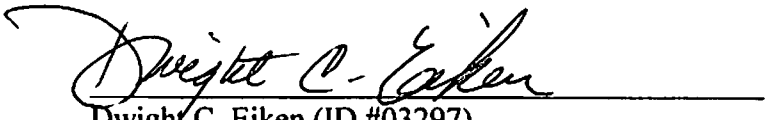
Dated this 11th day of May, 2012.

NEFF EIKEN & NEFF, P.C.



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IN THE SUPREME COURT

FOR THE STATE OF NORTH DAKOTA

Joe Waldock,	)	
	)	
Plaintiff/Appellant,	)	
	)	Supreme Court No. 20120064
vs.	)	
	)	
Amber Harvest Corp., *et al.*,	)	Mountrail County District
	)	Court No. 31-09-C-201
Defendants/Appellees,	)	
	)	
	)	

APPEAL FROM THE JUDGMENT ENTERED NOVEMBER 10, 2011
PURSUANT TO THE ORDER FOR SUMMARY JUDGMENT
DATED OCTOBER 17, 2011
IN THE MOUNTRAIL COUNTY DISTRICT COURT
NORTHWEST JUDICIAL DISTRICT

THE HONORABLE GARY H. LEE, PRESIDING

SUPPLEMENTAL CERTIFICATE OF SERVICE

Dwight C. Eiken, attorney for Appellees John H. Holt Oil Properties, Inc. and Cade Oil & Gas LLC, hereby certifies that on the 11th day of May, 2012, a copy of the BRIEF OF APPELLEES was deposited into the United States mails, postage prepaid, at Williston, North Dakota, and addressed to the following counsel:

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Dated this 11th day of May, 2012.

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