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STATE OF NORTH DAKOTA

IN THE SUPREME COURT

FOR THE STATE OF NORTH DAKOTA

Estate of Edyth M. Christeson, aka Edyth M. Christison, Estate of Emmett C. Christeson, Estate of Ronald J. Christeson, and Patricia Mary Christeson, Dennis Piper, Betty Horn, Estate of Eleanor Christeson, Dublin Company, and Lario Oil and Gas Company,	)	Supreme Court No. 20120328
Plaintiffs and Appellees,	)	Mountrail County District Court No. 31-11-C-00046
vs.	)	
Wade Gilstad, Trustee under Irrevocable Trust Agreement dated 2/3/1993, Wade Gilstad, Charles E. Gilstad, and Ruth Marie Smith,	)	
Defendants and Appellants.	)	

APPEAL FROM THE JUDGMENT QUIETING TITLE ENTERED JUNE 20, 2012,
PURSUANT TO THE LETTER OPINION DATED JUNE 7, 2012,

MOUNTRAIL COUNTY DISTRICT COURT, NORTHWEST JUDICIAL DISTRICT
THE HONORABLE WILLIAM W. McLEES, PRESIDING

REPLY BRIEF OF APPELLANTS GILSTAD

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¶2 **I. LAW AND ARGUMENT**

¶3 **A. An Heir Who Does Not Record Ownership of the Mineral Interest Cannot Be Considered an "Owner" for the Purposes of Chapter 38-18.1.**

¶4 Appellee Patricia Mary Christeson concedes by her argument that Edyth Christeson was the only mineral owner of record. Everyone involved agrees with the principle that property automatically devolves to the deceased's heirs upon death, subject to administration. However, the Gilstads disagree with the lower court's finding that after Edyth's death, Emmitt became the "owner" of the minerals for purposes of Chapter 38-18.1. Thus, while Emmitt Christeson may have had legal title via devolution upon Edyth's death, for the purposes of Chapter 38-18.1 he was not the "owner."

¶5 The Appellee cites Brigham Oil and Gas, LP v. Lario Oil and Gas Company, 2011 ND 154, 801 NW 2d 677 for the premise that "minerals vest immediately in the heirs upon the death of the previous owner." Brief, p. 8. That is in keeping with the above-stated principle, but this Court also noted in that case that a probate proceeding is required to "formally transfer title to the subject mineral rights." *Id.* at ¶ 16 (*citations omitted*). Formal, recorded title is what Chapter 38-18.1 requires in order to be an "owner." A conclusion that "non-record title" equals "owner" does not conform to real estate law nor has Appellee Patricia Mary Christeson cited a single case that regards "non-record title" as "ownership." Moreover, Appellee Patricia Mary Christeson has not acknowledged even in passing that an important purpose of Ch. 38-18.1 is to solve this very problem -- failure to keep current record title. In each of North Dakota's fifty-three counties the Recorder maintains a record "of each patent, deed, mortgage, bill of sale, security agreement, judgment, decree, lien, certificate of sale, and other instrument required to be filed or admitted to record." N.D.C.C.

§11-18-01. The identity of the owner of record of *all* minerals located in the county is included in these records maintained by the Recorder. After the death of Edyth Christeson, no one claiming from her bothered to record any document indicative of ownership. This Court is protective of the recording statutes and their purpose in making the history of the title readily available; the district court's finding ownership in the unknown *heirs* of the record owner, strangers to the title, is inimical to the recording statutes and the purposes of Ch. 38-18.1. Accordingly, Edyth Christeson can be the only "owner."

¶6 **B. A Lease Executed by One Not a Record Owner Is Not a "Use" of a Mineral Interest under N.D.C.C. § 38-18.1-03.**

¶7 In this case, the record owner had not used the minerals since 1977. (Appendix p. 52) To further the purposes of Chapter 38-18.1, which is to cure uncertainties of title and facilitate the use of minerals, a bright-line rule that allows reliance upon the owner shown of record as the "owner" is consistent with due process and Chapter 38-18.1.

¶8 **a. Permitting a stranger to the title to "use" minerals is contrary to settled law and the purposes of Chapter 38-18.1.**

¶9 In North Dakota real estate law, the "owner" of real property is generally regarded as the "owner of record." *See, e.g.* Cass County Joint Water Resource Dist. v. 1.43 Acres of Land in Highland Tp., 2002 ND 83, ¶ 11, 643 N.W.2d 685. In addition, when one is searching for the owner of abandoned minerals, one need not search beyond the address of the *owner of record*, indicating that the "owner of record" is the "owner." *See* Sorenson v. Alinder, 2011 ND 36, ¶ 6, 793 N.W.2d 797. This Court has made its position clear that the only "owner" deserving of consideration under Ch. 38-18.1 is the "owner of record": "We held in Sorenson v. Felton, 2011 ND 33, 793 N.W.2d 799, that section 38-18.1-06,

N.D.C.C., requires reasonable inquiry only when the mineral owner's address does not appear of record." Johnson v. Taliaferro, 2011 ND 34, ¶ 11, 793 N.W.2d 804.

¶10 Allowing a stranger to the title to "use" the minerals under N.D.C.C. § 38-18.1-03 ignores the settled law noted in the preceding paragraph, does damage to the very purpose of Chapter 38-18.1, and confers an explicit blessing upon a defect in N.D.C.C. § 38-18.1-03 in its current form. Section 38-18.1-03 is flawed in that it does not explicitly provide that the "owner of record" must be the one to record the documents evidencing "use." Instead, this provision provides that:

> d. The mineral interest on any tract is subject to a lease, mortgage, assignment, or conveyance of the mineral interest recorded in the office of the recorder in the county in which the mineral interest is located.

N.D.C.C. § 38-18.1-03(d). Indeed, the issue this Court is grappling with today was predicted in a law review article published in 2010 wherein its author, who argued for clarifying amendments to N.D.C.C. § 38-18.1-03, stated that

> *It is conceivable that someone other than the mineral owner could take action to have minerals produced under the mineral owner's interest.* It is also possible for a mineral owner to accrue royalties even if the owner has taken no affirmative action to use the mineral interests. North Dakota allows forced pooling. Thus, if there are two or more separately owned tracts within a spacing unit, the North Dakota Industrial Commission may "enter an order pooling all interests in the spacing unit for the development and operations thereof." The mineral owner whose interest has been pooled is then entitled to be paid a royalty when there is production within the spacing unit, even if the mineral owner has done absolutely nothing, not even entered into a lease, to foster the mineral development.

Sara K. Sorenson, *A Need For Clarification: North Dakota's Abandoned Mineral Statute*, 86 **N. Dak. L. Rev**. 521, 527-528 (2010) (*emphasis added*) (*footnotes omitted*). As the foresighted author envisioned, here is the case where someone other than the owner of

record-who is the only "owner" under real estate law - took action to have minerals produced under the record owner's interest. As Miss Sorenson points out, this statute requires amendment to clarify its meaning. Likewise, this Court should clarify that one who is not an "owner of record" is not enabled to call a lease a "use" under N.D.C.C. § 38-18.1-03.

¶11 **b. Strict construction as urged by Appellee thwarts Legislative intent.**

¶12 Appellee cites Spring Creek Ranch, LLC v. Svenberg, 1999 ND 113, 595 N.W.2d 323 and urges that this Court strictly construe N.D.C.C. § 38-18.1-03 to find that the "minerals were leased by the owner within the twenty years preceding the commencement of the lapse of mineral interest procedure." Brief, p. 10. Appellants Gilstad agree that Spring Creek did in fact state that courts "must review for strict construction and application of statutory requirements." *Id.* at ¶ 10. However, this Court has *also* noted that "even when we strictly construe statutory language, we do so in a manner that 'does not wreak havoc either with the meaning the words will bear or with the intent of the Legislature.'" Midwest Fed. Sav. Bank v. Symington, 423 N.W.2d 797, 798 (N.D. 1988), *quoting* Amerada Hess Corp. v. Conrad, 410 N.W.2d 124, 131 (N.D. 1987). In this case, strictly construing the statute in the manner urged by the Appellee *will* wreak havoc with the intent of the Legislature, if not thwart it entirely. None of the parties who claim an interest in the minerals are actual heirs of record-owner Edyth and so are unknowable and "unfindable" under a reasonable inquiry. If a surface owner cannot rely on the record owner as the "owner," tracking down the lower court's "owner" is impossible. Chapter 38-18.1 was meant to provide a relatively painless way for surface owners to reclaim abandoned mineral interests; the lower court's analysis and holding frustrates this purpose. It was not the intent of the

Legislature to burden the courts with litigation over whether the surface owner did or did not properly terminate an abandoned mineral interest when the *record* owner had shown no use in twenty years.

¶13 **II. CONCLUSION**

¶14 For all of the above reasons, the Gilstads respectfully request that this Court reverse the district court, granting them summary judgment quieting title in them in and to the minerals in and under the subject property as a matter of law.

¶15 Dated this 26th day of November, 2012.

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¶16 CERTIFICATE OF SERVICE

I, Richard P. Olson, attorney for Appellants Gilstad, do hereby certify that on the 26th day of November, 2012, a copy of the REPLY BRIEF OF APPELLANTS GILSTAD was served on the following by electronic mail transmission, per N.D. Sup.Ct. Admin. Order 14(D):

Steven J. Wild	sjoewild@yahoo.com	Steven J. Wild P.O. Box 260 Bowman, ND 58623

Dated this 26th day of November, 2012.

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¶17 **CERTIFICATE OF COMPLIANCE**

I, Richard P. Olson, attorney for the Appellants Gilstad, do hereby certify that the above brief complies with all type-volume limitations as set forth in the North Dakota Rules of Appellate Procedure.

I further certify that the attached Brief of Appellant contains less than 2,500 words, and was prepared using WordPerfect 10.0, Times New Roman font, size 12.

Dated this 26th day of November, 2012.

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