20140011
FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT
AUGUST 6, 2014
STATE OF NORTH DAKOTA

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Lawrence A. Hamilton, Philip B. Hamilton and Judy H. Kasper,

Plaintiffs/Appellees,

v.

Larry G. Woll, Cynthia J. Woll, Tracy J. Holiday, Robert V. Holiday, Philip Knolyn Hatch II, Jacki DeMay, R. Craig Woll, Dorothy Jean Griswold, Russell Rapp, Jeffery R. Carius, Michael Carius, Mark S. Rapp, Tandals Farm Inc., James H. Bragg, Julie K. McKinley, J. Michael Gleason DBA Gleason Land Co., Strata Minerals, Inc., Frances A. Hannifin, Alan R. Hannifin, Desert Partners II L.P., Value Petroleum Inc., J. Kyle Jones, Margaret J. Hannifin, Fall River Resources, Chatfield Company, Walter E. Opper, Emma Smart, John M. Schattyn, Lloyd S. Schattyn, Noel L. Schattyn Soren, Avalon North LLC, Dakota West Energy LLC, Ronald Rowland, Lee LaBarre, Terry Aronson, Burlington Resources Oil & Gas Company LP; Peyton Woll, Jr., Trust dated June 8, 1993, Peyton H. Woll, Trustee, Dana G. Woll, Successor Trustee; John H. Woll and Dorothea E. Woll, Trustees of the John & Dorothea Woll Trust Agreement dated 1-31-90; Helen F. Rapp, Trustee of the Helen F. Rapp Declaration of Trust dated 8-17-2004; Alvin C. Schopp, Trustee; and all other persons unknown claiming any estate or interest in or lien or encumbrance upon the property described in the Complaint,

Defendants,

Ronald Rowland,

Appellant.

Supreme Court No. 20140011
Bowman County Civ. No. 06-10-C-00043

APPEAL FROM THE FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER FOR JUDGMENT ENTERED NOVEMBER 12, 2013, AND JUDGMENT ENTERED NOVEMBER 18, 2013, IN BOWMAN COUNTY DISTRICT COURT, SOUTHWEST JUDICIAL DISTRICT

THE HON. DANN E. GREENWOOD, PRESIDING

REPLY BRIEF OF APPELLANT RONALD ROWLAND

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I. ARGUMENT

A. The district court erred by failing to consider direct evidence from Finlay's grantees indicating a belief of full mineral ownership.

[¶1] At the outset, it must be acknowledged that the Appellees' brief is entirely silent on the core arguments made in Rowland's principal brief. The Appellees did not address Rowland's extrinsic evidence of Finlay's subsequent grantees executing oil and gas leases, consistent with a belief that they received full mineral interests from Finlay. This includes leases that were executed by Finlay's grantees more than a decade before Rowland became involved in the area. In reference to deeds identical to those in question in this case, the North Dakota Supreme Court has stated that "[Finlay's] grantees may have evidence of and insight into Finlay's ambiguously expressed intentions." Williams Co. v. Hamilton, 427 N.W.2d 822, 824 (N.D. 1988). The extrinsic evidence of Finlay's grantees reveals that they believed they received full mineral interests, and constitutes the only direct evidence in this case as to the intent of the parties to the deeds in question. This evidence, and Rowland's argument that the district court erred in failing to consider this evidence, is totally unrefuted by the Appellees. Again, it is not the case that the district court weighed and considered this evidence and, ultimately, found it unpersuasive for various reasons. Instead, the district court ignored this extrinsic evidence altogether. (App. 167–81, 182–91).

[¶2] The extrinsic evidence offered by Defendant Ronald Rowland, which is recognized by North Dakota law to be helpful in determining the intent of the parties to ambiguous contracts, and was specifically mentioned by this Court as being helpful for interpreting deeds identical to those in question here, was not considered or weighed by the district court in any way whatsoever. See id. This was error. When the full record of

evidence in this case is examined, it is clear and definite that the district court's Finding of Fact 18 is not supported by the evidence and that the district court erred in making that finding of fact. The Appellees have provided no argument to the contrary.

B. Appellees' extrinsic evidence of Finlay's expertise and knowledge about oil and gas conveyances is wholly irrelevant as the Appellees now claim Finlay did not draft the deeds in question.

[¶3] As stated in Rowland's principal brief, the chief piece of extrinsic evidence that the district court used in making its Findings of Fact was Lawrence Hamilton's testimony that his grandfather Finlay was "very active and knowledgeable in the area of buying and selling interests in oil and gas and that he most certainly knew the difference between mineral interests, in general, and royalty interests, in particular." (App. 170). The district court also based its finding on the fact that, prior to the execution of the deeds in question, "Finlay had been involved with conveyances of both royalty interests and mineral interests in the past," referencing the earlier Texas deeds to which Finlay had been a party. (App. 99–101, 170). However, in their brief, the Appellees now suggest for the first time that Finlay Hamilton did not draft the deeds in question. Specifically, the Appellees state, "Appellants assert as a fact that Finlay drafted the deeds. That is not established in the evidence submitted." Appellees' Brief at ¶ 7 (emphasis added).

[¶4] Since the inception of this case, the Appellees have based their interpretation of the deeds in question on Finlay's expertise in buying and selling oil and gas properties and that Finlay, therefore, must have known the difference between a royalty interest and a mineral interest, and by inserting the word "Royalty" must have intended to convey royalty only. However, the Appellees now suggest that Finlay, in fact, did not draft the deeds in question. If the Appellees' statement is true, then Finlay's purported expertise

and "knowledgeability" about oil and gas transactions is wholly irrelevant because he did not draft the deeds and therefore never brought that knowledge and expertise to bear on the deeds. If Finlay did not draft the deeds in question, as the Appellees now state, then the district court's reliance on Finlay's expertise and knowledgeability is unfounded and there is no factual basis for the district court's Finding of Fact 18.

C. The district court erred by failing to apply North Dakota's rules of contract interpretation.

[¶5] Nor did the Appellees give any meaningful analysis to Rowland's arguments regarding North Dakota's statutory rules of contract interpretation made in Rowland's principal brief. This is telling, as the operation of these rules is determinative in this case. Instead, the thrust of the Appellees' argument is that, "the fact that Finlay inserted in the deeds the word "royalty" compels a finding that the deeds conveyed royalty only." Appellees' Brief at ¶ 23. This statement betrays a fundamental misunderstanding of Rowland's arguments on appeal and the operation of North Dakota's rules of contract interpretation.

[¶6] There is no question that the insertion of the word royalty into the mineral deeds in question created an ambiguity. However, the Appellees would have this Court view the word "Royalty" in isolation and ignore rest of the language in the deeds. The Appellees' position is inconsistent with North Dakota law, which requires that "[t]he whole of a contract is to be taken together so as to give effect to every part if reasonably practicable. Each clause is to help interpret the others." N.D.C.C. § 9-07-06; see also Haag v. Noetzelman, 1999 ND 157, ¶ 6, 598 N.W.2d 121 ("The intention of the parties to a contract must be gathered from the entire instrument, not from isolated clauses, and every

clause, sentence, and provision should be given effect consistent with the main purpose of the contract.").

[¶7] The Appellees have failed to put forth any interpretation of the deeds in question that reconciles the word "Royalty" with the deeds' surrounding language. Because they don't want to attempt to reconcile the deeds' remaining language, they want this Court to just ignore it. On the other hand, Rowland has put forward an interpretation of the deeds that gives effect to all of the language in the deeds and reconciles the ambiguous language, as required by N.D.C.C. § 9-07-06. Rowland's proposed interpretation is far from novel, and is in agreement with the holdings of the Texas and Arkansas Supreme Courts. See Wynn v. Sklar & Phillips Oil Co., 493 S.W.2d 439, 441 (Ark. 1973); French v. Chevron U.S.A. Inc., 896 S.W.2d 795, 797 (Tex. 1995). The "harmonizing" interpretation applied in the French case is the same interpretation required by N.D.C.C. § 9-07-06. The district court erred by failing to apply this rule of contract interpretation.

D. The Appellees have mischaracterized Rowland's argument to confuse the issues on appeal.

[¶8] The Appellees are trying to scare this Court into affirming the district court's decision by mischaracterizing Rowland's argument. Specifically, the Appellees state that Rowland is asking the Court to adopt a rule that a grant of "royalty" operates to convey a mineral interest. This is not what Rowland is arguing. Rowland is arguing that the word "Royalty," when surrounded by language that is otherwise unanimously indicative of a conveyance of minerals, should be read in such a way as to reconcile its meaning with that of the surrounding language. See N.D.C.C. § 9-07-06. Rowland has demonstrated through North Dakota case law, and case law in other states, that the word "Royalty" is subject to multiple interpretations. See Corbett v. La Bere, 68 N.W.2d 211,

214 (N.D. 1955). Before the word "Royalty" is interpreted in isolation and to the exclusion of the surrounding language, the district court is bound by the statutory rules of contract interpretation to attempt to reconcile the seemingly disparate language. That was not done here.

[¶9] Rowland is not asking this Court to adopt a new meaning of the word "Royalty," as the Appellees suggest. Instead, Rowland is asking for a narrow ruling, whereby this Court applies North Dakota's statutory rules of contract interpretation so that vast portions of language in the deeds in question are not totally disregarded with no attempt at reconciliation.

E. Affirming the district court's decision would create dangerous precedent for future litigation.

[¶10] Affirmation of the district court's decision would have far-reaching negative effects for future litigation. Specifically, North Dakota case law would encourage litigants to disregard N.D.C.C. § 9-07-06 and interpret certain portions of contracts and instruments in isolation, without any attempt at reconciling those portions with the contract as a whole. This would diminish the long-standing rule of law that interpretation of contracts must center on ascertaining the intent of the parties. See Carkuff v. Balmer, 2011 ND 60, ¶ 8, 795 N.W.2d 303. Instead, there would be case law showing that a single word, subject to multiple meanings under North Dakota law, was effective to nullify entire swaths of apparently inconsistent surrounding language, with no attempt at reconciliation of the seemingly disparate terms. This is not a precedent that this Court should be eager to set.

F. The district court erred by failing to apply N.D.C.C. § 9-07-19 and N.D.C.C. § 47-09-13, which require that ambiguous contracts and instruments be interpreted most strongly against the party who caused the ambiguity to exist.

[¶11] Finally, after all the evidence is examined and the rules of contract interpretation are applied, unless the Court has certainty about the meaning of the inserted word "Royalty," despite the total absence of evidence explaining the intended meaning of that word, and despite the fact that the entirety of the deeds' remaining language undoubtedly conveys a mineral interest, then the Court should have interpreted the deeds most strongly against the party responsible for the uncertainty. See N.D.C.C. § 9-07-19; N.D.C.C. § 47-09-13. This principle of contract interpretation exists for precisely this kind of case, where ambiguity persists after the statutory rules of contract interpretation are applied and there is still uncertainty about the intent of the parties.

[¶12] Construing the deeds most strongly against Finlay is particularly appropriate in this case due to the opportunity for mischief on his part. Specifically, Finlay may have inserted the word Royalty, but left the other mineral granting language intact to convince the buyers of those interests that they would have the full slate of mineral rights available to them, including the rights to any bonuses or delay rentals if their interest was ever leased. At the same time, if Finlay was ever approached about his interests in the Property, he would be able to convince a developer that his previous conveyances were only royalty interests and that he maintained ownership of the mineral rights along with the right to enter leases or participate in development. The potential for this kind of underhanded dealing is precisely why ambiguous deeds should be construed against the drafting party.

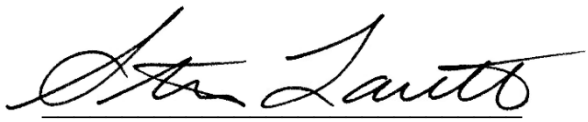
G. The district court's previous rulings in this matter and its predecessor case were all reversed, therefore the Appellees' reliance on such rulings as support for affirming the district court's decision in this case is unpersuasive.

[¶13] In their brief, the Appellees place great weight on the previous decisions made by the district court in this matter and the predecessor case of Williams Co. v. Hamilton, 427 N.W.2d 822 (N.D. 1988), in which the district court found that the deeds in question conveyed a royalty interest only. However, it should be noted that every time a district court's decision in these matters has been appealed to the North Dakota Supreme Court, it has been reversed. Therefore, the Appellees' emphasis on the district court's previous rulings is perhaps ill-placed.

II. CONCLUSION

[¶14] For the reasons stated above, Appellant Ronald Rowland respectfully requests that this Court set aside the district court's Finding of Fact 18 and determine as a matter of law that the deeds in question convey full mineral interests.

Dated this 6th day of August, 2014.



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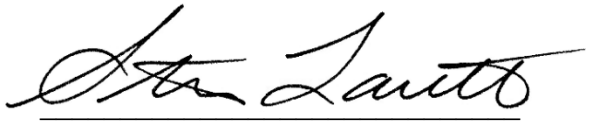
CERTIFICATE OF COMPLIANCE ON WORD COUNT

[¶15] I hereby certify that this brief complies with N.D.R.App.P. 32(a)(7)(A); the word count is 1,969.

Dated this 6th day of August, 2014.



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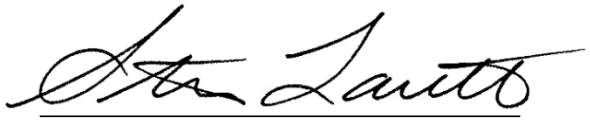
CERTIFICATE OF WORD PROCESSING PROGRAM

[¶16] The word-processing program is Microsoft Office Word 2013.

Dated this 6th day of August, 2014.



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Supreme Court No. 20140011
Bowman County Civ. No. 06-10-C-00043

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THE HON. DANN E. GREENWOOD, PRESIDING

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STATE OF NORTH DAKOTA)
)
COUNTY OF WARD)

MaLaura Sorensen, being first duly sworn, deposes and says:

That she is a citizen of the United States of America, of legal age and is not a party to nor interested in the above entitled action; that on the 6th day of August, 2014, she electronically served a true and correct copy of the following document in this action:

REPLY BRIEF OF APPELLANT RONALD ROWLAND

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MaLaura Sorensen

Subscribed and sworn to before me this 6th day of August, 2014.

JUDITH A TOSSETT
Notary Public
State of North Dakota
My Commission Expires March 26, 2016

Notary Public
For the State of North Dakota