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STATE OF NORTH DAKOTA

NORTH DAKOTA SUPREME COURT

Harry W. Chornuk and

Linda D. Chornuk,

Plaintiffs and Appellees,

v.

Craig Nelson and

Julie Nelson,

Defendants and Appellants.

Supreme Court File No. 20140124

Appeal Following Bench Trial Before the Honorable Josh B. Rustad, Judge of the McKenzie County Court, Northwest Judicial District, Civil No. 27-10-C-00123

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ISSUE PRESENTED

Did the trial court err by concluding that minor improvements to real property (such as planted trees and a drip line for the trees) and sporadic acts of general maintenance by the holders of an unrecorded conveyance suffice to put a subsequent purchaser, with no knowledge of who was responsible for the improvements, on notice of an unrecorded interest in the property.

INTRODUCTION

[1] This is a quiet title case concerning an undeveloped parcel of land located in McKenzie County, North Dakota (the "Property"). In 1986, non-parties Norman and Mildred Dahl sold the Property to Appellees Harry and Linda Chornuk. The Chornuks did not record their deed until 2010, nearly twenty years later. In the interim, in 2005, Mildred Dahl sold the same Property to Appellants Craig and Julie Nelson. Relying on the integrity of McKenzie County's land records, the Nelsons paid consideration for the Property and immediately recorded their deed. As a result, under N.D.C.C. § 47-19-41, the Nelsons were protected against unrecorded interests (like the Chornuks') so long as they purchased the Property in "good faith."

[2] The trial court erred when it concluded that the Nelsons did not purchase the Property in "good faith." At trial, the Chornuks introduced evidence that they had performed sporadic acts of general maintenance on the Property. The trial court incorrectly found that mowing grass and watering trees constituted constructive notice of the Chornuks' interest in the Property, thus defeating the Nelsons' good faith status. The trial court also erred by concluding that certain acts performed by the Chornuks with respect to the Property provided constructive notice even though, to a third-party, those

acts were wholly consistent with Mildred Dahl's continued ownership of the Property. The trial court quieted title in the Chornuks' favor. This appeal follows.

[3] The main issue on appeal is narrow: whether knowledge that a third-party has mowed grass and watered trees on a piece of undeveloped land is sufficient to place prospective purchasers on notice of an adverse claim to the land. Under the principles previously enunciated by this Court, persuasive precedent from courts across the country, and the dictates of common sense, such knowledge is insufficient to vitiate the protections afforded buyers under North Dakota's recording statute. As such, Appellants Craig and Julie Nelson respectfully request that this Court reverse the decision below, quiet title to the Property in the Nelsons' favor, and reverse the damages awarded to the Chornuks (which is predicated on the Chornuks' unrecorded interest in the Property).

STATEMENT OF THE CASE

[4] The Chornuks filed their Complaint on September 3, 2010. (A.1[1].) The Complaint asserts claims for trespass to land, conversion, and quiet title. (A.8.) The Nelsons filed their Answer on October 21, 2010. (A.2) In their Answer, the Nelsons denied each of the Chornuks' material allegations. (A.14.)

[5] The Nelsons filed a motion for summary judgment on December 21, 2010. (A.2, 15-17.) The motion argued that the Nelsons recorded their deed before the Chornuks and, therefore, the Nelsons were entitled to the protection of North Dakota's recording statute. (See A.19.) The Chornuks opposed the Nelsons' motion. The Chornuks argued that a question of fact existed as to whether the Nelsons had constructive notice of the

[1] The Nelson's Appeal Appendix, respectfully submitted herewith, is cited throughout this brief as "A.#," with the number sign replaced by the page number of the Appendix being cited.

Chornuks' prior deed. (See A.20.) The trial court denied the Nelsons' motion for summary judgment by order dated February 15, 2011. In its order, the trial court concluded that genuine issues of fact existed as to whether the Nelsons were "subsequent purchasers in good faith." (A.21.)

[6] The case was tried before the court, without a jury, on September 28, 2011. (See A.2.) By Order dated November 3, 2011, the court quieted title in favor of the Chornuks. In addition, the trial court awarded the Chornuks $2,830.00 as damages for conversion of tress that the Nelsons' daughter had cut down on the Property in 2010. (A.22-25.) The trial court did not make any express rulings as to the parties' other claims and defenses. The trial court entered judgment on November 22, 2011. (A.27.)

[7] On November 23, 2011, the Nelsons filed a motion to reconsider the damages award. (A.4, 52-53.) The Nelsons argued that the damages award was not supported by the evidence: the award was calculated using receipts for trees that had not been cut down. (See A.54.)

[8] On December 27, 2011, the trial court granted the Nelsons' motion for reconsideration. (Id.)

[9] Facing a possible appeal deadline on the quiet title claim, the Nelsons filed an initial Notice of Appeal on January 18, 2012. Thus, the initial Notice of Appeal was filed before the trial court heard the motion for reconsideration. (A.56.) On February 8, 2012, the clerk of this Court informed the Nelsons that, in light of the outstanding damages issue, this Court did not consider the November 22, 2011 judgment to be final. (See A.87.) Therefore, on February 15, 2012, the parties filed a stipulation for voluntarily

dismissal of the appeal without prejudice. (Id.) On February 17, 2012, the Court, through its clerk, dismissed the appeal without prejudice. (A.88.)

[10] The trial court held a hearing on the Nelsons' motion for reconsideration on January 22, 2013. (A.5.) By order dated February 11, 2014, the trial court reduced the Chornuks' damages award from $2,830.00 to $360.00. (A.89-92.) The trial court then entered an amended judgment dated March 7, 2014. (A.95.)

[11] On April 4, 2014, the Nelsons filed their current Notice of Appeal. (A.99.) The Notice of Appeal is intended to include all aspects of the trial court's judgment, including the original November 3, 2011 Order, the November 22, 2011 Judgment, the February 11, 2014 Order, and the amended March 7, 2014 Order. (See id.)

STATEMENT OF FACTS

[12] The disputed Property consists of 1.667 acres of undeveloped land located in McKenzie County, North Dakota. (A.8 ¶¶ 1, 3; A.13 ¶ 4.) The full legal description of the Property is as follows:

> A tract of land located in the NW1/4SW1/4 of Section 17, Township 150 North, Range 98 West of the Fifth Principal Meridian, Beginning at a point 1368.0 feet due North, on the section line, and 33.0 feet, South 89°41' East of the Southwest corner of Section 17, Township 150 North, Range 98 West to the true point of beginning and described as follows : Thence south 89°41' East, a distance of 333.0 feet; thence North 0°05' West, a distance of 218.0 feet; thence North 89°41' West, a distance of 333.0 feet; thence South 0°05' East, a distance of 218.0 feet to the point of beginning. Tract contains 1.667 acres, more or less.

(See A.29-30.)

[13] Norman and Mildred Dahl ("the Dahls") conveyed the Property to the Chornuks by warranty deed dated January 17, 1986 (the "1986 Deed"). (A.32-33; Tr. Tran. 7:8-25

(A.59)[2].) The Chornuks did not record the 1986 Deed until June 24, 2010, over 20 years later. (A.33; Tr. Tran. 8:5-9 (A.60).) The Chornuks did not pay property taxes for the Property during the time their deed was unrecorded. (See Tr. Tran. 28:19-25 (A.67).)

[14] On June 17, 2005, Mildred Dahl[3] conveyed the same Property by warranty deed to the Nelsons (the "2005 Deed"). (A.34-37; Tr. Tran. 10:5-20 (A.62).) The Nelsons purchased the Property as part of a transaction that also included two larger tracts. The transaction totaled approximately 44.5 acres. (Tr. Tran. 44:9-45:1; 45:16-19; 54:4-8 (A.74-75, 83).) The Nelsons paid consideration for the Property. (A.34; see also Tr. Tran. 53:18-22 (A.82).) At the time of the sale, the Nelsons believed that Mildred Dahl owned the Property. (Tr. Tran. 48:15-17 (A.78).) At the time they purchased the Property, the Nelsons did not know about the 1986 Deed. (Tr. Tran. 47:7-10; 49:18-23; 54:21-55:2 (A.77, 79, 83).) Just weeks after they received the 2005 Deed, the Nelsons recorded it with the McKenzie County Recorder. (A.34.) This was nearly five years before the Chornuks recorded their 1986 Deed.

[15] The Property is immediately adjacent to the Chornuks' homestead; the two properties share a boundary line. (Tr. Tran. 39:16-22; 50:24-51:7 (A.71, 80-81).) The Property is about a half mile south of the Nelsons' residence. (Tr. Tran. 43:11-16 (A.73).)

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[2] The trial transcript was filed with the trial court and was transmitted to this Court as part of the record on appeal. (See A.5.) The Nelsons have included in their Appendix pages of the transcript cited in this brief. Citations to the trial transcript will give the original transcript page and number line first, followed by a parenthetical citation to the relevant page of the Appendix.

[3] At the time of the sale to the Nelsons, Norman Dahl had since passed away. (Tr. Tran. 11:11-14; 49:10-17 (A.63, 79).)

[16] Prior to 2005, the Chornuks made some improvements to the Property, but the Nelsons did not know who had made the improvements. "A few years after" the 1986 Deed, Harry Chornuk placed flower boxes on the Property. (Tr. Tran. 34:23-35:4 (A.68-69).) However, there is no evidence demonstrating that the Nelsons knew Mr. Chornuk (as opposed to the Dahls) had done so. In 1994 and again in 1999, the Chornuks hired a nursery to plant trees on the Property. (A.47-49; Tr. Tran. 23:17-24:17 (A.65-66).) However, there is no evidence demonstrating that the Nelsons knew who had arranged for the trees to be planted (i.e., the Chornuks or the Dahls). In fact, the evidence is to the contrary. Craig Nelson knew that trees had been planted on the Property at some point in the past, but he did not know who planted those trees. (Tr. Tran. 46:13-17 (A.76); see also Tr. Tran. 53:23-54:3 (A.82-83).) The Chornuks also installed a drip line to water the trees. When the drip line broke, they used hoses to do the same. (Tr. Tran. 22:13-14, 19-20 (A.64).) There is no evidence demonstrating that the Nelsons knew about the drip line or who had installed it (i.e., the Chornuks or the Dahls).

[17] At various points in the past, the Chornuks maintained the Property. For example, Harry Chornuk testified that he occasionally stored equipment on the Property, but the Nelsons did not know about it. (Tr. Tran. 22:15-20; 51:14-16 (A.64, 81).) The Chornuks also mowed the Property approximately three to four times per year and occasionally watered the trees. (See Tr. Tran. 38:18-21 (A.70); Tr. Tran. 22:5-9 (A.64).) The Nelsons saw the Chornuks watering trees and mowing the grass on the Property from time to time. (Tr. Tran. 41:7-12; 55:24-56:1 (A.72, 84-85).) In addition, the Chornuk grandchildren played on the property from time to time. (Tr. Tran. 38:16-17 (A.70).) There is no evidence demonstrating that the Nelsons saw the Chornuk grandchildren on the property.

[18] The parties did not know about the others' claimed interest in the Property for approximately five years. The dispute arose when, in the spring of 2010, the Nelsons ordered a survey of the Property. (Tr. Tran. 47:21-24 (A.77).) Harry Chornuk asked the surveyor what he was doing on the Property. The surveyor told Mr. Chornuk that the owner, Craig Nelson, had ordered the survey. (Tr. Tran. 8:24-9:3 (A.60-61).)

[19] Upon hearing this news, the Chornuks invited the Nelsons to their residence. During their meeting, the Chornuks showed the Nelsons the 1986 Deed. (Tr. Tran. 9:22-25; 10:25-11:7; 47:7-10; 54:21-55:2 (A.61-63, 77, 83-84).) Prior to this time, the Nelsons did not know about the 1986 Deed. Around the same time, the Chornuks learned that the 1986 Deed had never been recorded. (Tr. Tran. 10:1-4 (A.62).) As noted, the Chornuks subsequently recorded their deed on June 24, 2010. (A.33; Tr. Tran. 8:5-9 (A.44).)

[20] After the Chornuks and Nelsons discussed the situation, sometime in 2010 the Nelsons' daughter was mowing the Property when she mowed down two knee-high trees that the Chornuks had planted on the Property in 2009. (Tr. Tran. 35:14-23 (A.69); A.89 ¶ 7.) The destruction of these trees gave rise to the Chornuks' claim for conversion damages.

ARGUMENT

I. APPLICABLE STANDARDS OF REVIEW

[21] Findings of fact may be set aside on review if "clearly erroneous." N.D. R. Civ. P. 52(a)(6). "[A] finding of fact is clearly erroneous if there is no evidence to support it, if it is clear to the reviewing court that a mistake has been made, or if the finding is induced by an erroneous view of the law." Buri v. Ramsey, 2005 ND 65, ¶ 17, 693 N.W.2d 619.

[22] This Court reviews conclusions of law de novo. State v. Torgerson, 2000 ND 105, ¶ 3, 611 N.W.2d 182.

II. NORTH DAKOTA'S RECORDING STATUTE

[23] In North Dakota, unrecorded deeds are generally declared void, except in exceptional circumstances where it can be shown that a subsequent purchaser did not acquire the land in good faith. North Dakota's recording statute in effect at the time of this lawsuit stated, in its entirety, that:

> Every conveyance of real estate not recorded shall be void as against any subsequent purchaser in good faith, and for a valuable consideration, of the same real estate or any part of or portion thereof, whose conveyance, whether in the form of a warranty deed, or deed of bargain and sale, or deed of quitclaim and release of the form in common use or otherwise, first is deposited with the proper officer for record and subsequently recorded, whether entitled to record or not, or as against an attachment levied thereon or any judgment lawfully obtained, at the suit of any party, against the person in whose name the title to such land appears of record, prior to the recording of such conveyance.

N.D.C.C. § 47-19-41 (emphasis added).[4]

[24] "The fundamental purpose of the recording statutes is to protect potential purchasers of real property against the risk that they may be paying out good money to someone who does not actually own the property that he is purporting to sell." Hanson v. Zoller, 187 N.W.2d 47, 54 (N.D. 1971). As a result, "the beneficiary of any interest in any real estate conveyance has a duty to protect his interest against subsequent purchasers by making certain that the instrument conveying his interest is properly recorded, because

[4] N.D.C.C. § 47-19-41 was amended in 2013. The amendment added a sentence to the statute: "The holder of an unrecorded conveyance may not question the good faith of the first recording party unless it can be established that the first recording party had actual knowledge of the existence of the unrecorded conveyance." N.D.C.C. § 47-19-41. The amendment evidences a strong legislative policy requiring purchasers to record their deeds.

he is the only person that by exercising some diligence can discover errors in the recording which a subsequent purchaser even by the exercise of the greatest diligence could not possibly do." Id. at 57-58.

[25] Rather than focus on the Chornuks' affirmative duty to record the 1986 Deed, the key contested issue at trial was whether the Nelsons purchased the Property in "good faith."

[26] "A party's status as a good faith purchaser without notice of a competing interest is a mixed question of fact and law." Diocese of Bismarck Trust v. Ramada, Inc., 553 N.W.2d 760, 768 (N.D. 1996). "The factual circumstances relating to events surrounding the transaction – the realities disclosed by the evidence as distinguished from their legal effect – constitute the findings of fact necessary to determine whether a party has attained the status of a good faith purchaser without notice." Id. "A court's ultimate determination that a party is not a good faith purchaser for value is a conclusion of law, because that determination describes the legal effect of the underlying factual circumstances." Id.

III. THE TRIAL COURT ERRONEOUSLY CONCLUDED THAT THE NELSONS DID NOT PURCHASE THE PROPERTY IN GOOD FAITH

[27] The trial court's erroneous conclusions are summarized in the following sentences of the November 3, 2011 Order:

> [T]he act of mowing the subject property three or four times a year, planting trees on the property and installing a drip line for those trees, installing a flower box on the property, and other general maintenance are sufficient facts that would put a prudent person on notice and require Defendants to conduct further inquiry, particularly where the Defendants went past the subject property on a near-daily basis. As such, the [Nelsons] are not good faith purchasers.

(A.25.) The trial court erred because its legal conclusions are not supported by the evidence.

[28] In disputes arising under North Dakota's recording statute, the "good faith" determination requires "an examination of the information possessed by a person." Nygaard v. Robinson, 341 N.W.2d 349, 355 (N.D. 1983) (emphasis added). Thus, the subsequent purchaser's actual personal knowledge at the time of the purchase becomes the starting point for the court's analysis. See id. (stating that a "purchaser's knowledge entails an examination of the circumstances in each case to determine if the information the purchaser received constituted notice or created a duty to inquire"). Once the subsequent purchaser's knowledge is established, the court may objectively determine whether such knowledge gives rise to a duty of further inquiry. See id.; see also Swanson v. Swanson, 2011 ND 74, ¶ 12, 796 N.W.2d 614, 618 (in order to have a duty to inquire, a purchaser must have "reasonable ground to believe that a conflicting right exists as a fact").

[29] The trial court identified five distinct actions that gave rise to a duty of further inquiry: mowing grass, installing trees, installing a drip line for the trees, installing flower boxes, and other "general maintenance." The trial court's conclusion was wrong because there was no evidence that the Nelsons knew about the Chornuks' role in performing most of these tasks. If the Nelsons did not know that the Chornuks (as opposed to the Dahls) had performed these acts, the Nelsons would have had no reason to question the status of the Property. See Nygaard, 341 N.W.2d at 355; Anderson v. Anderson, 435 N.W.2d 687, 688 n.2 (N.D. 1989) ("[W]hen possession by one other than the seller is consistent with the record title, the possession is presumed to be under the

record title and is not notice of any outstanding unrecorded equities"); Peterson v. Dill, 33 N.D. 407, 157 N.W. 301, 302 (1915) ("What makes inquiry necessary is such a visible state of things as is inconsistent with a perfect right in him who claims the benefit" (internal quotation omitted)).

[30] There was no evidence that the Nelsons knew who planted these trees. Craig Nelson certainly did not know. (Tr. Tran. 46:13-17 (A.76); see also Tr. Tran. 53:23-54:3 (A.82-83).) The Chornuks never asked Julie Nelson what she knew. And because the Chornuks hired third parties to perform the physical act of planting the trees, the Nelsons could have reasonably believed that the Dahl's had done it. (A.47-49.) The same is true for the drip line. There is no evidence in the record to suggest that the Nelsons knew that a drip line had been installed and, more critically, who had installed it. Likewise, there is no evidence that the Nelsons knew or should have known that the Chornuks (as opposed to the Dahls) placed the flower boxes on the Property. The Chornuks failed to establish (or even ask) the Nelsons what they knew about the flower boxes, including and especially who had installed them. In the absence of admissible, competent evidence imparting such knowledge onto the Nelsons, the trial court should not have relied on planting trees, installing a drip line, or placing flower boxes on the Property in concluding that the Nelsons had a duty to inquire further.

[31] In fact, the only actions the Nelsons knew that the Chornuks had taken with respect to the Property was mowing the grass and watering the trees on the Property. (Tr. Tran. 41:7-12; 55:24-56:1 (A.72, 84-85).) Respectfully, this is not a sufficient basis to conclude as a matter of law that the Nelsons were not purchasers in "good faith." The required maintenance was minimal. The Property is undeveloped. The Chornuks mowed

the grass only three to four times per year. The minimal maintenance benefitted the Chornuks irrespective of the 1986 Deed. The Property was immediately adjacent to the Chornuks' home; the Chornuks had an interest in keeping the Property tidy. It would not have been unreasonable for the Nelsons to conclude that the Chornuks were simply doing Mrs. Dahl – who by 2005 was an elderly widow – a favor. As the Vermont Supreme Court has recognized, "[a]lthough mowing the grass may be evidence of a claim of right, lawn-mowing could also well have been [a]n act of neighborly accommodation." First Congregational Church of Enosburg v. Manley, 946 A.2d 830, 836 (Vt. 2008) (internal quotes and brackets omitted).

[32] Other state appellate courts have held that the safeguards provided by recording acts cannot be mowed down as easily as a blade of grass. For example, the Illinois Court of Appeals has held that simply mowing grass and weeds does not establish constructive notice sufficient to foreclose reliance on a state's recording statute. Beals v. Cryer, 426 N.E.2d 253 (Ill. App. Ct. 1981). In Beals, a judgment creditor sought to establish priority over purchasers who bought the property in question from the judgment debtors. The purchasers had their brothers mow the grass and weeds on the property before the judgment creditor obtained their lien on it. Id. at 256. The Illinois Court of Appeals held that, "The mowing of grass and weeds was in no way inconsistent with continued ownership of the property by Glen and Hazel Sturgeon, the sellers of the property against whom judgment was taken." Id.

[33] In a similar Connecticut case, the trial court explained that "mere mowing of the lawn and plantings" was insufficient "to give notice to an owner that a claim is being made contrary to his ownership or at least some act or constructive notice that such a

hostile claim is being made." Har v. Boreiko, No. CV064005573S, 2008 WL 590510, at *8 (Conn. Super. Ct. Feb. 11, 2008). The Connecticut Court of Appeals affirmed. 986 A.2d 1072 (Conn. App. Ct. 2010). Courts across the country have reached similar results in analogous cases. Stanard v. Urban, 453 N.W.2d 733, 735-36 (Minn. Ct. App. 1990) (using land to store equipment in the winter, mowing the land in the summer, and allowing children to play on the land insufficient to establish that use was open and notorious); Montieth v. Twin Falls United Methodist Church, 428 N.E.2d 870, 875 (Ohio Ct. App. 1980) (mere maintenance of land, such as mowing grass and planting seedlings, insufficient to establish that use was open and notorious); Tennant v. Tadra, No. 189876, 1997 WL 33353497, at *1 (Mich. Ct. App. Mar. 7, 1997) ("Neither did the Tadras' occasional mowing of the grass or trimming of the trees reasonably apprise the Tennants that another was assuming control of their property."); Whitford v. MGM Ltd., No. 2382-M, 1995 WL 523272, at *2 (Ohio Ct. App. Sept. 6, 1995) ("[P]lanting trees and mowing grass, without more, do[es] not automatically constitute open and notorious use." (internal citation omitted)).

[34] The public policy behind the recording statute also leads inexorably to the conclusion that simply mowing grass and watering trees does not convey constructive notice. The recording statute imposes a duty on beneficiaries of any interest in real property "to protect [their] interest against subsequent purchasers by making certain that the instrument conveying [their] interest is properly recorded, because [they are] the only [people] that by exercising some diligence can discover errors in the recording which a subsequent purchaser even by the exercise of the greatest diligence could not possibly do." Hanson, 187 N.W.2d at 57-58. If mowing grass and watering trees is sufficient to

destroy "good faith" purchaser status, what incentive is there to record? The North Dakota legislature realized the dangers of such reasoning by recently amending the recording statute. Going forward, subsequent purchasers must have actual knowledge of the existence of the unrecorded conveyance to lose the protections of the statute. N.D.C.C. § 47-19-41. Yet the underlying policy of the prior statute leads to the same conclusion in this case.

IV. THE COURT SHOULD REVERSE THE DAMAGES AWARD TO THE CHORNUKS BECAUSE TITLE SHOULD BE QUIETED IN THE NELSONS' FAVOR

[35] If this Court grants the relief sought by the Nelsons and quiets title to the Property in their favor, the trial court's decision in favor of the Chornuks on their conversion claim must also be reversed. The trees at issue were destroyed by the Nelsons' daughter in 2010, nearly five years after the Nelsons purchased the Property. (Tr. Tran. 35:14-23 (A.69).) If the Nelsons were the rightful owners of the property, they could not have converted their own trees.

CONCLUSION

[36] For all the foregoing reasons, the Nelsons respectfully request that this court reverse the trial court's decision and quiet title to the Property in their favor. Additionally, the Nelsons respectfully request that this court reverse the trial court's award of damages in favor of the Chornuks, which award was predicated on the Chornuks' ownership of the property.

[*Signature Page to Follow*]

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Dated: May 14, 2014

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NORTH DAKOTA SUPREME COURT

Harry W. Chornuk and Linda D. Chornuk,

Plaintiffs and Appellees,

v.

Craig Nelson and Julie Nelson,

Defendants and Appellants.

Supreme Court File No. 20140124

AFFIDAVIT OF SERVICE

STATE OF MINNESOTA)
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COUNTY OF HENNEPIN)

Barbara K. Becker, being first duly sworn, deposes and says that on the 14th day of May 2014 she served the following document(s):

Appellants' Brief and Appendix

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(which is the last known email address(es) of said individuals(s)).

Barbara K. Becker

Subscribed and sworn to before me
this 14th day of May 2014.

Notary Public

DEANNA J. STOWER
NOTARY PUBLIC-MINNESOTA
My Commission Expires Jan. 31, 2015

NORTH DAKOTA SUPREME COURT

Harry W. Chornuk and Linda D. Chornuk,

Plaintiffs and Appellees,

v.

Craig Nelson and Julie Nelson,

Defendants and Appellants.

Supreme Court File No. 20140124

AFFIDAVIT OF SERVICE

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

Barbara K. Becker, being first duly sworn, deposes and says that on the 15th day of May 2014 she served the following document(s):

Appellants' Brief and Appendix [Corrected]

by email transmission upon:

Michael J. Maus, Esq.
Email: mmaus@mackoff.com

Jordan J. Evert, Esq.
Email: Jordan@furusethlaw.com

(which is the last known email address(es) of said individuals(s)).

Barbara K. Becker

Subscribed and sworn to before me
this 15th day of May 2014.

Notary Public

DENISE SIMON
NOTARY PUBLIC-MINNESOTA
My Commission Expires Jan. 31, 2015