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SEPTEMBER 30, 2016
STATE OF NORTH DAKOTA

IN THE SUPREME COURT STATE OF NORTH DAKOTA

Black Stone Minerals Company, L.P. and The Hamill Foundation, Plaintiffs, --- Missouri River Royalty Corporation and Bauer Family LLP, Plaintiffs and Appellants, vs. Kate Sarah Brokaw, Gordon Brokaw as Personal Representative of the Estate of Evelyn Brokaw, Gordon Brokaw as Trustee of the Testamentary Trust U/W Of Evelyn G. Brokaw FBO Jacob Gordon Brokaw, Gordon Brokaw as Trustee of the Testamentary Trust U/W Of Evelyn G. Brokaw FBO Emily Sue Brokaw, Kristen Jones, Steven Irgens, James Scott Brokaw, Ryan Kyle Brokaw, Brett Christopher Brokaw, Gordon D. Brokaw, Linda B. Irgens, Martha Brokaw, Lyman G. Brokaw, and all other persons unknown, claiming any estate of interest in or lien or encumbrance upon, the real estate described in the complaint, Defendants and Appellees.	Case No. 53-2015-CV-01217 Supreme Court Case No. 20160286 **APPELLANT'S BRIEF**

APPEAL FROM THE JUDGMENT DATED JUNE 16, 2016 OF THE WILLIAMS COUNTY DISTRICT COURT,

THE HONORABLE JOSH B. RUSTAD, PRESIDING.

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STATEMENT OF THE ISSUES

¶1. Whether a quiet title action can quiet title in a non-party and fail to address what interest other parties possess.

¶2. Whether oil production is required for possession of minerals for adverse possession in light of legislative changes.

¶3. Whether the District Court erred in its determination of the ownership of the subject mineral interests between the parties.

STATEMENT OF THE CASE

¶4. This is an appeal from a quiet title judgment. (App 76). The case was filed in Williams County District Court on October 7, 2015. (App. 3). Missouri River Royalty Corporation, Bauer Family LLP, Black Stone Minerals Company, L.P., and The Hamill Foundation (hereinafter collectively "Missouri River Group") initiated this action against the successors to the interest of Martha Brokaw and Lyman G. Brokaw (hereinafter collectively "Brokaw"). (App. 7). Ownership of the minerals under one hundred sixty (160) acres of land in Williams County is at issue to property in Township One Hundred Fifty-five (155) North, Range One Hundred (100) West in Section Twenty-eight (28), including the South One-Half of the Northeast Quarter and the North One-

Half of the Southeast Quarter (hereinafter "Subject Property"). (App. 7). Brokaw is claiming that they own one-half of the minerals due to a December 19, 1945 Judgment. (App. 14).

¶5. Both sides filed for summary judgment. The Honorable Joshua B. Rustad found in favor of Brokaw. (App. 70). This is an appeal from the Williams County district court's judgment dated June 16, 2016. (App. 79). The 2016 Order found that the 1945 Judgment "unambiguously vested titled {sic} of the Subject Lands in Lyman Brokaw and Martha Brokaw as fee simple owners as tenants in common." (App. 72). The Order then just summarily dismissed the adverse possession, laches and Record Marketable Title Act claims, indicating they failed to establish a "genuine issue of material fact to support" those arguments. (App. 73). Additionally, the 2016 Order indicated that the bona fide purchaser for value argument was "without merit" and that other contentions were without merit and not considered; all conclusions without providing any further analysis. (App. 73). The Order and Judgment then vested the minerals in various Brokaw family members and one-half of the interest in "North American Royalties Inc. and Successors in interest (Plaintiffs)." (App. 74, 76). North American Royalties Inc. is not a party to this action.

STATEMENT OF FACTS

¶6. A County Tax Deed granted all title to the subject property ONLY to Lyman Brokaw on October 1, 1945. (App. 20). The Judgment to cure that tax title entered on December 19, 1945, states that "Lyman G. Brokaw, also known as L.G. Brokaw, and Martha Brokaw, his wife, are the owners in fee simple absolute . . . ." (App. 21-22). On June 23, 1958, Lyman G. Brokaw executed a Mineral Deed conveying "an undivided full interest" in the minerals under the subject Property to the predecessor in title to the Missouri River Group. (App. 23). Martha Brokaw did not join in the Mineral Deed.

¶7. While Brokaw would like to believe that the chain of title stops at this point, it does not for the Missouri River Group. Since and from that 1958 Mineral Deed, the Missouri River Group has recorded and acted as owners of the entire mineral interest. (App. 33-34). In fact, the 2001 death certificate attachment shows that Brokaw made no claim to the minerals and listed the interest as only a surface interest. (App. 29).

¶8. Meanwhile, a claim to minerals is shown in title through deeds from the Missouri River Group including multiple leases. (App. 39-68). In addition, the judgment that conferred an interest to Martha Brokaw lists her as Lyman's wife and that with Lyman, she owned fee simple absolute. (App. 21). This could have been that she had a homestead interest, or that she had some type

of other surface interest such as an unrecorded lease. The record is silent, except for the 1945 judgment. The tax deed was clearly to Lyman solely, and Lyman and his successors in title until 2015 acted as if Lyman deeded 100% of the minerals. (App. 20-32). Whatever interest Martha had in the property was never evidenced by any deed into her name nor was it clear what interest she had pursuant to the judgment. But the actions of Brokaw until 2015 all point to the idea that Martha Brokaw had no mineral interest in the property.

¶9. Since the parties are relying upon record title documents, Brokaw has espoused ALL records that evidence their possession of the property. No oil and gas leases, statements of claim nor mineral deeds were included, except for the 2015 personal representative's deed have been produced by Brokaw that evidence mineral ownership. (App. 24-32). In fact, mineral reservations are not even mentioned in the 1963 deed nor the 1967 and in fact **ONLY** a surface interest is claimed in the attachment to the 2001 Dale Brokaw death certificate. (App. 24-29). Finding this surprise mineral claim, Brokaw now is trying to take back mineral rights which have been openly, notoriously and continuously claimed by the Missouri River Group since 1958.

¶10. Missouri River Group provided a timeline of title transfers after the deed from Lyman Brokaw of the "FULL" mineral interest. (App. 33-34). The title transfers listed on the Exhibit show predecessors in title in white while the

current owners are in black with their current interest in parenthesis. Where listed on the face of the deed, the amount of minerals is listed on the title summary or else it provides for a conveyance of all interests. Each of the deeds which provide the basis for the Exhibit A chain of title are contained within the record. (App. 39-58). If there had been a real interest in claiming mineral title, Brokaw would have done so in 1963, 1967 or 2001 at which points Brokaw would have been put on notice of the recorded instruments listed on chain of title. (App. 24-32).

¶11. Brokaw's stance would provide that all of the claims of ownership since 1958, except for The Hamill Foundation and its predecessor, were by strangers to title. Since the chain of title clearly shows a different intent, summary judgment should have been made in favor of the manner title has been held and exercised from 1958. Instead, the 2016 Order for Judgment found that the 1945 Judgment "unambiguously vested titled {sic} of the Subject Lands in Lyman Brokaw and Martha Brokaw as fee simple owners as tenants in common." (App. 72). The 1945 judgment did not contain the words "as tenants in common."

STANDARD OF REVIEW

¶12. This matter comes before the Court from a summary judgment. The parties submitted competing motions and agreed that there are no genuine issues of material fact.

> "Under N.D.R.Civ.P. 56, summary judgment is a procedural device for promptly resolving a controversy on the merits without a trial if there are no genuine issues of material fact or inferences that can reasonably be drawn from undisputed facts, or if the only issues to be resolved are questions of law. The party moving for summary judgment must show there are no genuine issues of material fact and the case is appropriate for judgment as a matter of law. A district court's decision on a motion for summary judgment is a question of law that we review de novo on the record. In determining whether summary judgment was appropriately granted, we view the evidence in the light most favorable to the party opposing the motion, giving that party the benefit of all favorable inferences which can reasonably be drawn from the record."

Brigham Oil and Gas, L.P. v. Lario Oil & Gas Co., 2011 ND 154,¶ 13, 801 N.W.2d 677. The documents of record and indications of ownership submitted by the Missouri River Group are not in contest. "Summary judgment under N.D.R.Civ.P. 56 is a procedural device for promptly and expeditiously disposing of an action without a trial if either party is entitled to judgment as a matter of law and no dispute exists as to either the material facts or the reasonable inferences to be drawn from undisputed facts, or if resolving the factual disputes will not alter the result." Groleau v. Bjornson Oil Co., 2004 ND 55, ¶5, 676 N.W.2d 763.

ARGUMENT

A. Title cannot be quieted into a non-party.

¶13. This matter has a pending Motion to Correct Judgment which has not been ruled upon as of the date of this document. (App. 77). The 2016 Order and Judgment are as unclear for ownership as the 1945 judgment. The current Judgment finds title in an entity who is no longer in the chain of title, namely North American Royalties, Inc. (App. 76). The Hamill Foundation would be entitled to the one-half interest under this Judgment. This was clear in the title summary provided to the lower court. (App. 33-34). In 1958 Claud B. Hamill gets a one-half interest from North American Royalties, Inc. (App. 39). And the deed states that it is a one-half interest in the minerals, not one-half of Grantor's interest, that is conveyed. In 1959, North American tries to transfer a one-fourth interest to Hill. (App. 40). After 1958 North American Royalties, Inc. would have nothing to transfer if Martha Brokaw owned one-half of the minerals. "The person is charged with constructive notice of properly recorded instruments affecting title to the real property." Holverson v. Lundberg, 2016 ND 103, ¶20, 879 N.W.2d 718.

¶14. The statutory mechanism for quiet title provides that the action can be had "against any person claiming an estate or interest in, or lien or encumbrance upon, the same." N.D.C.C. § 32-17-01. Additionally, multiple plaintiffs can

join in the action specifically by statute. N.D.C.C. § 32-17-03. The court failed to "find the nature and extent of the claim asserted by the various parties, and shall determine the validity, superiority, and priority of the same." N.D.C.C. § 32-17-10. By lumping the Missouri River Group's claims with North American, especially when the Group agreed that if Martha Brokaw had an interest then Hamill Foundation is whole in their claim and the remaining members of the Group have nothing, does not quiet title of all of the interest plead to the lower court. The nature and extent of claims of the Missouri River Group are not determined at all because each of the four entities are not even mentioned as to what interest, if any they have in the property. No validity, superiority or priority of the Missouri River Group's claims are decided. Dennison v. N.D. Dep't of Human Services, 2002 ND 39, 15, 640 N.W.2d 447. This Court should reverse the lower court's judgment and a remand with direction to remove non-party North American Royalties, Inc. from the judgment and adjudicate exactly what interest each actual party to the action has.

B. Oil production is no longer required for possession minerals due to legislative changes.

¶15. The Judgment in this matter makes no substantive findings to the many arguments the Missouri River Group makes. The Judgment seems to find that

because a 1945 judgment includes Martha Brokaw, then anything that happens after time is immaterial until there is oil production. This is incorrect for multiple reasons; one of which is that the legislature has changed the law affecting mineral ownership. "Interpretation of a statute is a question of law fully reviewable on appeal." State ex rel. Heitkamp v. Family Life Services, Inc., 2000 ND 166, ¶ 7, 616 N.W.2d 826. The statute is interpreted with words given their plain and ordinary meaning. N.D.C.C. § 1-02-02. If the statutory language is clear and unambiguous, the legislative intent is presumed clear from the face of the statute. N.D.C.C. § 1-02-05. In this case the new language of N.D.C.C. § 47-19.1-07 is clear and changes how possession is treated in North Dakota.

¶16. In the 2013 legislative session, N.D.C.C. § 47-19.1-07 was amended by 2013 N.D. Sess. Laws ch. 351, §4. In addition to clarifying language in the statute, the following sentence was added, "The holder of an interest in severed minerals is deemed in possession of the minerals if that person has used the minerals as defined in section 38-18.1-03 and the use is stated in the affidavit of possession provided for in this section." N.D.C.C. § 47-19.1-07. Production is no longer required to remove stale title claims. The Missouri River Group offers clear legal theories upon which they have superior title:

Adverse possession, Marketable Record Title Act and bona fide purchaser for value.

C. The District Court erred in its determination of the ownership of the subject mineral interests between the parties.

i. Marketable Record of Title Act

¶17. Under the Marketable Record Title Act:

> Any person that has an unbroken chain of title to any interest in real estate and that person's immediate or remote grantors under a conveyance or other title transaction that has been of record for a period of twenty years or longer, and is in possession of the interest, is deemed to have a marketable record title to the interest, subject solely to the claims or defects that are not extinguished or barred by the application of this chapter, instruments that have been recorded less than twenty years, and encumbrances of record not barred by the statute of limitations.

N.D.C.C. § 47-19.1-01. In 2013, the legislature clarified that possession is any of the acts under N.D.C.C. § 38-18.1-03. Brokaw claims their title is related solely to the deeds, which fail to mention mineral ownership from 1945 until 2015. In fact, the type of Affidavit that the statute intends to eliminate these stale claims was filed by Black Stone Minerals Company, L.P. on March 25, 2014. (App. 69). Only the Missouri River Group claims minerals and are leased as such. No such lease nor Statement of Claim appear of record for Brokaw. The only chain with title over twenty years is the Missouri River Group's chain.

¶18. The change legislatively to allow Statements of Claim and leases to evidence possession then impacts how possession of minerals was previously determined. Nelson v. Christianson, 343 N.W.2d 375, 379 (N.D. 1984). Production is not even necessary, though it could be one of the ways in which a mineral owner possesses mineral rights. The legislature determined that these type of documents, if of record for over twenty years, will remove stale claims, like Brokaw's mineral claim. 2013 N.D. Sess. Laws ch. 351, §4. Our caselaw needs to reflect that change to allow possession to occur before production or the Affidavit of Marketable Title is useless for practitioners.

ii.Adverse Possession

¶19. In order to satisfy a claim under adverse possession, the Missouri River Group needs to show ownership that is "actual, visible, continuous, notorious, distinct, and hostile, and of such charge to unmistakably indicate an assertion of claim of exclusive ownership." Gruebele v. Geringer, 2002 ND 38, ¶7, 640 N.W.2d 454.

¶20. In the present case, Brokaw alleges that Lyman Brokaw had only a one-half mineral interest. Lyman's first deed to The Hamill Foundation predecessors in title would have taken all of his mineral interest. (App. 39). Nonetheless, one year later, the Bauer Family, L.L.P.'s and Missouri River Royalty Corporation's predecessors took another one-fourth mineral interest. (App. 40). In 1977, Black Stone Minerals Company, L.P.'s predecessor in title received the remaining portion of minerals.

(App. 41). All of these documents are of record from 1958 to 2005, which are actual and truly visible as recorded documents. There are no gaps in title nor gaps in Missouri River Group's claim, while Brokaw has a gap in claim by the death certificate of Dale Brokaw only claiming a surface interest. (App. 29).

¶21. In addition, the oil and gas leases provided show actual possession of the minerals. (App. 59-68). No leases were proffered by Brokaw, and in fact no attempt to possess the minerals on the property was shown from 1958 to 2015. Meanwhile the chain of title of the Missouri River Group has been continuous and distinct. In fact, with the lack of continuous possession, Brokaw is unable to show twenty years of ownership pursuant to N.D.C.C. § 47-06-03. Even excluding the surface deeds where there were no mineral reservations, exceptions or inclusions, the 2001 death certificate clearly shows no intent of Brokaw to claim the minerals. (App. 29). Their ownership is therefore not adverse for twenty years. Brokaw cannot make a claim based on recorded documents because of the 2001 death certificate. The chain of title by the Missouri River Group of more than the one-half interest that Brokaw claims the deeds show, was exclusive from the 1958 forward until 2015. In 1967 Dale and Evelyn Brokaw, as joint tenants, received title in a Warranty Deed that makes no mention of minerals. (App. 26). In 2001, Dale Brokaw's death certificate severs joint tenancy and only mentions an ownership in the surface (App. 29). In 2013, the one owner of the Missouri River Group who received an interest not

delineated in specific amount from North American Royalties, Inc. but merely any remaining interest files a Marketable Record Title Affidavit claiming the one-fourth interest. (App. 69). Nothing happens again for the Brokaws until the 2015 deed from the Estate of Evelyn Brokaw that mentions minerals as "And mineral interest if any lying in and under" the Subject Property. (App. 31). However, Brokaw cannot show that they "exclusively possessed the property or that their possession was hostile." Moody v. Sundley, 2015 ND 204, ¶ 19, 868 N.W.2d 491. The Missouri River Group shows that by all of the documents shown in title.

iii. Bona Fide Purchaser For Value

¶22. Another method by which the Missouri River Group can claim is under the bona fide purchaser for value theory. "To become a bona fide purchaser one must have acquired title without notice, actual or constructive, of another's rights and also must have paid value for the same." Ell v. Ell, 295 N.W.2d 143, 153 (N.D. 1980). The inclusion of Martha Brokaw for some unrecorded interest, that may have been her homestead interest, in the judgment does not automatically give her one-half of the interest or any of the minerals. Her interest was vague at best, but the chain of title was clear from that point until 2015, Lyman Brokaw had all of the minerals. There is nothing in the judgment, recorded title nor the lower court's record that proves that Martha Brokaw's name on the judgment meant she owned "as tenants in common." They had notice that Martha was his wife in 1945. The appealed judgment

indicated the North American Royalties, Inc. (and their successors) owned fee simple absolute to one-half of the minerals in the property. (App. 74). By Brokaw's logic, North American now owns one-half of the minerals as tenants in common with Missouri River Group.

¶23. Whatever interest the judgment may have created in Martha Brokaw, the original purchaser took pains to obtain a title opinion, which at the time of those title transactions did not believe that Martha Brokaw's inclusion in the judgment created an issue with Lyman Brokaw's conveyance of all of the mineral interest. (App. 35). Additionally, there are business records that Missouri River Group did pay for the mineral interests. (App. 37). Some of the Missouri River Group also elected to participate in the well under these minerals and paid expenses. (App. 38). No such claim of separate value on the mineral interest is provided by Brokaw because their interest was treated as a surface interest until 2015.

¶24. Brokaw claims that their entire theory of ownership is that the judgment in 1945 conferred one-half of the ownership in the property in Martha Brokaw. The only case that Brokaw cites is McKenzie County v. Hodel, 467 N.W.2d 701 (N.D. 1991). That case involved whether McKenzie County and the federal government's stipulation that McKenzie County should receive a six and one-quarter percent non-participating royalty interest in a judgment pursuant to a condemnation action. Id at 702. The Supreme Court made it clear that these condemnation actions are a different

result than other types of court judgments, and the case involved written stipulations regarding ownership that were not recorded. Id at 705. This is not a condemnation case, and no stipulation regarding's Martha Brokaw's interest was proffered by Brokaw. This Court need not reach that issue because there is no evidence showing Martha Brokaw's interest other than the 1945 judgment. There is no other evidence to show an unrecorded agreement or anything to define that the interest was as tenants in common or whether it included minerals. With no one left with personal knowledge, the chain of title provides the evidence that whatever interest was included in that judgment, Martha did not have an interest in the minerals.

¶25. The facts in this case resemble more of the Fargo v. D.T.L. case. In a dispute between the City of Fargo and D.T.L. Properties, Inc. over the Black Building and several parking lots, which included the "Vanity Parking Lot," initially the Vanity Parking Lot legal description was included in a bond application inadvertently. City of Fargo v. D.T.L. Properties, Inc., 1997 ND 109, ¶4, 564 N.W.2d 274. During the midst of the financing on this project, Jordahl and Associates, who only had a leasehold interest, executed a warranty deed for the Vanity Parking Lot. Id at ¶5. And in that case as this one, the parties claiming an interest were "put on notice about 'serious questions as to the status of the City Lots title' by several recorded documents." Id at ¶18. Thus, Jordahl, as a stranger to title who is similar to Martha Brokaw in this case, had no interest in fee title.

¶26. This case is also like many of the Malloy v. Boettcher facts encountered in title. Malloy v. Boettcher, 334 N.W.2d 8 (N.D. 1983). While Malloy is often used in title opinions to include that a stranger to title spouse may obtain a reservation of mineral interest, the holding of the case is much different. Malloy contends that one can "convey a property interest to a third party who is a stranger to the deed or title of the property where that is determined to have been the grantor's intent." Id at 9. Reviewing the chain of title from the date of 1945 deed, Martha and Lyman Brokaw acted like Lyman Brokaw had all of the mineral interest in the property. There is nothing of record to evidence the intent of the parties as to what interest, if any, Martha Brokaw had.

¶27. Brokaw had used Shuck v. Shuck to argue that because the 1945 judgment included Martha Brokaw, then Brokaw must have title to the minerals. Shuck v. Shuck, 44 N.W.2d 767, 771 (ND 1950). If that interpretation was correct, adverse possession and record title concepts would be useless. Instead the Shuck case dealt with whether a deed from a title owner was properly signed and delivered. Id at 772. Nothing in that case stands for the idea that whoever has the oldest deed wins title.

¶28. In fact, the Brokaw's claim is barred by laches. "[T]he party against whom laches is ought to be invoked must be actually or presumptively aware of his rights and must fail to assert them against a party who in good faith permitted his position to become so changed that he could not be restored to his former state." Burlington

Northern, Inc. v. Hall, 322 N.W.2d 233, 242 (ND 1982). In this case no actual claim to the minerals was made by Brokaw through Martha Brokaw nor her successors in title from 1945 until 2015. Brokaw's predecessors in title in 2001 explicitly only claimed surface interests in this property. In fact, "laches is based principally upon the inequity of permitting a claim to be enforced due to change of conditions of the parties because of such delay." Richland County v. State, 180 N.W.2d 649, 657 (N.D. 1970). The change in circumstances that oil development occurred so that now the minerals had more worth is not sufficient. Additionally, allowing mineral holders to act like Lyman's deed was effective until long after Lyman and Martha are dead is inequitable. If that was the claim, it should have been raised at a time that North American could get funds back from Lyman or his widow.

¶29. Meanwhile, a claim to minerals is shown in title in the deeds from the Missouri River Group both before and after the 2001 recording date when minerals are again mentioned by the Brokaw chain of title, including multiple leases. (App. 57-68). In addition, the judgment that conferred an interest to Martha Brokaw lists her as Lyman's wife and that with Lyman, she owned fee simple absolute. This could have been that she had a homestead interest, or that she had some type of other surface interest such as a lease. The tax deed was clear to Lyman solely, and Lyman and his predecessors in title until 2015 acted with the clear intent that Lyman had possession of 100% of the minerals. Whatever interest Martha had in the property

was never evidenced by any deed into her name nor was it clear what interest she had pursuant to the judgment. But the actions of the Brokaws until 2015 all point to the idea that Lyman Brokaw had all of the mineral interest in the property.

CONCLUSION

¶30. The Missouri River Group respectfully requests that this Court reverse the lower court's decision and remand for the lower court to enter judgment that Brokaw has no interest in the minerals under the Subject Land and that The Hamill Foundation owns 50% of the minerals, Missouri River Royalty Corporation owns 18.75% of the minerals and Bauer Family LLP owns 6.25% in a de novo review, or alternatively reverse the judgment remove North American Royalties, Inc. as a party in whom title is quieted and instead provide that The Hamill Foundation owns One-Half of the minerals and remand for further findings regarding the underlying arguments to make specific findings regarding the Missouri River Group's possession under the amended N.D.C.C. § 47-19.1-07.

Dated: September 30, 2016.

/s/ Jannelle Steger Combs

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IN THE SUPREME COURT OF THE STATE OF NORTH DAKOTA

Black Stone Minerals Company, L.P., Missouri River Royalty Corporation, The Hamill Foundation, Bauer Family LLP, Plaintiffs, vs. Kate Sarah Brokaw, Gordon Brokaw as Personal Representative of the Estate of Evelyn Brokaw, Gordon Brokaw as Trustee of the Testamentary Trust U/W Of Evelyn G. Brokaw FBO Jacob Gordon Brokaw, Gordon Brokaw as Trustee of the Testamentary Trust U/W Of Evelyn G. Brokaw FBO Emily Sue Brokaw, Kristen Jones, Steven Irgens, James Scott Brokaw, Ryan Kyle Brokaw, Brett Christopher Brokaw, Gordon D. Brokaw, Linda B. Irgens, Martha Brokaw, Lyman G. Brokaw, and all other persons unknown, claiming any estate of interest in or lien or encumbrance upon, the real estate described in the complaint, Defendants.	Supreme Court Case No. 20160286 Civil Case No. 53-2015-CV-01217 **CERTIFICATE OF SERVICE BY ATTORNEY (N.D.R.App.P.25(d)**

1. I, Jannelle Steger Combs, hereby certify that I am an active member of the State Bar of North Dakota, and am not a party to the within action. My business address is 436 Brunswick Drive, Bismarck, North Dakota 58503.
2. That I served a copy of the attached Appellant's Brief to Kate Sarah Brokaw, Gordon Brokaw as Personal Representative of the Estate of Evelyn Brokaw, Gordon Brokaw as Trustee of the Testamentary Trust U/W Of Evelyn G. Brokaw FBO Jacob Gordon Brokaw, Gordon Brokaw as Trustee of the Testamentary Trust U/W Of Evelyn G. Brokaw FBO Emily Sue Brokaw, Kristen Jones, Steven Irgens, James Scott Brokaw, Ryan Kyle Brokaw, Brett Christopher Brokaw, Gordon D. Brokaw, and Linda B. Irgens, at the following e-mail service address on September 30, 2016:

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3. I declare under penalty of perjury under the laws of the State of North Dakota that the foregoing is true and correct and that this document was executed on September 30, 2016 at Bismarck, North Dakota.

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