

IN THE SUPREME COURT OF THE STATE OF NORTH DAKOTA

Dudley J. Stuber, Trustee of the D.J. Stuber
Land and Royalty Trust and Rocky R. Svihl
as Trustee of the RGKH Mineral & Royalty
Trust Dated 11-1-95,

Plaintiffs and Appellants,

vs.

Douglas F. Engel, Nikki Engel, Robert
Candee, Coleen Rae Baxter, Dirk Ronald
Baxter, Frank A. Steinbeck, Patricia E.
Steinbeck, John F. Steinbeck, Margaret
Steinbeck, Lillian Dasinger as Trustee of the
Lillian Dasinger Family Trust, Tracy Dawn
Rude, and Jason Scott Hukill,

Defendants and Appellees.

vs.

EOG Resources, Inc.,

Intervenor and Appellee

Williams County Case No. 53-08-C-765

Supreme Court Case No. 20160391

Appeal from FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER FOR
JUDGMENT dated July 26, 2016, and JUDGMENT entered October 3, 2016.

Williams County, North Dakota
Northwest Central Judicial District
Honorable Joshua B. Rustad

**BRIEF OF APPELLEES DOUGLAS F. ENGEL, NIKKI ENGEL, ROBERT CANDEE,
COLEEN RAE BAXTER, DIRK RONALD BAXTER, FRANK A. STEINBECK,
PATRICIA E. STEINBECK, JOHN F. STEINBECK, MARGARET STEINBECK,
LILLIAN DASINGER AS TRUSTEE OF THE LILLIAN DASINGER FAMILY TRUST,
TRACY DAWN RUDE, AND JASON SCOTT HUKILL**

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STATEMENT OF THE ISSUE

The Appellees put forth the following as the sole determinative issue in this case:

- [1] Whether the District Court erred in determining that the Plaintiff/Appellants could not be good faith purchasers of the subject mineral interests, because among other things, there was no personal representative appointed in the Estates in North Dakota.

STATEMENT OF THE CASE

[1a] Plaintiffs brought this action to quiet title to minerals in Williams and McKenzie Counties (“the subject minerals”) in October, 2008 [APP 9]. Defendants filed a Counterclaim seeking to quiet title in their names in November of 2009 [APP 15]. Intervening Defendant EOG Resources filed its own Answer on August 30, 2011 [APP 19]. On October 25, 2013, the Court denied competing motions for Summary Judgment. [APP 25]. A trial was held on August 31, 2015, and the Defendants ultimately prevailed. [APP 121].

STATEMENT OF THE FACTS

[2] The subject minerals were originally owned by Charlotte Nohle, who died testate in 1957. [APP 102]. The Decree of Distribution from Nohle's Estate distributed one-fifth of Nohle's interest to Victoria Davis. [APP 54]. Davis died in 1976, and her last will and testament left the subject minerals to her daughter, Helen Jaumotte. [APP 37]. The Davis Will was probated in Sheridan County, Montana. [APP 41], and Helen Jaumotte was appointed Personal Representative. [APP 42]. Helen died in 1991. [Doc #129]. Helen's will provided that the minerals from the Nohle estate would go first to her husband, Jay Jaumotte for the duration of his life, and upon his death, to the children of Charlotte Nohle. [APP 46]. Jay Jaumotte was appointed Personal Representative of the Estate of Helen Jaumotte in Arizona in 1991. [APP 57]. He was also appointed successor personal representative of the Estate of Victoria Davis in Montana. [APP 42].

[3] The issue in this case arose due to a pair of deeds executed by Jay Jaumotte, purporting to act individually and as the personal representative of the Estates of both Davis and Helen Jaumotte. These deeds are recorded in Williams and McKenzie counties [APP 66 and 69]. It is undisputed that at no time did Jaumotte ever initiate any probate proceedings in North Dakota. [TR 188]. It is further undisputed that prior to this dispute, the subject minerals were never conveyed from the Estate of Victoria Davis. [TR 201].

[3a] The District Court in this case found as a matter of law that Jaumotte was not ever rightfully appointed personal representative of either if the Estates in North Dakota, and as such he had no right to convey the property. [APP 29 at ¶18]. At trial, the Court made a Finding of Fact that Jay Jaumotte did not initiate any probate proceedings in North Dakota. [APP 122 at ¶5]. The Court further made a Finding of Fact that, "The Last Will and Testament of Helen Jaumotte merely devised a life estate in the minerals to Jay Jaumotte, and he had no mineral interests to convey to anyone in any capacity. [APP 122 at ¶8].

[4] After trial, the District Court entered the following Conclusions of Law:

[¶10] At no time was Jay Jaumotte authorized to act as the personal representative of the estates of either Victoria Davis or Helen Jaumotte with regard to the North Dakota property.

[¶11] At no time did Jay Jaumotte have the authority to issue the 1998 Mineral Deeds at issue to Northland or to convey any mineral interests to anyone.

[¶12] The only interest Jay Jaumotte would have ever obtained in the subject North Dakota minerals would have been a life estate interest via the Last Will and Testament of Helen Jaumotte.

[¶13] Montana law does not govern Jay Jaumotte's legal status as an alleged personal representative in North Dakota.

[¶14] Although Montana (Mont. Code. Ann. § 72-3-618) and North Dakota (N.D.C.C. § 30.1-18-14) both have statutes protecting good faith purchasers dealing with personal representatives, in this case Jay Jaumotte was not authorized to act as a personal representative in North Dakota of the Estates of Victoria Davis or of Helen Jaumotte.

[¶15] The recordation by Jay Jaumotte of the Montana Letters with the Williams County, North Dakota Recorder's Office placed the public, including Plaintiffs, on constructive and actual notice of not only what was contained within the Letters, but also what was not in the chain of title – most notably any indicia of any North Dakota Court authority for Jay Jaumotte to issue any deeds of record.

[¶16] Had the Plaintiffs investigated, they would have found that no order had been issued by a North Dakota Court establishing the filing of copies of Jay Jaumotte's appointment as personal representative of the Estates of Victoria Davis and of Helen Jaumotte in Montana and, thus, would have found that Jay Jaumotte was not authorized to act as the personal representative of the Estates of either Victoria Davis or Helen Jaumotte with regard to the North Dakota property and did not have the power to issue the deeds. They also would have found that the will of Helen Jaumotte merely gave a life estate in the mineral interests in question to Jay Jaumotte.

[¶17] Plaintiffs' failure to investigate the power of Jay Jaumotte to act in North Dakota as personal representative of the Estates of Victoria Davis and of Helen Jaumotte, the failure of Jay Jaumotte to follow the wishes of the Last Will and Testament of Helen Jaumotte, the fact that Jay Jaumotte only had a life estate in the mineral interests at issue, coupled with this

Court's previous finding in its Order Denying Motion for Summary Judgment that Jay Jaumotte had no authority to act as the Personal Representative of the aforementioned estates, leads to the conclusion that Plaintiffs were not good faith purchasers under N.D.C.C. § 30.1-18-14 and that the mineral interests at issue should have been devised according to the Wills of Victoria Davis and of Helen Jaumotte.

[¶18] This Court finds that Defendants are the rightful owners of the mineral interests in the properties at issue in this case. [APP 123-124].

[5] Accordingly, title was quieted to the devisees of wills of Victoria Davis and Helen Jaumotte, namely, the Defendants/Appellees. [APP 125].

Standard of Review

[6] A district court's Findings of Fact are upheld, unless clearly erroneous. A finding of fact is clearly erroneous if it is induced by an erroneous view of the law, if no evidence exists to support it, or if the reviewing court, on the entire evidence, is left with a definite and firm conviction a mistake has been made. [Jelsing v. Peterson](#), 2007 ND 41, ¶11, 729 N.W.2d 157.

[7] A district Court's Conclusions of Law are subject to de novo review.

Argument

I. The District Court Properly Determined that Jay Jaumotte Did Not Have Authority to Transfer the Subject Minerals to the Plaintiffs Predecessor-in-Interest

[8] The central issue in this case is whether Jay Jaumotte had the ability to convey minerals from the Estates to the Plaintiffs' predecessors in title. It is undisputed that Jay Jaumotte was appointed Montana Personal Representative of the Estate of Victoria Davis and Arizona Personal Representative for Helen Jaumotte. Jay Jaumotte did not initiate any probate proceedings in North Dakota. Based on these facts, the District Court entered Conclusions of Law which state

that Jaumotte was not authorized to act as the personal representative of the Estates, and could not therefore transfer the subject minerals.

[9] North Dakota law applies to "property of nonresidents located in this state." N.D.C.C. § 30.1-02-01(2) "It is settled in this State that a court decree or court judgment of another state in its determination of property rights may not directly affect or transfer title to real property situate in North Dakota." Brigham Oil v. Lario Oil, 2011 ND 154, 801 N.W.2d 677 at ¶16. (internal citations omitted). Under North Dakota law, the probate proceedings initiated by Jay Jaumotte in Montana cannot transfer the title of the North Dakota mineral interests, and his authority as personal representative in Montana does not extend across the border into North Dakota. This position is supported by the Supreme Court's ruling in the Brigham case, cited above, which involved a California probate court order that purported to award ownership of North Dakota minerals rights. In that case, the Court held that, "Initiation of ancillary probate proceedings in North Dakota was required to formally transfer title to the subject mineral rights" Brigham Oil v. Lario Oil, 2011 ND 154, 801 N.W.2d 677 at ¶16. (internal citations omitted).

[10] Since Jaumotte did not ever initiate any probate proceedings in North Dakota, he had no power, as personal representative, to transfer the subject minerals. The District Court's ruling must be upheld, as to do otherwise would result in the overturning of the Supreme Court's decision in the Brigham case, and all of the cases which support it.

A. N.D.C.C. 30.1-18-14 Does Not Apply to This Case Since Jaumotte is Not the North Dakota Personal Representative of Either Estate

[11] The Plaintiffs base their entire theory of this case on the application of N.D.C.C. 30.1-18-14, which states that, "A person who in good faith either assists a personal representative or deals with the personal representative for value is protected as if the personal representative properly exercised the personal representative's power." Essentially, the Plaintiffs argue that they

purchased the subject minerals from Northland, and that in buying the minerals from Jay Jaumotte, Northland did so in good faith. Thus, the Plaintiffs believe they should be protected under the statute, and have good title to the subject minerals. Unfortunately for the Plaintiffs, this belief is completely erroneous. The statute states that a good faith purchaser “is protected as if the personal representative properly exercised the personal representative's power.” In this case, it is absolutely clear that Jaumotte was not the personal representative. Had Jaumotte filed certified copies of his Montana or Arizona Letters Testamentary with a North Dakota Court under N.D.C.C. 30.1-24-05, he would have been a personal representative under the law, and the Plaintiffs would have the protection they seek. This is the reason the Plaintiffs prevailed in the Montana case, which will be discussed below, and is also the reason why they did not, and cannot, prevail in North Dakota.

[12] As was presented in the preceding argument, North Dakota law requires an actual probate proceeding in North Dakota prior to any real estate being transferred from an estate. The Plaintiffs admit that Jay Jaumotte did not commence any such proceeding. See Plaintiff’s Brief at ¶24. Nevertheless, the Plaintiffs argue that the term “personal representative” includes foreign personal representatives, meaning personal representatives appointed in other jurisdictions. Id. at ¶25-27. Specifically, the Plaintiffs argue that the good faith protections should apply to them because Jaumotte was the personal representative of both the Estates at the time of the sale to the Plaintiffs’ predecessor in title. Id. at 27. This argument ignores the fact that Jaumotte was only the personal representative in Montana and Arizona, and not in North Dakota. N.D.C.C. 30.1-18-01 states that: “The duties and powers of a personal representative commence upon appointment.” North Dakota law requires a personal representative to commence some sort of probate proceeding in the State of North Dakota, in order to transfer real estate. The Century

Code specifically states that a personal representative only has powers upon appointment. Thus, in order to be able to act as a personal representative in any capacity, Jay Jaumotte would have had to initiate a proceeding in North Dakota, and would have to be appointed by a North Dakota Court in order to have any powers. Accordingly, there is no way that the Plaintiffs can be protected under N.D.C.C. 30.1-18-14. Whether or not the Plaintiffs acted in good faith is beside the point; the real issue is that, in this case, the purported personal representative, Jay Jaumotte, was never appointed as such, and having never been appointed, never gained any personal representative powers. Thus, if the Plaintiffs were protected as if Jaumotte had properly exercised his powers, they would still have no benefit, as Jaumotte had no powers to exercise.

[13] Further proof that North Dakota Statutes do not allow foreign personal representatives any power or authority can be found in the following statutory definitions. N.D.C.C. 30.1-24-01 (2) sets out that "Local personal representative" includes "any personal representative appointed in this state pursuant to appointment proceedings described in chapters 30.1-12 through 30.1-23 and excludes foreign personal representatives who acquire the power of a local personal representative pursuant to section 30.1-24-06." N.D.C.C. 30.1-24-06 states that:

"A domiciliary foreign personal representative who has complied with section 30.1-24-05 may exercise, as to assets in this state, all powers of a local personal representative and may maintain actions and proceedings in this state subject to any conditions imposed upon nonresident parties generally". Thus, foreign personal representatives are not local personal representatives, and may only exercise powers in this state if they have been appointed under N.D.C.C. 30.1-24-05. It is undisputed that Jaumotte did not do this, and as such, he had no powers to exercise.

[14] Further proof that the District Court made the correct decision in this case can be found in the language of N.D.C.C. 30.1-18-14, which states, “The protection here expressed extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters...”. The statute states that it extends to instances where there is some defect in a proceeding where a personal representative is appointed, but says nothing about instances where no personal representative is appointed. Simply put, a person who deals in good faith with a personal representative is protected from procedural or jurisdictional defects, but this protection requires the actual appointment of a personal representative, and it is undisputed that no personal representative was appointed in this case.

[15] Again, unless the Supreme Court wishes to overturn its decision in the Brigham case, the District Court’s ruling must be upheld. Further, the Court would also have to overturn its own rulings in Stratton v. Rose, and ignore another section of North Dakota law. As cited by the District Court in its Order Denying Summary Judgment:

In *Stratton v. Rose*, Richard Rose was appointed personal representative in a Washington probate of the estate of Hilman Hofland. 484 N.W. 2d at 274. Hilman owned real property in Bottineau County, North Dakota. *Id.* Rose filed an authenticated copy of his Washington appointment, and the Bottineau County Court issued, “Letters Testamentary” indicating that Hilman’s will had been admitted to informal probate and that Rose has been appointed personal representative of the estate in North Dakota. *Id.* at 277. Citing N.D.C.C. 30.1-12-03, the Supreme Court concluded that, “the court’s action [issuing Letters Testamentary] commenced local administration of the estate.” *Id.* [APP 28 at ¶14].

[16] This case is similar to Stratton, and in order to become the personal representative of the Estates in North Dakota, Jay Jaumotte should have done what Richard Rose did in that case. Jaumotte should have filed an authenticated copy of his Montana or Arizona appointments with a North Dakota Court, which would have commenced his local administration of the Estates in

North Dakota. Since he did not do so, he was not the personal representative of either of the Estates in North Dakota, and could not transfer the assets of the Estates.

B. The Montana Case Presented to this Court is Distinguishable

[17] Plaintiffs are presently trying to confuse the issue before the Court, and to do so rely on a Montana case that involved some of the parties herein, Northland Royalty Corp. v. Engel, et. al. 2014 MT 295. Northland had similar parties, but had greatly dissimilar facts. Northland Royalty Corp. purchased Montana minerals from Jay Jaumotte, individually and as Personal Representatives of the Estates, and Northland was the Plaintiff in the Montana case. Northland had not conveyed the minerals to the Plaintiffs, as it did in the case at hand. The Defendants were largely the same. Montana has a statute, Mont. Code. Ann. § 72-3-618, that protects a good faith purchaser dealing with a personal representative, similar to N.D.C.C. § 30.1-18-14. The Montana Supreme Court held that §72-3-618, MCA, protected Northland’s purchase. Northland, ¶13.

[18] The Montana case is easily distinguishable from the case at hand. In Northland, Jay Jaumotte was personal representative of the Estate of Victoria Davis. Jay Jaumotte had been issued letters appointing him the Personal Representative of this Estate in Montana and they were in effect when the deed was given to Northland. Northland then received the status of “good faith purchaser” for the Montana property. While the Estate of Helen Jaumotte does not appear to ever have been opened in Montana, this is irrelevant; the minerals, which should have gone to the estate of Helen Jaumotte, did not do so, they instead went from the Estate of Victoria Davis to Northland.

[19] In their brief, the Plaintiffs state that, “Specifically, the [Montana] Court relied on the fact that Jaumotte Helen’s [sic] personal representative was appointed in Arizona, not Montana, in determining Northland could rely in good faith on Jaumotte’s actions as personal representative. Id. at ¶11-12.” First, it should be noted that this is not what these two paragraphs of this case say at all. Nowhere in these two paragraphs is the Arizona probate mentioned at all. Further, this Court should remember that the Estate of Helen Jaumotte never received the minerals it was entitled to receive from the Estate of Victoria Davis. At the time, in Montana at least, Jay Jaumotte was the personal representative of the estate which actually had title to the minerals in question, and thus could, despite it being against the devise of that will to do so, sell them to Northland.

[20] In direct contrast to the Montana case, in the case at hand, the District Court found “Jay was not authorized to act as the personal representative of the estates of either Victoria Davis or Helen Jaumotte with regard to the North Dakota property, and consequently, did not have the power to issue the 1998 Mineral Deed to Northland.” [APP 29 at ¶18]. The Montana Northland case states that, “In the ordinary case... a [purchaser] would only need to see that the letters were issued and in effect when a personal representative gave a deed to purchaser.” Northland at ¶13 citing 3 Patton & Palomar on Land Titles §521 (3d ed. 2003).

[21] In North Dakota, Jaumotte was never appointed personal representative of the Estates. [APP 29 at ¶18]. Jay Jaumotte did not file authenticated or certified copies of the “Letters” issued by the Montana Court with a North Dakota Court, which would have resulted in his becoming a domiciliary foreign personal representative. [Tr. 128:25-126:8; 140:15-24]. This case is absolutely distinguishable from the Montana case in that Jay Jaumotte was never appointed personal representative of either Estate in North Dakota in anyway. Due to Jay

Jaumotte's lack of authority to act as a personal representative in North Dakota, the deeds to Northland, and subsequently to the Plaintiffs, had no power to transfer the interests therein. The deeds should be treated as stray deeds, and the District Court's ruling affirmed.

II. The District Court Properly Determined that the Plaintiff/Appellants Did Not Act in Good Faith

[22] Even if this Court were to hold that Jaumotte somehow had the right to convey assets of the Estates in this case, N.D.C.C. 30.1-18-14 still requires that the Plaintiffs' predecessor in title be a good faith purchaser, in order for the Plaintiffs' to take title to the subject minerals. *See* N.D.C.C. 30.1-18-14. In this case, the District Court has previously held that the Plaintiffs' predecessor in title did not act in good faith, and thus the Plaintiffs are not protected by the statute.

[23] Intervenor Defendant EOG Resources has submitted an excellent brief to this Court which addresses this issue. In order to avoid duplicative arguments, the Defendants join with and fully incorporate the arguments and analysis put forth by EOG, specifically paragraphs [38-50]. As EOG has stated, there was clear evidence before the District Court establishing (1) that the Plaintiffs' predecessor in title had notice of Jay Jaumotte's lack of capacity to convey the subject minerals and (2) that the Plaintiffs themselves took no steps, and made no inquiries of any kind to verify the status of the title to the subject minerals. The District Court did not err in holding that this notice prevented the Plaintiffs' and their predecessor in title from acting in good faith.

CONCLUSION

[24] In summary, the reasons why the Court must affirm the District Court's ruling in this case are as follows. The Estates of Victoria Davis and Helen Jaumotte were never probated in North

Dakota, and no personal representative was appointed to either Estate. Since no personal representative was ever appointed, the Plaintiff/Appellants cannot have dealt in good faith with Jay Jaumotte for the sale of the subject minerals. Therefore the Plaintiff/Appellants are not entitled to protection as good faith purchasers under N.D.C.C. 30.1-18-14, and cannot prevail in this case. This is a different result than that reached by the Montana Supreme Court in the somewhat similar Northland case, however in that case, Jay Jaumotte was the actual personal representative of the Estate of Victoria Davis, where the subject minerals were located, and could therefore convey them. Jay Jaumotte was not the personal representative of the Estate of Victoria Davis in North Dakota, and therefore had no right to convey those minerals to any party. Further, even if Jaumotte could convey these minerals from the Estate of Victoria Davis, the will of Victoria Davis forbade him to do so, and so the only way his conveyance to the Plaintiffs can be allowed to stand is if the Plaintiffs' predecessor in title purchased the minerals in good faith. However, the evidence clearly shows that the predecessor had notice of Jaumotte's inability to convey the minerals, and accordingly, did not act in good faith.

[25] For all the foregoing reasons, the Judgment of the District Court must be affirmed.

DATED this 19th day of April 2017.

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s/ H. Malcolm Pippin
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CERTIFICATE OF SERVICE

[26] The undersigned certifies that the foregoing **BRIEF OF APPELLEES** was served on the following at their last known electronic mail addresses, on the 21th day of April, 2017.

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[26] The undersigned certifies that the foregoing **BRIEF OF APPELLEES** was served on the following at their last known electronic mail addresses, on the 19th day of April, 2017.

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