

**IN THE SUPREME COURT  
STATE OF NORTH DAKOTA**

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Dudley J. Stuber, Trustee of the	)	
D.J. Stuber Land and Royalty Trust	)	
and Rocky R. Svihl as Trustee of the	)	Supreme Court Case No. 20160391
RGKH Mineral & Royalty Trust	)	
Dated 11-1-95,	)	Williams County Case No. 53-08-C-765
	)	
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	)	
	)	

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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

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**BRIEF OF APPELLANTS**

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## **STATEMENT OF THE ISSUES**

- I. Whether the District Court erred in holding Appellants' predecessor-in-interest, Northland Royalty Corporation, did not acquire title to the subject minerals under N.D.C.C. § 30.1-18-14 as a purchaser in good faith from the personal representative of the Estates of Helen and Victoria Davis.
- II. Whether the District Court erred by quieting title in the name of Defendants and Appellees where Appellants acquired the subject minerals as bona fide or good faith purchasers for value.
- III. Whether the District Court erred in awarding Defendants and Appellees past royalty payments or monies received from the subject mineral properties.

## **STATEMENT OF THE CASE**

[¶ 1] Plaintiffs brought this action to quiet title minerals in Williams and McKenzie Counties (“the subject minerals”) they acquired from Northland Royalty Corporation (“Northland”). Northland previously purchased the subject minerals from Jay Jaumotte (“Jaumotte”) individually, and as personal representatives of the Estates of Victoria and Helen Jaumotte. Defendants filed a Counterclaim seeking to quiet title in their names. A bench trial was held before Joshua B. Rustad on August 31, 2015.

[¶ 2] This is an appeal of the District Court’s *Findings of Facts, Conclusions of Law and Order for Judgment* dated July 26, 2016 (“the Order”) and subsequent *Judgment* entered on October 3, 2016. The District Court’s decision must be reversed and remanded with directions to enter judgment finding: (1) Plaintiffs’ predecessor-in-interest, Northland, purchased the subject minerals in good faith from Jaumotte, personal representative of the Estates of Victoria Davis and Helen Jaumotte and title passed to it under N.D.C.C. § 30.1-18-14; and (2) Plaintiffs acquired title to the subject minerals as bona fide purchasers for value under N.D.C.C. § 47–19–41. In the alternative, the District Court award of past royalty payments and monies to Defendants must be reversed.



## **STATEMENT OF THE FACTS**

[¶ 3] Ownership of the mineral interests at issue originated with Charlotte Nohle (“Nohle”). Nohle died testate in 1957. [APP 102]. At the time of her death, Nohle resided in McKenzie County, North Dakota, where her estate was probated. [APP 102]. Nohle owned minerals in Williams and McKenzie County, a fractional interest of which are the subject of this quiet title action. [APP 53]. However, she owned a large number of other minerals in Williams County and McKenzie County, as well as minerals in Richland County, Montana, which are not subject to this quiet title action. [APP 53]. In her will, Nohle left the mineral rights she owned at the time of her death to her “living brother and sisters.” [APP 33]. She further directed that “their natural born children should take in their stead. . . .” [APP 33]. The Final Decree of Distribution entered in McKenzie County indicates Nohle’s mineral interests were distributed to: Victoria Davis, Ollye Freeman, Bertha Baxter, Ronald Freeman, Fay Freemean, Ella Steinbeck, Floyd Engel, Martha Freeman, Rose Bruun, Edgar Freeman, and Norman Freeman. [APP 52]. Defendants claim to be Nohle’s heirs. [APP 16]. Victoria Davis (“Davis”), Nohle’s sister, received an undivided one-fifth interest in the minerals owned by Nohle, including certain minerals located in Williams and McKenzie County. [APP 54]. The fractional interest received by Davis from Nohle in Williams and McKenzie County are the mineral interests which are the subject of this case (hereinafter “the subject minerals”).

[¶ 4] Davis died in 1976. In her Last Will and Testament (“the Davis will”), Davis left the subject minerals to her daughter, Helen Jaumotte (“Helen”). [APP 37]. The Davis will was probated in Sheridan County, Montana. [APP 41]. Letters of Personal Representative were issued to Helen. [APP 42]. Helen was married to Jay Jaumotte (“Jaumotte”). [APP 45]. The Jaumotte’s had no children. [APP 45]. Helen

executed a will dated June 9, 1976. [APP 49]. Helen's will contained the following provision:

I give to my husband, if he survives me by thirty days, the use and enjoyment of the income from the mineral interests in lands formerly owned by CHARLOTTE C. NOHLE, and given to me by my mother, VICTORIA F. DAVIS. Upon my husband's death, those mineral interests and the use and enjoyment thereof revert to the issue of CHARLOTTE C. NOHLE, in keeping with her Will, specifically to FLOYD A. ENGEL, MRS. ELLA STEINBECK, MRS. DOROTHY FREEMAN, AND MRS. CECIL BAXTER, and each of their issue by representation.

[APP 46]. Helen died in 1991. [Doc # 129]. At the time of her death, she was a resident of Yavapai County, Arizona, where her estate was probated. [APP 57 & 59]. Jaumotte was appointed Helen's personal representative in Yavapai County, Arizona. [Doc # 129; APP 57]. Letters Testamentary were issued to him in 1991, with "[n]o exceptions and without restrictions." Id.

[¶ 5] At the time of Helen's death, the Davis estate wasn't fully probated, so it was necessary to appoint a successor personal representative. In 1992, Letters were issued in Montana appointing Jaumotte the sole successor personal representative of the Davis Estate. [APP 41]. Helen's estate also remained open in Arizona until 1999, when counsel filed closing documents. [APP P. 59]. These documents had previously been filed in the wrong county. [APP 59].

[¶ 6] Richard Keller ("Keller") is the owner of Northland Royalty Corporation ("Northland") [Tr. 22 - 24]. Through searching courthouse records, Keller became aware Nohle's estate potentially owned minerals in Williams and McKenzie County. [Tr. 26]. In the spring of 1997, Keller completed his title check regarding these minerals and began contacting the heirs of Nohle to determine their interest in selling or leasing these minerals. [Tr. 22 - 33]. He performed his title search by looking at the tract index in

Richland County, MT, as well as Williams and McKenzie County. [Tr. 34]; [Doc # 163 and 164]. Keller discovered Nohle's heirs held fractional interests in minerals in both Montana and North Dakota. [Tr. 28 - 31]. He determined one of the devisees of Nohle's will was Davis, who received an undivided 1/5<sup>th</sup> interest in the subject minerals. [Tr. 28 - 31]. As part of his research in Montana, Keller reviewed the Davis will, which left her interest in the subject minerals to Helen. [Tr. 35]; [APP 37]. He discovered Helen had been Davis's personal representative, but Jaumotte was the successor personal representative of the Davis estate. [APP 41]. [Tr. 34].

[¶ 7] After his attempts to contact the Nohle heirs, Keller was contacted by Jaumotte regarding the minerals Nohle left to Davis. [Tr. 39]. During his contact with Jaumotte, Keller was also given the understanding that Jaumotte was the personal representative for his now deceased wife, Helen. [Tr. 41]. However, because he had not found any conveyance from estate to either Helen, individually, or to her estate, Keller understood the subject minerals were still owned by the Davis estate. [Tr. 41 - 43]. The Letters given to Jaumotte in Montana appointing him successor personal representative of the Davis estate were specifically "without any limitation" on Jaumotte's powers as personal representative. [APP 41]. Accordingly, he began dealing with Jaumotte to purchase the subject minerals. [Tr. 39 -41].

[¶ 8] As part of his due diligence, Keller also checked the status of Helen's estate. He checked records in Maricopa County, Arizona, where Helen passed away, to see if a will was probated there. [Tr. 43]. Keller believed Helen was residing in Maricopa County at the time of her death because that was where Jaumotte was residing. [Tr. 44]. In addition, Keller checked the probate records of Richland County, Montana, Williams County, North Dakota, and McKenzie County, North Dakota to see if

a probate had been opened for Helen's estate. [Tr. 44]. Finally, Keller prepared a document entitled "Proof of Death and Heirship", which he sent to Jaumotte for execution. [Tr. 46 – 48]. The Proof of Death and Heirship was returned to Keller bearing Jaumotte's signature. [APP 72]; [Tr. 47]. The document provided Helen died in 1991, that she was married to Jaumotte at the time of her death, and that the Jaumotte's had no children. [APP 72]. To Keller, this meant Jaumotte was Helen's sole heir. [Tr. 47]. At the time, Keller had no knowledge of Helen's will. [Tr. 47].

[¶ 9] By a deed dated July 8, 1998, Jaumotte deeded all his "right, title and interest", "individually, as Personal Representative of the Estate of Helen Jaumotte, and as sole Successor Personal Representative of the Will and Estate of Victoria F. Davis, both deceased," in the Williams County minerals to Northland. [APP 66]; [Tr. 49]. The deed was recorded in Williams County on July 16, 1998. [APP 68]. By another deed dated July 8, 1998, Jaumotte deeded all his "right, title and interest" in the McKenzie County minerals to Northland in both his individual and representative capacities. [APP 66]. The deed was recorded in McKenzie County. [APP 80]. Keller also recorded in North Dakota copies of the Davis will, the Davis Letters from Montana, and the Proof of Death and Heirship [APP 72 and 86]

[¶ 10] Plaintiff D.J. Stuber Land and Royalty Trust is a revocable trust. [Tr. 159]. Dudley Stuber is Trustee. [Tr. 160]. Plaintiff RGKH Mineral and Royalty Trust is also a revocable trust. [Tr. 214]. Rocky Svihl ("Svihl") is the Trustee. Id. After purchasing the subject minerals from Jaumotte, Northland approached Plaintiffs about selling them the minerals. [Tr. 164]. As part of the negotiations, Northland provided certain documents to Plaintiffs as proof of ownership. For the Williams County minerals, Northland provided the summary of Keller's title check on chain of title showing all conveyances of

record. [Doc # 163]. For the McKenzie County minerals, Northland provided Plaintiffs with a title search done by Precis Database, Inc. [Doc # 164]. These documents showed Davis was the record owner of the subject minerals in both counties. In addition, Northland provided copies of: (1) the Davis will; (2) Nohle's will; (3) the Letters appointing Jaumotte successor personal representative of the Davis estate in Montana; (4) the Proof of Death and Heirship; and (5) the deeds it received from Jaumotte [APP 86-101]. This satisfied Plaintiffs Northland held title to the subject minerals. [Tr. 168]. It is undisputed Plaintiffs paid valuable consideration for the subject minerals and for the McKenzie County minerals.

## **ARGUMENT**

### **I. The District Court Erred By Implicitly Holding Appellants' Predecessor-In-Interest, Northland Royalty Corporation, Was Not A Good Faith Purchaser Of the Subject Minerals Under N.D.C.C. § 30.1-18-14.**

[¶ 11] The District Court appears to have ruled Plaintiffs' predecessor in interest, Northland, was not a good faith purchaser of the subject minerals from Jaumotte under N.D.C.C. § 30.1-18-14. This issue is a question of law, fully reviewable on appeal. E.g., Brash v. Gulleason, 2013 ND 156, ¶ 17, 835 N.W.2d 798. In addition, this issue is dispositive. Because Northland purchased the subject minerals from Jaumotte as a good faith purchaser, Plaintiffs acquired good title to them from Northland.

[¶ 12] The Uniform Probate Code ("the UPC") was adopted in North Dakota in 1973. Estate of Hogen, 2015 ND 125, ¶ 11, 863 N.W.2d 876. Under North Dakota's version of the UPC, a personal representative has the same power over title that an absolute owner has, as a fiduciary for the benefit of those interested in the estate. N.D.C.C. § 30.1-18-11. The personal representative is authorized to "[a]cquire or dispose of any asset, including land. . . ." N.D.C.C. § 30.1-18-15(6). Conversely, a devisee under a will takes the property subject to administration by the personal representative. See, Estate of Hogen, 2015 ND 125, ¶ 24, 863 N.W.2d 876; N.D.C.C. § 30.1-18-15. This Court recognizes the personal representative's power to sell or otherwise dispose of the estate's assets even when a will contains a specific devisee of the property to the contrary. E.g., Green v. Gustafson, 482 N.W.2d 842, 845 – 847 (N.D. 1992); Matter of Estate of Johnson, 2015 ND 110, ¶9, 863 N.W.2d 215; Estate of Hogen, 2015 ND 125, ¶ 23 – 26. If a personal representative improperly disposes of estate property, the devisee's remedy is not the return of the property, but a direct

action against the personal representative. N.D.C.C. § 30.1-18-11; Gustafson, 482 N.W.2d at 849 fn 3.

[¶ 13] In light of the personal representative's broad powers over title, the UPC provides correspondingly broad protections to parties dealing with the personal representative. Gustafson, 482 N.W.2d at p. 845. Title 30.1 provides:

A person who in good faith either assists a personal representative or deals with him for value is protected as if the personal representative properly exercised his power. The fact that a person knowingly deals with a personal representative does not alone require the person to inquire in the existence of a power or the propriety of its exercise.

N.D.C.C. § 30.1-18-14. The intent of these provisions is to adequately protect persons dealing in good faith with a personal representative and to avoid the necessity of court orders in routine probate administration. Gustafson, 482 N.W.2d at p. 845 (quoting 1 Wellman, Uniform Probate Code Practice Manual 319 (2<sup>nd</sup> ed. 1977)). The District Court correctly found Jaumotte was the sole personal representative of both Helen's estate and the Davis estate at the time he sold the subject minerals to Northland. [APP 121-126]. Further, those estates were open at the time of the sale. In addition, it is uncontested that Keller, on behalf of Northland, did not have actual notice of the contents of Helen's will until 2005, well after these transactions. Therefore, the District Court erred in holding Northland was not a good faith purchaser under N.D.C.C. § 30.1-18-14 and must be reversed.

**A. The District Court erred by applying a “constructive knowledge” standard to the good faith requirements of N.D.C.C. § 30.1-18-14.**

[¶ 14] The District Court, in effect, held Northland did not purchase the subject minerals from Jaumotte in good faith under N.D.C.C. § 30.1-18-14. In some respect, that issue is irrelevant because, at the time Jaumotte entered into the transaction with

Northland, the Davis's estate had not conveyed the subject minerals to Helen or her estate. Jaumotte, as the successor personal representative of the Davis estate, could sell or otherwise dispose of the subject minerals no matter the terms of Helen's will. However, even assuming the terms of Helen's will are relevant, the District Court erred. N.D.C.C. § 30.1-18-14 protects anyone who purchased assets from a personal representative for value as if the personal representative validly exercised his or her power. The broad application of the statute cannot be doubted. It further provides:

[A] provision in any will or order of court purporting to limit the power of a personal representative is effective except as to person with actual knowledge thereon. . . . The protection here expressed extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters, including a case in which the alleged decedent is found to be alive.

N.D.C.C. § 30.1-18-14 (emphasis added). By its express terms, N.D.C.C. § 30.1-18-14 provides that no provision in a will is effective against a person dealing with a personal representative "except as to persons with actual knowledge thereof." However, the District Court found Northland was "put on inquiry notice" of potential claims as to the subject property but failed to investigate or inquire diligently regarding these claims. [APP 121-126]. The District Court erroneously applied a constructive notice standard to N.D.C.C. § 30.1-18-14.

[¶ 15] The District Court held Northland was on constructive notice of the restrictions contained in Helen's will because it would have found no order had been issued appointing Jaumotte personal representative of Helen's estate in North Dakota. Irrespective of the clearly erroneous factual findings contained in the District Court's Order, there is a logical fallacy in the District Court's conclusion. Checking records in North Dakota would not have resulted in Northland discovering the restrictions



contained in Helen's will. The will was never filed or recorded in North Dakota. More importantly, the Court disregarded the unambiguous requirements of N.D.C.C. § 30.1-18-14, namely, that Northland have actual notice of devise found in Helen's will. Without actual knowledge, Northland was entitled to rely in good faith on the representations of Jaumotte concerning his authority.

[¶ 16] Generally, "good faith" is "an honest intention to abstain from taking any unconscientious advantage of another through the forms and technicalities of law, together with an absence of all information or belief of facts which would render the transaction unconscientious." N.D.C.C. § 1-01-21. This "good faith" requirement has been applied in connection with N.D.C.C. § 30.1-18-14. However, it is also clear an "actual notice" standard applies to the "good faith" requirements of N.D.C.C. § 30.1-18-14. In Boe v. Rose, this Court held:

Boe is entitled to the protection of N.D.C.C. § 30.1-18-14 in dealing with the personal representative only if he acted in good faith. If, for instance, the evidence shows Boe was informed before signing that Hilda had devised the farmland to specific devisees, the personal representative needed their prior approval to sell the farmland, and he had not obtained that approval, the trier of fact could find Boe was not acting in good faith and, therefore, was not entitled to the statute's protection.

1998 ND 29, ¶ 14, 574 N.W.2d 834 (emphasis added). In other words, unless the individual dealing with the personal representative has actual knowledge of a limitation on the personal representative's powers, that individual is entitled to the protections of N.D.C.C. § 30.1-18-14. A similar conclusion was reached by the Arizona Court of Appeals in Cowley v. Kaechelle, 144 Ariz. 205, 696 P.2d. 1354 (AZ App. 1984). The Court in Kaechelle stated:

We find that A.R.S. § 14-3714 protects Thomas in his purchase of the Arizona property and consequently validates his successors claim to title. We do not find anything in this record that would have required Thomas

to investigate the existence of any restrictions on Stringham's authority to sell the real property of the estate. Thomas knew he was dealing with the personal representative of an estate. A.R.S. § 14-3714 nevertheless does not impose a duty on him to take steps to confirm the existence or extent of Stringham's power to sell real property of the estate.

Id. at 1359 (emphasis added). In addition, the official commentary in the UPC to § 3-714 provides "the will's prohibition is not relevant to the rights of a purchase unless he had actual knowledge of its terms."

[¶ 17] The Montana Supreme Court addressed this very issue in a case arising out of the same operative facts as this one. Northland Royalty Corp. v. Engel, 2014 MT 295, 339 P.3d 599. The Court found Northland was a good faith purchaser for value and without notice of the devisee in Helen's will under MCA § 72-3-618(1), the Montana equivalent of N.D.C.C. § 30.1-18-14. Id. at ¶¶ 13 - ¶ 14. The only difference is that the minerals at issue were located in Richland County, Montana. Id. at ¶ 2. As in this case, Northland purchased minerals from Jaumotte, individually and in his representative capacities. Id. at ¶ 5. After issues regarding title arose in 2005, Northland brought a quiet title action naming the devisees in Helen's will as defendants. Id. at ¶ 7.

[¶ 18] In the second appeal of the case, the Court directly addressed Northland's good faith status under MCA § 72-3-618. In finding Northland was entitled to the protections afforded by MCA § 72-3-618 in dealing with Jaumotte, the Court held:

Further, § 72-3-618(1), MCA, "explicitly excuse(s) [purchasers] from examining the terms of the will, court records relating to the appointment, or other source that might be relevant to the question of whether the sale is proper as between the fiduciary and those entitled to the inheritance." Uniform Probate Code Practice Manual 407. Because § 73-3-618(1), MCA, relieves a purchase from having to inquire into the specific language of a will, the District Court erred by concluding that Keller failed to act in good faith by failing to locate Helen's will.

What the statute's good faith and notice requirements to encompass is whether a purchaser in good faith believes that the "vendor has a right to

sell” by virtue of being an estate’s personal representative. (citations omitted). . . While Keller may not have obtained such independent verification here, there is no dispute that, at the time that the transaction occurred, Helen’s estate was open, Jay was the estate’s personal representative, there were no restrictions in place in Jay’s letter of appointment, and Keller had no actual knowledge of any restrictions on Jay’s authority. We thus hold that § 72-3-618, MCA, protects Northland’s purchase.

Id. at ¶11 – ¶12 (emphasis added). The Court specifically declined to apply a constructive notice standard to its “good faith” definition, stating such a standard “does not fit in the context of dealings with a personal representative.” Id. Therefore, the Court held Keller could not be found to have failed to act in good faith by failing to locate Helen’s will. Id. at ¶ 12. Further, it held a purchaser need only have a good faith belief in the personal representative’s right to sell by seeing the letters testamentary in effect at the time of the transaction. Id. at ¶ 13. The Montana Supreme Court’s opinion in Northland is directly on point. It addresses the same issues involved in this case, holding Northland was a good faith purchaser under the Montana equivalent of UPC § 3-714. The Montana Supreme Court’s holding fully supports reversal of the District Court’s Order and subsequent Judgment.

**B. The District Court relied on clearly erroneous findings of fact in holding Northland Royalty was not a good faith purchaser of the subject mineral interests under N.D.C.C. § 30.1-18-14.**

¶19] In its Order, the District Court made several findings of fact that were without any evidentiary support in the record. This Court has set forth standard of review of the findings of fact made by the Court after a bench trial on many occasions:

[t]he trial court’s findings of fact are reviewed under the clearly erroneous standard of N.D.R.Civ.P. 52(a) . . . . A finding of fact is clearly erroneous if it is induced by an erroneous view of the law, if there is no evidence to support it, or if, after reviewing all the evidence, we are left with a definite and firm conviction a mistake has been made.

E.g., Brash v. Gulleson, 2013 ND 156, ¶ 17, 835 N.W.2d 798. In this case, the uncontested facts ran directly counter to the District Court's findings.

[¶ 20] The District Court made the following findings:

1. That Jay Jaumotte was named Helen's personal representative in a probate matter opened in Montana;
2. That Jaumotte filed copies of these Montana Letters with the Williams County Recorder's Office;
3. That the property transfers made by Jaumotte were against the wishes of Victoria Davis;
4. That Jaumotte had no mineral interests to convey to anyone in any capacity; and
5. That Plaintiff and Plaintiffs' predecessors in interest were put on inquiry notice of potential claims as to the subject property.

[APP 121-126]. These findings of fact are wholly contradicted by the record before the District Court and, in fact, were not contested during trial.

[¶ 21] It is uncontroverted that Helen's estate was never probated in Montana, even though minerals in this same transaction were conveyed to Northland there. Similarly, it is uncontested that Jaumotte never recorded the Letters naming him personal representative of Helen's estate or the Davis estate. Northland recorded the Davis letters in North Dakota, not Jaumotte. This fact was not contested at trial. Though Jaumotte was Helen's sole personal representative at the time of the transaction, these Letters were not recorded in North Dakota. Keller was never in possession of these Letters. In addition, Victoria Davis left the subject minerals to Helen. Jaumotte sold the minerals to Northland after Helen's death. There is no evidence indicating such a transfer would have been against Davis's wishes. Likewise, whether Jaumotte had authority to convey these interests individually or in his

representative capacities is a conclusion of law, not a finding of fact. Similarly, whether Plaintiffs and Northland were put on inquiry notice of potential claims in the subject minerals is a conclusion of law, not a finding of fact and, as argued above, an irrelevant one.

[¶ 22] The District Court's clearly erroneous findings are material in this case because they, in turn, induced erroneous conclusions of law. Namely, the District Court concluded, based on these facts that Plaintiffs and Northland were not good faith purchasers because, they were on constructive notice of the contents of Helen's will and its devise of the subject minerals to Nohle's heirs and failed to follow Helen's wishes. [APP 121-126]. The only way Northland or Plaintiffs could have actually become aware of the contents of Helen's will is through a search of the records in Yavapai County, Arizona. The District Court's findings indicate a belief that the Yavapai County letters were recorded in Williams County at the time Northland purchased the subject minerals from Jaumotte, when Keller conducted his title search. The District Court concluded Keller and Northland should have been aware Helen's estate was being probated in Yavapai County, Arizona and would have known where to obtain a copy of her will, thereby learning of its contents. The Court's conclusion is clearly erroneous in that regard. Searching the filings on the subject minerals in Williams County revealed only that Victoria Davis owned a fractional interest in the subject minerals. It revealed nothing whatsoever regarding Helen or the status of her estate. The clearly erroneous findings made by the District Court induced it to make erroneous conclusions as to what notice Northland and Plaintiffs would have acquired by reviewing recorded documents in North Dakota.

[¶ 23] It bears noting that the Order was signed by the District Court on July 26, 2016, over eleven months after the bench trial took place on August 31, 2015. [APP 121-126]. In addition, the Court adopted in nearly verbatim fashion, the proposed Findings of Fact, Conclusions of Law and Order submitted by Defendants' counsel. [Doc # 191]. Only ¶9 was added to the *Findings of Fact*, with some slight changes to recognize Intervenor EOG's interests. [APP 121-126; Doc # 191] The District Court is required to "find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment" at the end of any bench trial. Rule 52(a), N.D.R.Civ.P. The purpose of the rule is to enable the appellate court to understand the factual determinations made by the trial court as the basis for its conclusions of law and the judgment entered. In re Griffey, 2002 ND 160, ¶ 6, 652 N.W.2d 351. The verbatim adoption of findings proposed by counsel is discouraged and disfavored. Foster v. Foster, 2004 ND 226, ¶ 10, 690 N.W.2d 197. It is true that the adoption of proposed findings is not, by itself, a reversible error. Id. However, in this case, when coupled with the several clearly erroneous findings, it must be concluded the District Court no longer had sufficient familiarity with the proceedings to make accurate findings of fact due to the length of time between trial and the signing of the Order. Therefore, the District Court's Order and subsequent Judgment must be reversed.

**C. The District Court erred by holding N.D.C.C. § 30.1-18-14 did not apply to the transaction between Jaumotte and Northland because copies of foreign Letters Testamentary appointing Jaumotte personal representative were not filed in North Dakota.**

[¶ 24] The District Court held Northland and, therefore, Plaintiffs, were not entitled to the protection of N.D.C.C. § 30.1-18-14 because certified copies of Jaumotte's Letters were not filed in North Dakota under N.D.C.C. § 30.1-24-05. This would have

granted Jaumotte actual authority to act as a domiciliary foreign personal representative under N.D.C.C. § 30.1-24-06, with full rights to alienate the subject minerals. However, the plain language of N.D.C.C. § 30.1-18-14 contains no such restriction or limitation on the good faith reliance on a personal representative. Indeed, the statute expressly protects from just this type of “procedural irregularities and jurisdictional defects.”

[¶ 25] The rules of statutory construction support the interpretation that N.D.C.C. § 30.1-18-14 applies to protect a good faith purchase even when the procedures of N.D.C.C. § 30.1-24-05 have not been followed. The term “personal representative” is defined as follows:

“Personal representative” includes executor, administrator, successor, personal representative, special administrator, and persons who perform substantially the same function under the law governing their status. “General personal representative” excludes special administrator.

N.D.C.C. § 30.1-01-06(40). This broad definition includes all administrators of a state, no matter what jurisdiction appointed in or terminology used. When referring to personal representatives appointed in another jurisdiction, Title 30.1 utilizes the phrase “foreign personal representative.” N.D.C.C. § 30.1-01-06(15). In addition, when referring to a personal representative appointed according to the procedures in this state, the phrase “local personal representative” applies. See, N.D.C.C. § 30.1-24-01(2). Similarly, the phrase “domiciliary foreign personal representative” means a foreign personal representative who has filed authenticated copies of the appointment from another jurisdiction and received an order establishing the filing of such copies. See, N.D.C.C. § 30.1-24-05 and N.D.C.C. § 30.1-24-06.

[¶ 26] These various definitions of “personal representative” requires the Court to resort to statutory interpretation to determine whether N.D.C.C. § 30.1-18-14 applies

to Jaumotte as a personal representative appointed in another jurisdiction. The primary objective in interpreting a statute is to determine the intent of the legislation. In re Estate of Hogen, 2015 ND 125, ¶ 12, 863 N.W.2d 876 (citing N.D.C.C. § 1–02–02). The intent of legislation must be sought initially from the statutory language. Id. Words in a statute are given their plain, ordinary, and commonly understood meaning, unless defined by statute or unless a contrary intention plainly appears. Id. Statutes are construed as a whole and are harmonized to give meaning to related provisions. Hogen, 2015 ND 125, ¶ 12 (citing N.D.C.C. § 1–02–07). Statutes are construed to give effect to all of their provisions, so that no part of a statute is rendered inoperative or superfluous. Hogen, 2015 ND 125, ¶ 12 (citing N.D.C.C. § 1–02–38(2) & (4)).

[¶ 27] As noted, the general definition of “personal representative” includes any person “who perform substantially the same function under the law governing their status” regardless of the terminology used in that jurisdiction. See, N.D.C.C. § 30.1-01-06 (40). Section 30.1-01-06(18), N.D.C.C., explains a “foreign personal representative” is “a personal representative appointed by another jurisdiction.” (Emphasis added.) By its plain language, a foreign personal representative is a “personal representative.” Moreover, construing section 30.1-01-06(40) to give meaning to related provisions, yields the conclusion a “personal representative” includes a “foreign personal representative” because a foreign personal representative is a person who performs “substantially the same function under the law governing their status.” See N.D.C.C. §§ 30.1-01-06(18) & 30.1-01-06(40). Similarly, reading the phrase “personal representative” in a restrictive fashion to only include “local personal representatives” or “domiciliary foreign personal representatives” inserts terms into the statute which do not exist. Therefore, the phrase “personal representative” as used in N.D.C.C § 30.1-18-



14 must be given the same meaning as it is in N.D.C.C. 30.1-01-06(40), which includes any personal representative wherever appointed. As such, the protections of N.D.C.C. § 30.1-18-14 apply to the transaction between Northland and Jaumotte given the fact that Jaumotte was the personal representative of both Helen's estate and the Davis estate at the time of sale.

[¶ 28] It is crucial to note that the Supreme Court of Montana reached the same conclusion in Northland, 2014 MT 295, 339 P.3d 599. Specifically, the Court relied on the fact that Jaumotte Helen's 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. In other words, Northland was entitled to rely on a deed obtained from a foreign personal representative not appointed in Montana. This is precisely the factual scenario before this Court. The Montana Supreme Court's holding fully supports the conclusion that Northland was a good faith purchaser under N.D.C.C. § 30.1-18-14.

## **II. The District Court Erred By Holding Plaintiffs were not Bona Fide Or Good Faith Purchasers For Value.**

[¶ 29] If Northland is entitled to the protection of N.D.C.C. § 30.1-18-14, the deeds given to it by Jaumotte on the subject minerals conveyed good title to Northland. Therefore, Northland's deeds to Plaintiffs also convey good title. Accordingly, if this Court determines statute applies to the Northland purchase, all other issues are moot. Irrespective of this issue, Plaintiffs are good faith purchasers for value without notice of Helen's will and, therefore, took title over the subject minerals. This is a question of law, fully reviewable on appeal. E.g., Brash, 2013 ND 156, ¶ 17, 835 N.W.2d 798.

[¶ 30] North Dakota has long recognized the status of bona fide or good faith purchaser for value. See, Dixon v. Kaufmann, 79 N.D. 633 (N.D. 1053). While the case law usually is applied to determine the validity of a subsequent deed against a prior unrecorded deed under North Dakota’s race notice statute, N.D.C.C. § 47–19–41, it has been recognized in other circumstances. Under N.D.C.C. § 32-04-16, an obligation regarding real property may be enforced against a subsequent purchaser, except a purchase in good faith for value. However, the same logic applies here, where Plaintiffs seek to have their recorded deeds, as well as those of Northland, recognized against heirs claiming rights in the subject minerals as devisees in a previously unknown devise. See, Kitchens vs. Pendley, 2014 WL 3548375 (holding a bona fide purchaser of real property may be protected against defects in title). Id. at # 1. In addition, the principles are applicable here for subsequent good-faith purchasers of mineral interests acquired second hand from a seller who gained the interest from a personal representative portraying to have the authority to sell as protected by N.D.C.C. § 30.1-18-14. See e.g. Minn. Stat. § 524.3-714(b) (“If property is wrongfully transferred by a person acting as a personal representative to a person who is not in good faith, a subsequent good faith purchaser is protected as if the original transferee dealt in good faith. Any purchaser in good faith is protected as if all prior transfers were made in good faith.”)

[¶ 31] Under the bona fide purchaser doctrine “[a] good faith purchaser must acquire rights without actual or constructive notice of another’s rights.” Chornuk v. Nelson, 2014 ND 238, ¶ 13, 857 N.W.2d 587. “Good faith” is “an honest intention to abstain from taking any unconscientious advantage of another even through the forms or technicalities of law, together with an absence of all information or belief of facts

which would render the transaction unconscientious.” N.D.C.C. § 1–01–21. North Dakota statute also provides:

Every grant of an estate in real property is conclusive against the grantor and everyone subsequently claiming under the grantor, except a purchaser in good faith and for valuable consideration acquires title or lien by an instrument that first is duly recorded.

N.D.C.C. § 47–19–41. In this case, the grantor would be Jaumotte or Helen’s estate in that Defendants’ claim arises from Helen’s will. Jaumotte, as grantor on behalf of the Estate of Helen deeded the subject minerals to Northland. That grant is conclusive against Defendants under N.D.C.C. § 47–19–41, especially where both Northland and Plaintiffs previously recorded deeds for the subject minerals in both Williams and McKenzie County.

[¶ 32] As noted, a purchaser of legal title may claim bona fide purchaser status, and in order for a purchaser to claim the rights of a bona fide purchaser, the title must be apparently perfect. 92A C.J.S., Vendor and Purchaser § 549. If title passes, even though through fraud, a person who purchases from the grantee in good faith, for valuable consideration, and without notice will be protected as a bone fide purchaser. *Id.*

[¶ 33] A similar decision was issued in Minnesota in Barnes v. Gunter, 127 NW 398 (Minn. 1910). In Gunter, a will executed and probated in a foreign state devising real estate in Minnesota to the testator's son for life with remainder over, and providing that the estate should vest in remainder immediately upon execution of a conveyance by the life tenant, was not probated in Minnesota until forty years after the testator's death, and some thirty years prior to the probate of the Will in Minnesota the life tenant conveyed the entire estate by warranty deed and other heirs of the testator conveyed by

quit claim deed, since which time subsequent grantees had been in actual, open, and exclusive possession of the property. Id. at P. 392. The writer of the concurring opinion expressed the opinion that a remainderman could not recover the land because the heirs' grantees were purchasers in good faith without knowledge of the will. Id. The opinion specifically provided:

[U]ntil a foreign will is probated where the real estate is located, a purchaser of the land, without notice of the will, may rely on the presumption that the grantor was intestate and safely purchase from the heirs. . . . The probate of a will in one state will not affect a bona fide purchase of land in another from an heir before the probate of the will in the state where the land is located. Van Syckel v. Beam, 110 Mo. 589, 19 S.W. 946; Slayton v. Singleton, 72 Tex. 209, 9 S.W. 876.

Id. This opinion essentially adopted the opinion of Wright v. Eakin, 151 Tenn. 681; 270 S.W. 992 (Tenn. 1925). In Eakin, Trabue died owning real estate in Nashville. Id. She was allegedly intestate leaving her husband and daughter as heirs. Id. Her husband later died. Id. Her daughter and her husband conveyed the Memphis real estate to another for valuable consideration and it eventually was owned by Eakin, who conveyed it to Wright. Id. A will of Trabue was later found, but not probated until 19 years after her death. Id. Wright sued alleging he was an innocent purchaser. Id. The Tennessee Court held:

We see no reason why the innocent purchaser of land from the heir of one supposed to have died intestate should not likewise be protected against those entitled to said land under a will appearing long after the heir had sold.

Id. at 994. While the sale was by an heir who took through the laws of intestate succession, the logic is the same here. An innocent and bona fide purchaser of property who derives title from a personal representative should be protected against claims by heirs of the decedent asserted much later.

[¶ 34] In this case, the record shows Plaintiffs acted in good faith under N.D.C.C. § 1-01-21. They were provided the evidence of title search performed by Northland, which showed no adverse claims on title to the Williams County property. While Plaintiffs did not conduct their own search, they would be imbued with constructive knowledge of only those documents which a search would have found. Defendants provided no evidence of any documents of record with respect to the subject minerals which would have provided notice of an adverse claim by Defendants. In addition, the title search done by Precis Databank, Inc., with respect to the McKenzie County minerals did not reveal the Defendants had an adverse claim with respect to the minerals derived from the Davis estate. Plaintiffs cannot have constructive knowledge of any defect which a title search would not have revealed.

[¶ 35] Further, Plaintiffs testified they received Letters showing Jaumotte was the personal representative of the Davis estate at the time of the transaction with Northland. In addition, Plaintiffs were instructed Jaumotte was the personal representative of Helen's estate. Northland provided Defendants with the recorded deeds in Williams and McKenzie Counties through which Northland acquired the subject minerals. Finally, Northland provided the Proof of Death and Heirship showing he and Helen had no children and Jay was presumptively Helen's sole heir at law. [Tr. 160 – 172]. At the time of the transactions with Northland, Plaintiffs had no knowledge of the contents of Helen's will or Defendants' claims. [Tr. 171, 223]. Plaintiffs were informed Northland had not found Helen's will nor had it been told of the contents of the will by Jaumotte. Plaintiffs had no knowledge of any issue with title until 2006. [Tr. 179]. While Plaintiffs did not ask for a copy of Helen's will, it was not relevant to their inquiry. The minerals had not passed out of the Davis estate. Plaintiffs had been

provided documents Davis was the last record owner of the subject minerals, Jaumotte was appointed personal representative in Montana, her state of domicile, and Northland was given a deed by Jaumotte in his individual and representative capacities. As far as Plaintiffs were concerned, the inquiry ended there. In addition, had they asked for Helen's Will, they would not have received it. Northland did not have it. Because the subject minerals were still in the Estate of Victoria Davis, there was no information providing a duty to inquire further as to the status of Helen's will.

[¶ 36] The record is completely devoid of any facts showing Defendants acted with anything other than the utmost good faith in purchasing the subject minerals. It is uncontested valuable consideration was given. Plaintiffs had no knowledge of the devise in Helen's will or of Defendants' claim. There is nothing in the record providing Plaintiffs with constructive notice of the contents of Helen's will. Therefore, regardless of whether this Court determines Northland is entitled to the protections of N.D.C.C. § 30.1-18-14, The District Court erred in concluding Plaintiffs had constructive notice of the contents of Helen's will and acted in bad faith by failing to follow Helen's wishes in administering the estate. Plaintiffs are entitled to have title to the subject minerals quieted in their name as good faith purchasers for value without knowledge of the adverse claim of Defendants.

### **III. The District Court Erred By Awarding Defendants Past Royalty Payments Or Monies By Plaintiffs From The Subject Mineral Properties.**

[¶ 37] In the Order, the District Court barred and forever enjoined Plaintiffs from asserting any interest in the properties at issue in this action. [APP 121-126]. Further, the District Court ordered Plaintiffs forfeit all royalty payments or monies received from

the subject minerals to Defendants. [APP 121-126]. This is a question of law, fully reviewable on appeal. E.g., Brash, 2013 ND 156, ¶ 17, 835 N.W.2d 798.

[¶ 38] It must be pointed out that Defendants did not specifically request such relief in their Answer and Counterclaim. [APP 121-126]. No testimony was taken on the issue, no evidence submitted, nor was the issue briefed by the parties. Therefore, the District Court erred in granting Defendants any past royalties or monies received by Plaintiffs. However, if such an award was within the District Court's purview in light of the circumstances, it still erred as a matter of law in awarding past royalties and monies because (1) it determined Plaintiffs duties under lease agreements not in evidence; and (2) it is undisputed that Jaumotte held a life estate in the subject minerals.

[¶ 39] In finding Plaintiffs must forfeit royalty payments to Defendants, the District Court essentially interpreted the terms of lease agreements to which Defendants were not a party. In addition, it interpreted lease agreements which were presumably not even entered into evidence. Revealingly, the lease entered into evidence plainly show Defendants had no right to obtain past royalty or other payments from Plaintiffs. By way of example, Stuber entered into an Oil and Gas Lease with Diamond Resources, Inc., ("Diamond") in 2004. [APP 115]. Stuber's lease specifically strikes out from Paragraph 14 of the standardized form all reference to a Lessors warranty of title and agreement to defend that title. [APP 115]. The lease, in Exhibit A, also specifically provides: "Lessor makes no representations or warranty with respect to Lessor's title to the mineral estate" leased. [APP 117]. Under the terms of the Oil and Gas Lease, the lessees, such as Diamond, accept the risk of any failure in title leading to a separate claim on royalty payments. Defendants claim is for past royalty payments is against

those lessees, not Plaintiffs. They had at least as great a duty to determine the status of the minerals as Plaintiffs, if not greater.

[¶ 40] The premise of Defendants' case is that they are entitled to the subject minerals under Helen's will, as Nohle's heirs. However, the District Court focused solely on Jaumotte's ability, as personal representative to convey title to Northland in light of the restriction in Helen's will. The District Court completely ignored its own finding of fact that Jaumotte retained a life estate in the subject minerals. [APP 121-126]. Indeed, it is uncontested that Helen's will specifically gave Jaumotte a life estate in the subject minerals. Jaumotte deeded the subject mineral interests to Northland on July 8, 1998. [APP 66 & 69]. He did so not only as personal representative Helen's estate and Davis' estate, but in his individual capacity. Jaumotte undoubtedly retained the right to sell his life estate in the subject minerals.

[¶ 41] Plaintiffs acquired the subject minerals from Northland in Williams County on July 15, 1998 [APP 74]. They acquired the McKenzie County minerals from Northland on January 11, 1999. [APP 80]. Jaumotte died on February 10, 2001. [Doc # 168]. Even if Plaintiffs did not obtain an interest in the subject minerals other than Jaumotte's life estate, the District Court's ruling divests them of royalties and other payments after the date of purchase of the subject minerals to which they are clearly entitled. In doing so, the District Court erred and must be reversed.



## **CONCLUSION**

[¶ 42] For all the foregoing reasons, the JUDGEMENT of the District Court must be REVERSED and remanded for entry of judgment quieting title in the subject minerals to Plaintiffs.

Respectfully submitted this 1<sup>st</sup> day of March, 2017.

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**CERTIFICATE OF SERVICE**

[¶ 43] The undersigned certifies that the foregoing **BRIEF OF APPELLANTS** was served on the following at their last known electronic mail addresses, on the 1<sup>st</sup> day of March, 2017:

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