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STATE OF NORTH DAKOTA

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

In the Matter of **Edward J. Brown, an Unlocatable Owner of Mineral Interests** Underlying Certain Tracts of Land Within Township 154 North, Range 94 West and Township 153 North, Range 94 West, all located in Mountrail County, North Dakota

Sundance Oil & Gas, LLC, Petitioner and Appellee, v. Barbara B. Corwin, individually and as Personal Representative of the Estate of Edward J. Brown, Patricia B. Golberg, individually and as Personal representative of the Estate of Janet G. Brown, and Mountrail County Treasurer, Trustee, Respondents, and Hess Corporation, Respondent and Appellant.	)	Supreme Court No. 20180348 Mountrail County No. 31-2013-CV-00070

APPELLEE'S BRIEF
and Addendum

Appeal from the Order Denying Hess's Motion to Set Aside Default Judgment
Dated July 17, 2018
Case No. 31-2013-CV-00070
County of Mountrail, North Central Judicial District
The Honorable Richard L. Hagar

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ISSUES

[¶1] 1. Whether this Court implicitly overruled over 100 years of precedent established in McCoy v. Davis, 38 N.D. 328, 164 N.W. 951 (1917), abrogated the legislative intent of N.D.C.C. § 47-19-46, and invalidated Title Standard 2-01 by making the concept of chain of title irrelevant in North Dakota.

[¶2] 2. Whether Hess had a statutory due process right to actual notice of this unlocatable mineral owner trust action under N.D.C.C. § 38-13.1-01 because Hess recorded out-of-chain-of-title memoranda of oil and gas leases between Hess and two individuals claiming to own the minerals subject to the trust action or because Hess had drilling permits for three wells on a single pad covering minerals in three of the six sections at issue.

[¶3] 3. Whether N.D.C.C. ch. 38-13.1 is unconstitutional because it did not require Sundance to provide Hess actual notice of this unlocatable mineral owner trust action.

STATEMENT OF THE CASE

[¶4] This is an appeal from an order denying Hess Corporation's motion to set aside a default judgment creating an unlocatable mineral owner trust for Edward J. Brown under N.D.C.C. ch. 38.1-13. (App. 572-580, 583-584). The sole issue before the district court and on appeal is whether the default judgment is void under N.D.R.Civ.P. 60(b)(4) because Hess had a due process right to actual notice of the this unlocatable mineral owner trust action ("Trust Action").

[¶5] In May 2013, Sundance Oil and Gas, LLC, petitioned for creation of an unlocatable mineral owner trust for Edward J. Brown, the record title owner of certain

minerals in Mountrail County. (App. 4-13). In July 2013, the district court granted the petition, ordered creation of the unlocatable mineral owner trust ("Brown Trust"), and ordered the Mountrail County Treasurer, as trustee for Edward J. Brown, to execute an oil and gas lease leasing Edward J. Brown's interest in the minerals to Sundance ("Sundance Lease"). (App. 35-37). In August 2013, the Sundance Lease was recorded in the chain of title. (App. 61-64).

[¶6] Sundance later learned that Hess claimed superior leasehold interests. Hess' claim was based on oil and gas leases Hess obtained in March 2011 from Barbara B. Corwin and Patricia B. Goldberg ("Hess Leases"). (App. 100-101, 104-105). Corwin and Goldberg claimed they were the sole heirs of the Edward J. Brown who once owned the minerals. (App. 94-97). In May 2011, memoranda of the Hess Leases ("Hess Memoranda") identifying the lessors as "Barbara B. Corwin" and "Patricia B. Goldberg" and providing no notice of any relationship between Corwin, Goldberg, and Edward J. Brown were recorded outside the chain of title. (App. 98-99, 102-103).

[¶7] In May 2014, Sundance initiated a quiet title action seeking to establish the superiority of the Sundance Lease over the Hess Leases ("Quiet Title Action"). (App. 56-85). In May 2016, Sundance was granted summary judgment quieting title in its favor. (App. 221-233). Hess appealed. On appeal, Hess argued, among other things, that Sundance could not obtain a superior lease because Sundance did not serve Hess actual notice of the Trust Action. Sundance Oil & Gas, LLC v. Hess Corp., 2017 ND 269, ¶ 20, 903 N.W.2d 712. In November 2017, this Court reversed and remanded the Quiet Title Action on other grounds and held that Hess' argument that it was entitled to actual notice of the Trust Action must be raised in the Trust Action. Id. at ¶¶ 19, 21.

[¶8] In February 2018, Hess filed in the Trust Action a Rule 60(b)(4) motion to set aside the default judgment on the grounds that Hess' due process rights were violated because Hess did not receive actual notice of the Trust Action. (App. 38-55). In July 2018, the district court denied the motion. (App. 572-580). Hess appealed. (App. 583-584). The district court's order should be affirmed because Hess did not have a due process right to actual notice of the Trust Action. The proper place for all parties to receive due process on their claims to the minerals is in the pending Quiet Title Action.

FACTS

[¶9] Hess ignores key facts about the status of record title when the competing leases were obtained, mischaracterizes what the record evidence establishes about Hess' drilling activity, and incorrectly claims there is no question whether Corwin and Goldberg are the sole owners of the minerals once belonging to Edward J. Brown. Edward J. Brown obtained via a 1952 mineral deed a 50/2000ths interest in the minerals under the following described real property in Mountrail County, North Dakota:

> Township 153 North, Range 94 West
> Section 1: Lots 3(40.10), 4(40.14), S½NW¼, SW¼SW¼, N½SW¼
> Section 2: Lots 1(40.19), 2(40.25), SE¼NE¼, E½SE¼, SW¼SE¼
>
> Township 154 North, Range 94 West
> Section 23: S½NW¼, W½E½, N½SW¼, SE¼SE¼, SE¼SW¼, NE¼NW¼
> Section 25: E½W½, SW¼NW¼, SW¼SW¼, West 20 acres of the SW¼SE¼
> Section 26: NE¼, E½NW¼, N½SW¼
> Section 35: Lot 1 (39.10), NW¼NW¼, SE¼NW¼, S½NE¼, NE¼SW¼, SE¼, 20 acres located in the SW¼SW¼, SE¼SW¼

("Subject Minerals"). (App. 85). The mineral deed was recorded in 1952. (Id.).

[¶10] In March 2011, Hess leased Corwin and Goldberg's interests in the minerals in the four sections in Township 154. (App. 100-101, 104-105). Hess did not record its leases. (Id.). On May 27, 2011, the Hess Memoranda were recorded. (App. 98-99, 102-

103). Edward J. Brown was the record title owner of the Subject Minerals when the Hess Memoranda were recorded. (App. 65-68, 77-84). The Hess Memoranda identify the lessors as "Barbara B. Corwin" and "Patricia B. Goldberg" and do not provide any indication that Corwin and Goldberg are heirs of Edward J. Brown. (App. 77-84). Hess did not record affidavits of heirship linking Corwin and Goldberg to Edward J. Brown and no other recorded document identified any relationship between Corwin and Goldberg and Edward J. Brown. (App. 299, 373, 434, 500). That is, the Hess Memoranda were recorded outside the chain of title and did not provide notice that Hess claimed a leasehold interest in minerals once owned by Edward J. Brown because nothing in the title records linked Corwin and Goldberg to Edward J. Brown. See N.D.C.C. § 47-19-46.

[¶11] On May 1, 2013, Sundance filed in the Trust Action a petition under N.D.C.C. § 38-13.1-01 to create an unlocatable mineral owner trust for Edward J. Brown, the record title owner of the Subject Minerals. (App. 4-6). Sundance served notice of the Trust Action by publication which was completed on May 30, 2013. (App. 16-17, 19-21, 25, ¶ 6; see N.D.R.Civ.P. 4(e)). On July 9, 2013, Sundance moved for default judgment authorizing creation of the Brown Trust and execution of the Sundance Lease. (App. 22-29). On July 15, 2013, the district court granted the motion. (App. 35-37).

[¶12] On July 17, 2013, Sundance paid the Mountrail County Treasurer a $75,000.00 lease bonus. (App. 214-215, 220). Fifty percent of the bonus was credited to Mountrail County's general fund and the remaining fifty percent was held in trust for the unlocatable owners. (App. 37 at ¶ 4; see N.D.C.C. § 38-13.1-03). On July 31, 2013, the Mountrail County Treasurer, as Trustee for Edward J. Brown, executed the Sundance Lease, effective July 17, 2013. (App. 61-64). On August 8, 2013, the Sundance Lease was

recorded. (Id.). The Sundance Lease, which identified the lessor as the "Mountrail County Treasurer, Trustee for Edward J. Brown" and was recorded when Edward J. Brown was the record title owner, was the first lease recorded in the chain of title. (App. 61-68, 77-84). The Sundance Lease covers all six sections in which Edward J. Brown owned minerals. (App. 61-64).

[¶13] On November 18, 2013, record title to the Subject Minerals was passed to Corwin and Goldberg when personal representative's mineral deeds conveying the Subject Minerals from the Estate of Edward J. Brown to the Estate of Janet G. Brown and from the Estate of Janet G. Brown to Corwin and Goldberg were recorded. (App. 77-84).

[¶14] On May 21, 2014, Corwin and Goldberg filed in the Trust Action a notice claiming they were Edward J. Brown's heirs and a petition requesting release of the Brown Trust funds to them. (Dkt. #17, 20). Corwin and Goldberg supported their claim by filing the personal representative's mineral deeds transferring them record title. (Dkt. #18-19). On May 28, 2014, the district court granted the petition and issued an order releasing the funds to Corwin and Goldberg. (Dkt. #23).

[¶15] On May 30, 2014, Sundance initiated the Quiet Title Action by serving a summons and complaint on Hess, Corwin, and Goldberg alleging the Sundance Lease had priority over the Hess Leases in the four sections in Township 154 where the leases conflict. (App. 56-85). Hess answered that its leases had priority. (App. 86-105). Corwin and Goldberg did not take a position on which lease had priority and asserted they were entitled to the benefit of the superior lease. (Dkt. #32).

[¶16] Hess claims it first learned of Sundance's lease when Sundance initiated the Quiet Title Action and cites only the quiet title complaint as support. (Appellant's Brief,

¶¶ 6, 14). Hess' claim is incorrect. Hess and the world had notice Sundance claimed a leasehold interest in Edward J. Brown's minerals from the time the Sundance Lease was recorded in the chain of title and under the correct descriptions in the tract index. (App. 61-64, 315, 384, 446, 513; see N.D.C.C. §§ 47-19-19, 47-19-46). Further, it should be safe to assume Hess regularly reviewed title records for the tracts where it had drilling permits, including some tracts covered by the Sundance Lease, because, as an operator, Hess was required to identify and pay royalties to all minerals owners. See N.D.C.C. § 47-16-39.1. In addition, Corwin and Goldberg petitioned for release of the Brown Trust funds before the Quiet Title Action was initiated which shows that Hess' lessors knew about the Sundance Lease before the Quiet Title Action was initiated. (App. 56-85; Dkt. #20). Finally, Sundance will produce in response to pending discovery in the Quiet Title Action, an email from Sundance to a Hess agent advising Hess of the Sundance Lease that was sent within weeks of the Sundance Lease being recorded. Hess should already have possession of that email and knowledge of its contents.

[¶17] In February 2016, Sundance and Hess filed competing summary judgment motions in the Quiet Title Action. (App. 110-111, 117-131). In May 2016, the district court granted summary judgment quieting title in Sundance. (App. 221-233). Hess appealed. In November 2017, this Court issued an opinion holding that any challenge to the sufficiency of notice in the Trust Action must be pursued in the Trust Action and remanding because genuine issues of material fact existed as to whether Sundance had notice of the Hess Leases. Sundance, 2017 ND 269, ¶¶ 19-21, 903 N.W.2d 712.

[¶18] In February 2018, Hess filed in the Trust Action a Rule 60(b)(4) motion to set aside the default judgment creating the Brown Trust. (App. 38-55). In the supporting

brief, Hess argued it had a due process right to actual notice based on the out-of-chain-of-title Hess Memoranda. (App.40-53). Hess did not argue it had a right to notice because it was an operator. (Id.). Hess served notice of its motion on Sundance, Corwin, and Goldberg. (Dkt. #57). In April 2018, Sundance filed a response opposing the motion. (App. 193-213). Corwin and Goldberg did not respond. (App. 2-3). In May 2018, Hess filed a reply in which Hess claimed for the first time in a single paragraph that it was entitled to actual notice "because it [was] the operator of the Tract." (App. 570, ¶ 16). In July 2018, the district court denied Hess' motion. (App. 572-580). Hess appealed. (App. 583-584).

[¶19] On appeal, Hess expanded its "operator" theory and now argues it had a right to actual notice because it was "actively drilling" for the Subject Minerals. (Appellant's Brief, ¶¶ 18, 39-46). The only record evidence supporting Hess' "active drilling" claim is an affidavit of Hess land manager Michael Allen submitted in the Quiet Title Action and an attached list of North Dakota Industrial Commission ("NDIC") approved drilling permits. (Appellant's Brief, ¶ 41; App. 132-137).

[¶20] Michael Allen's affidavit shows that on April 24, 2013, one week before Sundance filed the Trust Action and one day after the affidavit describing Sundance's efforts to locate Edward J. Brown was executed, Hess obtained permits to drill three wells. (App. 1, 7-9, 132-136). The permits cover Township 154 North, Range 94 West, Sections 23, 24, 26, and 35. (App. 135). That is, the permits cover three of the six sections where Edward J. Brown owned minerals, three of the four sections where the Sundance Lease and the Hess Leases compete, and one section where Edward J. Brown did not own minerals. (App. 61-64, 85, 100-101, 104-105, 135). The three wells were approved to be

sited on a single pad in the northwest quarter of the northwest quarter of Section 26. (App. 135).

[¶21] The minerals covered by the Hess wells can be identified by the well names listed on the NDIC permit list because of how Hess named the wells, e.g. EN-LEO 154-94-2324H-1 covers minerals in Township 154 North, Range 94 West, Sections 23 and 24. (App. 135). However, the NDIC permit list shows that most well names provide no information about what minerals are covered, and that information is not included anywhere else on the permit list. (Id.).

[¶22] No information about Hess' permits was recorded in the title records. Michael Allen's affidavit establishes that the drilling permit information could be accessed online as of March 23, 2016, by searching for the April 24, 2013 daily report. (App. 132). When that report first became available online is an issue for discovery in the Quiet Title Action. Further, there is no record evidence showing the permit information could be located by searching by property description rather than by date, meaning Hess is claiming Sundance was required to review all NDIC daily reports from some identified date in the past through the date Sundance obtained its lease despite the fact that those reports provide no information about the minerals covered by the wells unless the operator happened to include that information in the well name. (App. 132-137).

[¶23] Michael Allen's affidavit also states that Hess "began drilling" three wells in June 2013, over a month after Sundance initiated the Trust Action and weeks after Sundance completed service by publication. (App. 1, 16-17, 19-21, 133 at ¶ 5). Whether "began drilling" means staking and surveying, completing wells, or something in between and whether that work was done by Hess or other contractors are also issues for discovery

in the Quiet Title Action. Nothing in this record establishes that Hess had any physical presence on the surface before Sundance's Lease was recorded, and if Hess did have a physical presence, it would have been limited to a small area in one of the six sections covered by the Sundance Lease.

[¶24] After the district court denied Hess' motion in the Trust Action, discovery in the pending Quiet Title Action revealed that questions exist as to whether Corwin and Goldberg are the sole owners of the Subject Minerals. Sundance has filed with this Court a motion to supplement the record seeking to add documents showing the record probate documents are incorrect because prior to Edward J. Brown's death, he divorced Janet G. Brown and married Edith Silverman and that Edward J. Brown's probate has been reopened. (Exhibits A-E to Motion to Supplement). The motion also seeks to add to the record documents showing that Hess is requiring Corwin and Goldberg to complete title curative work related to a separate competing claim by John R. Powers. (App. 312, 382, 443, 508-509; Exhibits F-J to Motion Supplement).

[¶25] The district court in the Trust Action assumed Corwin and Goldberg were the undisputed mineral owners based on the information in the record. (App. 573-574, ¶¶ 4-5). Even making that favorable assumption to Hess, the district court correctly concluded Hess did not have a due process right to actual notice of the Trust Action. (App. 572-580). If this Court affirms that decision, the motion to supplement need not be decided because the proposed supplemental documents are irrelevant to the issues on appeal. Larson v. Larson, 2002 ND 196, ¶ 8 n.1, 653 N.W.2d 869. However, if this Court concludes that whether Corwin and Goldberg owned the minerals is relevant to whether Hess was entitled

to actual notice, the proposed supplemental documents showing what is now known about ownership of the Subject Minerals should be considered.

ARGUMENT

[¶26] The narrow issue before this Court is whether the district court correctly concluded Hess did not have a due process right to actual notice of this action. Rule 60(b)(4) provides that a court may relieve a party from a final judgment or order if "the judgment is void." A judgment is void "only in the rare instance where a judgment is premised either on a certain type of jurisdictional error or on a violation of due process that deprives a party of notice or the opportunity to be heard." United Student Aid Funds, Inc. v. Espinosa, 559 U.S. 260, 271 (2010). A court has no discretion when deciding a Rule 60(b)(4) motion. Peterson v. Jasmanka ex rel. Clark, 2014 ND 40, ¶ 10, 842 N.W.2d 920. "If the judgment is valid, the motion to vacate must be denied; if the judgment is void, the court has no discretion to protect it and it must be vacated." Jasmanka, at ¶ 10 (quotation omitted). The district court's order denying Hess' Rule 60(b)(4) motion must be affirmed because Hess did not have a due process right to actual notice.

1. This Court has not implicitly overruled century-old authority establishing that chain of title is relevant under North Dakota's tract index system.

[¶27] Chain of title is relevant in North Dakota, and Hess' failure to comply with chain-of-title requirements is the key fact in this appeal. Hess argues chain of title is irrelevant because North Dakota uses a tract index and cites only this Court's decision in Hanson v. Zoller, 187 N.W.2d 47 (N.D. 1971), as support. (Appellant's Brief, ¶ 48). By making that argument, Hess asks this Court to conclude Hanson implicitly overruled McCoy v. Davis, 38 N.D. 328, 164 N.W. 951 (1917), abrogated the legislative intent of

N.D.C.C. § 47-19-46, and invalidated North Dakota Title Standard 2-01. This Court did not make that drastic change to the law in Hanson or any other decision.

[¶28] This Court explicitly rejected the argument that out-of-chain-of-title recordings provide notice because North Dakota uses a tract index over one hundred years ago. In McCoy v. Davis, Davis and McCoy had competing claims to property once owned by Robert Conner. 164 N.W. at 951. On August 7, 1915, Conner conveyed the property to McCoy via warranty deed. Id. The deed was not recorded until November 5, 1915. Id. On October 1, 1915, Davis obtained a judgment against Conner which was properly docketed in the district court. Id. An execution on the judgment was issued, and the sheriff filed with the county recorder a notice of levy which was recorded against the property on October 20, 1915. Id. Conner was the record title owner when judgment was entered and the notice was recorded. Id. On November 29, 1915, Davis purchased the property at a sheriff's sale. Id. On November 30, 1915, a certificate of sale to Davis was recorded. Id.

[¶29] McCoy moved to set aside the certificate of sale. McCoy, at 951. The district court concluded Davis' claim was superior under North Dakota's race-notice statute (now N.D.C.C. § 47-19-41) because Davis obtained the judgment without notice of McCoy's claim before McCoy recorded the warranty deed. McCoy, at 951-952. On appeal, McCoy argued Davis had notice based on the September 8, 1915 recording of a mortgage from grantor, McCoy to grantee, Conner. Id. at 953-954. The mortgage was outside the chain of title as to Davis because chain of title runs through the grantor and Davis obtained the property through a judgment against Conner. Id. at 954. McCoy argued the out-of-chain-of-title recording provided notice because North Dakota used a tract index. Id. This Court explicitly rejected that argument because the statute now codified at N.D.C.C. § 47-19-46

provided that "[a]n unrecorded instrument is valid as between the parties thereto and those who have notice thereof; *but knowledge of the record of an instrument out of the chain of title does not constitute such notice*." McCoy, at 954 (italics in original).

[¶30] The relevant portion of the current version of N.D.C.C. § 47-19-46 is substantively identical to the version of the statute in effect when McCoy was decided. In addition, the 2012 version of Title Standard 2-01 in effect when the documents in this action were recorded recognizes chain of title is relevant stating, "Conveyances by strangers to the chain of title may be disregarded, unless a title examiner has actual notice or knowledge (through sources other than the record) of the interest of the grantor[.]" (NDTS 2-01 (2012) at App. 235-236). The recently published 2017 version of Title Standard 2-01 continues to recognize chain of title is relevant. (NDTS 2-01 (2017), attached at Addendum pp. 1-2).

[¶31] This Court's decision in Hanson v. Zoller, 187 N.W.2d 47 (N.D. 1971), in which chain of title was not at issue, did not overrule that well-established authority. In Hanson, John and Martha Zoller executed a mortgage in favor of Clifford Hanson. 187 N.W.2d 47 at 50. The mortgage was recorded under the incorrect property description in the tract index. Id. at 50-52. The Zollers subsequently sold their interest in the mortgaged property to other purchasers. Id. at 50. The issue on appeal was whether the subsequent purchasers had notice of Hanson's mortgage based on the improperly indexed recording. Id. at 52.

[¶32] This Court concluded "a prospective purchaser cannot be deemed to have constructive notice of instruments that are not indexed in the tract index under the specific tract of real estate to which they pertain" and further concluded "there must be substantial

compliance with those sections of the recording laws that pertain to the matter of notice in order to give constructive notice." Hanson, 187 N.W.2d at 56. The discussion of chain of title in Hanson appears in dicta which cannot be reasonably interpreted as implicitly overruling McCoy's holding that chain of title is relevant under N.D.C.C. § 47-19-46. Hanson, at 53-56. To the contrary, this Court's recognition that to give notice, an instrument must be recorded in substantial compliance with the recording laws affirms that in addition to being properly indexed, recordings must be in the chain of title to provide notice under the recording act. Similarly, chain of title was not an issue in Desert Partners IV, L.P. v. Benson, 2016 ND 37, 875 N.W.2d 510, because both parties claimed through the same grantor and the claim that a subsequent purchaser had notice from the title records was not based on out-of-chain-of-title recordings.

[¶33] This Court recently issued decisions recognizing chain of title remains relevant. For example, in Swanson v. Swanson, this Court held that the recording of an out-of-chain-of-title mortgage provided notice of a prior purchaser's claim not because the mortgage was properly indexed, but because the subsequent purchasers had notice of the prior purchaser's claim from sources outside the title records, i.e. the prior purchaser's statements that he owned the property. 2011 ND 74, ¶¶ 11-17, 796 N.W.2d 614; see NDTS 2-01 (2012) at App. 236. Further, this Court's decision in the Quiet Title Action appeal shows this Court has already concluded that proper indexing of the Hess Memoranda alone did not provide notice that Hess claimed an interest in Edward J. Brown's minerals. Sundance, 2017 ND 269, 903 N.W.2d 712. In the Quiet Title appeal, there was no dispute that the Hess Memoranda were properly indexed. Id. at ¶ 17. However, this Court did not conclude Sundance had notice of Hess' competing claim based on proper indexing alone

and instead remanded for further proceedings to determine whether Sundance had notice based on the "facts and recorded documents." Id. at ¶¶ 18-19. There is an abundance of well-settled authority establishing that chain of title is relevant in North Dakota.

[¶34] Hess could have easily completed the chain of title in a number of ways. Most simply, Hess could have linked Corwin and Goldberg to Edward J. Brown by adding a few words to its memoranda identifying Corwin and Goldberg "individually and as heirs to the Estate of Edward J. Brown." Hess also could have recorded affidavits of heirship linking Edward J. Brown to Corwin and Goldberg. Or, Hess could have required Corwin and Goldberg to obtain record title through the administration of Edward J. Brown's estate. By doing any of those things, Hess would have protected its leases and prevented commencement of this action. Further, if Sundance had initiated this action under those circumstances, Hess would have faced no risk of losing its leases because their priority would be indisputably established under the race-notice statute. Inexplicably, Hess chose not to take simple steps that would have prevented this dispute.

[¶35] Hess now seeks to excuse its failure to comply with easily satisfied record title requirements by arguing, contrary to over a century of authority, that chain of title is irrelevant. That argument fails. Hess was not entitled to actual notice of this action based on its out-of-chain-of-title recordings because those recordings did not provide notice that Hess claimed an interest in minerals once owned by Edward J. Brown. Whether evidence outside the title records provided Sundance notice of Hess' competing claim is an issue that remains to be resolved in the pending Quiet Title Action where all parties are receiving due process on their claims.

2. N.D.C.C. § 38-13.1-01 does not require an unlocatable mineral owner trust petitioner to provide actual notice to all mineral, leasehold, and royalty owners or to all operators with permits covering a portion of the minerals.

[¶36] Hess did not have a statutory due process right to actual notice based on its out-of-chain-of-title recordings or its drilling permits. Hess argues this Court should read a broad and burdensome notice requirement into N.D.C.C. § 38-13.1-01 that would make it impractical, if not impossible, to create any future unlocatable mineral owner trust. In making that argument, Hess ignores the rules of statutory interpretation by asking this Court to invent a notice requirement not supported by the statutory language because Hess is challenging the statute's constitutionality. (Appellant's Brief, ¶¶ 56-60). The rules of statutory interpretation apply to N.D.C.C. § 38-13.1-01. Hess did not have a statutory right to actual notice of this action because N.D.C.C. § 38-13.1-01 cannot be reasonably interpreted as requiring a trust petitioner to provide actual notice to hundreds of mineral, leasehold, and royalty owners or to well operators.

[¶37] The rules of statutory interpretation apply when the constitutionality of a statutory notice requirement is challenged. Capps v. Weflen, 2014 ND 201, ¶¶ 10-14, 855 N.W.2d 637. The primary objective in statutory interpretation is determining legislative intent from the statute's plain language. Sorenson v. Felton, 2011 ND 33, ¶ 8, 793 N.W.2d 799. "Words in a statute are given their plain, ordinary, and commonly understood meaning, unless defined in the code or unless the drafters clearly intended otherwise." Id. (quotation omitted). When interpreting statutes, it is presumed the Legislature did not intend absurd or ludicrous results. Nelson v. McAlester Fuel Co., 2017 ND 49, ¶ 12, 891 N.W.2d 126. "Where constitutional and statutory provisions are clear and unambiguous, it is improper for the courts to attempt to construe the provisions so as to legislate additional

requirements or proscriptions which the words of the provisions do not themselves provide." Capps, ¶ 11.

[¶38] No rational reading of the plain language of N.D.C.C. § 38-13.1-01 supports Hess' attempt to read a broad and burdensome notice requirement into the statute. The sentence Hess relies on to attempt to establish an actual notice requirement is clear and unambiguous and does exactly what it says—it requires a petitioner seeking to create an unlocatable mineral owner trust to show "that appointment of a trustee will be in the best interest of all owners of *an* interest in *the* mineral, leasehold, *or* royalty interest." N.D.C.C. § 38-13.1-01 (italics added). "'An' is an indefinite article, which is 'equivalent to 'one' or 'any' '; but is 'seldom used to denote plurality.'" McAlester Fuel, 2017 ND 49, ¶ 18, 891 N.W.2d 126 (quotations omitted). "In contrast, 'the' is '[a]n article which particularizes the subject spoken of. In construing [a] statute, definite article 'the' particularizes the subject which it precedes and is [a] word of limitation as opposed to indefinite or generalizing force [of] 'a' or 'an.'" Id. "The word 'or' is disjunctive in nature and ordinarily indicates an alternative between different things or actions." Felton, 2011 ND 33, ¶ 13, 793 N.W.2d 799 (quotation omitted). "Terms or phrases separated by 'or' have separate and independent significance." Id.

[¶39] The use of articles "an" and "the" in N.D.C.C. § 38-13.1-01 shows our Legislature clearly intended to require a trust petitioner to show creating a trust will be in the best interest of all owners of *any* interest *the particular* mineral, leasehold, *or* royalty interest at issue, i.e. the actual owners entitled to the trust proceeds, and did not intend to require a petitioner to show creating a trust will be in the best interest all owners of *any* interest in *any* mineral, leasehold, *and* royalty interest, i.e. the many other mineral,

leasehold, and royalty owners not entitled to the trust proceeds. The use of the conjunction "or" confirms the "best interest" requirement applies only to owners of the specific mineral, leasehold, *or* royalty interest at issue and not to all owners of mineral, leasehold, *and* royalty interests.

[¶40] Even if the N.D.C.C. § 38-13.1-01 "best interest" requirement did apply to all mineral, leasehold, and royalty owners, Hess' attempt to turn that requirement into an actual notice requirement strains the statute's plain language beyond any rational interpretation. The word "notice" does not appear N.D.C.C. § 38-13.1-01. If the Legislature had intended to require notice to hundreds of mineral, leasehold, and royalty owners, it would have used the word "notice." Further, N.D.C.C. § 38-13.1-01 does not distinguish between owners of recorded and unrecorded interests. As a result, interpreting N.D.C.C. § 38-13.1-01 as requiring actual notice to *all* mineral, leasehold, and royalty owners would lead to the absurd result of requiring actual notice to the actual owners, making it impossible for N.D.C.C. ch. 38-13.1 to be used because the unlocatable owners would have to be located and served notice before a trust could be created. Section § 38-13.1-01, N.D.C.C., cannot be rationally construed as requiring actual notice to every mineral, leasehold, and royalty owner.

[¶41] Despite arguing in the proceedings below and again on appeal that N.D.C.C. § 38-13.1-01 required actual notice *all* mineral, leasehold, and royalty owners, Hess also suggests this Court could decide the statute required Sundance to provide actual notice to Hess without deciding the statue required Sundance to provide actual notice to all other mineral, leasehold, and royalty owners. (Appellant's Brief, ¶¶ 60, 61; App. 569-570 at ¶¶ 12-15). There is no principled basis for distinguishing Hess from other mineral, leasehold,

and royalty owners. The district court correctly concluded that whether N.D.C.C. § 38-13.1-01 creates a statutory actual notice requirement is an all or nothing proposition, and that the statute does not require actual notice to all owners. (Appellant's Brief, ¶ 60; App. 579 at ¶ 17).

[¶42] Hess' attempt to read into N.D.C.C. § 38-13.1-01 an actual notice requirement for operators is even more strained. (Appellant's Brief, ¶ 62). The word "operator" does not appear in N.D.C.C. § 38-13.1-01 or anywhere in N.D.C.C. ch. 38-13.1. If the Legislature had intended to require actual notice to operators, it would have included the word "operator" in the statutes. Chapter 38-13.1, N.D.C.C., cannot be rationally construed as requiring actual notice to any operator.

[¶43] As a practical matter, review of the tract index shows that reading Hess' proposed notice requirement into N.D.C.C. § 38-13.1-01 would make using the statute impractical, if not impossible. The tract index pages in the record, which cover only the four sections in Township 154 and not the two sections in Township 153, show that to provide actual notice to all owners, Sundance would have had to review hundreds, if not thousands, of recordings to identify hundreds of owners with no interest in the specific minerals at issue. (App. 278-563). That requirement would become increasingly burdensome over time as additional documents are recorded.

[¶44] The apparent purpose of providing notice to *all* owners would be to protect owners like Hess who choose not to take simple steps to protect themselves by complying with the record title act. The legislative history of N.D.C.C. ch. 38-13.1 explains the intent of the statutes is "to establish an efficient mechanism in which unlocatable mineral interests can be put into a trust in the county in which they are located." Hearing on H.B. 1048

Before the House Natural Resources Comm., 60th N.D. Legis. Sess. (Jan. 12, 2007) (written testimony of Ron Ness, N.D. Petroleum Council President); at App. 265. That intent is clearly reflected on the face of the statutes. N.D.C.C. ch. 38-13.1. The Legislature's unambiguous intent cannot be disregarded by interpreting the trust statutes as including a broad and burdensome notice requirement that contradicts the statutes' plain language. Hess did not have a statutory right to actual notice.

3. N.D.C.C. ch. 38-13.1 is not unconstitutional because Hess did not have a due process right to actual notice of this action based on its drilling permits or its out-of-chain-of-title recordings.

[¶45] Hess did not have a constitutional due process right to actual notice. Hess argues that in addition to a statutory right, Hess had a stand-alone constitutional right to actual notice based on its permits to operate wells covering minerals in three of the six sections at issue and its out-of-chain-of-title recordings. (Appellant's Brief, ¶¶ 36-55). By making that alternative argument, Hess claims (without acknowledging it is doing so) that N.D.C.C. ch. 38-13.1 is unconstitutional because it did not require Sundance to provide actual notice to Hess. Chapter 38-13.1 is not unconstitutional.

[¶46] "All regularly enacted statutes carry a strong presumption of constitutionality, which is conclusive unless the party challenging the statute clearly demonstrates that it contravenes the state or federal constitution." Capps, 2014 ND 201, ¶ 15, 855 N.W.2d 637 (quotation omitted). Whenever possible, doubt about a statute's constitutionality must be resolved in favor of validity. Id. The party challenging a statute's constitutionality has the burden of proof. Id. Whether a statute is unconstitutional is a fully reviewable question of law. Id.

[¶47] "The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" In re N.A., 2016 ND 91, ¶ 10, 879 N.W.2d 82 (quoting Mathews v. Eldridge, 424 U.S. 319, 333 (1976)). The threshold question when a statute is challenged as unconstitutional for permitting deprivation of property without due process is "whether the statute authorizes the taking of a 'significant property interest[.]'" Reardon v. United States, 947 F.2d 1509, 1517 (1st Cir. 1991). "If there is no significant property interest involved, the [due process] inquiry is at an end." Reardon, at 1517.

[¶48] A property owner's due process rights are not implicated by statutes that do not authorize property deprivations, even when the actions authorized by the statute may have an incidental effect on a property owner's rights. For example, in Serenko v. City of Wilton, this Court held that statutes authorizing the declaration of a resolution of necessity for a special improvement district did not implicate due process because launching a project that *could* end in special assessments did not implicate the property rights of the property owners in the improvement district. 1999 ND 88, ¶¶ 13-14, 593 N.W.2d 368. This Court further held the property owners received adequate due process because they received notice and a hearing in a separate proceeding before individual assessments were charged to their properties. Id. Similarly, in Kryger v. Wilson, the United States Supreme Court affirmed a North Dakota Supreme Court decision holding that a property owner's due process rights were not implicated by a statutory cancellation proceeding that could not deprive the owner of property rights and further concluded the property owner received adequate due process in a quiet title action where he had notice and the opportunity to be

heard. 242 U.S. 171, 176-77 (1916), affirming Wilson v. Kryger, 29 N.D. 28, 149 N.W. 721 (1914).

[¶49] The N.D.C.C. ch. 38-13.1 trust statutes do not implicate Hess' property rights in its leases because they do not authorize the taking or diminishment of Hess' leasehold interests. Chapter 38-13.1 authorizes district courts to establish trusts for unlocatable mineral owners. Nothing in that chapter authorizes courts to act on the property interests of owners other than the unlocatable owner, including leasehold owners like Hess. N.D.C.C. ch. 38-13.1. In the Quiet Title Action appeal, this Court stated the result of the Trust Action was that "property was put into a trust for the benefit of Edward Brown" and "[t]he trustee's lease of the mineral rights to Sundance was an incidental result of the district court's creation of the trust." Sundance, 2017 ND 269, ¶ 7, 903 N.W.2d 712. Under The district court's authority under N.D.C.C. ch. 38-13.1 was limited to placing Edward J. Brown's minerals in trust. Any effect the Trust Action had on Hess' leasehold interests was an incidental result did not implicate Hess' due process rights.

[¶50] Hess' reliance on Connecticut v. Doehr, 501 U.S. 1 (1991) and its progeny as establishing Hess' due process rights were implicated by this action is misplaced. (Appellant's Brief, ¶¶ 28-35). Doehr is distinguishable because the purpose of the attachment statutes at issue was to directly affect the property interests of the owner challenging the statute's constitutionality. 501 U.S. at 5-7. Unlike in Doehr, the Trust Action did not implicate Hess' due process rights because any adverse effect on Hess' property was an incidental result, rather than a direct effect, of the challenged statutory procedure.

[¶51] Hess has not been deprived of notice and the opportunity to be heard on whether its leasehold interest has priority. Hess received notice and continues to have the opportunity to be heard in the Quiet Title Action. The Quiet Title Action—where evidence will be presented permitting the district court to resolve any disputed factual issues about who owns the minerals, whether Sundance had notice of Hess' leases, and which lease has priority—is the proper place for all parties to receive due process.

[¶52] Even if Hess' due process rights were implicated by this action, requiring actual notice to all operators with drilling permits covering any portion of the minerals at issue and to all owners of an interest recorded in the tract index would be impracticable and beyond what due process requires. Due process guarantees property owners *reasonable* notice of actions affecting their property rights. Tulsa Professional Collection Services, Inc. v. Pope, 485 U.S. 478, 484 & 489 (1988); Mennonite Bd. of Missions v. Adams, 462 U.S. 791, 798-99 (1983); Mullane v. Cent. Hanover Bank & Tr. Co., 339 U.S. 306, 313-14 (1950). Due process does not require actual notice to every property owner whose rights "may conceivably" be affected by an action. Pope, 485 U.S. at 490. What constitutes reasonable notice depends on the particular circumstances and practicalities of each case. Id. at 484 & 489-490; Mennonite, 462 U.S. at 798-99; Mullane, 339 U.S. at 313-14. Due process does not require "impracticable and extended searches" to locate property owners whose rights may be affected. Pope, 485 U.S. at 490. It requires only "reasonably diligent efforts" to locate "reasonably ascertainable" property owners. Pope, 485 U.S. at 484 & 489. Hess was not a reasonably ascertainable owner based on its drilling permits or its out-of-chain-of-title-recordings.

a. Hess did not have a due process right to actual notice based on its drilling permits or drilling activity.

[¶53] Hess was not a reasonably ascertainable owner based on its drilling permits or drilling activity. Hess' permits did not provide notice that Hess claimed an interest in Edward J. Brown's minerals, or any particular minerals, and there is no record evidence showing Hess had any physical presence on the surface. Chapter 38-13.1, N.D.C.C., is not unconstitutional for not requiring Sundance to provide Hess actual notice based on its drilling permits and drilling activity.

[¶54] Hess cites secondary authority and the legislative history of N.D.C.C. ch. 38-13.1 to support the implication that Hess was entitled to the presumption it had leased all minerals in the tracts where it had drilling permits. (Appellant's Brief, ¶ 40). The issuance of drilling permits in North Dakota is governed by statutes and regulations that do not require a person applying for a permit to hold any leasehold interests or to provide any information about their leases in the permit application. N.D.C.C. § 38-08-05; N.D.A.C. § 43-02-03-16. Further, a review of less than ten pages in the tract index shows that several lessees other than Hess owned leases in the minerals covered by Hess' permits. (E.g., App. 290-296). Hess is not entitled to the presumption it had leased all minerals, or any particular minerals, because it had drilling permits.

[¶55] Hess argues Sundance should have been able to "easily observe" Hess' drilling activity. (Appellant's Brief, ¶ 41). No record evidence supports that contention. The only evidence of Hess' drilling is a Hess land manager's affidavit testimony that Hess "began drilling" three wells in mid-June 2013. (App. 132-133). "Began drilling" could mean anything from staking and surveying to completing wells. The nature and extent of Hess' physical presence on the surface, if any, is subject to discovery in the Quiet Title

Action. Even assuming Hess had an obvious physical presence, that presence would have been limited to a small portion of a single quarter-quarter section and would not have provided notice Hess claimed a specific leasehold interest in tracts in four sections, one of which was not covered by Hess' drilling permits. (App. 135).

[¶56] Hess also argues Sundance should have known Hess was an operator and asked Hess if it had leased Edward J. Brown's minerals. (Appellant's Brief, ¶¶ 42-45). That seemingly simple suggestion is flawed for two reasons. First, the only record evidence showing how Hess' permits could be located is affidavit testimony establishing the permits could be located by date, rather than property description, in daily reports that include no information about which minerals are covered unless that information happens to appear in the well name. (App. 132-137). Reviewing daily reports that likely do not include relevant information is an impractical and extended search.

[¶57] Second, assuming there was a reasonable way for Sundance to determine Hess held permits covering a portion of the minerals subject to the trust action—which again, remains subject to discovery in the Quiet Title Action—Hess' argument that Sundance could have identified Hess' competing interest simply by asking Hess is dubious. Every Hess employee would not have knowledge of every Hess lease. Further, even employees with the ability to search Hess' leases but no personal knowledge of Corwin and Goldberg's relationship to Edward J. Brown, would not have been able to determine Hess claimed an interest in Edward J. Brown's minerals based on the Hess Leases or Memoranda. Finally, even if Sundance managed to locate a Hess employee with actual knowledge of Corwin and Goldberg's relationship to Edward J. Brown, there is no guarantee that employee would have disclosed that information to Sundance. In the Quiet

Title Action, Hess is refusing to disclose what it knows about the ownership of minerals covered by its wells by claiming its title opinions are privileged. It cannot be assumed that Hess would have disclosed in the past information that it will not disclose now. Hess failed to meet is burden to show N.D.C.C. ch. 38-13.1 is unconstitutional for not requiring actual notice to Hess based on Hess' drilling permits and drilling activity.

b. Hess did not have a due process right to actual notice based on its out-of-chain-of-title recordings.

[¶58] Hess was not a reasonably ascertainable owner based on the out-of-chain-of-title Hess Memoranda. The Hess Memoranda did not provide notice that Hess claimed a leasehold interest in Edward J. Brown's minerals, and due process did not require Sundance to contact every owner of an interest recorded in the tract index to ask whether the owner had leased Edward J. Brown's minerals but decided not to follow North Dakota's record title requirements. Chapter 38-13.1, N.D.C.C., is not unconstitutional for not requiring Sundance to provide Hess actual notice based on its out-of-chain-of-title recordings.

[¶59] Hess concedes Sundance could not have determined from the recorded Hess Memoranda that Corwin and Goldberg claimed they were Edward J. Brown's heirs or that Hess claimed an interest in Edward J. Brown's minerals. (Appellant's Brief, ¶ 52). Hess then argues due process required Sundance to ask Corwin, Goldberg, and Hess if they had any claim to Edward J. Brown's minerals. (Id.). In effect, Hess argues Sundance was required to identify and contact every owner of an interest recorded in the tract index to ask whether that owner claimed an interest in Edward J. Brown's minerals but had failed to provide notice of that interest by complying with North Dakota's record title requirements.

[¶60] Due process does not require actual notice to owners of conjectural interests who cannot be identified in the due course of business. Mullane, 339 U.S. at 317. Companies in the business of oil and gas leasing, like Sundance, should be able to assume other companies in the business of oil and gas leasing, and particularly sophisticated companies like Hess, will provide notice of their leases by recording documents satisfying North Dakota's record title requirements, including the chain-of-title requirement that has existed since shortly after statehood. McCoy, 164 N.W. at 954; see N.D.C.C. § 47-19-46; NDTS 2-01 (2012) at App. 236. The place for Hess to tell Sundance it claimed an interest in Edward J. Brown's minerals was not in response to actual notice of this action—it was at the Mountrail County Recorder's office where Hess could give notice of its claim to Sundance and the world. Due process did not require Sundance to provide actual notice to Hess and hundreds of other owners just in case they claimed an interest that could not be identified in a properly recorded title record.

[¶61] Hess claims identifying and providing notice to the hundreds of owners in the tract index "would be neither cumbersome nor impractical." (Appellant's Brief, ¶ 52). However, despite arguing that all mineral, leasehold, and royalty owners have a statutory due process right to actual notice, Hess did not provide them notice of its motion and offers no explanation for why their due process rights were implicated when the Brown Trust was created but are not implicated now when Hess is seeking to have the Brown Trust set aside. That Hess chose not to provide actual notice to *all* owners is further proof of the obvious—that it would be cumbersome and impractical to identify and provide actual notice to every mineral interest owner identified in the tract index. See Davis Oil Co. v. Mills, 873 F.2d 774, 789 (5th Cir. 1989) (explaining that due to fractionation of the mineral estate, "a search

of the conveyance records for the mineral interests on a single piece of property could resemble a rather large tree with several limbs and innumerable branches."). Hess failed to meet is burden to show that N.D.C.C. ch. 38-13.1 is unconstitutional for not requiring Sundance to provide Hess actual notice based on Hess' out-of-chain-of-title recordings. Service by publication provided reasonable notice in this case.

CONCLUSION

[¶62] The district court's order should be affirmed.

DATED this 20th day of December, 2018.

PEARCE DURICK PLLC

/s/ Kirsten H. Tuntland

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IN THE SUPREME COURT
STATE OF NORTH DAKOTA

In the Matter of **Edward J. Brown, an Unlocatable Owner of Mineral Interests** Underlying Certain Tracts of Land Within Township 153 North, Range 94 West and Township 154 North, Range 94 West, all located in Mountrail County, North Dakota

Sundance Oil & Gas, LLC, Petitioner and Appellee, v. Hess Corporation, Respondent and Appellant.	)	Supreme Court No. 20180348 Mountrail Co. No. 31-2013-CV-00070 **AFFIDAVIT OF SERVICE**

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF BURLEIGH)

Dayna Fredrickson, being first duly sworn, deposes and states that she is over the age of eighteen years, and not a party to the above-entitled matter. That on the 20th day of December, 2018, she filed and served the following documents:

1. **Motion to Supplement the Record**;
2. **Affidavit of Kirsten Tuntland** together with **Exhibits A – N**; and
3. **Appellee's Brief**

electronically with the Clerk of the North Dakota Supreme Court by email to:

supclerkofcourt@ndcourts.gov

and she also served the following individuals by email:

Michael J. Mazzone
michael.mazzone@haynesboone.com

Christina M. Wenko
cwenko@mackoff.com

Dante E. Tomassoni
dtomassoni@fryberger.com

Dayna Fredrickson

Subscribed and sworn to before me this 20 day of December, 2018.

ANNETTE KIRSCHENHEITER
Notary Public
State of North Dakota
My Commission Expires April 18, 2020

Notary Public

20180348
FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT
DECEMBER 21, 2018
STATE OF NORTH DAKOTA

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

In the Matter of **Edward J. Brown, an Unlocatable Owner of Mineral Interests** Underlying Certain Tracts of Land Within Township 154 North, Range 94 West and Township 153 North, Range 94 West, all located in Mountrail County, North Dakota

Sundance Oil & Gas, LLC, Petitioner and Appellee, v. Barbara B. Corwin, individually and as Personal Representative of the Estate of Edward J. Brown, Patricia B. Golberg, individually and as Personal representative of the Estate of Janet G. Brown, and Mountrail County Treasurer, Trustee, Respondents, and Hess Corporation, Respondent and Appellant.	)	Supreme Court No. 20180348 Mountrail County No. 31-2013-CV-00070

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF BURLEIGH)

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and she also served the following individuals by email:

Michael J. Mazzone
michael.mazzone@haynesboone.com

Christina M. Wenko
cwenko@mackoff.com

Dante E. Tomassoni
Dante.Tomassoni@enbridge.com

Dated this 21st day of December, 2018.

Dayna Fredrickson

Subscribed and sworn to before me this 21 day of December, 2018.

ANNETTE KIRSCHENHEITER
Notary Public
State of North Dakota
My Commission Expires April 18, 2020

Annette Kirschenheiter
Notary Public

ADDENDUM

NORTH DAKOTA STANDARDS
FOR
TITLE EXAMINATIONS

TITLE STANDARDS COMMITTEE
SECTION OF REAL PROPERTY, PROBATE AND TRUST LAW
STATE BAR ASSOCIATION OF NORTH DAKOTA

Notice should be taken of the interest of a person joining with the record owner in a contract, mortgage, lease, plat or easement, other than a spouse joining for possible homestead interest under N.D.C.C. § 47-18-05. Conveyances by strangers to the chain of title may be disregarded, unless a title examiner has actual notice or knowledge (through sources other than the record) of the interest of the grantor, or unless, subsequent to such conveyance, there is recorded a deed or other conveyance vesting title in such stranger.

Authority: Basye, *Clearing Land Titles*, § 42 (2d ed. 1970).
N.D.C.C. §§ 47-19-41, -45, and -46.
Doran v. Dazey, 64 N.W. 1023 (N.D. 1895).
Simonson v. Wenzel, 147 N.W. 804 (N.D. 1914).
McCoy v. Davis, 164 N.W. 951 (N.D. 1917).

But See: *Desert Partners IV, L.P. v. Benson*, 2016 ND 37, 875 N.W.2d 510 (buyer of mineral interests had a duty to inquire further into the actual state of mineral ownership based on a recorded statement of claim of mineral interests).

Note: If the conveyance can be disregarded, liens against parties to that conveyance may also be disregarded.

Caveat: In order to ignore conveyances from a "stranger" the "good faith" test of the Recording Act (N.D.C.C. § 47-19-41) must be met. Any circumstances that should cause further inquiry to be made as to the status of the "stranger," which inquiry would disclose the unrecorded interest of the "stranger," preclude ignoring the "strangers" conveyance. Possession inconsistent with the record title execution of a mortgage and other information suggesting an interest in a third person not appearing of record have been held to preclude "good faith" status. Conveyance or other instruments from a "stranger" to the chain of title which contain erroneous legal descriptions may be ignored.

Cross-Reference: NDTS 14-02.

See Also: *Swanson v. Swanson*, 2011 ND 74, 796 N.W.2d 614, for the Supreme Court's rejection of the trial court's application of this standard to a mortgage from someone not in the chain of title, but as to which the Supreme Court found the title claimants had notice from comments made by the mortgagor 32 years later although still not a record owner.

Source: NDTS 1950, as amended in 1953, 1961, 1980, 1988, 1989, 1994, 1995 and 2011.