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JUNE 25, 2019
STATE OF NORTH DAKOTA

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

Supreme Court Case No. 20190035
Mountrail County District Court No. 31-2017-CV-00088

Curtis R. Trulson and Lesley D. Trulson,

Plaintiffs and Appellants,

v.

John Anthony Meiers, Jean R. Meiers, Evan J. Meiers and Lauren B. Meiers,

Defendants and Appellees.

APPEAL OF JUDGMENT DATED DECEMBER 5, 2018, AND FROM ALL ADVERSE ORDERS AND RULINGS MADE THEREIN BY THE DISTRICT COURT, NORTH CENTRAL JUDICIAL DISTRICT, MOUNTRAIL COUNTY, STATE OF NORTH DAKOTA

THE HONORABLE TODD L. CRESAP, DISTRICT JUDGE

REPLY BRIEF OF THE PLAINTIFFS/APPELLANTS, CURTIS R. TRULSON AND LESLEY D. TRULSON

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I. The District Court explicitly considered parole evidence.

[¶1.] The Appellee argues that the District Court did not consider parole evidence in reaching its decision in this matter. Brief of Appellee, ¶ 27. In fact, the District Court made explicit findings with respect to several categories of parole evidence and relied on those findings in its conclusions. Paragraphs 14-19 of the Memorandum Decision and Order for Judgment are devoted almost singularly to various pieces of parole evidence, such as the location of the real estate closing, the number of witnesses present at closing, the location the royalty deed was delivered, and the reservation included in a separate deed. The Court prefaces its summation of this extrinsic evidence with the statement that "there are even stronger indications that no transfer of minerals was intended," and goes on to evaluate the supposed intent of the parties entirely through the lense of parole evidence, with no apparent weight given to the words of the signed royalty deed itself.

[¶2.] North Dakota law holds that when a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone if possible. N.D.C.C. § 9-07-04. Parole evidence cannot vary or contradict the terms of a complete, written contract adopted as a definite expression of the parties' agreement. Jorgenson v. Crow, 466 N.W.2d 120, 123 (N.D. 1991). The decision to admit parole evidence is a determination of law, fully reviewable on appeal. First Nat'l Bank v. Burich, 367 N.W.2d 148, 152 (N.D. 1985).

[¶3.] The District Court erred in looking outside the four corners of the unambiguous royalty deed, and in attempting to ascertain the intent of the parties from parole evidence.

II. The Appellee's argument that the Meiers presented clear evidence that they had no intention of selling the subject royalties is contradicted by their actions preparing and signing a royalty deed to the subject royalties.

[¶4.] The primary defense relied upon by the Meiers during the pendency of this case, apart from the questions regarding delivery of the royalty deed, was that they had no intention of selling any of their mineral interests to the Trulsons. Brief of Appellee, ¶ 40. However, the Meiers have never adequately reconciled this defense with the undisputed facts of the case, which are that they, themselves:

(1) Prepared the royalty deed to the Trulsons, which unambiguously serves to convey half of their fractional royalty interest;

(2) Signed the royalty deed to the Trulsons; and

(3) In some manner, provided for the royalty deed to be obtained by the Trulsons.

[¶5.] It is worth noting that the Meiers did not actually prepare or sign a *mineral* deed to the Trulsons. Rather, they prepared and signed a *royalty* deed conveying half of their fractional interest. Actual mineral acres were not conveyed, which perhaps imputes a degree of truth in their statements that they would never convey the *minerals* to anyone except their children.

[¶6.] It is similarly noteworthy that the reservation in the January 28, 1982 warranty deed for the surface estate reserved the mineral acre interests but did not explicitly reserve the royalty interests. Royalty interests were conveyed in the subsequent June 28, 1982 royalty deed. The two deeds are not contradictory. The early warranty deed reserved the mineral acres. The subsequent royalty deed granted a royalty interest. This is not a contradictory undertaking. Even if it were, the Duhig rule provides that effect should be given to the

grant over the reservation. There is no justification for disregarding the intent of the parties spelled out unambiguously in the royalty deed.

CONCLUSION

[¶7.] For the reasons stated above, the Appellants, Curtis and Lesley Trulson, respectfully request this Court reverse the District Court's decision and order judgment entered in their favor, quieting title to the mineral royalty interests conveyed through the June 28, 1982 royalty deed in the name of the Trulsons.

DATED this 13th day of May, 2019.

MCGEE, HANKLA & BACKES, P.C.

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CERTIFICATE OF SERVICE

[¶8.] I hereby certify that on June 25th, 2019, I served the foregoing (1) Reply Brief of the Plaintiffs/Appellants on the following by electronic mail transmission:

Erin M. Conroy
Email – erin@conroylegalservices.com

DATED this 25th day of June, 2019.

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