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IN THE  
SUPREME COURT OF NORTH DAKOTA

SUPREME COURT NUMBER 20200087  
DICKEY COUNTY NUMBER 2012-PR-00011

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**IN THE MATTER OF THE ESTATE OF DELBERT G. MOORE, DECEASED**

**CHARLES MINARD, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE  
FOR THE ESTATE OF DELBERT MOORE,  
PETITIONER/APPELLEE**

v.

**DONALD MOORE AND SCOTT MOORE,  
RESPONDENTS AND APPELLANTS**

**GLENN W. MOORE & SONS PARTNERSHIP,  
CLAIMANT AND APPELLANT**

**CANDICE EBERHART AND TERRY MINARD,  
RESPONDENTS AND APPELLEES**

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APPEAL FROM THE JUNE 27, 2019 ORDER, THE DECEMBER 19, 2019 ORDER  
FOR JUDGMENT, AND THE FEBRUARY 25, 2020 AMENDED JUDGMENT BY  
THE DICKEY COUNTY DISTRICT COURT, SOUTHEAST JUDICIAL DISTRICT  
THE HONORABLE CHERIE L. CLARK, PRESIDING

**ORAL ARGUMENT REQUESTED**

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BRIEF FOR THE APPELLEES

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I. **STATEMENT OF ISSUES**

[¶1] Whether the district court erred in excluding Scott Moore’s labor charge in accounting for the profits and losses of the Glenn W. Moore & Sons partnership.

[¶2] Whether the district court erred in denying Scott Moore’s claim for interest on distributions that were being held by the Estate of Delbert Moore pending the outcome of litigation of claims in the Estate.

II. **STATEMENT OF THE CASE**

[¶3] This case was previously before the North Dakota Supreme Court in 2018. *See In the Matter of the Estate of Delbert G. Moore, Deceased*, 2018 ND 221, 918 N.W.2d 69 (N.D. 2018). Pursuant to this Court’s opinion in that matter, the case was remanded to the District Court “for an accounting of partnership profits and losses from Delbert Moore’s death until the property sold.” *Id.* at ¶ 15. Delbert Moore died on March 5, 2012, and the sale of the real property in question occurred in May 2015. *Id.* at ¶¶ 2, 4.

[¶4] Prior to remand, Scott Moore and Donald Moore filed a Petition for Accounting and Distribution of Estate and a Corrected Petition. *See* Dkt. #120, 123. In said Petitions, the Moores asked that the Court order an immediate distribution of the Estate to the heirs. On November 8, 2018, the Moores filed a Renewed Petition for Accounting and Distribution of Estate. *See* Dkt. #139. Not one of the three requests referenced an interest claim on the outstanding distributions allegedly owed to Scott Moore. On May 16, 2019, the Moores filed yet another Motion for Distribution from Estate, which was disposed of by the Court on June 27, 2019. *See* Dkt. #161, 177. The Court ultimately determined that Scott Moore was not entitled to receive interest, equitably or

statutorily, on any outstanding distributions and further directed that said distributions be held pending the hearing on the Accounting of the Estate. *Id.*

[¶15] In March 2019, Thomas Ault who was retained by the partnership, submitted his report regarding partnership profits and losses pursuant to the Supreme Court remand. See Appellants' Appendix at 19-24. Ault's report reflects a net loss of \$49,408.00 to the partnership for the period in question. *Id.* In May 2019, the Estate submitted its response to the partnership's report, which was originally compiled by Chad Weber from Eide Bailly, arguing that the partnership had net income of \$316,366.88. See Dkt. # 165.

[¶16] A hearing was held on the partnership accounting on October 14, 2019, and was decided by the Court on December 19, 2019. See Dkt. #211. The Court ultimately held that the partnership was indebted to the Estate in the amount of \$140,206.00, plus interest from October 3, 2018. *Id.* Amended Judgment was entered on February 25, 2020, and a Notice of Appeal was filed by Appellants on March 24, 2020. See Dkt. #216, 217.

**III. STATEMENT OF FACTS**

[¶17] Delbert G. Moore died on March 5, 2012. See Appellants' Appendix 33 at ¶4. His estate was admitted to probate and his stepson, Charles Minard, was appointed personal representative on March 20, 2012. See Appellants' Appendix 33 at ¶5. Under the terms of the decedent's Last Will and Testament, Charles Minard, his two siblings Candice Eberhart and Terry Minard, and Delbert's nephew Scott Moore, were each devised a one-fourth (1/4) interest in a majority of Delbert G. Moore's real estate, with

the exception of certain real property being devised to Donald Moore. *See* Appellants' Appendix 12-13. Delbert Moore's interest in the Glenn W. Moore & Sons Partnership, as well as the remainder of the Estate, was devised equally to Charles Minard, Candice Eberhart, and Terry Minard. *Id.*

[¶18] Subsequent to Charles Minard being appointed as Personal Representative, the parties engaged in extensive litigation in order to value, sell and properly distribute the property comprising the Estate. The culmination and outcome of that litigation was subsequently appealed by the Estate of Delbert Moore to the North Dakota Supreme Court. *See* Estate of Moore, 2018 ND 221, 918 N.W.2d 69. In its Opinion dated October 3, 2018, the North Dakota Supreme Court held that the Estate of Delbert Moore remained a partner of Glenn W. Moore & Sons Partnership after Delbert Moore's death, and the district court failed to account for the Estate's continued interest in the partnership until the May 2015 sale of Delbert Moore's property. *Id.* As a result, the Supreme Court remanded the case back to the district court for an accounting of partnership profits and losses from Delbert Moore's death on March 5, 2012, until the property sold. *Id.*

[¶19] Shortly after the appeal was filed and prior to the remand, Scott Moore and Donald Moore filed a Petition for Accounting and Distribution of Estate and a Corrected Petition. *See* Dkt. #120, 123. In said Petitions, the Moores asked that the Court order an immediate distribution of the Estate to the heirs. However, nowhere in their request for relief did the Moores ask for interest on any outstanding distributions. *Id.* On November 8, 2018, the Moores filed a Renewed Petition for Accounting and Distribution of Estate,

which acknowledged the remand of the North Dakota Supreme Court and once again requested distribution of the Estate. Notably the renewed Petition alleged that Scott Moore had yet to receive any distributions, even though he had received distributions totaling \$600,000.00, and again, the Moores failed to make any request for interest to be assessed on any outstanding distributions yet to be made. *See* Dkt. #139, 143. It wasn't until the Moores' May 16, 2019 Motion for Distribution from Estate did the Moores make any request for interest. *See* Dkt. #161. Yet, the Moores did not provide any legal rationale in their brief as to why Scott Moore would have been entitled to interest. *Id.* As can be seen by the filings in this matter, there was a dispute as to whether the Partnership assets were part of the residue of the Estate versus a specific devise. *Id.* Until the Court decided the matter, the Personal Representative did not know which assets should be taxed for the costs of the administration of the Estate. *See* Dkt. #143. That was not decided until June 27, 2019. *See* Dkt. #177. The Court ultimately determined that Scott Moore was not entitled to receive interest, equitably or statutorily, on any outstanding distributions and further directed that said distributions be held pending the hearing on the Accounting of the Estate. *Id.*

[¶10] As to the partnership accounting issue, pursuant to the Supreme Court remand, the parties engaged their own respective experts to review the records of the partnership to provide for an accurate accounting of the profits and losses of the partnership during the period set forth by the Supreme Court. Scott Moore and Donald Moore, individually and as partners of Glenn W. Moore & Sons Partnership, engaged the firm Point CPA out of Bismarck, North Dakota. *See* Dkt. #157. The Estate of Delbert

Moore engaged the firm Eide Bailly located in Aberdeen, South Dakota. *See* Dkt. #164, 165. On March 8, 2019, Thomas Ault, a certified public accountant and principal of Point CPA, submitted his report on behalf of the Moores. *See* Dkt. #157. On October 10, 2019, Eide Bailly by and through Timothy D. Bergstrom, a certified public accountant, submitted its report on behalf of the Estate. The Estate's original expert, Chad Weber, a certified public accountant, had previously filed a report with the Court; however, Mr. Weber encountered medical issues during the pendency of the proceedings and was unable to testify in support of his report. *See* Dkt. #164. By agreement of the parties, Mr. Bergstrom was permitted to step into Mr. Weber's place and draft his own report for review and consideration by the Court. *See* Dkt. #193.

[¶11] On October 14, 2019, a hearing was held in front of the Honorable Judge Cherie Clark to take up the matter of the accounting of partnership profits and losses pursuant to the remand of the Supreme Court. *See generally* (Transcript of Proceedings, October 14, 2019). Appearing at the hearing was David Smith, attorney for Scott Moore and Donald Moore, individually and as partners of Glenn W. Moore & Sons Partnership; Scott Moore; Donald Moore; Thomas Ault, CPA; Kimberly Radermacher, attorney for Charles Minard, as Personal Representative of the Estate of Delbert Moore; Charles Minard, as Personal Representative; and Timothy Bergstrom, CPA. *Id.* During the hearing, the Court heard testimony from Scott Moore, Thomas Ault, CPA, and Timothy Bergstrom, CPA. (Transcript of Proceedings, October 14, 2019, Page 3). The Court also received the expert reports into evidence, as well as the Supreme Court opinion, the Addition and Clarification of the Partnership Agreement, and the financial documents of



the partnership that the experts relied upon in drafting their reports. *See* Dkt. #189 – 193.

[¶12] Based on the testimony of the experts, the expert's numbers primarily correlated except in two areas – an allocation for wage expense and depreciation. Thomas Ault, Moore's expert, accounted for a wage expense given to him by the Moores that was not accounted for anywhere else in the financial reports and documents provided on behalf of the partnership. (Transcript of Proceedings, October 14, 2019, Page 20, lines 19-25; Page 21, lines 1-5). Based on calendars provided by Scott Moore setting forth alleged hours that were worked between March 5, 2012, and May 18, 2015, and the Moore's request of \$30.00 per hour, Ault deducted a total wage expense of \$316,366.88 from the income for the years in question. (Transcript of Proceedings, October 14, 2019, Page 33, lines 1-25; Page 34, lines 1-21). Furthermore, Ault utilized the depreciation expense that was provided for on the partnership tax returns rather than calculating it based on useful life of the assets. *See* Dkt. #191. The total depreciation expense accounted for by Ault came to \$169,287.80. *Id.* Based on Ault's findings, the Estate would sustain a loss of \$33,022.00. *Id.*

[¶13] Timothy Bergstrom, the Estate's expert, did not account for the wage expense submitted by the Moore's for a number of reasons. Bergstrom testified that the wage expense was not accounted for in any of the partnership tax returns from 2012 through 2015 or any other financial documents prepared by AgCountry on behalf of the partnership during those years. *See* (Transcript of Proceedings, October 14, 2019, Page 61, lines 19-25; Pages 62-64; Page 69, lines 19-25; Pages 70-75). Under general accepted

accounting principles, deducting this expense after the fact would not be appropriate. *Id.* Furthermore, a general partner is not entitled to wages under the partnership taxation rules. *Id.* Rather, in order for a general partner to receive an allocation above and beyond a share in the profits and losses, the other partners would have to agree that said partner would be entitled to what Bergstrom referred to as a “guaranteed payment”. *Id.* Bergstrom indicated there was no evidence provided regarding Scott Moore’s right to receive a guaranteed payment and no guaranteed payments were allocated on the partnership tax returns or financial documents, which would be required. *Id.* Lastly, Bergstrom indicated that Scott Moore was not entitled to receive a wage because his labor was his contribution to the partnership, as the land (valued at over \$7 million at the time it was sold in 2015) was Donald Moore and Delbert Moore’s contribution to the partnership. *Id.* Scott Moore, by his own admission, indicated that his contribution to the partnership was to be his knowledge, his labor and two cows in return for a one-third interest in the partnership. *See* (Transcript of Proceedings, October 14, 2019, Page 54, lines 2-24). Scott Moore did not deny that during the years in question, he shared equally with his father and uncle in the profits of the partnership, as well as enjoyed the benefit of shareholder distributions above and beyond what the other partners took and having most of his living expenses paid for by the partnership. *Id.* As for the issue of depreciation, Bergstrom accounted for depreciation based on the useful life of the asset rather than the depreciation that was accounted for on the tax return. *See* (Transcript of Proceedings, October 14, 2019, Page 65, lines 2-25; Pages 66-68). Under certain tax rules, the partnership would be able to expense the entire cost of

an asset in the year that it was acquired. *Id.* However, while permissible, it does not accurately reflect the economic profits and losses of the partnership. *Id.* Also, some of the assets that were fully depreciated were assets that would benefit the partnership and the Moores beyond May 18, 2015, but not the Estate. *Id.* Using the useful lives already accounted for by AgCountry in the Moores' financial documents, Bergstrom came up with an estimated book depreciation on estimated useful life that he included in his report. *Id.* Based on Bergstrom's findings, the Estate would be entitled to \$140,206.00 for its share of the profits and losses from March 2012 to May 2015. *See* Dkt. #193.

[¶14] During rebuttal, Ault acknowledged that the wage deduction provided for in his report was an exception to generally accepted accounting principles and provided a disclaimer in his report reflecting this. *See* (Transcript of Proceedings, October 14, 2019, Page 34, lines 9-25; Page 35, lines 1-13). He said he did not independently review the accuracy of the information that was provided for by Scott Moore in calculating the wage expense and that he merely included it because he was requested to do so by the Moores. *Id.* He also acknowledged that the wage expense was not accounted for in any of the tax returns or financial statements generated by AgCountry that were relied upon in drafting his report. *Id.* Ault agreed with Bergstrom that it would seem logical that Scott Moore's labor was his contribution to the partnership and that any wages should have been in the form of a guaranteed payment, which was also not reflected in the financials. *See* (Transcript of Proceedings, October 14, 2019, Pages 38-42; Page 43, lines 1-15). Ault also agreed with Bergstrom's position on depreciation and indicated that

would be the most appropriate way to calculate for depreciation in this case. See (Transcript of Proceedings, October 14, 2019, Page 83, lines 5-25; Page 84, lines 1-24). He stated he did not make his own findings as to depreciation and simply used what was reflected on the partnership tax returns. *Id.*

[¶15] On December 19, 2019, the District Court entered an Order adopting the report and position provided by the Estate and awarded the Estate the sum of \$140,206.00, plus interest at a rate of 7.5% per annum from October 3, 2018. See Dkt. #211. An Amended Judgment was entered on February 25, 2020. See Dkt. #216. Appellants filed a Notice of Appeal on March 17, 2020. See Dkt. #217.

#### **IV. LAW AND ARGUMENT**

##### **A. Standard of Review.**

[¶16] In Border Res., LLC v. Irish Oil & Gas, Inc., 2015 ND 238, ¶ 14, 869 N.W.2d 758 (quoting Brash v. Gulleason, 2013 ND 156, ¶ 7, 887 N.W.2d 538, 835 N.W.2d 798), this Court explained the standard of review for an appeal from a bench trial: “[T]he trial court's findings of fact are reviewed under the clearly erroneous standard of N.D.R.Civ.P. 52(a) and its conclusions of law are fully reviewable. 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. In a bench trial, the trial court is the determiner of credibility issues and we do not second-guess the trial court on its credibility determinations.”

**B. The district court did not err in excluding Scott Moore's labor charge in accounting for the profits and losses of the Glenn W. Moore & Sons partnership.**

[¶17] Based on the testimony of both experts at the hearing on October 14, 2019, it does not appear that Scott Moore and ultimately the partnership should be entitled to deduct any expense for wages that were never expensed subsequent to the opinion of the North Dakota Supreme Court in this matter. To permit the deduction for wage expenses would be contrary to, among other things, the tax returns and financial reports previously prepared on behalf of the partnership, generally accepted accounting principles, the partnership agreement and the law. Both experts acknowledged that there was no expense for wages made on ANY of the financial documents or tax returns provided by the partnership to Ault and Bergstrom in preparation of their reports. In fact, no claim for wages was ever made until Donald Moore and Scott Moore met with Ault as part of the audit process, which came well after the Supreme Court's opinion in this matter. Bergstrom testified that a general partner in a partnership is not entitled to receive a wage for providing services to the partnership. Rather, a general partner may be entitled to receive a "guaranteed payment" for services above and beyond the partner's share in profits and losses, but only if there is an agreement with the other partners. Furthermore, if a guaranteed payment would be agreed upon, the payment would be deducted in the year it was earned unless it was otherwise accrued. Bergstrom testified that there was no evidence provided to support that any of the partners agreed that Scott Moore was entitled to a guaranteed payment in any given year, nor were any guaranteed payments reflected or accrued on the tax returns for the years 2012-2015.

The reason for this is that there was no such agreement for Scott Moore to receive any wages or guaranteed payments. On appeal, the Moores have included a letter dated May 11, 2012, from Donald Moore to the Personal Representative of the Estate in an effort to substantiate that there was such an agreement. *See* Appellant's Appendix 17-18, Dkt. #45. The Moores acknowledge that this letter was utilized in a hearing in 2014, which was well before the original appeal in this matter, and it should be noted that this was not an issue previously raised on appeal. Furthermore, this letter was not an exhibit that was introduced during the October 14, 2019, hearing and therefore should not even be considered by this Court.

[¶18] Scott Moore testified during the October 14, 2019, that his contribution to the partnership were essentially "his knowledge, labor and two cows." In return for his contribution, Scott Moore took greater shareholder distributions than the other partners (so much so that Bergstrom indicated Scott Moore's capital account was in the red at least one year), shared in one-third of the profits received by the partnership, and had a majority of his living expenses paid for by the partnership. Donald Moore and Delbert Moore, in return for their contribution of a significant amount of land and their labor, received similar benefits to Scott Moore, except that their shareholder distributions were smaller and more infrequent. It is clear based on this fact, the partnership's financial records and the way the partnership had been operating historically that Scott Moore was not entitled to receive a wage or guaranteed payment relative to his contribution of labor. For Ault to deduct for a wage expense not previously reflected in the partnership's tax returns and otherwise not permitted under

generally accepted accounting principles is utterly improper. Ault said he only included the wage expense because he was asked to by the Moores and noted it as an exception in his report. Ault knew that to include the expense was inappropriate, hence the exception in his report and testimony, and so for this Court to award this expense to the Moores and the partnership would also be inappropriate. The Moores presented no credible evidence to support how they even arrived at the amount for wage expense that they did. It is clear that the Moores' intent was to come up with a big enough number to wipe out any potential for reimbursement to the Estate, which has to raise some serious questions with this Court as the validity of the claim. Bergstrom's report follows generally accepted accounting principles and the historical practice of the partnership, and was properly relied upon by the District Court in determining this issue.

[¶19] Moreover, the deduction for wage expense is not permissible as it is barred by the principle of res adjudicata. As testified to by the experts, there was no claim, expense or deduction made for wages by or on behalf of Scott Moore in any of the financial documents or tax returns prepared by AgCountry or the partnership during the timeframe including March 2012 to May 2015. The sole basis for the wage expense was a request made by Scott Moore and Donald Moore to Thomas Ault to include the wage expense in his report, which was completed on March 8, 2019. At no time prior to Ault's report being filed with the Court is there any reference to a wage claim being made by Scott Moore in any other proceeding. The issue was clearly not raised or addressed at the February 2016 trial or on appeal. Per the prior opinions of this Court, "res judicata, or claim preclusion, prevents relitigation of claims that were raised, or could have been

raised, in prior actions between the same parties or their privies. Thus, res judicata means a valid, existing final judgment from a court of competent jurisdiction is conclusive with regard to claims raised, or those that could have been raised and determined, as to [the] parties and their privies in all other actions. Res judicata applies even if subsequent claims are based upon a different legal theory.” See Hager v. City of Devils Lake, 2009 ND 180, ¶10 773 N.W.2d 420, 426 (N.D. 2009).

[¶20] Furthermore, Scott Moore’s wage claim falls outside of the mandate of the Supreme Court remand. While the Moores attempt to couch the wage claim as a valid expense incurred by the partnership, it is a distinct and separate claim from the accounting of the profits and losses of the partnership. The wage expense was not accounted for on any of the partnership’s tax returns or any other legitimate financial document presented to this Court. It was a claim that didn’t exist or present itself until Ault submitted his report on or about March 8, 2019. “The law of the case doctrine “is based upon the theory of res judicata,” (citing Muhlhauser v. Becker, 74 N.D. 103, 121, 20 N.W.2d 353, 362 (1945)), and “is grounded on judicial economy to prevent piecemeal and unnecessary appeals,” (citing Robertson v. North Dakota Workers Comp. Bureau, 2000 ND 167, ¶ 18, 616 N.W.2d 844)). See Jundt v. Jurassic Resources Development, North America, L.L.C., 2004 ND 65, ¶ 7, 677 N.W.2d 209, 212-213 (N.D. 2004). “The law of the case encompasses not only those issues decided on the first appeal, but also those issues decided by the trial court prior to the first appeal which were not presented for review at the first appeal. Thus, this Court ‘will not hear on a second appeal what could have been presented in the prior appeal.’” *Id.*



**C. The district court did not err in denying Scott Moore's claim for interest on distributions that were being held by the Estate of Delbert Moore pending the outcome of litigation of claims in the Estate.**

[¶21] In its order dated June 27, 2019, the District Court held that Scott Moore was not entitled to receive statutory interest on any outstanding distributions due from the Estate as his interest was a specific devise, nor did the Court award interest on an equitable basis. *See* Dkt. #177. Appellants contend that Scott Moore is entitled to interest on the withheld specific devise under N.D.C.C. § 32-03-05, which provides that it is within the Court's discretion to award interest in certain circumstances. The District Court chose not to award interest to Scott Moore on an equitable basis, which was well within the discretion of the Court. There is nothing under the provisions cited by the Moores that would mandate that the Court award interest. The findings made by the District Court on this issue are not clearly erroneous and there was no abuse of discretion. Furthermore, the Moores acknowledge in their brief that there was a mistaken belief by the Estate as to what portion of the Estate should be taxed for the expenses of the Estate. The Estate construed the partnership assets as a specific devise and not a part of the residue of the Estate. *See* Dkt. #143. Without the partnership assets included, there was nothing in the residue by which to pay the expenses of the Estate. *Id.* This could not be determined until the Court decided the matter on June 27, 2019. *See* Dkt. #177. The Court also directed that the distributions be withheld until further order of the court and so distribution could not be made until the amended judgment was entered in this matter on February 25, 2020. *See* Dkt. #216. The Personal Representative's hands were tied at this point in the proceedings. It is clear from the

entire record that the Personal Representative did not breach his obligation in this matter and therefore Scott Moore is not entitled to receive interest under any equitable doctrine. Moreover, this claim should be barred by the law of the case and res adjudicata as it wasn't previously raised prior to appeal.

[¶22] Lastly, it should be noted that the Moores brought repeated petitions for distribution of the estate and that only one out of the four makes a request for interest. Scott Moore and Donald Moore filed a Petition for Accounting and Distribution of Estate and a Corrected Petition. *See* Dkt. #120, 123. In said Petitions, the Moores asked that the Court order an immediate distribution of the Estate to the heirs. However, nowhere in their request for relief did the Moores ask for interest on any outstanding distributions. *Id.* On November 8, 2018, the Moores filed a Renewed Petition for Accounting and Distribution of Estate, which acknowledged the remand of the North Dakota Supreme Court and once again requested distribution of the Estate. Notably the renewed Petition alleged that Scott Moore had yet to receive any distributions, even though he had received distributions totaling \$600,000.00, and again, the Moores failed to make any request for interest to be assessed on any outstanding distributions yet to be made. *See* Dkt. #139, 143. It wasn't until the Moores' May 16, 2019 Motion for Distribution from Estate did the Moores make any request for interest. *See* Dkt. #161. Yet, the Moores did not provide any legal rationale in their brief as to why Scott Moore would have been entitled to interest. The District Court rightfully decided this issue and the decision should be upheld on appeal.

**V. CONCLUSION**

[¶23] For the foregoing reasons, the District Court did not err in excluding Scott Moore's labor charge in accounting for the profits and losses of the Glenn W. Moore & Sons Partnership or in failing to award Scott Moore interest on the remaining distribution of certain real estate proceeds pending the outcome of the litigation of claims in the Estate. The determination of the District Court should be affirmed in its entirety.

**VI. REQUEST FOR ORAL ARGUMENT**

[¶24] Appellees hereby request oral argument to be held. Appellees believe oral argument would be helpful to this Court given the nature of the proceedings and the fact that this is an appeal from a remand of this Court.

**VII. CERTIFICATE OF COMPLIANCE**

[¶25] The undersigned, as attorney for the Appellees in the above matter, and as the author of the above brief, hereby certify, in compliance with Rule 32(a) of the North Dakota Rules of Appellate Procedure, that the above brief was prepared with proportional type face in 12-point font and equals 19 pages.

Respectfully submitted at Edgeley, ND, this 5<sup>th</sup> day of August, 2020.



---

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Supreme Court No. 20200087  
Probate No. 11-2012-PR-00011

Attorney for Appellees

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IN THE DISTRICT COURT OF DICKEY COUNTY, STATE OF NORTH DAKOTA

---

In the Matter of the Estate of **Delbert G. Moore**, Deceased.

---

**CERTIFICATE OF ELECTRONIC SERVICE**

STATE OF NORTH DAKOTA    )  
  )ss  
COUNTY OF LAMOURE        )

[1] I, Kimberly J. Radermacher, do hereby certify that on July 31, 2020, I served the following documents:

**A. BRIEF FOR APPELLEES (IN BOTH WORD AND PDF FORMAT)**

[2] by sending a true and correct copy thereof via email at:

**Terry Minard at btminard@msn.com**  
**Candice Eberhart at Eberbc@aol.com**  
**David Smith at DSmith@smithporsborg.com**  
**Tyler Malm at TMalm@smithporsborg.com**

[4] To the best of my knowledge, information and belief, such addresses are the actual email/postal addresses of the parties intended to be served. That the above document was duly e-mailed or mailed in accordance with the applicable provisions of North Dakota law.

Dated this 31<sup>st</sup> day of July, 2020.



---

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Supreme Court No. 20200087  
 Probate No. 11-2012-PR-00011

Attorney for Appellees

---

IN THE DISTRICT COURT OF DICKEY COUNTY, STATE OF NORTH DAKOTA

In the Matter of the Estate of **Delbert G. Moore**, Deceased.

---

**CERTIFICATE OF ELECTRONIC SERVICE**

STATE OF NORTH DAKOTA    )  
   )ss  
 COUNTY OF LAMOURE        )

[1] I, Kimberly J. Radermacher, do hereby certify that on August 5, 2020, I served the following documents:

**A. BRIEF FOR APPELLEES (IN BOTH WORD AND PDF FORMAT) (AMENDED)**

[2] by sending a true and correct copy thereof via email at:

**Terry Minard at btminard@msn.com**  
**Candice Eberhart at Eberbc@aol.com**  
**David Smith at DSmith@smithporsborg.com**  
**Tyler Malm at TMalm@smithporsborg.com**

[4] To the best of my knowledge, information and belief, such addresses are the actual email/postal addresses of the parties intended to be served. That the above document was duly e-mailed or mailed in accordance with the applicable provisions of North Dakota law.

Dated this 5<sup>th</sup> day of August, 2020.




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