

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

Supreme Court Case No. 20220091
District Court Case No. 13-2020-CV-00079

Scott Kubik,

Appellant/Plaintiff,

v.

Dominic Hauck,

Appellee/Defendant

APPELLANT'S BRIEF

APPEAL FROM FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER FOR
JUDGMENT ENTERED BY THE SOUTHWEST JUDICIAL DISTRICT, COUNTY
OF DUNN, STATE OF NORTH DAKOTA, THE HONORABLE RHONDA R. EHLIS,
ON FEBRUARY 17, 2022.

ORAL ARGUMENT REQUESTED

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JURISDICTIONAL STATEMENT

[¶ 1] The District Court had jurisdiction to hear and try this case under Article VI, Section 8 of the North Dakota Constitution, Chapter 32-17 of the North Dakota Century Code, and Section 27-05-06 of the North Dakota Century Code. This Court has jurisdiction to hear this appeal under Article VI, Section 6, of the North Dakota Constitution and section 28-27-01 of the North Dakota Century Code.

STATEMENT OF THE ISSUES

[¶ 2] Whether the District Court erred in finding that the Kubik Original Fence had not been the established boundary line for the statutorily required 20-year period.

[¶ 3] Whether the District Court erred in concluding that Scott was not entitled quieted title in the disputed property under the doctrine of acquiescence.

[¶ 4] Whether the District Court erred when it failed to find that Hauck trespassed to Scott's real property and personal property.

ORAL ARGUMENT REQUESTED

[¶ 5] Appellant Scott Kubik requests oral argument. Oral argument would be helpful to address the District Court's erroneous finding that the Original Fence had not been the established boundary for the respective properties for the statutorily required 20-year period. Similarly, oral argument would be helpful to address the District Court's erroneous holding that Scott Kubik was not entitled to quieted title over the disputed property based upon the doctrine of acquiescence; and further that the District Court erred in failing to hold Appellee Dominic Hauck trespassed to Scott's real property and personal property.

STATEMENT OF THE CASE

[¶ 6] This case comes to the North Dakota Supreme Court on appeal from the Dunn County District Court in the Southwest Judicial District. Plaintiff Scott Kubik and Defendant Dominic Hauck own neighboring land. This dispute involves the question of where the boundary line sits between Scott's property and Hauck's property.

[¶ 7] Up until Hauck purchased his land in 2019, an Original Fence divided the two properties. Scott maintains that the Original Fence has been the established boundary line from the time his grandfather built the Original Fence in the 1940s until the Original Fence was torn down by Hauck. The testimony and evidence show that the Original Fence has been in place for over 70s years. Throughout those 70 plus years, Hauck's predecessors in interest, the Sickler family, never disputed that the Original Fence was not the property boundary line. Put another way, for over 70 years, the Kubiks and Sicklers mutually recognized the Original Fence as the boundary line between their two properties. As a result, the Kubik family obtained ownership of the disputed property under the doctrine of acquiescence. Subsequent to the Kubik family's acquiescent ownership, Hauck proceeded to destroy the Original Fence, and thereby trespass to Kubik's real and personal property.

[¶ 8] The District Court erred by giving undue credit to testimony that had no bearing on the statutorily required 20-year period under the doctrine of acquiescence. The District Court also erred by failing to follow, or even acknowledge established North Dakota Supreme Court precedent in the case of Sauter v Miller. As a result, the Supreme Court should reverse the District Court and Order that the boundary line between returned to the Original Fence line and that title be quieted in Scott Kubik's favor. In doing so, the

Supreme Court should also reverse the District Court and conclude that Hauck is liable for trespass to Scott Kubik’s real property and trespass to Scott Kubik’s personal property.

STATEMENT OF THE FACTS

[¶ 9] Scott Kubik (hereinafter, “Scott”) is the current owner of real property in Dunn County, North Dakota described as:

Township 141 North – Range 95 West
Section 2: SW1/4

(hereinafter, “Kubik Property”). (R142:12:23-25).

[¶ 10] Scott purchased the Kubik Property on November 13, 1997, from his mother. (R142:14:9) His father purchased the Kubik Property in 1945 from Scott’s grandfather. (R142:14:17-22). Scott’s grandfather, Joseph Kubik, homesteaded the Kubik Property in 1911. Id. As a result, the Kubik Property has been owned by the Kubik family since 1911. Id.

[¶ 11] Kubik has lived on the Kubik Property for most of his life. (R142:15:4-9).

[¶ 12] Dominic Hauck (hereinafter, “Hauck”) purchased the following Dunn County Property from the Tony Sickler Trust dated March 19, 1994, on January 18, 2019:

Township 141 North – Range 95 West
Section 2: NW1/4

(hereinafter, “Sickler/Hauck Property”). (R142:181:12-19).

[¶ 13] Prior to Hauck’s purchase of the Sickler/Hauck Property, the Sickler/Hauck Property was owned by the Sickler family since approximately 1935. (R142:146:18-19).

[¶ 14] Scott testified at trial that the Kubik family erected and has maintained a fence between the Kubik Property and the Sickler/Hauck Property since at least 1947 after Scott’s father purchased the Kubik Property from Scott’s grandfather (hereinafter, “Original

Fence”). (Affidavit of Scott Kubik, R30: ¶ 7), R142:69:5-6). The Original Fence is part of a series of fences that completely encloses the Kubik Property. (R142:20:22-25).

Throughout the years, Scott

[¶ 15] The Kubik and Sickler families have mutually recognized the Original Fence as the property boundary line between the Kubik Property and the Sickler/Hauck Property for at least 70 years. (R142:164:24-25, 165:1-20).

[¶ 16] At the very least, the Original Fence has been the established property boundary line of the Kubik Property since Scott purchased the Kubik Property in 1997 from his mother, following his father’s passing. (Affidavit of Scott Kubik, R30: ¶ 9).

[¶ 17] Scott testified at trial that when Hauck purchased the Sickler/Hauck Property in 2019, Hauck asked Scott if he could use the Original Fence for Hauck’s cattle. (R142:38:2-22). Scott agreed to allow Hauck to use the Original Fence, provided he helped maintain it. Id. This was the same agreement Scott made with not only his own renters throughout the years, but also with Dale Sickler, who previously managed the land for the Sickler Trust. Id.

[¶ 18] In August of 2019, Scott was driving home past the Original Fence and discovered that Hauck was removing the Original Fence. (R142:40-42). When Scott stopped and asked Hauck what he was doing, Hauck told Scott that he did not believe the Original Fence was on the property line so he was removing it and would be installing a new fence, thereby encroaching approximately 15 feet onto the Kubik Property. Id. Scott informed Hauck that the Original Fence had been the established property line for at least 70 years and Hauck had no right to destroy the Original Fence, encroach on Kubik’s land, or erect a new fence

on Kubik's Property. Id. Hauck either maintained possession or destroyed the posts and wire that comprised the Original Fence. Id.

[¶ 19] Prior to this time, neither Hauck nor anyone from the Sickler family expressed that the Original Fence was not the boundary line between the Kubik Property and the Sickler/Hauck Property. (R142:165:1-22).

[¶ 20] Hauck also proceeded to cut and keep hay that Scott had grown on his side of the Original Fence. (R142:214:17-25, 215:1-3). Hauck has also been grazing his cows on the encroached portion of the Kubik Property. Id.

[¶ 21] Scott initiated this lawsuit in response to Hauck's destruction of the Original Fence.

[¶ 22] There is also a distinguishable ledge or margin that shows where the Original Fence used to be. (R142:36:2-8). This ledge is where the property line and fence should be returned to. This ledge was most likely created by erosion from the Original Fence being there over 70 years. Id.

LAW AND ARGUMENT

[¶ 23] The Supreme Court should review the District Court's Findings of Facts under the clearly erroneous standard and its Conclusions of Law de novo. "In an appeal from a bench trial, the district court's findings of fact are reviewed under the clearly erroneous standard of review and its conclusions of law are fully reviewable. Sauter v. Miller, 2018 ND 57, ¶8, 907, N.W.2d 370 (internal citation omitted). "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 of the evidence, this Court is convinced a mistake has been made." Id.

[¶ 24] The doctrine of acquiescence applies when parties mutually mistake a boundary as a property line. Id. at ¶ 10.

The doctrine of acquiescence is separate from adverse possession and may apply when all of the elements of adverse possession cannot be met. The doctrine of acquiescence allows a person to acquire property when occupying part of a neighbor's land due to an honest mistake about the location of the true boundary, because the adverse intent requirement of the related doctrine of adverse possession could not be met. To establish a new boundary line by the doctrine of acquiescence, it must be shown by clear and convincing evidence that both parties recognized the line as a boundary, and not a mere barrier, for at least 20 years prior to the litigation. Mutual recognition of the boundary may be inferred by a party's conduct or silence. The determination whether there has been mutual recognition of a boundary is a question of fact, which we review under the clearly erroneous standard on appeal.

Moody v. Sundley, 2015 ND 204, ¶ 23, 868 N.W.2d 491 (internal citations omitted).

- I. The District Court erred in finding that the Kubik Original Fence had not been the established boundary line for the statutorily required 20-year period.

[¶ 25] Scott Kubik and his predecessors in interest possessed the real property that is in dispute for a period of time much greater than the 20 years required by North Dakota law. North Dakota Century Code provides, “No action for the recovery of real property or for the possession thereof may be maintained, unless the plaintiff, or the plaintiff's ancestor, predecessor, or grantor, was seized or possessed of the premises in question within twenty years before the commencement of such action.” N.D.C.C. § 28-01-04. The Court should focus on two time periods. First, it should be clear that title to the disputed property based to the Kubik family at some point in the 1960s, 20-years after the Original Fence was established. However, at the very least, the Court should see that Scott maintained continuous possession of the disputed property from the time he purchased the Kubik Property from his parents in 1998 until the Original Fence was destroyed by Hauck in 2019. These clear facts were simply ignored by the District Court. As a result, the Supreme Court should find the District Court erred and reverse the District Court accordingly.

[¶ 26] The District Court’s Findings includes at paragraph 16 “The Court heard testimony that Sicklers, over the years, actually moved the fence posts to accommodate for the erosion that had occurred.” (R134:¶ 16). The Supreme Court should note that the District Court made a mistake. The following is an excerpt from the cross-examination of Alfred Sickler:

Q. Okay, so then when you say it - - you testified that you moved the posts over, are you talking laterally along the fence line so that that fence remains straight the entire time or did the entire fence zigzag?

A. Well, I don’t know how far off that fence was, I guess. Maybe Dominic knows now because he had it surveyed, but at the time when we were utilizing that fence, you sort of try to stay in line with where the fence was at, but I just said probably at certain times if the sand got too deep or couldn’t dig a post hole, you just moved it over maybe just one post of two posts. I don’t - -

Q. And, again, when you say, “move over,” you’re saying move over just in line with the fence?

A. Right.

Q. So you kept that line straight?

A. Right.

(R142:166:4-19).

Additionally, the entire basis for Alfred Sickler’s testimony has absolutely nothing to do with the 20-year statutory period the District Court should have looked at when analyzing Kubik’s claim for acquiescence.

Q. . . . Did you do anything with that fence in the 70s?

A. Outside of just maintaining, stretching wire or something like that, I was probably out there once or twice in the 70s.

Q. In the 70s. How about the 80s?

A. No, not the 80s anymore.

Q. How about the 90s?

A. Dale was out there in the 80s and the 90s, so I left that up to him.

Q. So you personally did not do anything in the 90s?

A. No.

Q. How about in the 2000s?

A. No. At that time we were leasing that property and that was part of the lease agreement that the fences would be maintained by the lessors.

(R.142:1-16).

[¶ 27] It should have been absolutely clear to the District Court that Alfred Sickler had no knowledge regarding the appearance, maintenance, or anything else regarding the Original Fence. As a result, the District Court made a clearly erroneous mistake by giving undo credit to Alfred Sickler's testimony and using it as a basis for its ruling.

II. The District Court erred in concluding that Scott was not entitled quieted title in the disputed property under the doctrine of acquiescence.

[¶ 28] The District Court erroneously failed to quiet title in favor of Scott Kubik under the Doctrine of Acquiescence. Scott and Hauck own property with a common border in Dunn County. Scott and Hauck dispute ownership of a strip of land located on Scott's side of the Original Fence that separates the Kubik Property from the Sickler/Hauck Property.

[¶ 29] The District Court failed to follow established precedent of the Supreme Court in Sauter v. Miller, 2018 ND 57, 907 N.W.2d 370 (internal citation omitted). The District Court did not even attempt to distinguish this established precedent. Rather, the District Court ignored Sauter altogether. As a result, the Supreme Court should reverse the District Court thereby quieting title in favor of Scott Kubik. "The doctrine of acquiescence allows a property owner to acquire neighboring property due to an honest mistake over the location of the boundary line." Brown v. Bordell, 2008 ND 183, ¶ 9, 756 N.W.2d 779. "To

establish a new boundary line by the doctrine of acquiescence, it must be shown by clear and convincing evidence that both parties recognized the line as a boundary, and not a mere barrier, for at least 20 years prior to the litigation.” Id.

[¶ 30] At trial, Scott and Alfred Sickler both testified the Original Fence was constructed sometime in the 1940s and has stood in the same place for nearly 80 years until it was removed by Hauck in 2020. Hauck’s expert witness, Robert Procive, testified “[t]he nature of the fence appeared to have been built in the 40s.” (R142:135: 15-16). Finally, a multitude of witnesses testified that the Original Fence had been in place for at least the last 20 years, satisfying the statutory requirements. See testimony of Chris Knopik, (R142:78-82), testimony of Barry Steffan, (R142:83-91), testimony of Richard Schmidt, (R142:91-96) and testimony of Marvin Barth (R142:110-116).

[¶ 31] The facts of the instant case are nearly identical to Sauter v. Miller, 2018 ND 57, 907 N.W.2d 370. Coincidentally, Sauter also originated in the Southwest Judicial District and was affirmed on appeal to the North Dakota Supreme Court. In Sauter, the Millers and Sauter owned property with a common border in Bowman County. Id. at ¶ 3. The parties disputed the ownership of a 55–60-foot strip of land located on the Sauter side of a fence separating the properties. Id. The original fence in that case was “constructed sometime before the 1960s and remained in place until it was removed by the Millers in 2014.” Id. at ¶ 4. The Millers argued they were justified in removing the original fence after they obtained a survey that revealed the original fence did not follow the actual boundary line of the two properties. As a result, Sauter brought an action to quiet title to the disputed property. The district court found Sauter to be the legal owner of the disputed property on the theories of adverse possession and acquiescence. The district court also ordered

damages for breach of contract, trespass, and attorney's fees in favor of Sauter. Id. at ¶ 7. The Supreme Court affirmed the judgment on acquiescence, breach of contract, trespass, and attorney's fees, but did not reach the issue of adverse possession upon Sauter met her burden as to the doctrine of acquiescence. Id. at ¶ 2.

[¶ 32] The present case substantially mirrors Sauter. “Julie Sauter testified the Original fence has been in place since she was a young child growing up around the property in the 1960s.” Id. at ¶ 22. The Original Fence in the present case had also been in place since Scott was a young child. “[Sauter] further testified she used the fence to communicate to her tenants, lessees, and neighbors where the boundaries were and to keep the livestock where they belonged.” Sauter at ¶ 22. Kubik testified that the Kubik Original Fence was used to keep his or his renter's livestock contained and was the boundary line for his farming and haying renters. “Julie Sauter testified prior to the Millers, nobody had ever expressed to her that the Original fence was not the boundary line between the Sauter and Miller property.” Sauter at ¶ 22. Alfred Sickler testified that neither he nor anyone from his family ever expressed that the Original Fence was not the boundary line between the Kubik Property and Sickler Property. Essentially, the Original Fence was never discussed because both sides mutually recognized the Original Fence as the boundary line. “The Millers testified the fence was unkept and in disrepair.” Sauter at ¶ 22. Hauck testified the fence was unkept and in disrepair. the factual parallels between Sauter and the instant case, the District Court here ignored precedent and came to a different conclusion.

[¶ 33] The District Court also erred by finding that in order for Kubik to succeed on a doctrine of acquiescence claim, there has to be some evidence of the Kubiks and Sickler discussing the boundary line. Alfred Sickler, on cross-examination, testified:

Q. Sure. Did you ever have a conversation with Scott telling him that that fence was not on the property line?

A. Never.

Q. Do you know of any one in your family ever having a conversation with Scott about

--

A. Not that I'm aware of.

Q. So no one ever told him or disputed that that fence was not on the property line?

A. No, I never.

Q. Okay. So you say here in paragraph 4 that the fence was originally built by your father. But before you testified that you don't know who built the fence. Is your testimony today accurate or is your testimony from this affidavit accurate?

Ms. Kuntz: Which line, Counsel. I apologize.

Mr. Selinger: Paragraph 4 on the first page.

The Witness: Well, like I say. I don't know who put up the fence. I never was there when they built the fence, so I don't know. I mean, we're going all the way back now to the 30s, you know, when it could have been built. So I don't remember that. But I'm just assuming, I guess, beings as the way the fence is constructed and is on our property presuming that dad built that fence or somebody built that fence that owned that land.
(R.142:164:24-25,165:1-22).

[¶ 34] The District Court also states in paragraph 18 of its Findings of Fact, Conclusions of Law and Order for Judgment that part of its basis for its decision lies in a purported telephone easement given by the Tony Sickler Trust. However, a review of the metes and bounds description of the purported easement shows that the telephone easement location

is at least one thousand feet north of the Original Fence boundary line in question. (R93:2)(R142,216:5-24). Nonetheless, the District Court used this misunderstanding to erroneously conclude that the doctrine of acquiescence does not apply.

[¶ 35] Paragraph 19 of the District Court’s Findings of Fact, Conclusions of Law and Order for Judgment states, “Finally, it does not appear that Kubik or the Sicklers ever specifically discussed the boundary line between the NW¼ and the SW¼.” (R134:¶19). This is precisely the point of the doctrine of acquiescence. Kubik and the Sicklers never discussed where the boundary line was; rather, they mutually recognized the fence line as the boundary line for not only the statutorily required 20 years, but for over 70 years. As a result, the Supreme Court should conclude that the District Court’s Findings and Conclusions of Law are clearly erroneous.

[¶ 36] The District Court concluded Scott did not meet his burden of proof because “[t]he Court did not receive any evidence as to whether the co-Trustees believed the fence to be the boundary line.” (R134:¶ 20). The North Dakota Supreme Court in Brown v. Brodell, opined “[l]ike its sister doctrine of adverse possession, the doctrine of acquiescence allows for the principle of tacking to reach the 20-year requirement.” 2008 ND 183, ¶ 9, 756 N.W.2d 779 (internal citation omitted). “In the absence of a conventional agreement, mutual recognition may be inferred from a party’s conduct or silence.” Id.

[¶ 37] In the present case, the Sicklers were silent about the Original Fence and recognized the Original Fence as the boundary line between the Sickler Property and the Kubik Property for nearly 70 years. Yet, the District Court’s reasoning for quieting title against Scott is that Scott failed to show that the Sicklers believed the Original Fence to be the boundary line. An express affirmation, or other “conventional agreement” is not required

to prove acquiescence. See Brown at ¶ 9. Rather, it can be inferred, and in the present case, was inferred for a time period well beyond the statutory 20-year requirement. As a result, the Supreme Court should find the District Court's Conclusions of Law to be clearly erroneous.

[¶ 38] In paragraph 22 of the District Court's Findings of Fact, Conclusions of Law and Order for Judgment, the District Court restates its clearly erroneous finding that the "Sicklars moved the fence at times." (R134:¶ 20) Again, not only did Alfred Sickler testify that the fence posts were only moved laterally in line with the established fence, thus not changing the actual boundary line, but also, Alfred Sickler's testimony is only relevant to his time working the Original Fence in the 1970s, which has absolutely no bearing on the 20-year doctrine of acquiescence claim at issue. Additionally, in paragraph 22, the District Court finds that the "fence was there to contain livestock, not to act as a boundary." (R134: ¶ 20) This simply does not meld with Hauck's entire theory of the case being that he had to remove the fence because it was too dilapidated to hold his livestock. The only logical explanation is that the Original Fence was a boundary line, and not a barrier.

[¶ 39] The Doctrine of Acquiescence provides that acquiesced title to property matures upon the passage of the required 20-year time period.

It is a general theory underlying adverse possession that the title, once matured, relates back to the beginning of the adverse holding. Under such theory, it is presumed that the origin of the title was rightful, not wrongful; that the possession which has matured it was in support, not in derogation, of the rightful title; and that the claimant, who by a possession pursuant to law has matured a title, has been the owner of the title from the beginning. After the title has matured, the former owner of the land cannot call the adverse possession owner to account for any actions done to the land in the course of the possession that has ripened such party's right and title to it.

3 Am. Jur. 2d Adverse Possession § 250.

[¶ 40] Because adverse possession is so commonly aligned with acquiescence, this same general theory applies here. It is not disputed that Kubik's Original Fence was constructed at some point in the 1940s, which means that title in the disputed property would have passed to the Kubik family at some point in the 1960s. As a result, when Hauck entered Scott's land, removed Kubik's Original Fence, cut Scott's hay, and built a new fence, Hauck undeniably trespassed onto Scott's real property.

[¶ 41] Additionally, at trial, the location of Kubik's Original Fence was shown by a distinguishable ledge which spanned approximately half of Kubik's Original Fence line. Hauck provided tape measurement photos showing the location of Kubik's Original Fence. Finally, Hauck testified that if he had to put Kubik's Original Fence back up along the same line, he could do so. (R134:219:19-24). This shows there are sufficient distinctive markers where Kubik's Original Fence was located, or in other words, a "visible line marked clearly by monuments, fences, or the like." Manz v. Bohara, 367 N.W.2d 743, 746 (N.D. 1985).

[¶ 42] Throughout the trial, every witness referred to Kubik's Original Fence as the boundary line between the Kubik Property and the Sickler/Hauck Property. Not once throughout trial did any witness refer to the Original Fence as a barrier. Scott testified that Kubik's Original Fence had been there since the 1940s, and at the very least since he took ownership of the Kubik Property in 1997. Alfred Sickler testified that he was not aware of himself or any of his family members ever asking Scott or any of the Kubiks to move the Original Fence. Additionally, Alfred Sickler was not aware of anyone ever expressing to the Kubiks that the Original Fence was not the boundary line between the two properties.

[¶ 43] Therefore, the Supreme Court should reverse the District Court’s ruling and find that Kubik’s Original Fence has been the established boundary line between the Kubik Property and the Sickler/Hauck Property for a period exceeding the statutorily required 20-year period. Additionally, the Supreme Court should find that Scott is entitled to quieted title in the disputed strip of land between the Kubik Property and the Sickler/Hauck Property under the doctrine of acquiescence.

III. The District Court erred when it failed to find that Hauck trespassed to Scott’s real property and personal property.

[¶ 44] The North Dakota Supreme Court provides that “[c]ivil trespass is a common law tort in North Dakota and is not statutorily defined.” Tibert v. Slominski, 2005 ND 34, ¶ 15, 692 N.W.2d 133. The Court goes on to define trespass as “an intentional harm where a person intentionally and without a consensual or other privilege . . . enters land in possession of another or any part thereof or causes a thing or third person to do so.” Id. (citing McDermott v. Sway, 78 N.D. 521, 529-30, 50 N.W.2d 235, 240 (1951)). The North Dakota Supreme Court has most recently provided:

To succeed on a trespass claim, “the plaintiff must establish the defendant intentionally entered the land or another, or caused a thing to or third person to do so, without the consent of the landowner. While actual harm is not one of the requisite elements to a claim for trespass, actual interference with another’s property is. A trespasser is liable irrespective of whether they caused harm to a legally protected interest.

G&D Enters. v. Liebelt, 2020 ND 213, ¶18, 949 N.W.2d 853. (Internal citation omitted).

[¶ 45] Prior to Hauck’s trespass, Hauck was advised that the Original Fence had been the established boundary line since the 1940s. Hauck knew that Kubik would be harmed by Hauck’s entrance onto Scott’s property, tearing down Kubik’s Original Fence, and cutting Scott’s hay. Hauck did so anyway.

[¶ 46] The Supreme Court should find that the District Court erred in finding that Hauck did not trespass as to Scott's personal property. While the District Court acknowledges that it is unclear who actually owns Kubik's Original Fence, that, in turn, means that the District Court found that Scott owned at least a partial interest in Kubik's Original Fence. By destroying Kubik's Original Fence, Hauck deprived Scott of his interest in Kubik's Original Fence. As a result, the District Court should have found that Hauck trespassed to Scott's personal property. Additionally, Hauck admits that he cut a portion of Scott's hay. The ownership of that portion of hay was not at all disputed. Therefore, the Supreme Court should also find that the District Court erred when it failed to find that Hauck trespassed as to Scott's hay personal property.

CONCLUSION

[¶ 47] For the reasons stated above, the Supreme Court should reverse the District Court's Findings of Fact, Conclusions of Law, and Order for Judgment and quiet title in Scott Kubik under the doctrine of acquiescence. The Supreme Court should also reverse the District Court by concluding Hauck also trespassed to Scott's real property and personal property.

Dated this 1st day of August, 2022.

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CERTIFICATE OF COMPLIANCE

[¶ 48] The undersigned hereby certifies, in compliance with N.D.R.App.P. 32(a)(8)(A), that the *Brief of Plaintiff and Appellant, Scott Kubik*, was prepared with Times New Roman proportional typeface, 12 pt. font, and totals 20 pages.

Dated this 1st day of August, 2022.

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(I. D. # 08454)

IN THE SUPREME COURT OF THE STATE OF NORTH DAKOTA

| | | |
|----------------------|---|--|
| Scott Kubik, |) | |
| |) | CERTIFICATE OF SERVICE |
| Appellant/Plaintiff, |) | |
| |) | Supreme Ct. Case No. 20220091 |
| vs. |) | (District Ct. Case No. 13-2020-CV-00079) |
| |) | |
| Dominic Hauck, |) | |
| |) | |
| Appellee/Defendant. |) | |

[¶1] I, Jordan L. Selinger, certify that on August 1, 2022, a true and correct copy of the following document was served through the North Dakota Supreme Court E-Filing Portal:

1. APPELLANT’S BRIEF

[¶2] A copy of the foregoing was sent to the following email address:

Sandra Kay Kuntz
Legal Edge Solutions, PLLC
skuntz@legaledgesolutions.com

Clerk of the Supreme Court
supclerkofcourt@ndcourts.gov

[¶3] That the above documents were duly served in accordance with the requirements of the North Dakota Rules of Civil Procedure and the North Dakota Rules of Appellate Procedure.

DATED this 1st day of August, 2022.

/s/ Jordan L. Selinger
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