



## North Dakota Supreme Court Rules on Real Property Issues

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The North Dakota Supreme Court recently ruled on two issues of real property ownership in two separate cases. First, *Halvorson v. Starr*, 2010 ND 133 clarifies that the time for providing notice to owners of purportedly lapsed minerals is governed by N.D.C.C. § 1-02-15 and not by the North Dakota Rules of Civil Procedure. Second, *Melchior v. Lystad*, 786 N.W.2d 8 (N.D. 2010) holds that a grant of “all minerals” in a tract with a reservation of 50% of the minerals is ineffective to reserve any interest where the grantor owns only 50% of the minerals.

In *Halvorson*, the owners (the Halvorsons) of a surface parcel in Mountrail County attempted to quiet title to purportedly lapsed minerals (owned by the Starrs) underlying their parcel. Under North Dakota’s dormant mineral act, N.D.C.C. §§ 38-18.1-01 to -08 (the “Act”), where severed minerals are not “used” according to the statutory definition for the required time period, title to the minerals “lapses” and may be claimed by the owner of the overlying surface parcel. The Act requires publishing notice of the lapse for three consecutive weeks, followed by mailing a copy of the notice to the record mineral owner or owners within ten days after the last day of publication.

The Halvorsons published a Notice of Lapse of Mineral Interest (Notice) for the required three weeks under N.D.C.C. § 38-18.1-06, from March 7, 1990 to March 21, 1990. On April 2, 1990, twelve days after the date of final publication of the Notice, the Halvorsons mailed the Notice to the Starrs, then brought an action to quiet title to the purportedly lapsed minerals. The Starrs countersued, claiming the notice mailing failed to satisfy the ten-day time limit of Section 38-18.1-06. The Halvorsons argued that the North Dakota Rules of Civil Procedure, specifically N.D.R.Civ.P. 6(a) (1990) (allowing for exclusion of Saturday and Sunday from computation of the time period) should govern the

time limit for notice mailing under N.D.C.C. § 38-18.1-06. The District Court disagreed and granted summary judgment in favor of the Starrs, holding that N.D.C.C. § 1-02-15 (1987) (allowing for exclusion of only holidays from the computed time period for notice mailing) governs the ten-day time period for notice mailing under N.D.C.C. § 38-18.1-06.

On de novo review, the North Dakota Supreme Court affirmed the District Court's ruling, observing that the notice mailing requirement of N.D.C.C. § 38-18.1-06 does not begin a civil action, nor does the court have authority to apply the North Dakota Rules of Civil Procedure to N.D.C.C. § 38-18.1-06. The court distinguished as inapplicable to the issue in this case its opinions in both *Spring Creek Ranch v. Svenberg*, 595 N.W.2d 323 (N.D. 1999) (whether a reasonable inquiry has been conducted as required by N.D.C.C. § 38-18.1-06 is a genuine issue of material fact) and *Comstock Constr., Inc. v. Sheyenne Disposal, Inc.*, 651 N.W.2d 656 (N.D. 2002) (additional time for service of written demand upon a lien holder pursuant to N.D.R.Civ.P. 6(e) applies under the mechanic's lien law, N.D.C.C. § 35-27-25).

*Melchior* involved a dispute over an undivided one-half mineral interest in a tract of land in Mountrail County. In a 1983 warranty deed, Walter and Edith Halvorson, as owners of the surface and an undivided one-half mineral interest in the tract, conveyed all of the tract to Kenneth and Hope Lystad, with a reservation to themselves of an undivided one-half of all of the minerals in and under the tract. The Halvorsons subsequently conveyed all of their purportedly reserved minerals to Roger and Barbara Melchior, while the Lystads conveyed their minerals to the American Trust Center, as Trustee of the Lystad Family Irrevocable Mineral Trust.

In 2009, the Melchiors brought an action to quiet in themselves an undivided one-fourth of the tract's minerals, and the Lystads counterclaimed to quiet title to an undivided one-half mineral interest in the Trustee. The District Court granted summary judgment in favor of the Lystads under the rule established in *Duhig v. Peavey-Moore Lumber Co.* 144 S.W.2d 878 (Tex. 1940) (the *Duhig* rule), quieting title to one-half of the minerals in the Trustee.

On appeal, the North Dakota Supreme Court affirmed under the *Duhig* rule: where a grantor owning only 50% of the minerals in a tract conveys by warranty deed all of the tract and simultaneously attempts to reserve 50% of the minerals, the deed fails to the extent both the grant and reservation cannot be given effect and "the grantor loses because the risk of title loss is on him." *Id.* (citing Williams & Meyers, *Oil and Gas Law* 1 § 311, p. 580.39

(2001)). As in *Miller v. Kloeckner*, 600 N.W.2d 881 (N.D. 1999) the Court observed that *Duhig* may apply to deeds without warranty provisions, and that “the key question is not what the grantor purported to retain for himself, but what the grantor purported to give the grantee.” *Melchior* ¶ 8.

The opinions can be seen at  
<http://www.ndcourts.gov/court/opinions/20100068.htm> (*Halvorson*) and  
<http://www.ndcourts.gov/court/opinions/20100045.htm> (*Melchior*).

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