

SUPREME COURT OF NORTH DAKOTA

Markgraf v. Welker

2017 ND 219 (2017) · No. 20160449 · Decided September 7, 2017

SUMMARY

The North Dakota Supreme Court affirmed a judgment quieting title to mineral interests in favor of Kathleen Markgraf and Marilyn Shanahan. The court held that clear and convincing evidence supported the existence of a resulting trust arising from the conveyance of property to Arnold Hannah as trustee and his subsequent conduct. The court also held that the trust was not repudiated and that the statute of limitations did not bar the action.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Gerald W. VandeWalle, Chief Justice; Gerald W. VandeWalle, C.J.; Jerod E. Tufte; Daniel J. Crothers; Lisa Fair McEvers; Mary Muehlen Maring, S.J.
JURISDICTION	North Dakota
DECIDED	September 7, 2017
DOCKET	20160449
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a district court judgment quieting title to mineral interests after a bench trial on remand.
STANDARD OF REVIEW	The Supreme Court reviews findings of fact after a bench trial under the clearly erroneous standard. Conclusions of law are fully reviewable.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion; precedential.
PARTIES	Connie Welker, Vicki Ostrem v. Kathleen Markgraf, Marilyn Shanahan

TOPICS

- trusts
- mineral rights
- quiet title
- standard of review
- appellate procedure

PRACTICE AREAS

- trusts and estates
- real property
- appellate litigation

QUESTIONS PRESENTED

1. Whether the evidence established a resulting trust in the mineral interests conveyed to Arnold Hannah as trustee.
2. Whether Arnold Hannah repudiated the resulting trust so that the statute of limitations began to run and barred the quiet-title action.
3. Whether the district court's findings after the bench trial were clearly erroneous.

HOLDINGS

1. A resulting trust existed because clear and convincing evidence showed that the parties intended, at the time of the 1965 conveyance, that Arnold Hannah would hold the property for the benefit of W.J. and Mary Hannah's family. The word "Trustee" in the deed alone was insufficient, but it could be considered with the surrounding circumstances and subsequent conduct.
2. The trust was not repudiated, and the statute of limitations did not bar the plaintiffs' action. Repudiation requires an act or statement by the trustee in open contravention of the trust, amounting to a denial of its existence, and the party asserting repudiation bears the burden of proving it.

KEY QUOTATIONS

"A resulting trust is based on the parties' intentions and exists where the acts or expressions of the parties indicate an intent that a trust relation resulted from their transaction." (§ 11)

"In order to constitute a repudiation there must be something said or done by the trustee in open contravention of the terms of the trust, and of such character that the relations of the parties will become and continue hostile." (§ 20)

"The mere failure of a trustee to perform his duty is not sufficient to repudiate a resulting trust, rather there must be a distinct act of repudiation amounting to a denial of its existence." (§ 20)

FACTUAL BACKGROUND

W.J. Hannah conveyed land and mineral interests in 1965 to his son Arnold Hannah as "Arnold Hannah, Trustee." Subsequent conduct included Arnold's executing oil and gas leases as trustee, accounting for property proceeds, and distributing proceeds among family members. A 1989 letter referred to an arrangement under which Arnold might retain mineral interests as compensation, but he nevertheless distributed a later bonus among family members, and the record did not establish that all beneficiaries received notice of any repudiation. The plaintiffs, descendants of beneficiaries of the alleged family trust, sought to quiet title against Arnold's heirs.

PROCEDURAL HISTORY

Markgraf and Shanahan sued to quiet title to mineral interests, claiming that a 1965 conveyance to "Arnold Hannah, Trustee" created a family resulting trust. Both sides moved for summary judgment; the district court initially granted Markgraf and Shanahan's motion, but the Supreme Court reversed and remanded because conflicting evidence required fact-finding. On remand, the district court held a bench trial, found that a resulting

trust existed, that it had not been repudiated, and that the statute of limitations did not bar the action. The Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Markgraf v. Welker, 2015 ND 303, 873 N.W.2d 26
- Border Res., LLC v. Irish Oil & Gas, Inc., 2015 ND 238, ¶ 14, 869 N.W.2d 758
- Erickson v. Olsen, 2014 ND 66, ¶ 19, 844 N.W.2d 585
- Zundel v. Zundel, 278 N.W.2d 123, 130-32 (N.D. 1979)
- Hodny v. Hoyt, 243 N.W.2d 350, 357-58, 361 (N.D. 1976)