

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Supreme Court No. 20170423
Rolette Co. Court No. 40-2016-CV-00100

Darrel Gustafson,)
)
Plaintiff and Appellee,)
)
vs.)
)
Raymond Poitra, Linus Poitra, and all other)
persons unknown claiming an estate or)
interest in, or lien or encumbrance upon,)
the property described in the Complaint,)
)
Defendants and Appellants.)

APPEAL FROM THE *JUDGMENT*, DATED OCTOBER 30, 2017, BY THE
HONORABLE JUDGE ANTHONY SWAIN BENSON, NORTHEAST JUDICIAL
DISTRICT COURT, ROLETTE COUNTY, NORTH DAKOTA, CASE NO. 40-2016-
CV-00100

BRIEF OF APPELLEE DARREL GUSTAFSON

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[¶1]

STATEMENT OF ISSUES

- I. **WHETHER THE ISSUE OF SUBJECT MATTER JURISDICTION REGARDING CASE NO. 40-06-C-00134 (THE 2007 FORECLOSURE ACTION) IS PRECLUDED BY RES JUDICATA.**

- II. **WHETHER THE DISTRICT COURT PROPERLY DETERMINED THE TURTLE MOUNTAIN TRIBAL COURT LACKED SUBJECT MATTER JURISDICTION IN AN ACTION FOR QUIET TITLE OVER NON-INDIAN FEE LAND UNDER MONTANA V. UNITED STATES, 450 U.S. 544 (1981).**

- III. **WHETHER THE DISTRICT COURT POSSESSED SUBJECT MATTER JURISDICTION IN AN ACTION FOR QUIET TITLE OVER NON-INDIAN FEE LAND WITHIN THE EXTERIOR BOUNDARIES OF THE TURTLE MOUNTAIN INDIAN RESERVATION.**

STATEMENT OF THE FACTS

[¶2] The dispute between these parties has a long and labored history and has made two appearances before this Court. See Gustafson v. Estate of Poitra, 2011 ND 150, 800 N.W.2d 842; Gustafson v. Poitra, 2008 ND 159, 755 N.W.2d 479. In this particular matter, Plaintiff/Appellee Darrel Gustafson (“Gustafson”) initiated this quiet title action with a summons and complaint dated September 11, 2015. Appellee’s Appendix (“Gustafson’s Appendix”) at 4-9, Doc ID Nos. 1 and 2. Gustafson is a non-Indian owner of certain fee land located in Rolette County, which is also located within the exterior boundaries of the Turtle Mountain Indian Reservation, described as follows:

Parcel 1: That part of the NW¹/₄NW¹/₄, Section 29, Township 162 N., Range 70 W., 5th P.M., described as commencing at the Common Section Corners of Sections 19, 20, 29, and 30, Township 162 N. Range 70 W., thence South 89°58’ Ease on the Section Line between Sections 20 and 29 a distance of 1320.0 feet; thence South 0°04’ Ease a distance of 530.0 feet to the South right of way line of State Highway No. 5 and 281 being the point of beginning; thence South 0°04’ West a distance of 510.05 feet to the South right of way line of State Highway No. 5 and 281; thence North 55°52’ East a distance of 660.0 feet along the State Highway 5 and 281 right of way line back to the point of beginning, comprising 10.0 acres more or less.

Parcel 2: A parcel of land lying in the NW¹/₄NW¹/₄, Section 29, Township 162 N., Range 70 W., described as follows: Beginning at the SW Corner of said NW¹/₄NW¹/₄ thence East on forty-line to a point which is 550 feet West of the East line of said NW¹/₄NW¹/₄, thence North to intersection with the South right-of-way line of State Highway No. 5, thence Southwesterly along said highway right-of-way line to intersection with West line of said NW¹/₄NW¹/₄, thence South on forty-line to said pint of beginning, subject to all valid outstanding easements and rights-of-way of record.

(Parcel 1 and Parcel 2, taken together, are also known as that part of the NW¹/₄NW¹/₄ lying South of the highway Right-of-Way of State Highway Number 5).

(hereinafter referred to as the “Subject Property”). Gustafson’s Appendix at 5-6, Doc ID No. 2 at 1-2.

[¶3] Gustafson gained title to the Subject Property via a Sheriff’s Deed dated November 17, 2008, recorded in Rolette County as Document No. 56802. Gustafson’s Appendix at 6-7 and 17-21, Doc ID No. 2 at 2-3; Doc ID No. 27. The Sheriff’s Deed was issued as a result of a foreclosure action brought by Gustafson against Raymond Poitra and Linus Poitra in 2006 (the “Foreclosure Action”). See Rolette County Case No. 40-06-C-00134. The Foreclosure Action was affirmed by the North Dakota Supreme Court in Gustafson I, 2008 ND 159, 755 N.W.2d 479. Since receiving title under the Sheriff’s Deed, Gustafson has paid real estate taxes for the Subject Property, made improvements to the Subject Property, and maintained the Subject Property. Transcript on Appeal (“Tr.”) 18:14-25; Gustafson’s Appendix at 3, Doc ID No. 58 at ¶ 6.

[¶4] Gustafson subsequently discovered that Linus Poitra recorded a plat in Rolette County in 2009 as Document No. 57119. Tr. 20:11-25; Gustafson’s Appendix at 22-24; Doc ID No 30. Said plat contained certain legal descriptions that were also included on the Sheriff’s Deed issued to Gustafson under the Foreclosure Action. Tr. 21:4-16.

Between 2008 and 2013, the parties continued to engage in litigation matters before the Rolette County District Court, the North Dakota Supreme Court, the Turtle Mountain Tribal Court, and the Turtle Mountain Court of appeals. (Rolette County Case Nos. 40-08-C-00025; 40-08-C-00026; 40-08-C-00027; and 40-09-C-00074; North Dakota Supreme Court Case Nos. 20070301 and 20100277; Turtle Mountain Tribal Court Case Nos. CV-08-10106; CV-08-10107; CV-08-10108; and CV-09-10106; Turtle Mountain Tribal Court of Appeals No. TMAC-11-014). During the course of these legal matters, Linus Poitra executed and recorded a Lessor's lien, claiming that Gustafson (and his spouse) owed Linus Poitra \$337,008 for rent and \$6,410,150 for royalties and penalties. Tr. 27:6-28:7; Gustafson's Appendix at 25, Doc ID No. 33. This lien was recorded in Rolette County against Parcel 1 of the Subject Property identified on the Sheriff's Deed. Tr. 27:12-14; Gustafson's Appendix at 25, Doc ID No. 33. In September 2011, the lien was also mailed by Linus Poitra via certified mail to Gustafson's bank. Tr. 28:8-29:2; Gustafson's Appendix at 26, Doc ID No. 34. At trial, Gustafson testified that this action by Linus Poitra impeded his ability to obtain a loan for construction on the Subject Property with an interest rate of 4.3%, and instead he received financing with an interest rate of 5.75%. Tr. 29:16-31:6. The higher interest rate led Gustafson to pay an additional \$67,567.98 in interest under the construction loan. Tr. 30:18-31:6.

[¶5] In their short answer to Gustafson's complaint, Raymond and Linus Poitra contended that the district court lacked subject-matter jurisdiction to hear Gustafson's quiet title claim. Gustafson's Appendix at 10-13, Doc ID No. 17. A bench trial was held on this matter on March 30, 2017, before the Honorable Anthony Swain Benson, at the Rolette County Courthouse. At trial, Gustafson testified in support of his claim,

explaining the Sheriff's Deed, Lessor's Lien, and issues with financing. Tr. 20:11-21:16; 27:6-28:7; and 29:16-31:6. Raymond and Linus Poitra maintained that the district court did not have subject matter jurisdiction to hear the issue and briefly summarized their position in a short post-trial brief. Tr. 60:11-61:7; Gustafson's Appendix at 27-28, Doc ID No. 48.

[¶6] Following the parties' post-trial briefs, the District Court issued its Memorandum Opinion and Order for Judgment on September 26, 2017. Gustafson's Appendix at 29-39, Doc ID No. 53. Findings of Fact, Conclusions of Law, and an Order for Judgment were signed by the Court on October 30, 2017. Id. at 40-50, Doc ID No. 58. A Judgment was issued also on October 30, 2017. Id. at 51-52, Doc ID No. 59. On November 30, 2017, counsel for Gustafson filed a Notice of Entry of Judgment. Id. at 53, Doc ID No. 60. The Poitras filed their Notice of Appeal on December 5, 2017. Id. at 54, Doc ID No. 64.

LAW AND ARGUMENT

[¶7] "Subject-matter jurisdiction cannot be conferred by agreement, consent, or waiver, and issues involving subject-matter jurisdiction can be raised by the court or a party at any time in a proceeding." Fredricks v. Fredricks, 2016 ND 234, ¶ 6, 888 N.W.2d 177 (citing State v. Lavallie, 2015 ND 74, ¶ 4, 861 N.W.2d 168; State ex rel. Workforce Safety & Ins. V. JFK Raingutters, 2007 ND 80, ¶ 9, 733 N.W.2d 248). When the facts are not in dispute, the district court's decision on subject matter jurisdiction is reviewed de novo on appeal. Id. (citing Winer v. Penny Enters., Inc., 2004 ND 21, ¶ 8, 674 N.W.2d 9). If the underlying facts are also disputed, there is a mixed question of law and fact. Id. The question of law is reviewed de novo while the question of fact is reviewed under the clearly erroneous standard. Id. (citing Lavallie v. Lavallie, 2015 ND 69, ¶ 7, 861 N.W.2d

164). “A finding of fact is clearly erroneous if it is induced by an erroneous view of the law, if no evidence exists to support it, or if, upon review of the entire record, this Court believes a mistake has been made.” *Id.* (citing *State v. Arot*, 2013 ND 182, ¶ 7, 838 N.W.2d 409).

I. THE ISSUE OF SUBJECT MATTER JURISDICTION REGARDING CASE NO. 40-06-C-00134 (THE 2007 FORECLOSURE ACTION) IS PRECLUDED BY RES JUDICATA.

¶8 Throughout their brief, the Poitras attempt to relitigate the issue of subject matter jurisdiction in the Foreclosure Action (Rolette County Case No. 40-06-C-00134). However, the Poitras are precluded from relitigating the issue of subject matter jurisdiction under the doctrine of res judicata.

¶9 In the case *Riverwood Commercial Park, L.L.C. v. Standard Oil Co.*, 2007 ND 36, 729 N.W.2d 101, this Court provided an in-depth analysis of the doctrine of res judicata. Generally speaking, “[t]he doctrine[] of res judicata ... bar[s] courts from relitigating claims and issues in order to promote the finality of judgments, which increases certainty, avoids multiple litigation, wasteful delay and expense, and ultimately conserves judicial resources.” *Id.* at ¶ 13 (citation omitted). “The applicability of res judicata ... is a question of law, fully reviewable on appeal.” *Id.* More specifically, the *Riverwood Commercial Park* Court explained:

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.

Id. (citations omitted).

[¶10] As it relates to this dispute, “[t]he principles of res judicata apply to questions of jurisdiction as well as to other issues.” Sandy Lake Band of Mississippi Chippewa v. United States, 714 F.3d 1098, 1102 (8th Cir. 2013) (citing Am. Sur. Co. v. Baldwin, 287 U.S. 156, 166 (1932)); see also In re Athens/Alpha Gas Corp., 715 F.3d 230, 236-37 (8th Cir. 2013) (holding that a finding of subject matter jurisdiction by the North Dakota Supreme Court regarding a civil proceeding relating to a Chapter 11 bankruptcy proceeding was res judicata as to a determination of subject matter jurisdiction in the U.S. Bankruptcy Court regarding the Chapter 11 proceeding).

[¶11] Despite what the Poitras might allege in their brief, the issue of subject matter jurisdiction was, in fact, decided by the district court in the Foreclosure Action. This Court specifically noted as much in its Opinion: “[t]he [district] court also concluded it had jurisdiction and ordered the case scheduled for trial.” Gustafson v. Poitra, 2008 ND 159, ¶ 2, 755 N.W.2d 479. However, even if the district court prevented the Poitras from raising the jurisdictional issue, the Poitras had an opportunity to appeal the same. Notably, the Poitras failed to raise the jurisdictional issue on appeal. Id. at n.1.

[¶12] The parties to the Foreclosure Action are the same that are presently before the Court. See Gustafson I, 2008 ND 159, 755 N.W.2d 479. Additionally, and as noted by the Poitras, the district court in the Foreclosure Action issued a judgment of foreclosure which was upheld on appeal to this Court. Brief of Appellant at ¶ 5; see Gustafson I, 2008 ND 159, 755 N.W.2d 479. Therefore, a valid and enforceable judgment exists in the Foreclosure Action.

[¶13] Certainly then: (1) the issue of subject matter jurisdiction was raised, or could have been raised, by the Poitras in the Foreclosure Action; (2) the Foreclosure Action was a prior case between the same parties; and (3) a valid, existing judgment was entered in the Foreclosure Action. The Poitras must be precluded from further attacking the Foreclosure Action. Accordingly, the Poitras' subsequent attempts to raise the issue of subject matter jurisdiction following the conclusion of the Foreclosure Action are barred by res judicata.

II. THE DISTRICT COURT CORRECTLY DETERMINED THE TURTLE MOUNTAIN TRIBAL COURT LACKED SUBJECT MATTER JURISDICTION OVER THE QUIET TITLE ACTION.

[¶14] Indian tribes are recognized as “distinct, independent political communities qualified to exercise many of the powers and prerogatives of self-government.” Plains Commerce Bank v. Long Family Land and Cattle Co., 554 U.S. 316, 327 (2008) (internal quotations and citations omitted). However, it has been frequently noted that the “sovereignty that the Indian tribes retain is of a unique and limited character.” Id. (internal quotations and citations omitted). Although the tribes possess authority over non-Indians who come within their borders, the tribe's authority does not extend to the activities of nonmembers. See id. at 327-28. “The tribes have, by virtue of their incorporation into the American republic, lost ‘the right of governing ... person[s] within their limits except themselves.’” Id. at 328 (ellipsis and brackets in original) (quoting Oliphant v. Suquamish Tribe, 435 U.S. 191, 209 (1978)). This limitation is “particularly strong when the nonmember's activity occurs on land owned in fee simple by non-Indians.” Id. (citing Strate v. A-1 Contractors, 520 U.S. 438, 446 (1997)).

[¶15] “[O]nce tribal land is converted into fee simple, the tribe loses plenary jurisdiction over it.” Plains Commerce Bank, 554 U.S. at 328 (citations omitted). “Among the powers lost is the authority to prevent the land’s sale.” Id. at 329 (citing County of Yakima v. Confederated Tribes and Bands of Yakima Nation, 502 U.S. 251, 263 (1992)). Furthermore, when fee land is conveyed to non-Indians, “[the tribe] loses any former right of absolute and exclusive use and occupation of the conveyed lands. Id. (brackets in original) (citing South Dakota v. Bourland, 508 U.S. 679, 689 (1993)). “As a general rule, then, ‘the tribe has no authority itself, by way of tribal ordinance or action in the tribal courts, to regulate the use of fee land.’” Id. (quoting Berndale v. Confederated Tribes and Bands of Yakima Nation, 492 U.S. 408, 430 (1989)).

[¶16] There are two exceptions to this general rule, however, where “tribes may exercise civil jurisdiction over non-Indians on their reservations, even on non-Indian fee lands.” Plains Commerce Bank, 554 U.S. at 329 (internal quotations omitted). Such exceptions are recognized in Montana v. U.S., 450 U.S. 544 (1981).

First, “[a] tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements.” Second, a tribe may exercise “civil authority over the conduct of non-Indians on fee lands within the reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.” ... By their terms, the exceptions concern regulation of “the activities of nonmembers” or “the conduct of non-Indians on fee land.”

Id. at 329-30 (quoting Montana, 450 U.S. at 565-66). “These exceptions are ‘limited’ ones and cannot be construed in a manner that would ‘swallow the rule’ or ‘severely shrink’ it.” Id. at 330 (quotations in original; citations omitted). Certainly, under the first

Montana exception, the action for quiet title cannot be construed as a “consensual relationship with the tribe or its members.”

[¶17] Thus, the only plausible exception under Montana is whether the quiet title action “threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.” See Montana 450 U.S. at 565-66. Notably, however, the second Montana exception has been narrowed to only include conduct that “imperil[s] the subsistence of the tribal community.” Plains Commerce Bank, 554 U.S. at 336. Further, “tribal power must be necessary to avert catastrophic consequences.” Id. at 341. As noted by the district court, “[w]hile the loss of this formerly Indian-owned fee land to a third party non-Indian is quite possibly disappointing to the Turtle Mountain Tribe, it cannot be called catastrophic for tribal self-governance.” Gustafson’s Appendix at 46-47, Doc ID No. 58 at ¶ 31.

[¶18] This action for quiet title is substantially similar to a case recently before the Court, Fredricks v. Fredricks, 2016 ND 234, 888 N.W.2d 177. In Fredricks, a member of the Fort Berthold Indian Reservation moved the district court to quiet title to certain minerals under fee land. Id. at ¶¶ 2-4. Notably, two of the defendants were also members of the Fort Berthold Indian Reservation while a third defendant was not. Id. at ¶¶ 2-3. The district court found for the plaintiff. Id. at ¶ 4. On appeal, one of the defendant-tribal members argued the district court lacked subject matter jurisdiction and jurisdiction was, instead, proper in tribal court. This Court concluded the Fort Berthold Tribal Court did not have jurisdiction over a quiet title action regarding certain minerals under fee land within the exterior boundaries Forth Berthold Indian Reservation. Fredricks, at ¶ 12. In

coming to its conclusion, the Court analyzed both the Plains Commerce Bank and Montana cases from the U.S. Supreme Court. See id.

[¶19] Importantly, in Fredricks, despite an enrolled tribal member pursuing the action to quiet title, this Court did not find clearly erroneous the district court's factual finding that the real property at issue was non-Indian fee land because, at the time the action was commenced, the record owner was a non-Indian. Fredricks, 2016 ND 234, ¶ 11, 888 N.W.2d 177. Ultimately, this Court agreed with the conclusion reached by the district court:

[N]either the sale, nor the incidents of the sale, of fee land located within the boundaries of the [Forth Berthold Indian Reservation] intrude on the internal relation of the tribe or threaten tribal self-rule or otherwise affect the political integrity, economic security, or the health or welfare of the tribe.

Id. at ¶ 12 (quotation marks omitted).

[¶20] In this action, it is not disputed that the Subject Property upon which the underlying action rests is fee land located within the exterior boundaries of the Turtle Mountain Indian Reservation. Gustafson's Appendix at 43, Doc ID No. 58 at ¶ 4. Additionally, while the underlying action for quiet title does not involve the sale of fee land as in Fredricks, it does involve the transfer of fee land by foreclosure judgment which was upheld on appeal to this Court. See id. at 45, Doc ID No. 58 at ¶ 26; see also Gustafson I, 2008 ND 159, 755 N.W.2d 479. Accordingly, at the time the underlying action began, Gustafson, a non-Indian, was the record title holder of the Subject Property. Therefore, the Subject Property is *non-Indian fee land*. Under Plains Commerce Bank, the Turtle Mountain Tribal Court does not have plenary jurisdiction over the Subject Property, and the Poitras must establish an exception to the general rule through Montana

to confer tribal jurisdiction over the quiet title action. However, the Poitras are patently unable to do so. In fact, the only support shown by the Poitras that a Montana exception has been met are two unsupported and conclusory statements. See Brief of Appellant at ¶¶ 11 and 12. The first being that Gustafson “described the consensual nature of his actions in doing business from the [Subject Property] on the reservation.” Next, the Poitras state the Turtle Mountain Band of Chippewa Indians has unilaterally decided the quiet title action has an “effect on the political integrity, economic security or health and welfare of the tribe” because the Tribe also took up an action by the Poitras to quiet title as to Gustafson. Notably, these arguments are offered without further qualification or explanations as to how they are even remotely related to the current action. More importantly, however, these arguments are without merit.

[¶21] The same vein of reasoning this Court utilized in Fredricks also applies to this matter. In Fredricks, the Court specifically noted “the sale of non-Indian fee land is not nonmember ‘conduct’ or ‘activities’ within the meaning of Montana.” Fredricks, 2016 ND 234, ¶ 10, 888 N.W.2d 177 (citing Plains Commerce Bank, 554 U.S. at 330-41; Cohen’s Handbook of Federal Indian Law, § 4.02[3][c], at p. 241 (Nell Jessup Newton ed., 2012) (Montana exceptions do not apply “to contests with nonmembers over land ownership or the sale of land.” (footnote omitted)). Similarly, the transfer of fee land by foreclosure judgment and a subsequent quiet title action thereon do not implicate any Montana exception.

[¶22] Accordingly, this Court should affirm the holding of the district court that the Turtle Mountain Tribal Court lacks subject matter jurisdiction over the present matter. See Gustafson’s Appendix at 47, Doc ID No. 58 at ¶¶ 32 (“Since none of the Montana

exceptions applies to the present matter, the Turtle Mountain Tribal Court lacks jurisdiction over this matter”).

III. THE DISTRICT COURT POSSESSED SUBJECT MATTER JURISDICTION OVER THE QUIET TITLE ACTION.

[¶23] District courts in North Dakota are courts of general jurisdiction and derive such power through the North Dakota Constitution and the North Dakota Century Code. N.D. Const. art. VI, § 8; N.D.C.C. § 27-05-06.

[¶24] “North Dakota has disclaimed jurisdiction over Indian reservation lands.” Gustafson v. Estate of Poitra, 2011 ND 150, ¶ 13, 800 N.W.2d 150 (quoting Winer, 2004 ND 21, ¶ 21, 674 N.W.2d 9. Unless a majority of the enrolled residents of an Indian Reservation vote to accept jurisdiction, “state courts have no jurisdiction over causes of action involving Indians, arising within the exterior boundaries of an Indian Reservation.” Id. (quoting Winer, at ¶ 21). In the absence of tribal jurisdiction, the district court generally must “allow[] an Indian to enter its court to seek relief against a non-Indian concerning a claim arising in Indian country.” Fredricks, 2016 ND 234, ¶ 13, 888 N.W.2d 177 (brackets in original) (quoting Three Affiliated Tribes v. Wold Eng’g, 476 U.S. 877, 888 (1986). Thus, the lack of tribal court jurisdiction is a factor to be considered in determining whether the district court has jurisdiction.

[¶25] Additionally, “[w]hile Montana governs tribal court jurisdiction, state court jurisdiction is determined under the test set forth in Williams v. Lee 358 U.S. 217 (1959).” Fredricks, 2016 ND 234, ¶ 12, 888 N.W.2d 177 (citing Arrow Midstream Holdings, LLC v. Bears Constr., LLC, 2015 ND 302, ¶ 10, 873 N.W.2d 16). Under the Williams test, “absent congressional action, the question is whether the state action

infringes on the right of reservation Indians to make their own laws and be ruled by them.” Id. (internal quotations omitted).

[¶26] In Fredricks, this Court held fee land, which has been divested from tribal control and treated as non-Indian property, is subject to state court jurisdiction. Fredricks, 2016 ND 234, ¶ 13, 888 N.W.2d 177. Ultimately, “the state court action regarding the sale of fee land located within the exterior boundaries of the reservation does not intrude on the rights of the reservation to make their own laws and be ruled by them.” Id. at ¶ 12 (internal quotation marks omitted).

[¶27] Again, Fredricks is controlling. The Subject Property has been divested from tribal control by its status as non-Indian fee land and has been treated as though it is non-Indian land, to wit: the Subject Property was foreclosed on in 2007 and, since that time, Gustafson has been the record title holder; Gustafson has paid taxes on the Subject Property; and Gustafson has improved and maintained the Subject Property. See Tr. 18:14-25; Gustafson’s Appendix at 3, Doc ID No. 58 at ¶ 6.

[¶28] The district court action to quiet title on fee land located within the exterior boundaries of the Turtle Mountain Indian Reservation does not intrude on the rights of the Reservation to make its own laws and be ruled by them. Thus, the Williams test is met and the district court properly asserted its jurisdiction over the underlying quiet-title action. Accordingly, this Court should affirm the decision of the district court.

IV. CONCLUSION

[¶29] As discussed herein, the district court correctly determined it held subject matter jurisdiction and quieted title to the Subject Property in favor of the Appellee, Darrel Gustafson respectfully requests this Court to affirm the decision of the district court.

Dated: April 11, 2018.

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By: /s/ David J. Smith

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CERTIFICATE OF SERVICE

[¶30] I hereby certify that a true and correct copy of the foregoing brief was filed electronically with the Clerk of the North Dakota Supreme Court on the 11th day of April, 2018 and e-mailed to **William J. Delmore** (bill@delmorelawfirm.com).

Dated: April 11, 2018.

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