The Duhig Rule in North Dakota

NDLR Energy Law Symposium
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What is the Duhig Rule?

- Where a grantor conveys land in such a manner as to include 100% of the minerals, and then reserves to himself 50% of the minerals, the reservation is not operative where the grantor owns only 50% of the minerals
Duhig Rule

- When both the grant and reservation cannot be given effect, the grantor loses because the risk of title loss is on him
W. J. Duhig was conveyed a tract of land from the estate of Alexander Gilmer, known as the “Jordan Survey”, subject to a reservation of ½ of the minerals. Duhig then conveyed the tract to Miller-Link Lumber Company (predecessor to Peavy-Moore Lumber Company), retaining a ½ interest in all of the mineral rights. Both parties asserted ownership to the ½ mineral interest.
The granting clause in the deed described what is conveyed as the tract known as the Jordan Survey.

The description includes the minerals, as well as the surface, and thus the granting clause purports to convey both the surface estate and all of the mineral estate.

The language of the deed did not clearly and plainly disclose the intention of the parties that Duhig would reserve ½ of the minerals in addition to the ½ that had been reserved by the Gilmer Estate.
The intention of the parties was to vest the grantee with title to the surface and \( \frac{1}{2} \) of the minerals, excepting from the conveyance only the \( \frac{1}{2} \) interest that had been previously reserved by the Gilmer estate.

The Texas Supreme Court concluded that Miller-Link Lumber Company owned the surface and a \( \frac{1}{2} \) mineral interest, the Gilmer Estate owned the outstanding \( \frac{1}{2} \) mineral interest and W. J. Duhig owned nothing.
North Dakota adopted the general rule in the 1971 Supreme Court case *Kadrmas v. Sauvageau*.
The Sauvageaus owned the entire surface estate and ½ of the minerals in the SE¼ of Section 11. The State of North Dakota owned the remaining ½ mineral interest.
Kadrmas v. Sauvageau

- By Warranty Deed, the Sauvageaus conveyed unto the Kadrmases the SE¼ of Section 11, reserving unto the grantors ½ of the minerals.
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Could the Sauvageaus retain \( \frac{1}{2} \) of the minerals when they warranted title to \( \frac{1}{2} \) and owned but \( \frac{1}{2} \)?
Kadrmas v. Sauvageau

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<th>Kadrmas</th>
<th>Sauvageaus</th>
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<td>State of North Dakota</td>
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<td>Kadrmas</td>
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<td>Sauvageaus</td>
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Kadrmas v. Sauvageau

- When a grantor conveys the entire surface, excepting and reserving ½ of the minerals, he thereby warrants title to and conveys ½ of the minerals to the grantee.

- Focus on what grantor purports to convey, not what grantor purports to reserve.

- Where a grantor conveys in such a manner to include 100% of the minerals, and also reserves 50% of the minerals, the reservation is not valid when the grantor only owns 50% of the minerals.
Because the Sauvageaus could not fulfill the conveyance of $\frac{1}{2}$, and the reservation of $\frac{1}{2}$, the Kadrmases get the minerals.
Kadrmas v. Sauvageau
Kadrmas v. Sauvageau

- If grantor does not own enough minerals to satisfy both the grant and the reservation, the grant must be satisfied first because the obligation of the grant is superior to the reservation.

- Key: Not what the grantor purports to retain, but what the grantor purports to give to the grantee.
Miller v. Kloecckner

1999 North Dakota Supreme Court case
W.V. Hron owned the entire surface estate and 50% of the minerals

Hron conveyed unto Benjamin Huether the SW¼ ... reserving to himself 50% of all of the oil and gas...

The Millers (successors-in-interest to Huether) brought a quiet title action and the trial court concluded the Millers owned 50% of the minerals after applying the Duhig rule

- Special warranty deed vs. general warranty deed
  - A special warranty deed warrants title only against claims held by, through, or under the grantor.
  - Cannot be held to warrant title generally against all persons

Download copy of warranty
Warranty does not define the estate conveyed

Granting clause
- Purpose is to define and designate the estate conveyed

Covenant of warranty
- Exceptions inserted into the warranty are intended only to protect the grantor on the warranty and are not intended as a limitation on the nature of the interest conveyed by the granting clause
Court concluded that W. V. Hron’s deed purported to convey a \( \frac{1}{2} \) interest in the minerals and reserve a \( \frac{1}{2} \) interest in the minerals when he only owned a \( \frac{1}{2} \) interest in the minerals.

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**Miller v. Kloeckner (1999)**

- Klobeckner 1/2
- Miller 1/2
- Hron 1/2

- A deed’s limited warranty limits the grantor’s warranty, not the interest conveyed

![Diagram showing ownership shares among Miller, Kloeckner, and Hron](image)
Gilbertson v. Charlson (1981)

- Conveyances between tenants in common
Gilbertson v. Charlson (1981)

- State owned 5% of the minerals
- Three siblings each owned an undivided 1/3 of the surface and 1/3 of 95% of the minerals

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<th>Charlson</th>
<th>Gilbertson</th>
<th>Thorlackson</th>
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<tr>
<td>State 5%</td>
<td>Charlson 31 2/3%</td>
<td>Gilbertson 31 2/3%</td>
<td>Thorlackson 31 2/3%</td>
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Gilbertson v. Charlson (1981)

- By warranty deed, Charlson and Thorlackson conveyed their interest in the property to Gilbertson.

- The warranty deed contained the following reservation:
  
  “Reserving and excepting, however, to the Grantors fifty (50%) Per Centum of all oil, natural gas and minerals which may be found on or underlying said lands, including fifty (50%) percentum of rentals and other income therefrom.”
Successors-in-interest to Gilbertson argue that the *Duhig* rule applies.

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<th>State 5%</th>
<th>Charlson 6 2/3%</th>
<th>Gilbertson 81 2/3%</th>
<th>Thorlackson 6 2/3%</th>
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Gilbertson v. Charlson (1981)

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<th>Thorlackson 5 2/3%</th>
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<td><strong>Gilbertson</strong></td>
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The Court held:

- Exception to *Duhig*

- As a co-tenant, Gilbertson had actual knowledge of the State’s five-percent reservation

The Court quieted title to:
- Gilbertson – 45%
- Charlson – 25%
- Thorlackson – 25%
Issue is whether or not a grantee’s constructive notice of a third-party interest in minerals alone precludes application of the Duhig rule.

- Mary Stuss owned the entire surface estate and ½ of the minerals. The State of North Dakota owned the remaining ½ of the minerals.

- Mary conveyed the property to David and Patricia Kubas, reserving ½ of the minerals.

- Mary later conveyed ½ of the minerals to her children (Sibert).

- Sibert asserted that *Duhig* could not be applied because the Kubases had constructive notice that the State owned $\frac{1}{2}$ of the minerals.

- The court held that *Gilbertson* was limited to the facts of that case and factors other than constructive notice of the State’s interest were controlling.

- *Duhig* is applicable and *Gilbertson* is not.
Johnson v. Finkle (2013)

- Attempt to extend reasoning in *Gilbertson* to contract for deed
Johnson v. Finkle (2013)

Predecessors to Johnson

Third-Party
1/2

Predecessors to Johnson
1/2
Contract for Deed (1957) and Warranty Deed (1962) to successors in interest to Finkle containing the following reservation:

“...The grantor reserved a 1/4 mineral interest, including gas and oil and the right of ingress and egress for the purpose of mining, exploring or drilling for the same.”
District Court applied *Duhig* and quieted title in the 1/2 mineral interest to Finkle.

On appeal, Johnson argued that reasoning from *Gilbertson* applied because the predecessors to Finkle had notice of reservation because Finkle was an owner under the contract for deed prior to the Warranty Deed.
Co-Tenant Exception from *Gilbertson* did not apply

Predecessors to Finkle did not own a legal interest until the warranty deed

Result:
- Johnson: 0%
- Finkle: 50%
Waldock v. Amber Harvest Corp. (2012)

- Does *Duhig* apply to personal representative’s deeds?

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Edwardson (deceased)

United States 1/2

Edwardson (deceased) 1/2
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Waldock v. Amber Harvest Corp. (2012)

- Administrator’s Deed to predecessor in interest to Waldock

  - “all the right, title, estate and interest, of said above named decedent, at the time of his death”

  - “excepting and reserving unto said estate, its successors and assigns, forever, an undivided twenty-five percent (25%) interest in all of the oil, gas, and other minerals”
Waldock v. Amber Harvest Corp. (2012)

- **Holding:**
  - Court looked to the language of Administrator’s Deed
  - The deed conveys all right, title, and interest of Edwardson at his death
    - all the right, title, *estate and interest, of said above named decedent*, at the time of his death
    - Reservation reserved 1/4 of the minerals that were owned by decedent

- **Result:**
  - Waldock – 1/4 minerals
  - Edwardson – 1/4 minerals
Poynter owned ½ of the minerals and the State of North Dakota owned ½ of the minerals.

- August 17, 1951: Poynter conveyed unto Crafton “an undivided 4/5ths interest in the oil and gas.”

- September 12, 1953: Poynter executed a Mineral Deed correcting the 1951 deed to convey only 192 acres.

- October 1, 1953: Poynter executed a Correction Mineral Deed correcting the 1951 deed to convey a 4/5ths of 50% mineral interest.
At issue are 25 mineral acres

- Gawryluk (successor to Crafton) and The Viola Trust (successor to Poynter) both claim ownership to the 25 mineral acres

- The Viola Trust argued that the 1951 deed was ambiguous and the subsequent 1953 deeds establish that Poynter intended to convey 4/5ths of his 50% mineral interest

- Analysis under the Duhig rule:
  - Deed unambiguously conveyed a 4/5ths interest in all of the oil and gas
  - Deed conveyed more than Poynter actually owned
  - Because Poynter could not satisfy the grant of 4/5ths (and the implied reservation of 1/5th), Gawryluk is entitled to the interest
### Nichols v. Goughnour (2012)

- Co-tenants using separate mineral deeds

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<th>Each Sibling</th>
<th>Third – Party</th>
<th>Each Sibling</th>
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<td>1/9</td>
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Nichols v. Goughnour (2012)

- 9 siblings

- 8 siblings conveyed to brother John Q. Nichols, by 8 separate warranty deeds, conveying “all my undivided 1/9 interest,” with the following reservation:
  - “Hereby excepted from this grant and there is hereby reserved from this grant, to the grantors, 25% of all minerals, gas, oil and hydrocarbon compounds and 25% of all royalties on account thereof.”
Successors-in-interest to the 8 siblings argue that the deeds were part of one transaction and reserved a 1/4 interest to them collectively.

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<th>John Q. Nichols</th>
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<td>Third – Party 1/2</td>
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Nichols v. Goughnour (2012)

- Holding:

  - As all the parties were co-tenants, exception to *Duhig*

  - Because John Q. Nichols was a co-tenant he had knowledge of the third party owning 1/2 of the oil and gas interest

  - The Court interpreted each deed as reserving to each sibling a 1/4 of the 1/18 mineral interest
Nichols v. Goughnour (2012)

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<tr>
<th>Third – Party</th>
<th>John Q. Nichols</th>
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<td>4/9</td>
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Acoma Oil Corp. v. Wilson (1991)
Moen owned a 160 acre tract in fee simple
Moen conveyed cumulatively a 6.5% royalty interest to third parties
Acoma Oil Corp. v. Wilson (1991)

- Successors-in-interest to Moen conveyed, through 2 separate deeds, 35 and 5 “mineral acres” to the predecessors-in-interest to Acoma

- Wilson succeeded to the remaining 120 mineral acres

- A question arose as to who bears the 6.5% royalty burden
Acoma Oil Corp. v. Wilson (1991)

- Court applied the *Duhig* rule:
  - Neither deed indicated that the interests were subject to outstanding royalty
  - Grant must be satisfied first
    - if grantor owns enough to bear the burden, grantor bears
    - if grantor does not own enough to bear the burden, grantee bears its proportionate share
Acoma Oil Corp. v. Wilson (1991)

- Result:
  - Wilson’s 120 mineral acres bear the 6.5% royalty burden

- The North Dakota Supreme Court affirmed its ruling in *Wenco v. EOG Resources, Inc.* (2012)
Conclusion

- Status of *Duhig*
- Practical Application
Questions?