

ENERGY AND UTILITIES - OIL AND GAS: INTERPRETING LIEN RIGHTS ALLOWED TO OIL & GAS EMPLOYEES

Oil & Gas Transfer L.L.C. v. Karr, 928 F.3d 1120 (8th Cir. 2019).

ABSTRACT

In North Dakota, oil and gas is an important industry and with that importance comes meaningful legal issues. In *Oil & Gas Transfer L.L.C. v. Karr*, the Eighth Circuit Court of Appeals analyzed an issue never heard before in North Dakota: whether an employee of an oil and gas company is entitled to a lien under North Dakota Century Code section 35-24-04. Oil & Gas Transfer L.L.C. (“OGT”) is an oilfield construction company. OGT hired John Karr (“Karr”) to manage and expand its business in North Dakota. Karr left OGT and claimed the company owed him \$1,304,026.42. OGT was insolvent at the time, so Karr filed a pipeline construction lien statement under North Dakota Century Code section 35-24-04. The issues before the court were (1) whether Karr was considered an employee of OGT and (2) if he was considered an employee, whether he was entitled to a lien under North Dakota Century Code section 35-24-04. The novel issue before the court was if someone is considered an employee of an oil and gas company, are they entitled to a lien under section 35-24-04, because the statute explicitly gives independent contractors the right to a lien. The court held that an employee is not entitled to a lien under North Dakota Century Code section 35-24-04. As a case of first impression, the holding provides North Dakota practitioners with direction on how to handle pipeline construction liens when the party filing for the lien is an employee.

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I. FACTS

Oil & Gas Transfer L.L.C. (“OGT”) is an oil field construction company.¹ OGT hired John Karr as a project manager.² Karr left OGT in April 2015.³ Karr then claimed OGT owed him \$1,304,026.42 for his services.⁴ Because OGT was insolvent, Karr filed an oil and gas lien on March 8, 2016 to recover for his unpaid services.⁵ Upon filing the oil and gas lien, Karr then filed suit against OGT, alleging breach of contract, promissory estoppel, reformation, and unjust enrichment.⁶ In January 2016, OGT filed this claim in North Dakota state court.⁷ OGT sought to quiet title on the pipeline, arguing Karr was ineligible to claim a lien under North Dakota Century Code section 35-24-04.⁸ OGT argued that Karr was an employee under North Dakota law and employees are ineligible to obtain a lien under section 35-24-04.⁹ The action was removed to federal district court by Karr based on diversity jurisdiction.¹⁰ OGT moved for summary judgment.¹¹ OGT argued that the undisputed facts indicate Karr was an employee of OGT and not an independent contractor, and that section 35-24-04 does not allow employees to

1. Oil & Gas Transfer L.L.C. v. Karr, 928 F.3d 1120, 1122 (8th Cir. 2019).

2. *Id.*

3. *Id.*

4. John Karr’s Appellee Brief at 3, Oil & Gas Transfer L.L.C. v. Karr, 928 F.3d 1120 (8th Cir. 2019) (No. 18-2316).

5. *Id.*

6. Oil & Gas Transfer, L.L.C. v. Karr, 928 F.3d 1120 at 1122-23.

7. *Id.* at 1122.

8. *Id.*

9. *Id.* at 1123.

10. *Id.* at 1122.

11. *Id.*

file an oil and gas lien.¹² OGT's summary judgment motion was granted.¹³ Karr appealed.¹⁴

II. LEGAL BACKGROUND

A. EMPLOYEE DEFINITION

The central question in determining whether a person is deemed an employee or an independent contractor is whether that person is in control of their own work or if there is someone else who is in control of the work.¹⁵ This is normally termed the "right to control."¹⁶ The district court determines who has the right to control by applying the right to control test.¹⁷ The test analyzes whether the employee is subject to the will and control of the employer in all manners, including how the work should be done.¹⁸ Importantly, the relationship is still considered an employee-employer relationship so long as the employer has the right to exercise control, regardless if the control is actually exercised or not.¹⁹

To determine the right to control, the court may look at twenty factors laid out by the North Dakota Administrative Code.²⁰ Not every factor is used in each case and the degree of importance of each factor varies case to case.²¹ However, several factors are given more weight in every case.²² These factors are: (1) the integration of the individual's service into the company's general practices and operations; (2) a relationship that continuously occurs at frequent intervals; (3) the degree to which the individual has invested in their own office space, equipment, supplies, insurance, etc.; (4) the realization of profit or loss dependent on continued business with the company; (5) the amount of employers the individual is working for; (6) the availability of the individual's service to the general public; (7) the company's right to dismissal of the individual; and (8) the company's right to terminate the individual.²³

12. *Id.* at 1123.

13. *Id.*

14. *Id.*

15. *Id.* (quoting *BAHA Petroleum Consulting Corp. v. Job Serv. N.D.*, 2015 ND 199, 868 N.W.2d 356).

16. *Id.*

17. *Id.*

18. N.D. ADMIN. CODE § 27-02-14-01(5)(a) (2021).

19. *Id.*

20. *Oil & Gas Transfer v. Karr*, 928 F.3d 1120, 1123 (8th Cir. 2019) (citing N.D. ADMIN. CODE §§ 27-02-14-01(5)(b)(1)-(20), 92-01-02-49(1)(b)(1)-(20) (2021)) (stating the twenty factors that have been determined by North Dakota administrative agencies).

21. N.D. ADMIN. CODE § 27-02-14-01(5)(b).

22. N.D. ADMIN. CODE § 92-01-02-49(2) (2021).

23. N.D. ADMIN. CODE § 92-01-02-49(1)(b)(3),(6),(15)-(20) (2021).

The court lists other factors which are to be given less weight: (10) the company requiring the individual to comply with its control of the work; (11) the individual rendering the services personally; (12) the imposition on the individual of set hours; (13) the degree of employment, whether it be full-time or part-time; (14) the method of payment, whether it be weekly, monthly, bi-monthly; and (15) if the company pays any expenses of the individual, such as traveling.²⁴ The person asserting they are an independent contractor, rather than an employee, has the burden of proving they are an independent contractor.²⁵

B. NORTH DAKOTA CENTURY CODE SECTION 35-24-04

Section 35-25-04 is titled “Subcontractor’s lien” and is designed to ensure any person who performs work under contract is entitled to a lien upon the property.²⁶ Section 35-24-04 states “any person who shall, under contract, perform any labor or furnish any material or services as a subcontractor under an original contractor or for or to an original contract or a subcontractor under an original contractor is entitled to a lien”²⁷ The issue in *Oil & Gas Transfer L.L.C.* was whether an employee is included under “any person” in the statute and would therefore be entitled to the lien.²⁸ This section has rarely been interpreted²⁹ and has never been interpreted to determine if an employee has the right to a lien.³⁰ Thus, *Oil & Gas Transfer L.L.C.* is a finding of first impression in North Dakota law.³¹

III. ANALYSIS

In *Oil & Gas Transfer L.L.C.* the Eighth Circuit made two findings, one on the status of an employee and the other an issue of first impression.³² The issue of first impression addressed whether an employee of a company is entitled to a subcontractor’s lien under North Dakota Century Code section 35-

24. N.D. ADMIN. CODE § 92-01-02-49(1)(b)(1),(4),(7),(8),(12),(13) (2021); *see also* N.D. ADMIN. CODE § 27-02-14-01 (2021) (defining employment).

25. N.D. CENT. CODE § 65-01-03(1) (2021).

26. N.D. CENT. CODE § 35-24-04 (2021).

27. *Oil & Gas Transfer L.L.C. v. Karr*, 928 F.3d 1120, 1122 (8th Cir. 2019) (quoting N.D. CENT. CODE § 35-24-04).

28. *Id.* at 1126.

29. *See Rocky Mountain Steel Found., Inc. v. Brockett Co., LLC*, 2018 ND 96, 909 N.W.2d 671 (deciding if N.D. CENT. CODE § 35-24-04 entitles a subcontractor to an oil and gas lien when the owner has fully paid the general contractor); *see also In re Northland Oil Field Servs., Inc.*, No. 83-05074, 83-7145, 1984 WL 558320, (Bankr. D. N.D. Feb. 3, 1984) (holding that the party did not comply with the statute and only sent a notice of lien claim when filing of a statement of lien was required).

30. *Oil & Gas Transfer L.L.C.*, 928 F.3d at 1124.

31. *Id.*

32. *Id.*

24-04.³³ The court held that Karr was indeed considered an employee and under North Dakota Century Code section 35-24-04, employees are not entitled to a subcontractor's lien.³⁴

A. THE EMPLOYMENT QUESTION

The court began by explaining that because the action is a diversity suit, the court will apply the substantive law of North Dakota to determine Karr's employment status.³⁵ The court clarified that under North Dakota Century Code section 65-01-03(1) "[t]he person that asserts that an individual is an independent contractor under the common-law test . . . has the burden of proving that fact."³⁶

Further, the court acknowledged that *BAHA Petroleum Consulting Corp. v. Job Serv. N.D.*,³⁷ through *In re BKU Enters., Inc. v. Job Serv. N.D.*,³⁸ states that the common law test is primarily concerned with the employer's right to control the means and manner of performing the work.³⁹ The pivotal right to control derives from North Dakota Administrative Code section 27-02-14-01(5)(a), which states an employer must have the right to direct the means of the work.⁴⁰ The legislative history provides evidence of this in Representative John Dorso's comment, "[t]he Legislative Council feels the right to control and the common law [test] are one and the same."⁴¹ To answer who has control, the court used the common law "right-to-control" test.⁴² The right to control test only looks at who has the control and not who is actually exercising the control.⁴³

The court analyzed some of the twenty factors of the right-to-control test set out by North Dakota administrative agencies and recognized that several factors must be given more weight than others.⁴⁴ The court listed the important factors as: (1) the integration of the companies' operations and the individual's services; (2) a continuous relationship between the individual and the company; (3) the level of investment the individual has in their own office space and other expenses; (4) whether the company shares its profits

33. *Id.*

34. *Id.* at 1126.

35. *Id.* at 1123 (citing *Vandewarker v. Cont'l Res., Inc.*, 917 F.3d 626, 629 (8th Cir. 2019)).

36. *Id.* at 1123.

37. 2015 ND 199, ¶ 12, 868 N.W.2d 356, 360.

38. 513 N.W.2d 382, 385 (N.D. 1994).

39. *BAHA Petroleum Consulting Corp.*, 2015 ND 199, ¶ 12, 868 N.W.2d at 360.

40. *Id.*

41. *Id.*

42. *Oil & Gas Transfer L.L.C.*, 928 F.3d at 1123.

43. *Id.* (quoting *Myers-Weigel Funeral Home v. Job Ins. Div. of Job Serv. N.D.*, 1998 ND 87, ¶ 9, 578 N.W.2d 125, 127).

44. *Id.* (citing N.D. ADMIN. CODE § 92-01-02-49(2) (2021)).

and losses with the individual; (5) whether the individual works for other companies or exclusively for the company in question; (6) whether the individual has services that are available to the public for hire; and (7) if the company is allowed to fire the individual without fear of being in breach of contract.⁴⁵

The Eighth Circuit then listed factors that need not be given as much weight, but are still relevant.⁴⁶ The court listed these factors as: (1) if the company required the individual to comply with their instruction of “when, where, and how to work’;” (2) if the individual rendered their services personally; (3) if the company set the work hours for the individual; (4) whether the individual works full time or part time; (5) the way the company pays the individual; if it is by the hour, week, or month; and (6) whether the company pays any of the individual’s work related expenses.⁴⁷

The Eighth Circuit found that Karr was an employee of OGT.⁴⁸ The court used *Myers-Weigel Funeral Home v. Job Ins. Div. of Job Serv. N.D.*⁴⁹ to establish that regardless of whether OGT actually directed the work, they had the authority to do so.⁵⁰ Moreover, the court stated the only evidence Karr was able to provide that OGT did not have the authority to direct his work was his personal statement from his affidavit that he took over the operational duties of the pipeline.⁵¹ The Court stated that this one fact does not establish that OGT could not have directed his work, they just may have chosen not to.⁵²

Second, the court found that Karr was an employee of OGT because Karr admitted that his weekly base salary was “similar to what is commonly found in employment relationships.”⁵³ Third, Karr may have had a 12-month contract with OGT, but the court found it relevant to note that his contract could be renewed to extend the work relationship.⁵⁴

The court then looked at the district court’s findings to conclude Karr was an employee.⁵⁵ These findings included Karr earning a weekly salary from OGT regardless of amount of work or hours completed and Karr completing a Form W-4 indicating his tax withholdings, both of which indicated

45. *Id.* (stating the most important factors the court will address, which derive from N.D. ADMIN. CODE §§ 27-02-14-01(5)(b)(1)-(20) (2021), 92-01-02-49(1)(b)(1)-(20) (2021)).

46. *Id.*

47. *Id.* (stating the less important factors the court will address, which derive from N.D. ADMIN. CODE §§ 27-02-14-01(5)(b)(1)-(20) (2021), 92-01-02-49(1)(b)(1)-(20) (2021)).

48. *Id.* at 1124.

49. 1998 ND 87, 578 N.W.2d 125.

50. *Oil & Gas Transfer L.L.C.*, 928 F.3d at 1124.

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.*

employee status.⁵⁶ Moreover, the court found no issue with the district court's findings that OGT withheld and paid taxes on Karr's wages, Karr reported his income on a Form W-2, Karr was offered employee benefits such as health insurance and retirement benefits, Karr worked full time for OGT and did not provide services for anyone else, and OGT had the right to control and direct Karr's work in all aspects.⁵⁷

Additionally, while the court acknowledged that Karr disputed these assertions, the court concluded that Karr was an employee and not an independent contractor.⁵⁸ Karr had the burden of proving he was an independent contractor, but because he did not provide any evidence to the contrary, there was no genuine issue of material fact and summary judgment was proper.

Lastly, the court addressed Karr's contention that the district court improperly applied the summary judgment standard by making no findings of fact. The court turned to *Quick v. Donaldson Co.*⁵⁹ and *Anderson v. Liberty Lobby, Inc.*,⁶⁰ which both state that the court at the summary judgment stage should not weigh the evidence or attempt to determine the truth of the matter, but should determine whether a dispute about a material fact is genuine.⁶¹ Thus, the Eighth Circuit found the district court properly applied the summary judgment standard and the question of whether Karr was an employee of OGT could be resolved in summary judgment.⁶²

B. APPLICATION OF NORTH DAKOTA LAW

The Eighth Circuit moved on to analyze the issue of first impression before them: whether the North Dakota Century Code confers lien rights upon employees.⁶³ Since the issue was one of first impression for the North Dakota statute, it required the court to apply North Dakota's rules of statutory interpretation.⁶⁴ The court laid out the rules for interpreting statutes. The court pointed to *Bolinske v. Jaeger*,⁶⁵ which held the primary purpose of statutory interpretation is determining the legislative intent.⁶⁶ Additionally, the court

56. *Id.*

57. *Id.*

58. *Id.*

59. 90 F.3d 1372, 1376-77 (8th Cir. 1996).

60. 477 U.S. 242, 249 (1986).

61. *Quick v. Donaldson Co. Inc.*, 90 F.3d 1372, 1377 (8th Cir. 1996) (citing *Anderson v. City Lobby, Inc.*, 477 U.S. 242, 249 (1986)).

62. *Oil & Gas Transfer L.L.C.*, 928 F.3d at 1124 (citing *Kronberg v. Oasis Petroleum N. Am. LLC*, 831 F.3d 1043, 1049 (8th Cir. 2016)).

63. *Id.* at 1124.

64. *Id.* at 1124-25 (citing *Behlmann v. Century Sur. Co.*, 794 F.3d 960, 963 (8th Cir. 2015) (stating this court will apply the state's rules of statutory construction.)).

65. 2008 ND 180, 756 N.W.2d 336.

66. *Oil & Gas Transfer L.L.C.*, 928 F.3d at 1125 (quoting *Bolinske v. Jaeger*, 2008 ND 180, ¶ 6, 756 N.W.2d 336, 339).

pointed to *Olson v. Job Serv. N.D.*⁶⁷ which reasoned that the legislature's intent must be figured out initially from the statutory language.⁶⁸ The court pointed to additional rules from North Dakota Century Code section 1-02-02, stating "[w]ords used in any statute are to be understood in their ordinary sense, unless a contrary intention plainly appears"⁶⁹ Additionally, *Sorenson v. Felton*⁷⁰ mandated all words, phrases, and sentences must be given meaning and effect in a way which would avoid making the statute irrelevant⁷¹ or absurd.⁷²

The Eighth Circuit turned next to determine if North Dakota Century Code section 35-24-04 is ambiguous.⁷³ The court pointed to several cases which lay out the rules of interpreting ambiguous statutes. *Rasnic v. ConocoPhillips Co.*,⁷⁴ established that courts may resort to external information and aids to determine the intent of the legislatures.⁷⁵ *Rasnic* established the external aids as the circumstances surrounding the legislation when it was enacted, the included legislative history, and the objective the statute sought to attain.⁷⁶ Further, *Great Western Bank v. Wilmar Poultry Co.*⁷⁷ held statutory lien laws are to be liberally construed by the courts to ensure their purpose of protecting the individual who performed the labor or skill or provided materials.⁷⁸

North Dakota Century Code section 35-24-04, titled "Subcontractor's lien" is as follows:

Any person who shall, under contract, perform any labor or furnish any material or services as a subcontractor under an original contractor or for or to an original contractor or a subcontractor under an original contractor is entitled to a lien upon all the property upon which the lien of an original contractor may attach to the same extent as an original contractor, and the lien provided for in this section shall further extend and attach to all materials and fixtures owned by such original contractor or subcontractor to or for whom the labor

67. 2013 ND 24, 826 N.W.2d 36.

68. *Oil & Gas Transfer L.L.C.*, 928 F.3d at 1125 (quoting *Olson v. Job Serv. N.D.*, 2013 ND 24, ¶ 5, 826 N.W.2d 36, 40).

69. N.D. CENT. CODE § 1-02-02 (2021).

70. 2011 ND 33, 793 N.W.2d 799.

71. *Oil & Gas Transfer L.L.C.*, 928 F.3d at 1125 (quoting *Sorenson v. Felton*, 2011 ND 33, 793 N.W.2d 799).

72. *Pub. Serv. Comm'n v. Wimbledon Grain Co.*, 2003 ND 104, 663 N.W.2d 186, 193.

73. *Oil & Gas Transfer L.L.C.*, 928 F.3d at 1125.

74. 2014 ND 181, 854 N.W.2d 659.

75. *Oil & Gas Transfer L.L.C.*, 928 F.3d at 1125.

76. *Id.* (quoting *Rasnic v. ConocoPhillips Co.*, 2014 ND 181, 854 N.W.2d 659).

77. 2010 ND 50, 780 N.W.2d 437.

78. *Oil & Gas Transfer L.L.C.*, 928 F.3d at 1125 (quoting *Great Western Bank v. Wilmar Poultry Co.*, 2010 ND 50, ¶ 7, 780 N.W.2d at 437).

is performed or material or services furnished and used or employed, or furnished to be used or employed in the drilling or operating of such oil or gas wells, or in the construction of such pipeline.⁷⁹

The court recognized that if the phrase “as a subcontractor” modifies “any person[,]” it is dispositive.⁸⁰ The court reasoned that if the phrase “as a subcontractor” modifies “any person[,]” employees are not entitled to a lien, because the statute confers rights only on those who provided materials or performed labor as a subcontractor.⁸¹ The parties did not dispute that an employee is not considered a subcontractor.⁸²

The court then looked to the dictionary definition of subcontractor to support their reasoning.⁸³ The court cited Merriam-Webster’s Collegiate Dictionary, which defines a subcontractor as “an individual or business firm contracting to perform part or all of another’s contract.”⁸⁴

The court then analyzed the other possible interpretation where “as a subcontractor” is only part of the phrase “as a subcontractor under an original contractor.”⁸⁵ The court reasoned this interpretation would allow any person, including employees who perform labor or provide materials to an original contractor or a subcontractor working under an original contractor, to be entitled to a lien.⁸⁶

The court reasoned the proposed interpretation of section 35-24-04, where “as a subcontractor” does not modify “any person[,]” would lead to absurd results.⁸⁷ The court explained that this interpretation of the statute would lead to an endless number of possible lien claimants.⁸⁸ The court explained that not only would employees and subcontractors be entitled to liens, but also “couriers delivering design documents to work sites, food delivery drivers bringing lunch to contractors or subcontractors, or vendors hired to perform routine maintenance on construction equipment.”⁸⁹ The court went on to reason the legislature likely did not intend to convey the same lien rights it bestowed onto subcontractors onto every other person who contributed to

79. N.D. CENT. CODE § 35-24-04 (2021).

80. *Oil & Gas Transfer L.L.C.*, 928 F.3d at 1125.

81. *Id.*

82. *Id.*

83. *Id.*

84. MERRIAM WEBSTER DICTIONARY, 1242 (11th ed. 2005).

85. *Oil & Gas Transfer L.L.C. v. Karr*, 938 F.3d 1120, 1125-26 (8th Cir. 2019).

86. *Id.* at 1126. (quoting N.D. CENT. CODE § 35-24-01 which defines “person” as “an individual, corporation, limited liability company, firm, partnership, or association”).

87. *Id.*

88. *Id.*

89. *Id.*

the project, especially those who contributed to the project in minimal ways.⁹⁰

The court reasoned that under the interpretation argued by Karr, the phrase “under contract” would be rendered meaningless, because it would refer to all contracts and not only contracts between pipeline construction contractors and subcontractors.⁹¹ Thus, if employees are entitled to liens under section 35-24-04, then the term “under contract” would also refer to employment contracts.⁹² The court recognized under this interpretation there is no limit on who is entitled to the lien, because anyone who contributes to the pipeline in any manner is likely doing so under contract and thus would be entitled to a lien.⁹³ This interpretation leaves the availability of a lien open to almost anyone.⁹⁴ The court concluded that North Dakota Century Code section 35-24-04 unambiguously does not confer lien rights to employees, and because Karr was an employee of OGT, he was not entitled to a pipeline lien.⁹⁵

IV. IMPACT

North Dakota relies heavily on oil production.⁹⁶ In fact, North Dakota produces more crude oil per capita than any other state in the United States.⁹⁷ Additionally, the oil and gas industry is responsible for supplying a large amount of jobs in North Dakota.⁹⁸ In 2018 the oil and gas industry was estimated to have provided 35,800 jobs in North Dakota.⁹⁹ Moreover, oil and gas are highly linked with North Dakota employment trends, causing employment to either go up or down depending on the industry fluctuations.¹⁰⁰

During the Spring of 2020, oil production in North Dakota fell approximately forty percent.¹⁰¹ This decline in production is bad news not only for the state of North Dakota, but also for oil producers and the thousands of

90. *Id.*; see Pub. Serv. Comm’n v. Wimbledon Grain Co., 2003 N.D. 104, 663 N.W.2d 186 (stating courts presume the legislature did not intend ludicrous results and courts construe statutes to give consideration to the context and purpose of the statutes).

91. Oil & Gas Transfer L.L.C. v. Karr, 938 F.3d 1120, 1126 (8th Cir. 2019).

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.* at 1126-27.

96. Scott Carpenter, *As Oil Busts, It’s a ‘Five-Alarm-Fire’ for North Dakota’s Frackers*, FORBES (July 21, 2020, 5:02 PM), <https://www.forbes.com/sites/scottcarpenter/2020/07/21/among-top-oil-us-oil-producers-north-dakotas-retreat-is-fastest/#3423cff35127>.

97. *Id.*

98. Amy Dalrymple, *North Dakota Oil Industry Maturing, Study Shows*, BISMARCK TRIB. (Mar. 5, 2019), https://bismarcktribune.com/bakken/north-dakota-oil-industry-maturing-study-shows/article_0210cfaf-bef4-5d2f-9f0b-05137df5116e.html.

99. *Id.*

100. *Id.* (discussing Dean Bangsund’s findings on employment trends).

101. Carpenter, *supra* note 96.

North Dakota citizens they employ.¹⁰² Additionally, the legal ramifications from the Dakota Access Pipeline could significantly impact the sustainability of oil producers in North Dakota as the pipeline decreases the cost of transportation.¹⁰³

With all of these issues together, many North Dakota oil producers may be unable to pay their employees. This is where *Oil & Gas Transfer L.L.C.* impacts the industry. With many oil producing companies facing increases in transportation costs and a decline in production, they may be forced to file for bankruptcy or may become insolvent.¹⁰⁴ For example, Bruin E&P and Whiting Petroleum Corporation recently filed for bankruptcy protection.¹⁰⁵ Now, *Oil & Gas Transfer L.L.C.*, has made it clear that employees were not given the right to a lien under North Dakota Century Code section 35-24-04. This may in some instances limit the amount employees receive for their outstanding wages, especially if the company they worked for filed for Chapter 7 bankruptcy.

The interpretation of North Dakota Century Code section 35-24-04 closed the door on an alternative avenue for North Dakota oil workers to ensure they receive payment for their work. With the increase of costs coupled with a decrease in production, North Dakota may see more employees, such as Karr, who failed to receive the wages they earned. With the interpretation of section 35-24-04, the Eighth Circuit has made it clear that employees must find a different avenue to pursue their unpaid wages, because North Dakota law does not confer lien rights on them.¹⁰⁶

Ultimately, with the increasing difficulties in the oil industry, bankruptcy courts may find themselves overwhelmed with oil and gas companies, as more than 230 North American oil and gas producers have filed for bankruptcy since 2015, with 7 of them occurring in June of 2020.¹⁰⁷

V. CONCLUSION

The Eighth Circuit Court of Appeals in *Oil & Gas Transfer L.L.C.*, interpreted for the first time North Dakota Century Code section 35-24-04.¹⁰⁸

102. *Id.*

103. *Id.*

104. Todd Schriber, *Woeful Whiting Petroleum is Only Trouble For Investors*, YAHOO (July 17, 2020, 2:12 PM), <https://finance.yahoo.com/news/woeful-whiting-petroleum-only-trouble-181253857.html>.

105. Carpenter, *supra* note 96.

106. *Oil & Gas Transfer, L.L.C. v. Karr*, 928 F.3d 1120, 1126 (8th Cir. 2019).

107. David Wethe & Kevin Crowley, *Shale's Bust Shows Basis of Boom: Debt, Debt, and Debt*, WASH. POST (July 23, 2020, 9:58 AM), https://www.washingtonpost.com/business/energy/shales-bust-shows-basis-of-boom-debt-debt-and-debt/2020/07/22/0e6ed98c-cc41-11ea-99b0-8426e26d203b_story.html.

108. *Oil & Gas Transfer L.L.C.*, 928 F.3d at 1124.

The court clarified the intention of the legislature, finding North Dakota Century Code section 35-24-04 did not confer lien rights on employees.¹⁰⁹ The court reasoned the language “as a subcontractor” modifies “any person[,]” limiting the availability of lien rights to individuals who worked as a subcontractor under the original project contract.¹¹⁰ The interpretation laid out in *Oil & Gas Transfer L.L.C.* impacts the North Dakota oil industry by limiting the avenues oil and gas employees can take to ensure they receive any unpaid wages and bonuses. With the oil field in volatile times, the decision in *Oil & Gas Transfer L.L.C.* clarifies to employees which routes they have available to pursue any outstanding wages if their employer happens to become insolvent.

Krista Sauber-Christopherson *

109. *Id.* at 1126.

110. *Id.*

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