IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

APPEAL NO. 30003

EDWARD O. MOHNEN,

Plaintiff and Appellee,

vs.

ESTATE OF JOHN J. MOHNEN and
JOHN J. MOHNEN TRUST,

Defendants and Appellants,

and

AURORA COUNTY, SOUTH DAKOTA, et al.,

Defendants and Appellees,

and

ESTATE OF JOSEPH J. MOHNEN and
ESTATE OF ANNA MOHNEN,

Intervenors and Appellees.

APPEAL FROM THE FIRST JUDICIAL CIRCUIT
AURORA COUNTY, SOUTH DAKOTA

THE HONORABLE DAVID KNOFF
CIRCUIT COURT JUDGE

BRIEF OF APPELLANTS
JOHN J. MOHNEN TRUST and ESTATE OF JOHN J. MOHNEN

Notice of Appeal filed on May 24, 2022

ATTORNEYS FOR APPELLANTS JOHN J. MOHNEN TRUST AND ESTATE OF JOHN J. MOHNEN:

Albert Steven Fox
LARSON LAW, P.C.
P.O. Box 131
Chamberlain, SD 57325-0131
(605) 234-2222
steve@larsonlawpc.com

Ronald A. Parsons, Jr.
JOHNSON JANKLOW ABDALLAH & REITER LLP
101 S. Main Ave., Suite 100
Sioux Falls, SD 57104
(605) 338-4304
ron@janklowabdallah.com

ATTORNEYS FOR APPELLEE AURORA COUNTY, SD:

Rachel Mairose
AURORA COUNTY STATE'S ATTORNEY
P.O. Box 577
Plankinton, SD 57368
(605) 942-7725
Rachel@mairoseandsteele.com

ATTORNEYS FOR APPELLEES ESTATE OF JOSEPH J. MOHNEN ESTATE OF ANNA MOHNEN:

Timothy R. Whalen
WHALEN LAW OFFICE
P.O. Box 127
Lakes Andes, SD 57356
(605) 487-7091
whalawtim@cme.coop

ATTORNEYS FOR APPELLEE EDWARD O. MOHNEN:

Brad A. Schreiber
THE SCHREIBER LAW FIRM, PROF. L.L.C.
1110 E. Sioux Ave
Pierre, SD 57501
(605) 494-3004
brad@xtremejustice.com

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PRELIMINARY STATEMENT

Citations to the settled record reflected in Clerk's Index are designated in this brief with "R." and the page number. The transcript of the March 16, 2022 court trial is included and paginated within the record and also cited as "R." and the page number. There are four additional hearing transcripts ordered for this appeal: (1) hearing on motion for temporary restraining order held on April 8, 2020; (2) contempt hearing for Edward Mohnen held on July 1, 2020; (3) hearing on the motion to intervene held on September 23, 2020; and (4) hearing on motion to amend held on April 7, 2021. Transcripts for these hearings are designated as "HT," the date of the hearing, and the page number. Citations to the Appendix to this brief are designated as "App." and the page number.

This Court may take judicial notice of public records, including prior judicial proceedings. *See Rhines v. S.D. Dep't of Corrections*, 2019 S.D. 59, ¶ 3, 935 N.W.2d 541, n.2 (citing *Jenner v. Dooley*, 1999 S.D. 20, ¶ 15, 590 N.W.2d 463, 470). There are citations in this brief to the Probate opened in Aurora County for Joseph J. Mohnen, 01PRO19-000002, and Probate opened in Aurora County for Anna E. Mohnen, 01PRO19-000003, are cited as "Anna Pro." The lower court has already taken judicial notice of those two files. (R. 380). There also are citations to the Probate opened in Aurora County for John J. Mohnen, 01PRO20-000003. Additional court cases are cited by their civil docket number.

JURISDICTIONAL STATEMENT

This Court has jurisdiction under SDCL 15-26A-3(1).

REQUEST FOR ORAL ARGUMENT

Appellants respectfully requests the privilege of appearing for oral argument before this Honorable Court.

STATEMENT OF THE ISSUES

I. Does the equitable doctrine of laches bar the claims to the farm by Edward Mohnen and other descendants of Joseph Mohnen who are heirs of his intestate estate?

The lower court held it does not.

- *Kenny v. McKenzie*, 127 N.W. 597 (S.D. 1910)
- *Wehrkamp v. Werhkamp*, 2009 S.D. 84, 773 N.W.2d 212
- *Cochrane v. McCoy*, 179 N.W. 210, 212 (S.D. 1920)

II. Did John Mohnen and his successor trust acquire ownership of any part of the farm he did not already own by adverse possession?

The lower held they did not.

- *Underhill v. Mattson*, 2016 S.D. 69, 886 N.W.2d 348
- *Healy Ranch Partnership v. Mines*, 2022 S.D. 44
- *Iverson v. Iverson*, 213 N.W.2d 708 (S.D. 1973)

III. Was the division of the interests in the parcels of the farm incorrect?

The lower court assigned fractional interests to each individual parcel of the farm based on its assessment of those interests.

- *Moeckly v. Hanson*, 2020 S.D. 45, 947 N.W.2d 630
- *Cudmore v. Cudmore*, 311 N.W.2d 47 (S.D. 1981)
- SDCL 43-2-17

STATEMENT OF THE CASE

This is a case about sitting for decades on one's ostensible rights to claim title to a farm in Aurora County, to the substantial detriment and disadvantage of those in lawful possession of the land for their entire lives. There is quite a story to tell here—and there may have been much more to the tale. We will never know because most of the people with knowledge of the facts are gone. The prejudicial dissipation of that knowledge into the ethers of history is part of the essence of this appeal.

The claims of title at issue here arose more than fifty years ago, a few months before the Apollo 11 moon landings in the summer of 1969. During the Reagan 80's, as the space shuttle program was launching, John Mohnen's fourteen brothers and sisters were all informed by an attorney of their claims to ownership of the farm, and—although the documents are lost—all of them were asked to sign away their rights by quit claim deed, which most of the fourteen may have signed. No legal assertion of title was made by any of the appellees, however, until November 2019, after all the original owners, including John, had "slipped the surly bonds of Earth" themselves.

That is when Appellee Edward O. Mohnen (Edward), son of the late Joseph J. Mohnen (Joseph) and younger brother of the late John J. Mohnen (John), filed a Quiet Title Complaint and Notice of Lis Pendens concerning five parcels of Aurora County farmland owned by the John J. Mohnen Trust.[1]

[1] Unless otherwise indicated, appellants are collectively called "John's Trust."

Filed November 5, 2019, in Aurora County, the complaint averred that John and the Trust had "used and occupied" the five parcels of land and that Edward "claims title in fee to such real property or right, title and interest therein which may be adverse to Defendants or persons unknown." (R.4-5). Edward sought conveyance of title and "disbursement of all profits and rents to the appropriate parties in accordance with their court determined interest in the real property." (R.6).

The case was assigned to the Honorable Patrick Smith.

On December 10, 2019, John's Trust filed an answer and counterclaim. (R.12). John's Trust later filed an amended pleading further detailing its affirmative defenses of laches and adverse possession and asking the court to find that, as John's successor in interest, the trust held "sole right and title" to the farm. (R.216-20).

Motion for Contempt

On May 15, 2020, John's Trust filed a motion to hold Edward in contempt for trying to sell John's tractors and other farm equipment on Craig's List. (R.78-79, 83-85, 98-100; HT 7-1-20 at 4-5). A hearing was held on July 1, 2020, at which Judge Smith denied the motion and admonished Edward: "But I am finding, Mr. Mohnen, that that's not because you had a good intention; that's because, for lack of a better phrase, you got caught and you were trying to sell the property. And you can't do that. That's a violation of my order. Luckily nothing got sold." (HT 7-1-20 at 16; R. 126).

Motion to Intervene

Although Joseph died intestate on May 9, 1969, and Anna died testate on May 10, 1996, one of their granddaughters, Doris Maas, petitioned to open probates for their estates in 2019. Judge Smith was presiding over those probates as well. On August 22, 2020, Joseph's Estate and Anna's Estate filed a motion to intervene. (R.131, 138). A hearing was held on September 23, 2020, at which Judge Smith granted the motion. (HT 9-23-20 at 8). An order was entered and the two estates filed their intervenor claim. (R.150).

Motion to Strike

On March 10, 2021, Joseph's and Anna's Estates moved to strike the amended answer and counterclaim because it was filed one day beyond the scheduled deadline and without court approval. (R.181).

At the hearing before Judge Smith on April 7, 2021, Edward opposed extending the pleading deadline because he and his surviving siblings were "all very elderly" and "I think that's the prejudice to my clients and their desire to get this thing to trial as quickly as possible basically due to their age, Judge." (HT 4-7-21 at 9-10).

John's Trust responded that "to argue that time of is of the essence for them is, after waiting 50 years – Joe Mohnen died 50 years ago – and now they bring an action 50 years after his death and after my client – John Mohnen died – most of those arguments probably don't hold a lot of water about their clients being older and issues of health." (HT 4-27-21 at 11).

The court granted the motion but construed the response by John's Trust as a motion for leave to amend, which it indicated it would grant. (HT 4-7-21 at 16-18). Ultimately, the amendment was filed by agreement of the parties. (R.208, 213-20).

Court Trial

Judge Smith set trial for March 16, 2022. (R.320). Due to a family emergency, the case was reassigned to the Honorable David Knoff. A three-hour court trial was held on the morning of March 16, 2022. (R.338). After the plaintiff and intervenors rested, John's Trust moved for a determination of title to the parcels in its favor. (R.409-10). The court denied the motion except for one parcel everyone agreed was included by mistake because John had bought it alone. (R.410-11).

On April 11, 2022, the court issued its memorandum decision. (R.629). First, it rejected the claim of adverse possession, holding Edward was a cotenant of the property with John, there could be no adverse possession claim between cotenants without an ouster, and no ouster had occurred. (R.633-34). The court also held that payment of taxes could not set up a bar against cotenants, though it did not cite or analyze any of the statutes on which John's Trust had relied. (R.634). Finally, the court found that John's Trust had not met the requirements for establishing laches. (R.635).

On April 22, 2022, the lower court issued findings of fact and conclusions of law, (R.640), and its judgment quieting title to the remaining five disputed parcels in undivided interests as follows:

Parcel 1: *South* 1/2 of the NW Quarter, Sec. 15:
Joseph's Estate: 2/3 interest
John's Trust: 1/3 interest

Parcel 2: *North* 1/2 of the NW Quarter, Sec. 15:
Joseph's Estate: 1/3 interest
John's Trust: 2/3 interest

Parcel 3: NE Quarter, Sec. 3:
Joseph's Estate: 1/3 interest
John's Trust: 2/3 interest

Parcel 4: SE Quarter, Sec. 34:
Joseph's Estate: 2/3 interest
John's Trust: 1/3 interest

Parcel 5: SW Quarter, Sec. 35:
Joseph's Estate: 2/3 interest
John's Trust: 1/3 interest

(R.637-39).[2]

The lower court did not fully explain its rationale for its divisions of interest, which appear to vary from parcel to parcel. The court appears to have quieted title on the parcels partially according to the conclusions of an Owner and Encumbrance Report performed by Kristie Rake, who testified at trial on behalf of Edward. But although it was not mentioned in Rake's

[2] The legal descriptions are simplified here.

report, Anna had deeded all her interest to John in 1990. (R.632). It appears that for some, but not all, of the parcels where Anna would have taken a one-third interest of a parcel by operation of 1969-circa intestacy law,[3] the court sought to credit part of that to John's trust. Again, however, the division of parcels was not elaborated upon.

STATEMENT OF THE FACTS

Because Joseph, Anna, John, and their attorney all have died, the facts in this case are necessarily incomplete. The only persons alive when most of the relevant events occurred who testified were Edward Mohnen (age 75) and Theresa Ishmael (age 68), the youngest Mohnen sibling.

Joseph Mohnen was born on March 4, 1902. (R. 332). He married Anna (Schroeder) Mohnen. (R.332). Joseph and Anna lived on and worked a small farm in Aurora County. (R.344).

On June 1, 1930, Joseph and Ann had their first child, a son named John J. Mohnen.[4] Over the years, they had fifteen children in all. (R.344). Six of them (Mary, Edward, Sharon, Paul, Dolores, and Theresa) were still alive at the time of trial. (R.344, 347, 426). Today only five remain.

John was the oldest. (R.349). After returning from military service,

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[3] When Joseph died without any will in 1969, South Dakota intestacy law provided that his wife, Anna, received one-third of his property and their fifteen children received the other two-thirds. SDCL 29-1-5 (1967 Code). Joseph's Probate, June 15, 2019 Hearing Transcript at 10.

[4] John J. Mohnen Probate, 01PRO20-000003 (Application for Probate).

John operated the farm with his father as a joint venture. (R.374, 411). Over the years, John, Anna, and Joseph bought more land to increase the size of the farm. (R.370). Even before his father died, John had taken over responsibility for all the fieldwork and managing the farm. (R.412-14, 436).

In 1966, Edward, the fifth youngest sibling born in 1947, left the farm for a time, but later returned and was allowed to live in the family home. (R.343-44, 346, 349, 416).

1969
Joseph dies without a will

Joseph always told all his children that John would get the farm. (R.350, 435, 438). But when he died on May 3, 1969, at the age of 67, he did not leave a will. (R.345). After his father died, John stayed on the farm, worked it, ran it, and took care of Anna and the children (plus Edward, an adult). As Edward admitted, John basically did and "paid for everything" from that point on. (R.59, 371-72, 374-75, 376, 415-20, 424, 449, 454). Times were hard and farming was far from profitable, but John and Anna made it work. (R.417-19). Even so, John made improvements to the farm, building feed bunks for raising hogs, installing waterers, and redoing the barns. (R.414-15). John devoted his life to taking care of the farm, his mother, and siblings—he never married or had children of his own. (R.437, 454).

The only other sibling who lived on the property after high school was Edward. (R.346, 376). John allowed him to live in the house and paid him as a hired man. (R.350-51, 448-49).

"Back in the '80's"
All siblings placed on legal notice of ownership interests

Although Edward contradicted himself at trial, he and his siblings either fully understood—or surely should have—that they had an interest in the farm about forty years ago, sometime in the 1980's. As Edward testified:

> Q: So at some point in time, did you think that you had an interest in the land?
>
> A: *Yes*.
>
> Q: Okay. Why did you think you had an interest in the land, that you might be an owner or have some sort of an interest?
>
> A: *Well, back in the '80s, we all got together and we were all going to sign it over to John until two of the siblings said they wanted their share. And then that all broke up*.

(R.360-61). Tellingly, Edward also claimed he was one of those *willing* to convey their interest in the farm to John in the 1980's. (R.369).

Theresa, the youngest, testified to her recollection that in the 1980's all John's fourteen siblings were asked in writing by John and Anna's attorney, Leonard Andera of Chamberlain, to convey their legal interests in the farm to Anna, who then would convey it all to John:

> Q: Do you remember a time when the family was asked to sign over their interests to Johnnie?
>
> A: Yes.
>
> Q: Okay. And what do you remember about that?
>
> A: *I remember they said everybody did but two.*
>
> Q: And you were willing to sign your interest over –

A: Yes.

Q: -- to Mom? In fact, that was the request, wasn't it? Sign over to Mom.

A: Well, it was to Mom, and then Mom deeded it all to Johnnie.

(R.425). Theresa further testified:

Q: . . . I believe there was a discussion that you testified to – and maybe I'm wrong – but it was my understanding that there were a couple of occasions where the kids got together and said there was a discussion about signing everything over to John, the kids?

A: At one time Johnnie wanted – Mom wanted some improvements done on the house, and Johnnie was afraid to do it because – if he would lose it, --

Q: Okay.

A: – so he tried – we went to Andera and – or however you pronounce his name – and then he wrote to everybody and asked them to sign everything over to Mom, and I guess *everybody did* but two.

. . .

Q: So at least back when Anna was still alive, John was worried about: if he did improvements to the house, he might lose it because somebody might come in and say "hey, we've got a claim here," right?

A: I'm not exactly sure why. . . .

I'm just saying that Johnnie said that he would rather have it all be his than not knowing who it belonged to.

Q: And so for that reason, John went to Andera to get that straightened around.

A: Mom and Johnnie went, yes.

(R.438-39, 60).

As a result, it appears that at least by the mid-1980's, every single sibling was placed on notice—through express correspondence with John and Anna's attorney Leonard Andera—that they had an ownership interest in the farm. It also appears Edward and all but two of the siblings actually may have signed conveyances or deeds for their interests more than thirty years ago. But John, Anna, and Leonard (who died in 2012) all died of old age before any claim was brought. And the legal files are gone. (R.60).

1987
Anna's executes her will

On January 7, 1987, Anna executed a will naming John as her executor and devising him "any and all real property or interest in real property of which I may die possessed[.]" (R.329, 371, 384, 428, 440, 568; Ex. 501). Leonard Andera drafted and witnessed this will. (R.433, 568; Ex. 501).

1990
Anna executes and records deed conveying entire farm to John

On October 4, 1990, Anna executed a deed conveying *all* of the land at issue to John. (R.385-86, 403-04, 570; Ex. 502). Leonard Andera drafted and notarized the deed. (R.570; Ex. 502). The Aurora County Register of Deeds recorded it on October 10, 1990, in "Book 53 of Deeds page 138." (R.570; Ex. 502). Anna always was open with her children about the fact that she deeded the farm to John. (R.422).

1996
Anna passes away

Anna died on May 9, 1996, at the age of 87. (R.331, 345, 379). All but one of the siblings returned for her services. (R.421-22). As the result of her 1990 deed, there was no real property in her estate and the personal property listed in her will was delivered as she instructed. (R.428, 570; Ex. 502).

The misadventures of Edward

Edward testified he "took over" the farm when John supposedly retired in 1998 and "did the farming" until 2016, "when my nephew threw me out." (R.351). He also claimed he paid the property taxes from 2003 to 2016, although to the extent there is any truth to that, certainly it was done with John's money. (R.362, 370, 420, 449-50, 458). Edward waited until John's death to bring this action, so John could not contradict him.

In fact—as Edward admitted—he was *leasing* the land and paying John rent the whole time, which is consistent with someone who signed away his interest in the land in the 1980's. (R.369-70, 372-73, 461, 474). Edward also testified that he would not have paid rent if he did not think John owned the land. (R.373). Again, John was unavailable to tell his side of the story.

Edward also testified that in 2016 he tried to put 435 acres into a "government program" and "that's when I found out John didn't own the farm." (R.357-58). He said he was told by "Fish and Wildlife" that "John doesn't own it. Your dad still owns it." (R.357-59). It is unknown why

Edward was trying to put land he did not own into a "government program." Edward also was caught mailing bundles of cash overseas trying to claim a nonexistent prize in the Australian lottery. (R.60, 364-66, 429-31).

During this time, Edward was criminally charged and sued by a bank over a scheme involving missing cattle.[5] He admitted he got the money by mortgaging some land John purchased on his own.[6] The bank obtained a $67,601.04 judgment against Edward, placed a lien on John's land, and brought foreclosure proceedings.[7] John's Trust had to borrow the money to satisfy Edward's judgment and prevent foreclosure. (R.367, 432, 443-44, 455-57, 466). John nearly lost the farm.

As these things came to light, John terminated Edward's lease and instead leased the land to neighboring farmers. (R.359-60, 457, 465). He allowed Edward, who continued to commit waste on the property, to remain in the house. (R.359, 444-50, 594-600; Exs. 513-16).

2016
John executes deed conveying the farm to his trust

On August 18, 2016, John executed a deed conveying the entire farm to the John J. Mohnen Trust. (R.461, 566; Ex. 500). The deed was recorded on August 23, 2016. (R.566; Ex. 500). John named Theresa and her son Gabriel

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[5] (R.60, 365, 367, 430-31, 589; Ex. 511); *State v. Edward Mohnen*, 01CRI17-000008.

[6] (R.60, 366, 455-56); *F&M v. Mohnen*, 01CIV17-000024 – Complaint, Ex. D.

[7] (R.60, 367, 432, 443-44, 455-57, 592; Ex. 512); *F&M v. Mohnen*, 01CIV17-000024 – Complaint.

Mohnen as co-trustees of his trust. (R. 461). In addition, John provided in his trust instrument and will that Edward and Theresa receive $8,000 per year. (R.465-69).

2018
John passes away

John died on January 27, 2018, at the age of 88.[8] Although he left a will devising his property to his nephew Gabriel, he already had conveyed the farm to his trust during his lifetime.[9] According to the inventory, John's Estate left unsatisfied claims against Edward amounting to about $300,000.[10] Since that time, John's Trust has paid all taxes and expenses in place of John. (R.464-66).

2019
Doris Maas opens probates for Joseph and Anna; brings Edward to lawyer

In 2019, Doris Maas, a granddaughter of Joseph and Anna, filed petitions to open probates for both Joseph (who died in 1969) and Anna (who died in 1996).[11] Maas was appointed as personal representative for both estates. (R.347-48, 380-81). According to an amended petition filed on May 21, 2019, Joseph's intestate estate appears to have at least eighteen heirs,

[8] John's Probate, 01PRO20-000003 (Application for Probate).

[9] John's Probate (March 20, 2020 filing of will; August 3, 2020 Inventory).

[10] John's Probate, 01PRO20-000003 (August 3, 2020 Inventory).

[11] Joseph's, 01PRO19-000002 (Petition); Anna's Probate, 01PRO19-000003 (Petition).

most of whom appear to be grandchildren living in Wisconsin.[12]

Maas testified that she first learned her ancestors might have an interest in the farm from her mother, Mary Magdalene Koch-Vinz. (R.382). Maas then went to the Register of Deeds and saw Joseph's name on at least some of the parcels. (R.382). She hired an attorney and testified she also brought Edward to an attorney to commence this action.[13]

2019
Edward files this action

There is no evidence that any of the siblings or their descendants ever made any legal claim to the farm until Edward filed this action in 2019 and the Estates of Joseph and Anna intervened. (R.407, 421-27, 441-42).

In September 2021, Kristie Rake, was asked by Edward's attorney to create an "Owner and Encumbrance Report" for the farm. (R.393-96; Ex. 1). Rake emphasized she was not giving title opinions, but rather listing "who shows up as the owner" in the records. (R.401-02, 408). The report confirmed that one of the parcels, which John purchased, was titled outright to John's Trust. (R.399, 326, 406; Ex. 1, ¶2). That is the parcel on which the lower court granted judgment to the trust at trial. (R.410-11).

For the other parcels, the report found the apparent title holders as:

Parcel 1: *South* 1/2 of the NW Quarter, Sec. 15:
Joseph Mohnen

---

[12] Joseph's Probate, 01PRO19-000002 (Amended Petition).

[13] (R.382); Joseph's Probate, 01PRO19-000002 (June 5, 2019 Hearing Transcript at 20).

<u>Parcel 2</u>: *North* 1/2 of the NW Quarter, Sec. 15:
John's Trust and Joseph Mohnen

<u>Parcel 3</u>: NE Quarter, Sec. 3,
John's Trust and Joseph Mohnen

<u>Parcel 4</u>: SE Quarter, Sec. 34:
Joseph Mohnen

<u>Parcel 5</u>: SW Quarter, Section 35:
Joseph Mohnen

(R.326; Ex. 1, ¶2).[14]

At trial, Rake testified: "Well, we found that several of the properties, there were deeds put into Joe, Anna, and John's name." (R.399). Regarding Parcels 1, 2, and 3 in the judgment, Rake testified they were deeded to *Joseph*, *Anna*, and *John* in 1961:

> Q: Okay. How about Parcel Number 2[15] same question?
>
> A: Yes. Parcel 2 is one of them. *It was deeded to the three of them*.
>
> Q: "The three of them" being . . .?
>
> A: John or – sorry. *Joe, Anna, and John took title* to the

[14] The parcel numbers here match the numbering used in the judgment, which differs from Rake's report because, as noted, the court held at trial that Parcel 1 in Rake's report belonged to John's Trust. (R.410-11). For some reason, that parcel was *not* included in the judgment. Instead, Parcel 2 in Rake's report, consisting of two halves of one parcel with different apparent title, became Parcels 1 and 2 in the judgment. Parcels 3, 4, and 5 in Rake's report correspond to Parcels 3, 4, and 5 in the judgment.

[15] Again, this reference to "Parcel 2" in Rake's testimony refers to the two halves (South and North) of the Northwest Quarter of Section 15 listed as Parcels 1 and 2 in the judgment.

north half of the [northeast[16]] of 15-102-66, and the south half of the northwest of 15-102-66 was *very first* deeded to Joe.[17]

Q: Okay. Now, you said "Anna" in there also.

A: Anna, yes.

Q: But she's [not[18]] listed in Parcel Number 2 as one of the owners in Parcel 2.

A: That's correct because she later deeded her interest out to John.

Q: Okay. Now how about Parcel Number 3, same question?

A: *Parcel 3 was deeded also to Joe, Anna, and John in '61*,[[19]] *and then Anna later deeded it to John.*

Q: Okay.

A: So that's why I'm showing Joe still has an interest and John's trust has an interest.

(R.399-400). Regarding the last two parcels, Rake testified "Parcel 4 was deeded directly to Joe in 1936"[20] and "Parcel 5 was deeded from the county to just Joe in 1948."[21] (R.400).

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[16] A 1964 deed conveyed the property to "Joe Mohnen, Anna M. Mohnen, and John Mohnen." (R.581; Ex. 507). Although the transcript says "northeast," Rake clearly meant the *Northwest* Quarter of Section 15, as that property is the subject of "Parcel 2" in her report. (R.326; Ex. 1, ¶¶1-2).

[17] This 1955 deed conveyed the property to "Joe Mohnen." (R.583; Ex. 508).

[18] The transcript says "now," but "not" clearly was meant because Anna is *not* listed as an owner of Parcel 2 of her report. (R.326; Ex. 1, ¶2).

[19] Two 1961 deeds conveyed this parcel to "Joe Mohnen and Anna M. Mohnen, husband and wife; and John J. Mohnen." (R.575-78; Exs. 505-06).

[20] A 1936 deed conveyed this parcel to "Joe J. Mohnen." (R.587; Ex. 510).

[21] A 1947 deed conveyed this parcel to "Joe Mohnen." (R.585; Ex. 509).

ARGUMENT

I. THE JUDGMENT SHOULD BE REVERSED AND TITLE QUIETED IN FAVOR OF JOHN'S TRUST.

Edward commenced this as a quiet title action, which permits one claiming an interest in real property to test the validity of adverse claims for the purpose of establishing ownership. *Healy Ranch v. Healy*, 2022 S.D. 43, ¶38; *Estate of Henderson v. Estate of Henderson*, 2012 S.D. 80, ¶13, 823 N.W.2d 363, 367; SDCL 21-41-1. Although enlarged by statute in South Dakota, a quiet title action sounds in equity. *Heilman v. Heilman*, 133 N.W. 256, 257 (S.D. 1911); *Ahl v. Arnio*, 388 N.W.2d 532, 534 (S.D. 1986); *Bingham Farms Trust v. City of Belle Fourche*, 2019 S.D. 50, ¶16, 932 N.W.2d 916, 920.

A. The claims of title by Edward and the heirs of Joseph Mohnen's intestate estate are barred by laches.

Laches is an affirmative defense that a party has unreasonably slumbered on its rights and delayed bringing suit in a manner causing prejudice to the party sued and it applies to quiet title actions. *McDowell v. Jameson*, 184 N.W. 251, 252 (S.D. 1921).

This Court reviews a lower court's decision on its application of laches de novo. *Webb v. Webb*, 2012 S.D. 41, ¶10, 814 N.W.2d 818, 822 ("We review de novo a court's ruling on the applicability of the doctrine of laches"); *Wehrkamp v. Werhkamp*, 2009 S.D. 84, ¶11, 773 N.W.2d 212, 216 (same); *C.H. Young Rev. Living Tr.*, 2008 S.D. 43, ¶7, 751 N.W.2d 715, 717 ("We

review de novo the court's ruling on the issue of laches"); *Estate of Henderson*, 2012 S.D. 80, ¶9, 823 N.W.2d at 366 (mixed questions reviewed de novo).[22] Under any standard of review, the lower court here erred in granting relief against John's Trust and instead should have quieted title to the farm in the trust's favor.

The Book of Laches

Pomeroy's seminal treatise, on which this Court rested many foundational decisions forming the bedrock of its equity jurisprudence, defines the equitable doctrine of laches as: "such neglect or omission to assert a right as, taken in conjunction with the lapse of time, more or less great, and other circumstances causing prejudice to an adverse party, operates as a bar in a court of equity." J. Pomeroy, *A Treatise on Equity Jurisprudence*, Vol. II, § 419 (5th ed. 1941). "A court of equity," as described by an eminent English chancellor, has always "refused its aid to stale demands, where the party has slept upon his rights, and acquiesced for a great length of time. Nothing can call forth this court into actvity but conscience, good faith, *and reasonable diligence.*" *Id.* (emphasis in original).

The key to unlocking laches is the combination of unreasonable delay and undue prejudice. Unlike a statute of limitations, "an arbitrary bar

[22] *But see Clarkson & Co. v. Continental Resources, Inc.*, 2011 S.D. 72, ¶10, 806 N.W.2d 615, 618 ("if the trial court applied the correct legal standard in determining laches, its findings are review under the clearly erroneous standard and its application of the doctrine is reviewed for abuse of discretion").

created by legislative enactment," laches "arises not from any statute, but from the acts and conduct of the parties themselves." *Kenny v. McKenzie*, 127 N.W. 597, 601 (S.D. 1910). Thus, laches does not apply *merely* because time has elapsed. *Wehrkamp*, 2009 S.D. 84, ¶11, 773 N.W.2d at 216. Rather, "the circumstances must warrant charging the complainant with a lack of diligence in failing to proceed more promptly." *Id.*; *Conway v. Conway*, 487 N.W.2d 21, 25 (S.D. 1992). By the same token, "estoppel may arise from laches covering a period of time much shorter than that prescribed by statute." *Kenny*, 127 N.W. at 601.

This Court has said laches applies where the defendant can show: (1) the plaintiff had full knowledge of the facts upon which the action was based; (2) regardless of this knowledge, the plaintiff engaged in unreasonable delay before seeking relief in court; and (3) it would be prejudicial to allow the plaintiff to maintain the action. *Wehrkamp*, 2009 S.D. 84, ¶10, 773 N.W.2d at 215-16; *Clarkson*, 2011 S.D. 72, ¶12, 806 N.W.2d at 616.

As an equitable doctrine, laches is not controlled exclusively by the mechanical rigidity of a checklist. As this Court long ago made clear:

> Laches is not, like limitation, a mere matter of time, but principally a question of the inequity in permitting the claim to be enforced, an inequity founded upon some change in the conditions, or the relations of the property or the parties.
>
> "Laches," in legal significance, is not mere delay, but delay that works a disadvantage to another. So long as persons are in the same condition, it matters little whether one presses a right promptly or slowly within the limits allowed by law; but when, knowing his rights, he takes no steps to enforce them until the

> condition of the other person has in good faith become so changed that he cannot be restored to his former state, if the right be then enforced, delay becomes inequitable, and operates as an estoppel against the assertion of the right.
>
> The disadvantage may come from loss of evidence, change of title, intervention of equities, and other causes, but when a court sees negligence on one side, and injury therefrom on the other, it is a ground for denial of relief. What would be laches in one case might not constitute such in another.

Schwartzle v. Dale, 54 N.W.2d 361, 362 (S.D. 1952); *Chicago & N.W. Ry. Co. v. Bradbury*, 129 N.W.2d 540, 542 (S.D. 1964). Here, the lower court arrived at the wrong result on laches based on errors of law and erroneous findings.

1. Knowledge

When weighing the applicability of laches, the knowledge element factors into whether a claimant unreasonably delayed in bringing a claim. It would be a supreme irony to conclude that the knowledge element was not met in a particular case because the testimony or evidence that could have established that element had disappeared during the decades for which pursuit of a legal claim was delayed. To the contrary, waiting until everyone else has died before bringing a claim is a prototypical situation showing the need for laches.

Fortunately, this Court has made clear that a plaintiff's knowledge of the facts on which an action is based can be imputed. In *Stianson v. Stianson*, for example, this Court held:

> In this case every fact essential to disclose and to constitute a constructive trust in appellant was a matter of public record for more than 17 years before this action was begun, and for at least

> 9 years after the minors became of age.
>
> Plaintiffs must be held to have known that the land had belonged to the deceased, and that they had interests therein as his heirs; that defendant was acting as administrator of the estate; that the land was mortgaged, and that the estate was without money or resources to pay the mortgage; that the mortgage was foreclosed and the land bought in by defendant while acting as administrator.

167 N.W. 237, 239-40 (S.D. 1918). And in barring relief in *Kenny*, this Court held:

> And shall these plaintiffs be permitted by a court of equity to oust the defendant from a possession of seven years without offering to redeem the mortgages which they gave upon this land, or to pay the taxes which the defendant and his grantors have paid for twelve years, and without being required to show when they first became advised of their legal rights?
>
> Can they place the burden upon the defendant of showing that plaintiffs did know of their legal rights when both are presumed to have equal knowledge of the law? In equity that burden should be held to rest upon these plaintiffs.
>
> . . . [U]nder such situation, they should be held estopped from maintaining this action.

127 N.W. at 604.

Thus, one's knowledge—including what one must or reasonably should have known—plays into whether delay in bringing a claim is considered unreasonable. *See Gilfilan v. Schaller*, 144 N.W. 133, 136 (S.D. 1913) (barring claim by cotenant heir as "[s]uch right of estoppel, if it needed any strengthening, was certainly made unquestionable by the laches of plaintiff whom in apparent acquiescence in defendant's claim of title, stood by for the period of some six years and, without making any claim to an interest in said

land, allowed defendant to put valuable improvement thereon").[23]

Here, the lower court's failure to invoke laches was based on its incorrect assessment that John's fourteen siblings did not know of their interest in the farm until 2016, when Edward testified he was trying to put John's land into a "government program" and someone from "Fish and Wildlife" told him the land belonged to Joseph.

That and similar findings by the lower court are contradicted by the known facts. Every one of the siblings was placed on direct notice of their interest by John and Anna's attorney in the 1980's, each was presented with a quitclaim deed or other conveyance, and most apparently agreed to sign it or actually did. Again, as Edward admitted: "*Well, back in the '80s, we all got together and we were all going to sign it over to John until two of the siblings said they wanted their share. And then that all broke up*." (R.360-61). That much is known, and that is more than enough under this Court's precedent to constitute knowledge or imputed knowledge that triggered a duty to exercise reasonable diligence in investigating and bringing a legal claim.

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[23] *See C.H. Young*, 2008 S.D. 43, ¶1, 751 N.W.2d at 716 (holding that "the doctrine of laches precludes reforming or modifying the trust instrument because the aggrieved beneficiary, while knowing of the problem, took no action to petition the court for over ten years"); *Jenkins v. Peters*, 288 F.2d 401, 402 (D.C. Cir. 1961) ("failure of the plaintiffs to assert their interest in the property following the title search instigated by one of them in 1939, if not an abandonment of their interest, is at least clear evidence of laches which in the circumstances should bar their right to assert their claim").

2. Unreasonable delay

And yet, not a single one of John's fourteen siblings did anything to challenge John's sole ownership of the farm for more than three decades. In 1990, further, when Anna publicly recorded a deed conveying the entire farm to John, something about which she was very open with her children, not one sibling did anything until 29 years after that as John continued to solely possess, work, maintain, and improve the farm. As one court rather handily captured the doctrine of laches:

> No doctrine is so wholesome, when wisely administered, as that of laches. It prevents the resurrection of stale titles, and forbids the spying out from the records of ancient and abandoned rights. It requires of every owner that he take care of his property, and of every claimant that he make known his claims. It gives to the actual and longer possessor security, and induces and justifies him in all efforts to improve and to make valuable the property he holds[.]
>
> Or, in other words, one is not permitted to stand by while another develops property in which he claims an interest, and then if the property proves valuable, assert a claim thereto, and if it does not prove valuable, be willing that the losses incurred in the exploration be borne by the opposite party. This thought was expressed in one case by the following language: "If the property proves good, I want it; if it is valueless, you keep it."

Lundgren v. Lundgren, 245 Cal.App.2d 582, 591-92 (1966) (cleaned up).

There is no question that waiting so long to bring this action—or do anything at all—until after Anna died, after her attorney who communicated with each of the siblings died, after his legal files were gone, after John had put the farm in a trust, and after John had died, was unreasonable. The lower court erred in concluding otherwise.

3. Undue Prejudice

That long delay resulted in intense prejudice. This Court has found sufficient prejudice to warrant application of laches where:

> [N]o effort was made to modify the terms of the trust in court until more than ten years later, after Alice had passed away. She was involved in or at least present during the preparation and execution of the trust documents an may have been able to cast light on Cy's intent. Thus, not only was the delay unreasonable, it prejudiced the beneficiaries. It hindered the court's ability to ascertain Cy's true intent.

C.H. Young, 2008 S.D. 43, ¶11, 751 N.W.2d at 718; *Kern v. Kern*, 892 A.2d 1, 10 (Pa. 2005) (prejudice supporting laches resulting from delay in bringing action after key witness died*); Linker v. Martin*, 803 N.Y.S.2d 534, 538 (N.Y. App. Div. 2005); *Cagle v. Cagle*, 586 S.E.2d 665, 666-67 (Ga. 2003).

In 2022, less than a handful of people with relevant knowledge were still alive to testify at a court trial that was over before lunch. Anna, John, and Leonard Andera had all died from old age. No was left to contradict Edward's dubious testimony regarding his dealings, discussions, or understanding of his interest in the farm. John and Anna certainly had an understanding of Edward's knowledge about his claim to the farm. They may have had dozens of conversations about it with him over the years.

Leonard Andera certainly had an understanding about what Edward and the other siblings were told, asked to sign, and did sign in the 1980's. John and Anna also certainly had relevant kmowledge about whether there was a legally suficient ouster for establishing adverse possession.

John never had time to marry or have any children. His work on the farm was all-consuming. He paid for everything, saved the land from ruin and foreclosure, and improved it over the decades. Acting in reliance on his ownership, shortly before his death, John placed the farm in trust to be overseen by his nephew who he knew would be a good steward. The prejudice caused by having to undue all that and slice up a working farm for fifteen siblings (most deceased) and their lineal descendants is immeasurable.

Respectfully, the lower court simply got it wrong in failing to apply laches to bar this untimely and prejudicial claim. In its de novo review, this Court should remedy that error.

B. John and his trust acquired any interest in the property he did not already own by adverse possession.

The lower court's rejection of the adverse possession claim also was an error of law and should be reversed. "The Legislature has allowed for several types of adverse possession." *Healy Ranch Partnership v. Mines*, 2022 S.D. 44, ¶47. Two such methods are at issue here. The lower court's analysis, however, did not reach the elements of the statutes.

1. The evidence demonstrated ouster.

Instead, the court based its ruling on an erroneous assessment that the facts—to the extent they could be ascertained—did not establish Edward had been "ousted" in the legal sense. With great respect, the court's statement of the law was incomplete, its construction of the cases was incorrect, and its perception of the concept of ouster was flawed.

The law is clear that if a cotenant holds possession of common land adversely to fellow cotenants and meets the general requirements of adverse possession, the possessor thereby may eventually acquire exclusive title. This principle was articulated by Justice Story two centuries ago:

> There is no doubt, that in general, the entry of one heir will enure to the benefit of all, and that if the entry is made as heir, and without claim of an exclusive title, it will be deemed an entry not adverse to, but in consonance with, the rights of the other heirs.
>
> *But it is as clear*, that one heir may disseise his co-heirs, and hold an adverse possession against them, as well as a stranger. And, notwithstanding an entry as heir, the party may, afterwards, by disseisin of his co-heirs, acquire an exclusive possession upon which the statute will run. An ouster, or disseisin, is not, indeed, to be presumed from the mere fact of sole possession; but it may be proved by such possession, accompanied with a notorious claim of an exclusive right.

Ricard v. Williams, 20 U.S. 59, 120-21 (1822). That remains the law generally. *Adverse possession between cotenants*, 82 A.L.R.2d 5, § 3 (1962); 4 Tiffany Real Property § 1185 (3d ed. 2021). And it has been the law in South Dakota since statehood.

In 1905, this Court first held that "a tenant in common may oust his cotenants and acquire the title to the whole property by an adverse possession" where the ouster is "of such a character as to notify his co-tenants that he denies their right to the property and holds the same adversely to them." *Barrett v. McCarty*, 104 N.W. 907, 909 (S.D. 1905).

In 1909, this Court considered an adverse possession claim between the cotenant heirs of a woman who settled a homestead. *Theisen v. Qualley*,

175 N.W. 556, 557 (S.D. 1919). The lower court quieted title for the son who "had been in continuous possession and occupancy of the land" and "paid all the taxes assessed against said land from 1905 to 1917[.]" *Id.* This Court affirmed:

> Respondent also contends that he acquired title through adverse possession under color of title. Appellants contend that under the law they and respondent were [cotenants] and the possession of respondent, being that of a cotenant, could not be adverse. *But no proposition is more fully settled than that the possession of a cotenant is adverse where he claims the whole estate.* We think the finding that respondent held possession of the land "claiming title thereto" was in effect a finding that he claimed the whole estate in said land.

Id.; *Murphy v. Connolly*, 140 N.W.2d 394, 399 (S.D. 1966). In other words, this Court properly deemed a claim to the whole estate of a cotenant in possession as an ouster of the others.

In *Iverson v. Iverson*, 213 N.W.2d 708, 709 (S.D. 1973), relied on by the lower court here, two brothers (Edwin and John) jointly purchased land for their farming partnership and mortgaged the land together as tenants in common. Even though Edwin later left, the evidence showed "it was clearly the intention of Edwin and John that each should own one-half of the property in question, notwithstanding the fact that John had individually made the five preceding annual payments." *Id.* at 710.

This Court held that "*mere* possession by one tenant in common who receives all the rents and profits and pays the taxes on the property, no matter for how long a period, cannot be set up as a bar against the

cotenants." *Id.* at 711. In finding no adverse possession, however, this Court emphasized that "[f]rom 1944 to the spring of 1969 there was no change in the relationship of the parties, *nor was there any actual or constructive notice of an intent by John to hold the property adversely to Edwin*." *Id.* at 710-11.

Thus, even in the absence of an express or formal "ouster," a cotenant may acquire title adversely by constructive ouster:

> The distinction appears to be in effect, that while the exclusive possession of one cotenant does not involve an ouster of the other, so as to start the running of the statute, the fact that one cotenant is in sole possession for 20, 30, or 40 years, without any claim being made by the other, justifies a finding that an ouster had taken place, "because men do not ordinarily sleep on their rights for so long a period, *and a strong presumption arises that actual proof of the original ouster has become lost by lapse of time*."

4 *Tiffany Real Property* § 1185 (emphasis supplied). "[A]ny act of the cotenant in possession which manifests an intention on his part to hold exclusively for himself," moreover, "is equivalent in law to an actual ouster." *Id.*; § 449 (ouster is not established "by the mere appropriation by one cotenant of all the rents and profits, though such appropriation may have that effect if accompanied by a notorious claim to the exclusive ownership"); *Adverse possession between cotenants, supra*, § 10.[24]

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[24] *See Adams v. Johnson*, 136 N.W.2d 78, 81-82 (Minn. 1965) (possession of property was actual, open, and notorious, where defendants conducted farming operations for almost 50 years as sole owners, paying all taxes and insurance and retaining all profits); *Daugherty v. Miller*, 549 So.2d 65, 67 (Ala. 1989) (ouster sufficient to allow one cotenant title by adverse possession as against other cotenant where first cotenant requested other to execute deed to disputed property and the other cotenant refused); *Harkleroad v.*

This case presents a scenario opposite from *Iverson*. Here, there was *at least* constructive notice of John's intent to hold the entire farm for himself and adversely to Edward and the other siblings. Such notice was established *at least* by the 1980's when every one of the siblings was asked to convey their interest in the farm to Anna, who in turn would convey it John. It was established again in 1990, when Anna openly deeded the entire farm to John and publicly recorded the deed in 1990, without objection by anyone. It was established still again 1998, when John leased the farm to Edward and charged him rent to use the land. And it was confirmed yet again when John terminated his lease to Edward and rented the farm to someone else. All of these events were sufficient to constitute an ouster under the law.

2. The elements of adverse possession were met.

John's Trust sought to establish adverse possession by two methods: SDCL 15-3-15 (ten years) and SDCL 15-3-1, 12 and 13 (twenty years).

a. SDCL 15-3-15 was met.

Adverse possession occurs under SDCL 15-3-15 where there is: (1) claim and color of title made in good faith; (2) ten successive years in possession; and (3) payment of all taxes legally assessed. *Healy Ranch*, 2022 S.D. 44, ¶¶48, 61.

Linkous, 704 S.E.2d 381, 384 (Va. 2011) (cotenant may rely on adverse possession to obtain exclusive fee simple title to the property where notice, *actual or constructive*, is given to cotenant of intent to oust, thus making the occupying cotenant's possession hostile).

As to first element, John clearly had a claim and color of title to the entire property by at least 1990, when Anna conveyed him a deed for the entire property and it was publicly recorded. (App. 39). Bad faith is never presumed and there was no evidence or even allegation of that here. *Id.* ¶¶63-65 ("In the absence of facts contained in the record supporting a reasonable inference of bad faith on the part of [John], the presumption that [h]e acted in good faith remains intact").

Regarding the second element, there is no dispute John was in possession of the farm for much more than ten years after that. To the extent SDCL 15-3-15 is said to contain a "separate hostility element," which seems dubious in light of *Healy Ranch*, that was established as discussed below.

The final element under SDCL 15-3-15 is payment of all taxes legally assessed. John did that too, just like he "paid for everything," in Edward's own words, beginning in 1969. (R.59, 371-75, 376, 415-20, 424, 454). The lower court appears to have understood that, but nonetheless indicated that who paid the taxes was less than clear. To the extent that was a finding, it was erroneous. Edward's admissions and Gabriel Mohnen's review of John's bank records were the only real evidence on that issue. (R.449-50, 454, 458). And of course, to the extent that there is no longer is any official record of *who* paid the real estate taxes for the farm beginning in 1969 after Joseph's death, that was the direct result of laches.

The lower court should have held that John acquired adverse

possession of the entire farm, which was what his "paper title" indicated in the form of Anna's deed, on October 10, 2000, ten years after the deed was recorded, by operation of SDCL 15-3-15. John then conveyed the entire farm to his trust, in which the lower court should have quieted title.

b. SDCL 15-3-1, 12 and 13 were met.

Adverse possession occurs under these statutes when there is: (1) an occupation that is (2) open and notorious, (3) continuous for the statutory period (twenty years), and (4) under a claim of title exclusive of any other right. *See Gangle v. Spiry*, 2018 S.D. 55, ¶11, 916 N.W.2d 119, 123; *Underhill v. Mattson*, 2016 S.D. 69, ¶10, 886 N.W.2d 348, 352; SDCL 15-3-12. Proof of these elements present questions of fact reviewed for clear error, "while the ultimate conclusion of whether they are sufficient to constitute adverse possession is a question of law" is reviewed de novo. *Id.* ¶9.

Occupation

Certainly, John occupied the farm under the meaning of SDCL 15-3-12. He either purchased or helped purchase much of the land, lived there, ran his farming operation, cultivated the land as its sole owner, paid for everything, and even improved the farm. *See Underhill*, 2016 S.D. 69, ¶13, 886 N.W.2d at 353.

Open and Notorious

"The purpose of this element is to give the record owner notice of the occupation." *Id.* ¶15. Other than John, the only record owner or persons

appearing on any title or deed were his parents. Joseph died in 1969 telling everyone that the farm was John's. In 1990, Anna recorded her deed of the entire farm to John. John later recorded his deed of the farm to his trust.

Even if one considers Joseph's heirs under the 1969 laws of intestacy to be a "record owners" not named on any records, there can be no doubt that John's adverse occupation was "open and notorious" virtually for his entire life. For as long as anyone could remember, Joseph told the children John was getting the farm. After Joseph died, that is exactly how John and everyone else treated things. John's exclusive ownership was never challenged by any of his siblings, even after John's attorney informed them of their interests in the 1980's. John's operation of the farm as his alone was "made in such a way that a reasonably diligent owner would learn of its existence, nature, and extent." *Id.* This element clearly is met.

Continuous for the statutory period

The statutory period for adverse possession in South Dakota is twenty years. SDCL 15-3-1. Under the principle of "tacking," moreover, John's adverse possession inures to John's trust, which took the farm by deed. *See id.*; *Cochrane v. McCoy*, 179 N.W. 210, 212 (S.D. 1920) ("grantees may tack their possession to that of their grantors for the purpose of establishing a title by adverse possession, as against such other cotenant").

The events constituting a legal ouster occurred in the 1980's (legal notice from attorney), 1990 (Anna's recorded deed), and 1998 (lease to

Edward). John continuously occupied the farm under his claim to the entire property for more than twenty years following each of those events.

Claim of title exclusive of any right

This element does not require wrongful intent; rather, possession is adverse to the "true owner" even where occupancy "was due to mistake and without intention to claim the land to each other." *Underhill*, 2016 S.D. 69, ¶17, 886 N.W.2d at 354.

John has treated the farm as his own since his father died in the summer of 1969. He allowed Edward to live in the house and paid him a wage for fieldwork. His other siblings all left after high school understanding that John owned the farm. He improved the property. He took any profit, what little there was, and paid all the taxes, just like he "paid for everything," from that point on.

In the 1980's, John and Anna's lawyer announced John's intent to formalize his ownership of the entire farm by having the siblings sign deeds conveying interest, which apparently most of them did. In 1990, Anna deeded the entire farm to John and made sure all the siblings knew. In 1998 or so, John apparently let Edward pay him to lease some of the farm, but later ended the lease and rented the land to someone else. Finally, in 2016, John executed a deed conveying the entire farm to his trust. Proof of John's claim to title exclusive of any right far exceeds the proof on this element accepted in cases such as *Underhill*.

3. The laches of the siblings prejudicially compromised the evidence.

To the extent John's Trust is said to have failed in the proof for adverse possession, that is the direct result of Edward and the others sitting on their rights and waiting decades, until after Joseph, Anna, John, and their attorney, who could have provided that evidence, all safely passed away. *See, e.g., Welch v. Welch,* 109 S.E.2d 757, 760 (Ga. 1959) ("Yet he stood by until R.C. Welch's lips were sealed by death on August 20, 1953, and then for more than five years thereafter before bringing this action"). In other words, it is the kind of prejudice that demonstrates laches.

II. THE JUDGMENT SHOULD BE REVERSED BECAUSE THE LOWER COURT ERRED IN ITS DIVISION OF THE PARCELS.

Even if it were to hold that the lower court's application of the law was entirely correct, this Court still should reverse because the lower court's fractional math in the division of interests in the parcels is not.

Although he died in 1969, Joseph was listed in Rake's report as at least one of the "apparent title holders" for each of the parcels covered by the lower court's judgment. But the parcels did not come from a common source. Some originally were purchased by Joseph, Anna, and John together; some originally deeded just to Joseph.

The construction of a deed is a question of law. *Swaby v. N. Hills Regional R.R. Auth.*, 2009 S.D. 57, ¶22, 769 N.W.2d 798, 808. Under South Dakota law, it is presumed, unless otherwise indicated, that where a contract

for deed is issued to more than one person their interests were intended to be equal. SDCL 43-2-17; *Moeckly v. Hanson*, 2020 S.D. 45, ¶19, 947 N.W.2d 630, 636; *Cudmore v. Cudmore*, 311 N.W.2d 47, 49 (S.D. 1981) ("Since the contracts did not indicate the proportionate interest of each tenant, the law presumes that they took in equal shares"). As between the parties to the instrument, moreover, the recording of a deed is not necessary to the instrument's validity. *Schleuter Co., Inc. v. Sevigny*, 1997 S.D. 68, ¶11, 564 N.W.2d 309, 312.

The lower court did not explain its division of parcels in the judgment. Clearly, it accepted that John was an "apparent record owner" of at least Parcels 2 and 3, and possibly Parcel 1, listed in judgment. It also seems clear the court intended to assign Anna's interest in any parcel to John due to the deed she granted him in 1990.

Regarding **Parcel 1**, the only deed in evidence showed it was deeded to Joseph alone in 1955. (App. 50; Ex. 508). The court credited John with the one-third Anna conveyed to him in 1990 and held that it was owned 2/3 by Joseph's Estate and 1/3 by John. But the trial record also included deeds from two of the six surviving siblings who deeded their interests to John's Trust: David Mohnen in 2019 (App. 42; Ex. 504) and Sharon Beckman in 2020 (App. 40; Ex. 503). Under the court's reasoning, their shares should have been credited to John's Trust as well. The same analysis applies to **Parcels 4** and **5** in the judgment, which originally were deeded to Joseph:

John's Trust did not get credit for David and Sharon's deeds.

Regarding **Parcel 2**, the judgment held it belonged 1/3 to Joseph's Estate and 2/3 to John's Trust. But that math also was wrong. The original deed was granted to "Joe Mohnen, Anna M. Mohnen and John Mohnen." (App. 48; Ex. 507). By operation of law, each owned an undivided one-third. When Anna deeded the farm to John, he acquired her third and added it to his own. But unlike with Parcel 1, John did not also get credit for Anna's intestate inheritance from Joseph of the one-third Joseph owned. John's Trust should have been credited with an *additional* one-third of Joseph's third, *plus* the interests deeded to the trust by David and Sharon.

The same analysis applies to **Parcel 3**, which also originally was purchased by and deeded to Joseph, Anna, and John. John is at least entitled to the divisions indicated above for Parcel 2. But there is a slight difference in the original deeds for the two parcels. Parcel 3 was deeded to "Joe Mohnen and Anna M. Mohnen, *husband and wife*, and John J. Mohnen." (App. 44; Ex. 505). This indicates that 50 percent was deeded *jointly* to Joseph and Anna and 50 percent to John. That would mean that when Anna deeded her interest to John, he received and additional 25 percent from here. Of the remaining 25 percent held by Joseph, one-third is Anna's intestate share of Joseph's estate, which also should be credited to John by virtue of her 1990 deed to him. John should receive the shares corresponding to David and Sharon's deeds as well.

Even accepting the lower court's incorrect resolution of the legal issues, then, each of the parcels was incorrectly divided and the judgment should be reversed and remanded with instructions to correct the divisions of interests.

CONCLUSION

Once upon a time in Aurora County, Joseph and Anna had a farm. Today, more than fifty years after Joseph died, any claim by his descendants to an interest in that farm is barred both by laches and adverse possession. This Court's summation in an early case involving laches and cotenants resonates here:

> During all this time respondent and her predecessors in interest were in possession of the land under claim of ownership, working it and improving it and enhancing its value.
>
> Welch had never been in possession nor sought possession nor exercised any act of ownership. He never paid, nor offered to pay, any taxes, and this is true of all the beneficiaries of the trust under which Kennedy held legal title.
>
> Respondent paid the taxes for a sufficient length of time to have acquired title through possession and payment of taxes had the action not been pending.
>
> While it cannot be held that respondent acquired title by adverse possession and payment of taxes, the court was justified in denying the equitable relief sought, and to place such denial squarely on the ground of laches.

Cochrane, 179 N.W. at 212.

The same equities are at stake in this case. John, who had clear title of his own to a substantial portion of the property wholly independent of the laws of intestacy in 1969, devoted his entire life—the ensuing half-century—

to working and operating the farm, saving it from loss and ruin—improving it even—without even the pretense of financial assistance or hint of a legal claim to the farm from any of his fourteen siblings or their descendants.

Carving up this working farm into a dozen or more different pieces should not be sustained in equity and is not warranted under a proper application of the law. If that truly is what should have been done, once upon a time, the pendency for such claims has long since dissolved. The time for these descendants to try to get this farm for themselves ripened and passed more than a generation ago.

WHEREFORE, Appellants respectfully request that this Honorable Court, *reverse* and remand with instructions to enter judgment quieting title to the parcels of land at issue in favor of the John J. Mohnen Trust.

Respectfully submitted this 5th day of August, 2022.

LARSON LAW, P.C.

BY: */s/ Ronald A. Parsons, Jr.*

Albert Steven Fox
P.O. Box 131
Chamberlain, SD 57325-0131
(605) 234-2222
steve@larsonlawpc.com

Ronald A. Parsons, Jr.
JOHNSON JANKLOW ABDALLAH
& REITER LLP
P.O. Box 2348
Sioux Falls, SD 57101-2348
(605) 338-4304
ron@janklowabdallah.com

Attorneys for Appellants

John J. Mohnen Trust and
Estate of John J. Mohnen

CERTIFICATE OF COMPLIANCE

In accordance with SDCL 15-26A-66(b)(4), I certify that this brief complies with the requirements set forth in the South Dakota Codified Laws. This brief was prepared using Microsoft Word and contains 9,908 words, excluding the table of contents, table of cases, jurisdictional statement, and certificates of counsel. I have relied on the word and character count of the word-processing program to prepare this certificate.

/s/ Ronald A. Parsons, Jr.
Ronald A. Parsons, Jr.

CERTIFICATE OF SERVICE

The undersigned hereby certify that a true and correct copy of the foregoing BRIEF OF APPELLANTS and its accompanying APPENDIX were served via email upon the following counsel of record:

Timothy R. Whalen: whalawtim@cme.coop

Brad A. Schreiber: brad@xtremejustice.com

Rachel Mairose: rachel@mairoseandsteele.com

and by U.S. Mail, first class and postage prepaid, upon the following:

Theresa Ishmael
505 East 1st Street
White Lake, SD 57383

Gabriel Mohnen
34606 250th St.
Chamberlain, SD 57325

Doris Maas
38370 252nd St.
Plankinton, SD 57368

Delores Waters
920 Lincoln St.
Menosha, WI 54952

Bruce Kettner
2853 W. Warner Estates Dr.
Appleton, WI 54913

Sarah Mohnen
1582 Redwing Dr.
Neenah, WI 54952

Elaine Koleske
4529 County Rd. PP
Center Valley, WI 54106

Janette Priebe
W3878 Jeske Rd.
Seymour, WI 54165

Leo Mohnen
9090 N. Loop Rd.
Larsen, WI 54947-9748

Paul Mohnen
313 Grandview Dr.
Menasha, WI 54952

Rosalie Mohnen
705 5th St.
Menasha, WI 54952

Shane Mohnen
4981 Depot Rd.
New London, WI 54961

Ronald Kettner
1147 Meadow Lane
Neenah, WI 54956

Shawn Mohnen
1023 Dove St
Oshkosh WI 54902-3301

Mark Mohnen
N168 Crooked Pine Ct.
Appleton, WI 54915

David Mohnen
20045 E. Jude
Rhododendron, OR 97049

James Mohnen
3925 W. Larsen Rd.
Larsen, WI 54947

Johnathan Mohnen
3910 Fisk Ave
Osh Kosh, WI 54904

Jesse Mohnen
4981 Depot Rd.
New London, WI 54962

Mary M. Koch-Vinz
509 East Street
Spencer, SD 57374

Ronald Kettner
W6950 County Rd. S
Shiocton, WI 54170

Rose Rynish
W 6828 Midway Rd
Hortonville, WI 54944

Sharon Beckman
1224 Elkay Dr.
Eugene, OR 97404

Jesse Mohnen
3915 Roral Bay Ridge Rd.
New Franken, WI

Lawrence Mohnen
N5423 Obertin Rd.
New London, WI 54961

Merlyn Kettner
W 6950 Cty. Road
Shiocton, WI 54170

Randy Mohnen
5278 County Rd II
Larsen, WI 54947

Steve Mohnen
9090 N Loop Rd
Larson, WI 54947

Cheryl Christianson
N201 Island Rd
Neenah, WI 54956

Kristy Mohnen
9090 N Loop Rd
Larson, WI 54947

Jill Hartges
110 Parkway Ct
Combined Locks, WI 54113

on this 5th day of August, 2022.

/s/ Ronald A. Parsons, Jr.
Ronald A. Parsons, Jr.

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

APPEAL NO. 3003

EDWARD O. MOHNEN,

Plaintiff and Appellee,

vs.

ESTATE OF JOHN J. MOHNEN and JOHN J. MOHNEN TRUST,

Defendants and Appellants,

and

AURORA COUNTY, SOUTH DAKOTA, et al.,

Defendants and Appellees,

and

ESTATE OF JOSEPH J. MOHNEN and ESTATE OF ANNA MOHNEN,

Intervenors and Appellees.

APPEAL FROM THE FIRST JUDICIAL CIRCUIT
AURORA COUNTY, SOUTH DAKOTA

THE HONORABLE DAVID KNOFF
CIRCUIT COURT JUDGE

APPENDIX OF APPELLANTS
JOHN J. MOHNEN TRUST and ESTATE OF JOHN J. MOHNEN

Notice of Appeal filed on May 24, 2022

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STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	) SS	
COUNTY OF AURORA	)	FIRST JUDICIAL CIRCUIT

EDWARD O. MOHNEN, Plaintiff, vs. ESTATE OF JOHN J. MOHNIN, JOHN J. MOHNEN TRUST, AURORA COUNTY, SOUTH DAKOTA, and ANY AND ALL SPOUSES OF THE ABOVE NAMED PERSONS OR UNKNOWN HEIRS, HEIRS-AT-LAW, DEVISEES, LEGATEES, EXECUTORS, ADMINISTRATORS, PERSONAL REPRESENTATIVES, AGENTS OR LEGAL REPRESENATITVES, OR CREDITORS OF ANY DECEASED PERSON; AND ALL PERSONS KNOWN OR UNKNOWN WHO HAVE AN INTEREST, ESTATE IN, OR LIEN OR ENCUMBRANCE UPON THE PREMISES DESCRIBED IN THE COMPLAINT, Defendants, and ESTATE OF JOSEPH J. MOHNEN and ESTATE OF ANNA MOHNEN, Intervenors. Defendant.	*	01CIV19-33 MEMORANDUM DECISION

FILED
APR 11 2022
AURORA COUNTY CLERK OF COURTS
FIRST JUDICIAL CIRCUIT COURT OF SD

The Plaintiff seeks to quiet title to five parcels of real property in Aurora County, South Dakota and secure his claim to title and ownership interest. The Defendant denies the Plaintiff's and Intervenors' claims and asserts ownership of all the interest and title to the five parcels of property by virtue of adverse possession and the affirmative defense of laches. A trial to the

Court was held on the 16th day of March 2022.

FACTUAL BACKGROUND

Joe and Anna Mohnen were the parents of 15 children who lived on a farm in Aurora County, South Dakota. During Joe's life various parcels of property were acquired where he owned them either in their entirety, or with his wife and son, John Mohnen. All of the children grew up on the farm, however John stayed on the farm his entire life. Edward (Ed) was the fifth to the youngest child who left the farm for military service for two years in 1966, but otherwise has lived on the farm. At one point he was asked to move out by his nephew, Gabriel (Gabe) Mohnen. Gabe is a co-trustee and beneficiary of the John J. Mohnen Trust. Ed refused to move out and still lives at the farm because he has nowhere to go. Presently there are six surviving siblings.

Joe died intestate on May 3, 1969. At that time, Anna, John and Ed were living at the farm, as well as three siblings who had not yet graduated from high school. Anna died testate in May 1996. She was living with her daughter Teresa in White Lake at the time of her death. Throughout John's life of farming, Ed worked and lived on the farm for free and received $3,000 per month from John. Ed also had a side business fixing engines. He continued on the farm even after John retired. His arrangement with John changed where Ed paid John $8000 per year to rent the land. John died in 2018. Ed paid the taxes on the land from 2003 to 2016, however there is a dispute as to whether John actually gave money to Ed to pay those taxes. Gabe has been paying the taxes since 2016. Other expenses are disputed as to who paid the expenses and the Court is not able to determine exactly who paid what expenses.

The parcels of land, of which only four[1] are actually disputed are described as:

[1] The Court is laying out five parcels, however parcel one and two are one quarter of ground with

1. The South half of the Northwest quarter, Section 15, Township 102, Range 66, West of the 5th P.M. Aurora County, South Dakota;
2. The North half of the Northwest quarter, Section 15, Township 102, Range 66, West of the 5th P.M. Aurora County, South Dakota;
3. The Northeast quarter, Section 3, Township 102, Range 66, West of the 5th P.M. Aurora County, South Dakota;
4. The Southeast quarter, Section 34, Township 103, Range 66, West of the 5th P.M. Aurora County, South Dakota;
5. The Southwest quarter, Section 35, Township 103, Range 66, West of the 5th P.M. Aurora County, South Dakota;

Throughout John's life and after the death of Joe, Ed believed the land was owned by John. John took over the role of Joe, not only taking care of and managing the land, but also Anna and the siblings who were still home. John (or Ed for that matter) never married. At one point in the eighties, Ed thought he may have an interest in the land because he and the other siblings were asked to sign a quit claim deed to John. Anna deeded her interest in the property to John, as well as some of the siblings. Ed did not sign the deed.

In the fall of 2016 Ed wanted to put 400 plus acres into a government program for John. While looking into this he was told John was not the only owner of the land and he would not be able to enroll the land. Ed also had some personal and legal issues around this time. He erroneously believed he won an Australian lottery and lost a large sum of money through fraud. He also had criminal issues related to selling cattle that were subject to a lien by a bank. He

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mixed ownership. The initial complaint included the Southeast quarter of Section 35. There is no dispute this ground is owned by the John Mohnen Trust, and Plaintiffs conceded this at trial. Therefor four parcels, as laid out in the complaint, are at issue.

received a suspended imposition of sentence. A civil judgment was placed against him by the bank. John's trust ultimately paid the civil judgment for Ed. Ed's niece now assists him with his finances.

An Owner and Encumbrance report was completed by Aurora County Land Title Company. Its findings are consistent with the evidence as to who is listed as the record owner of the land and thus are presumed to own the property. Corresponding to the parcels laid out above the owner(s) are:

1. Joe Mohnen;
2. John J. Mohnen Trust and Joe Mohnen;
3. John J. Mohnen Trust and Joe Mohnen;
4. Joe Mohnen; and
5. Joe Mohnen.

As stated earlier, Joe Mohnen died intestate in 1969[2]. Anna died testate in 1996 and deeded her interest in the parcels to John prior to her death. Through two deeds, John was a joint owner with Joe and Anna when those parcels were acquired. Probates have been commenced for both Joe and Anna's estates. This quiet title action by Ed is to assert his interest in the estate through Joe's estate. Clearly Joe's estate is the record owner as set out above, so he has met his burden to show title[3]. The ultimate question is whether John's estate or Trust has an ownership claim against any interest of Joe or Anna's[4] estates. John's estate claims it owns the land by adverse

[2] Pursuant to the law of intestacy at the time of Joe's death, Joe's interest would be shared one-third by Anna and 2/3 by the children of Joe and Anna. See SDCL 29-1-5 in effect at the time.
[3] Joe's estate is an intervener who's interest is aligned with Ed's interest, albeit not equal in interest. Ed would be a beneficiary of Joe's estate. The intervenor actually holds title.
[4] Anna's will, as it relates to the land, devises any interest in her estate to John. The probate of that will was not an issue before the Court at trial.

possession, or that Ed should be barred by laches. The Court will address both in turn.

ISSUES

I. Adverse Possession

In order for the Defendants to establish an adverse possession claim, the Defendants must prove that they were in "... actual, open, visible, notorious, continuous, and hostile occupation for the statutory period." *Gangle v. Spiry*, 2018 S.D. 55, 916 N.W.2d 55. The burden to prove an adverse possession claim is clear and convincing evidence. *Id.* Proof of individual elements of adverse possession present questions of fact for the [circuit] court, while the ultimate conclusion of whether they are sufficient to constitute adverse possession is a question of law. *City of Deadwood v. Summit, Inc.*, 2000 S.D. 29, 9, 607 N.W.2d 22, 25.

SDCL 15–3–7 creates a presumption that the person holding legal title to property has been in possession of the property, unless someone else can prove adverse possession for at least twenty years prior to commencement of the action. Here, the Intervenors are co-owners of record of the real property subject to this action with John's trust. Furthermore, Plaintiff secured a title search which verified all or a portion of the property subject to this suit remains in Joe's name. The only way Intervenor's co-ownership interest can be defeated is by a conveyance by them or by a valid and legal adverse possession claim. There is no evidence of a conveyance by the Plaintiffs or Intervenors to the Defendant for this specific parcel.

The possession of land by one tenant in common is "... presumptively the possession of all the tenants in common, and one cotenant cannot hold property adversely to another cotenant unless he has ousted the latter." *Murphy v. Connolly*, 81 S.D. 644, 140 N.W.2d 394 (1996). In order for an ouster or ejectment to occur, there must be clear and unequivocal actions which establish same and the "mere possession by one tenant in common who receives all the rents and

profits and pays the taxes on the property, no matter how long a period, cannot be set up as a bar against the cotenants." *Iverson v. Iverson*, 87 S.D. 628, 213 N.W.2d 708, 710-711. Here, while it is true that John used and farmed the land, he did not present any evidence that he acted in such a way that clearly and unequivocally communicated an ouster or ejectment of his co-owners. Without ouster, an interest in real property as a tenant in common entitles the co-tenants to the same and equal rights to the property under all circumstances. *Id.* Ed has been living on the property for nearly his entire life. He has worked the farm and rented (at a low amount) for a long period of time. He was simply unaware of his ownership. At one point when he thought he may have an interest, he refused to sign a quit claim deed. This is not a basis for adverse possession. Here, because the Defendant cannot prove independent ownership through conveyance or alternatively, the necessary facts for the elements of actual, open, visible, notorious, continuous, and hostile occupation for a successful adverse possession claim, the Defendant cannot succeed.

The Defendant further claims that his payment of taxes and handling of financial matters for the property affords him valid title to the property in question. The court in *Iverson* held that "mere possession by one tenant in common who receives all the rents and profits and pays the taxes on the property, no matter how long a period, cannot be set up as a bar against the cotenants." *Iverson*, 213 N.W.2d at 710-711. Who paid the taxes was never fully established at trial. In any event, payment would have been made by a co-tenant and would not amount to adverse possession.

II. Laches

Laches is an equitable defense. *Clarkson and Co. v. Continental Resources, Inc*, 2011 S.D. 72, 12, 806 N.W. 2d 615. To prove laches, the Defendant must show that: (1) the Plaintiff had

full knowledge of facts upon which the action is based, (2) regardless of this knowledge, the Plaintiff engaged in an unreasonable delay before commencing the suit, and (3) that allowing the Plaintiff to maintain the action would prejudice the defendant. *Webb v. Webb*, 2012 S.D. 41, 814 N.W.2d 818. Here, Ed did not find out the land was not entirely in John's name until he applied for government benefits in 2016. He could not have sat on his rights until that time, and it's questionable whether or not a co-owner can sit on his rights outside of an adverse possession claim. There are insufficient facts to show there was prior knowledge or intent by the parties to create an unreasonable delay to prejudice the Defendant. In fact, upon discovery of relevant information, the Plaintiff and Intervenors responded promptly and appropriately. The Court does not find the Defendant met the requirements for the defense of laches.

CONCLUSION

The record owner of the property was laid out by the title search. Those owners are presumed until adverse possession is shown. The court does not need to determine whether laches applies to joint owners since there was insufficient evidence that anyone knew of their interest in the property other than John Mohnen until recently. Adverse possession against the co-owners was not proved by Defendants. Counsel for Plaintiff or Intervenors shall prepare an Order.

Dated this 8th day of April, 2022.

BY THE COURT:

Hon. David Knoff
First Circuit Court Judge

ATTEST:

STATE OF SOUTH DAKOTA) : SS COUNTY OF AURORA)	IN CIRCUIT COURT FIRST JUDICIAL CIRCUIT
EDWARD O. MOHNEN, Plaintiff, vs. ESTATE OF JOHN J. MOHNEN, JOHN J. MOHNEN TRUST, AURORA COUNTY, SOUTH DAKOTA, and ANY AND ALL SPOUSES OF THE ABOVE NAMED PERSONS OR UNKNOWN HEIRS, HEIRS-AT-LAW, DEVISEES, LEGATEES, EXECUTORS, ADMINISTRATORS, PERSONAL REPRESENTATIVES, AGENTS OR LEGAL REPRESENTATIVES, OR CREDITORS OF ANY DECEASED PERSON; AND ALL PERSONS UNKNOWN WHO HAVE OR CLAIM TO HAVE ANY INTEREST, ESTATE IN, OR LIEN OR ENCUMBRANCE UPON THE PREMISES DESCRIBED IN THE COMPLAINT, Defendants. and ESTATE OF JOSEPH J. MOHNEN and ESTATE OF ANNA MOHNEN, Intervenors.	FILE NO. 01CIV19-33 JUDGMENT

This matter coming on for a court trial before the Honorable David Knoff, Circuit Court Judge, First Judicial Circuit, State of South Dakota, on the 16th day of March, 2022; and the Plaintiff appearing in person and with his attorney of record, Brad Schreiber; and the Defendants Estate of John J. Mohnen and John J. Mohnen Trust appearing by and through their representatives Theresa Ishmael and Gabriel Mohnen and with their attorney of record Albert Steven Fox; and the Intervenors appearing by and through the personal representative of both estates, Dori Maas, and with her attorney of record, Timothy R. Whalen; and none of the unknown Defendants appearing by or through a representative or legal counsel; and the

Court having heard and considered the evidence and read and considered the briefs of the parties; and the Court having entered its Findings of Fact and Conclusions of Law and Order; and the Court having been fully advised in the premises and good cause appearing therefor, it is hereby

ORDERED, ADJUDGED AND DECREED that at the time of the commencement of this action and now, the owners in fee simple of the following described real property are:

Parcel #1: The South One-half of the Northwest Quarter (S1/2 NW1/4), Section Fifteen (15), Township One Hundred Two (102) North, Range Sixty-six (66) West of the 5th P.M., Aurora County, South Dakota, is owned jointly, as tenants in common, as follows:

The Estate of Joseph J. Mohnen: an undivided two-thirds interest,
and
John J. Mohnen Trust: an undivided one-third interest,

and

Parcel #2: The North One-half of the Northwest Quarter (N1/2 NW1/4), Section Fifteen (15), Township One Hundred Two (102) North, Range Sixty-six (66) West of the 5th P.M., Aurora County, South Dakota, is owned jointly, as tenants in common, as follows:

The Estate of Joseph J. Mohnen: an undivided one-third interest,
and
John J. Mohnen Trust: an undivided two-thirds interest,

and

Parcel #3: The Northeast Quarter (NE1/4), Section Three (3), Township One Hundred Two (102) North, Range Sixty-six (66) West of the 5th P.M., Aurora County, South Dakota, is owned jointly, as tenants in common as follows:

The Estate of Joseph J. Mohnen: an undivided one-third interest,
and
John J. Mohnen Trust: an undivided two-thirds interest,

and

Parcel #4: The Southeast Quarter (SE1/4), Section Thirty-four (34), Township One Hundred Three (103) North, Range Sixty-six (66) West of the 5th P.M., Aurora County, South Dakota, is owned jointly, as tenants in common as follows:

The Estate of Joseph J. Mohnen: an undivided two-thirds interest, and
John J. Mohnen Trust: an undivided one-third interest,

and

Parcel #5: The Southwest Quarter (SW1/4), Section Thirty-five (35), Township One Hundred Three (103) North, Range Sixty-six (66) West of the 5th P.M., Aurora County, South Dakota, is owned jointly, as tenants in common as follows:

The Estate of Joseph J. Mohnen: an undivided two-thirds interest, and
John J. Mohnen Trust: an undivided one-third interest,
as tenants in common,

subject only to the interests and rights of the following individuals, agencies, public entities, or other entities:

a. Aurora County, South Dakota, and any and all taxing agencies, or political subdivisions in said county, for real property taxes and assessments;

b. Easements of record;

c. State of South Dakota Department of Transportation for road right-of-ways, if any;

d. Other holders of utility easements of record;

and it is further

ORDERED, ADJUDGED AND DECREED that except as provided above, the Defendants, known or unknown, have no right, title, equity, or interest in, or lien or encumbrance upon, the above described real property; and that said Defendants, known or unknown, are hereby forever barred from asserting, or attempting to assert, any and all claims, rights, or title in and to the above described real property,

or any liens or encumbrances thereon, or any part thereof; and it is further

ORDERED, ADJUDGED AND DECREED that the title in and to the above described real property is hereby quieted in favor of and vested in the parties as identified herein, subject to a proper probate proceeding for the Estate of Joseph J. Mohnen subject only to the interests and rights of the individuals, agencies, public entities, or other entities specifically set forth and named above and such title in the parties herein identified, is hereby, in all respects, validated; and it is further

ORDERED, ADJUDGED AND DECREED that Plaintiff's good and sufficient quiet title bond in the penal sum of $100.00 shall remain posted with this Court pursuant to SDCL 21-41-24 for a period of two (2) years from the entry of this judgment, and in the event no Defendant shall obtain relief from this judgment during such period of time, said bond shall be returned to the Plaintiff upon his request therefor.

4/22/2022 3:09:23 PM

BY THE COURT:

Attest:
Thiry, Deborah
Clerk/Deputy

DAVID KNOFF - CIRCUIT COURT JUDGE

STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	) SS	
COUNTY OF AURORA	)	FIRST JUDICIAL CIRCUIT

EDWARD O. MOHNEN, Plaintiff,	*	01CIV19-33
vs.	*	**FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER**
ESTATE OF JOHN J. MOHNIN, JOHN J. MOHNEN TRUST, AURORA COUNTY, SOUTH DAKOTA, and ANY AND ALL SPOUSES OF THE ABOVE NAMED PERSONS OR UNKNOWN HEIRS, HEIRS-AT-LAW, DEVISEES, LEGATEES, EXECUTORS, ADMINISTRATORS, PERSONAL REPRESENTATIVES, AGENTS OR LEGAL REPRESENATITVES, OR CREDITORS OF ANY DECEASED PERSON; AND ALL PERSONS KNOWN OR UNKNOWN WHO HAVE AN INTEREST, ESTATE IN, OR LIEN OR ENCUMBRANCE UPON THE PREMISES DESCRIBED IN THE COMPLAINT, Defendants,	*	
and	*	
ESTATE OF JOSEPH J. MOHNEN and ESTATE OF ANNA MOHNEN, Intervenors.	*	
Defendant.	*	

FINDINGS OF FACT

1. Joe and Anna Mohnen were the parents of 15 children who lived on a farm in Aurora County, South Dakota.

2. During Joe's life various parcels of property were acquired where he owned them

either in their entirety, or with his wife and son, John Mohnen. All of the children grew up on the farm, however John stayed on the farm his entire life.

3. Edward (Ed) was the fifth to the youngest child who left the farm for military service for two years in 1966, but otherwise has lived on the farm. At one point he was asked to move out by his nephew, Gabriel (Gabe) Mohnen.

4. Gabe is a co-trustee and beneficiary of the John J. Mohnen Trust. Ed refused to move out and still lives at the farm because he has nowhere to go.

5. Presently there are six surviving siblings.

6. Joe died intestate on May 3, 1969. At that time, Anna, John and Ed were living at the farm, as well as three siblings who had not yet graduated from high school.

7. Anna died testate in May 1996. She was living with her daughter Teresa in White Lake at the time of her death.

8. Throughout John's life of farming, Ed worked and lived on the farm for free and received $3,000 per month from John. Ed also had a side business fixing engines. He continued on the farm even after John retired.

9. His arrangement with John changed where Ed paid John $8000 per year to rent the land. John died in 2018. Ed paid the taxes on the land from 2003 to 2016, however there is a dispute as to whether John actually gave money to Ed to pay those taxes.

10. Gabe has been paying the taxes since 2016.

11. Other expenses are disputed as to who paid the expenses and the Court is not able to determine exactly who paid what expenses.

12. The parcels of land which are in dispute are:

Parcel 1: The South half of the Northwest quarter, Section 15, Township 102,

Range 66, West of the 5th P.M. Aurora County, South Dakota;

Parcel 2: The North half of the Northwest quarter, Section 15, Township 102, Range 66, West of the 5th P.M. Aurora County, South Dakota;

Parcel 3: The Northeast quarter, Section 3, Township 102, Range 66, West of the 5th P.M. Aurora County, South Dakota;

Parcel 4: The Southeast quarter, Section 34, Township 103, Range 66, West of the 5th P.M. Aurora County, South Dakota;

Parcel 5: The Southwest quarter, Section 35, Township 103, Range 66, West of the 5th P.M. Aurora County, South Dakota;

13. The Court is laying out five parcels, however parcel one and two are one quarter of ground with mixed ownership. The initial complaint included the Southeast quarter of Section 35. There is no dispute this ground is owned by the John Mohnen Trust and Plaintiffs and Intervenors conceded this at trial. Therefore, four parcels, as laid out in the complaint, are at issue.

14. Throughout John's life and after the death of Joe, Ed believed the land was owned by John.

15. John took over the role of Joe, not only taking care of and managing the land, but also Anna and the siblings who were still home.

16. John (or Ed for that matter) never married.

17. At one point in the eighties, Ed thought he may have an interest in the land because he and the other siblings were asked to sign a quit claim deed to John.

18. Anna deeded her interest in the property to John, as well as some of the siblings. Ed did not sign the deed.

19. John deeded his interest in land he owned to the John J. Mohnen Trust.

20. In the fall of 2016 Ed wanted to put 400 plus acres into a government program for John. While looking into this he was told John was not the only owner of the land and he would not be able to enroll the land.

21. Ed also had some personal and legal issues around this time.

22. He erroneously believed he won an Australian lottery and lost a large sum of money through fraud. He also had criminal issues related to selling cattle that were subject to a lien by a bank. He received a suspended imposition of sentence. A civil judgment was placed against him by the bank.

23. John's trust ultimately paid the civil judgment for Ed. Ed's niece now assists him with his finances.

24. An Owner and Encumbrance report was completed by Aurora County Land Title Company. Its findings are consistent with the evidence as to who is listed as the record owner of the land and thus are presumed to own the property. Corresponding to the parcels laid out below the owner(s) are:

Parcel 1: Joe Mohnen;

Parcel 2: John J. Mohnen Trust and Joe Mohnen;

Parcel 3: John J. Mohnen Trust and Joe Mohnen;

Parcel 4: Joe Mohnen; and

Parcel 5: Joe Mohnen.

25. As stated earlier, Joe Mohnen died intestate in 1969.

26. Pursuant to the law of intestacy at the time of Joe's death, Joe's interest would be shared one-third by Anna and 2/3 by the children of Joe and Anna. See SDCL 29-1-5 in effect at

the time.

27. Anna died testate in 1996 and deeded her interest in the parcels to John prior to her death. Through two deeds, John was a joint owner with Joe and Anna when those parcels were acquired.

28. Probates have been commenced for both Joe and Anna's estates.

29. This quiet title action by Ed is to assert his interest in the estate through Joe's estate. Clearly Joe's estate is the record owner as set out above, so he has met his burden to show title.

30. Joe's estate is an intervener whose interest is aligned with Ed's interest, albeit not equal in interest. Ed would be a beneficiary of Joe's estate. The intervenor actually holds title. Consequently, the real property subject of this action is held jointly as tenants in common as between John J. Mohnen and his estate in trust (collectively hereinafter from time to time referred to as "Defendants") and Joe's heirs through the Joseph J. Mohnen Estate.

31. Anna's will, as it relates to the land, devises any interest in her estate to John. The probate of that will was not an issue before the court at trial.

32. John's estate and his trust claim they own the land by adverse possession, or that Ed should be barred by laches.

33. The court will address both in turn.

34. The Court's Memorandum Decision dated April 8, 2022, is hereby fully incorporated herein by this reference thereto as further factual findings by the Court.

CONCLUSIONS OF LAW

1. Adverse Possession. In order for the Defendants to establish an adverse possession claim, the Defendants must prove that they were in "... actual, open, visible,

notorious, continuous, and hostile occupation for the statutory period." *Gangle v. Spiry*, 2018 S.D. 55, 916 N.W.2d 55.

2. The burden to prove an adverse possession claim is clear and convincing evidence. *Id.*

3. Proof of individual elements of adverse possession present questions of fact for the court, while the ultimate conclusion of whether they are sufficient to constitute adverse possession is a question of law. *City of Deadwood v. Summit, Inc.*, 2000 S.D. 29, 9, 607 N.W.2d 22, 25.

4. SDCL 15–3–7 creates a presumption that the person holding legal title to property has been in possession of the property, unless someone else can prove adverse possession for at least twenty years prior to commencement of the action.

5. Here, the Plaintiff and the Intervenor Joseph J. Mohnen Estate, and the heirs thereof, are co-owners of record of the real property subject to this action with John's trust. Furthermore, Plaintiff secured a title search which verified all or a portion of the property subject to this suit remains in Joe's name.

6. The only way the Intervenor Joseph J. Mohnen and Joe's heirs' co-ownership interest can be defeated is by a conveyance by them or by a valid and legal adverse possession claim.

7. There is no evidence of a conveyance by the Plaintiff or Intervenor Joseph J. Mohnen Estate, or the heirs thereof, to the Defendant for the land subject of this action.

8. The possession of land by one tenant in common is "... presumptively the possession of all the tenants in common, and one cotenant cannot hold property adversely to another cotenant unless he has ousted the latter." *Murphy v. Connolly*, 81 S.D. 644, 140 N.W.2d

394 (1996).

9. In order for an ouster or ejectment to occur, there must be clear and unequivocal actions which establish same and the "mere possession by one tenant in common who receives all the rents and profits and pays the taxes on the property, no matter how long a period, cannot be set up as a bar against the cotenants." *Iverson v. Iverson*, 87 S.D. 628, 213 N.W.2d 708, 710-711.

10. Here, while it is true that John used and farmed the land, he did not present any evidence that he acted in such a way that clearly and unequivocally communicated an ouster or ejectment of his co-owners. Without ouster, an interest in real property as a tenant in common entitles the co-tenants to the same and equal rights to the property under all circumstances. *Id.*

11. Ed has been living on the property for nearly his entire life. He has worked the farm and rented (at a low amount) for a long period of time. He was simply unaware of his ownership. At one point when he thought he may have an interest, he refused to sign a quit claim deed. This is not a basis for adverse possession.

12. Here, because the Defendant cannot prove independent ownership through conveyance or alternatively, the necessary facts for the elements of actual, open, visible, notorious, continuous, and hostile occupation for a successful adverse possession claim, the Defendants cannot succeed on their claims.

13. The Defendants further claim that their payment of taxes and handling of financial matters for the property affords them valid title to the property in question.

14. The court in *Iverson* held that "mere possession by one tenant in common who receives all the rents and profits and pays the taxes on the property, no matter how long a period, cannot be set up as a bar against the cotenants." *Iverson,* 213 N.W.2d at 710-711.

15. Who paid the taxes was never fully established at trial. In any event, payment would have been made by a co-tenant and would not amount to adverse possession.

16. Laches is an equitable defense. *Clarkson and Co. v. Continental Resources, Inc,* 2011 S.D. 72, 12, 806 N.W. 2d 615. To prove laches, the Defendants must show that: (1) the Plaintiff had full knowledge of facts upon which the action is based, (2) regardless of this knowledge, the Plaintiff engaged in an unreasonable delay before commencing the suit, and (3) that allowing the Plaintiff to maintain the action would prejudice the defendant. *Webb v. Webb*, 2012 S.D. 41, 814 N.W.2d 818.

17. Here, Ed did not find out the land was not entirely in John's name until he applied for government benefits in 2016. He could not have sat on his rights until that time, and it's questionable whether or not a co-owner can sit on his rights outside of an adverse possession claim.

18. There are insufficient facts to show there was prior knowledge or intent by the parties to create an unreasonable delay to prejudice the Defendants. In fact, upon discovery of relevant information, the Plaintiff and Intervenors responded promptly and appropriately. The Court does not find the Defendants met the requirements for the defense of laches.

19. The record owner of the property was laid out by the title search. Those owners are presumed until adverse possession is shown.

20. The court does not need to determine whether laches applies to joint owners since there was insufficient evidence that anyone knew of their interest in the property other than John Mohnen until recently.

21. Adverse possession against the co-owners was not proved by Defendants.

22 The Court's Memorandum Decision dated April 8, 2022, is hereby fully

incorporated herein by this reference thereto as further Conclusions of Law by the Court.

ORDER

This matter having been heard by the Court on the 16th day of March, 2022, and the parties having appeared through their attorneys, it is hereby

ORDERED that:

1. The real property subject of this action is owned as follows:

Parcel #1: The South One-half of the Northwest Quarter (S1/2 NW1/4), Section Fifteen (15), Township One Hundred Two (102) North, Range Sixty-six (66) West of the 5th P.M., Aurora County, South Dakota, is owned jointly, as tenants in common, as follows: The Estate of Joseph J. Mohnen: an undivided two-thirds interest, and John J. Mohnen Trust: an undivided one-third interest;

and

Parcel #2: The North One-half of the Northwest Quarter (N1/2 NW1/4), Section Fifteen (15), Township One Hundred Two (102) North, Range Sixty-six (66) West of the 5th P.M., Aurora County, South Dakota, is owned jointly, as tenants in common, as follows: The Estate of Joseph J. Mohnen: an undivided one-third interest, and John J. Mohnen Trust: an undivided two-thirds interest,

and

Parcel #3: The Northeast Quarter (NE1/4), Section Three (3), Township One Hundred Two (102) North, Range Sixty-six (66) West of the 5th P.M., Aurora County, South Dakota, is owned jointly, as tenants in common as follows: The Estate of Joseph J. Mohnen: an undivided one-third interest, and John J. Mohnen Trust: an undivided two-thirds interest,

and

Parcel #4: The Southeast Quarter (SE1/4), Section Thirty-four (34), Township One Hundred Three (103) North, Range Sixty-six (66) West of the 5th P.M., Aurora County, South Dakota, is owned jointly, as tenants in common as follows: The Estate of Joseph J. Mohnen: an undivided two-thirds interest, and John J. Mohnen Trust: an undivided one-third interest,

and

Parcel #5: The Southwest Quarter (SW1/4), Section Thirty-five (35), Township One Hundred Three (103) North, Range Sixty-six (66) West of the 5th P.M., Aurora County, south Dakota, is owned jointly, as tenants in common as follows: The Estate of Joseph J.

Mohnen: an undivided two-thirds interest, and John J. Mohnen Trust: an undivided one-third interest, as tenants in Common.

2. Defendants' Counterclaim is dismissed.

Dated this _____ day of April, 2022.

4/22/2022 3:11:24 PM

BY THE COURT:

Attest:
Thiry, Deborah
Clerk/Deputy

Circuit Court Judge

STATE OF SOUTH DAKOTA))SS COUNTY OF AURORA)	IN CIRCUIT COURT FIRST JUDICIAL CIRCUIT
EDWARD O. MOHNEN) PLAINTIFF) VS.)	01CIV19-000033 ESTATE OF JOHN J. MOHNEN AND JOHN J. MOHNEN TRUST PROPOSED FINDINGS OF FACTS AND CONCLUSIONS OF LAW
ESTATE OF JOHN J. MOHNEN, JOHN J. MOHNEN TRUST, AURORA COUNTY, SOUTH DAKOTA, AND ANY AND ALL SPOUSES OF THE ABOVE NAMED PERSONS OR UNKNOWN HEIRS, HEIRS-AT LAW, DEVISEES, LEGATEES, EXECUTORS, ADMINISTRATORS, PERSONAL REPRESENTATIVES, AGENTS OR LEGAL REPRESENTATIVES, OR CREDITORS OF ANY DECEASED PERSON; AND ALL PERSONS UNKNOWN WHO HAVE OR CLAIM TO HAVE ANY INTEREST, ESTATE IN, OR LIEN OR ENCUMBRANCE UPON THE PREMISES DESCRIBED IN THE COMPLAINT, DEFENDANTS, AND ESTATE OF JOSEPH J. MOHNEN AND ANNA MOHNEN, INTERVENORS.	Refused /ddk/ 4/22/2022 3:12:20 PM

1. Joe and Anna Mohnen were the parents of 15 children who lived on a farm in Aurora County, South Dakota.

2. During Joe's life various parcels of property were acquired where he owned them either in their entirety, or with his wife and son, John Mohnen. All of the children grew up on the farm, however John stayed on the farm his entire life.

3. John never married.

4. John Mohnen returned from the military in 1953 and stayed at home from that date until his death in 2018.

5. Edward (Ed) was the fifth to the youngest child who left the farm for military service for two years in 1966, but otherwise has lived on the farm as a renter paying rent or as a hired man and being paid for each.

6. Theresa Ishmael is a daughter of Joe and Anna Mohnen.

7. Theresa Ishmael cared for her mother for many years, especially during the last years of her life. Anna Mohnen lived with Theresa her last years.

8. Gabriel Mohnen, the son of Theresa Ishmael is a co-trustee and beneficiary of the John J. Mohnen Trust. He worked on the farm part-time with John since High School and more so as John got older.

9. Presently there are six surviving siblings, Theresa Ishmael being one.

10. Theresa Ishmael is a co-trustee and beneficiary of the John J. Mohnen Trust.

11. Joe died intestate on May 3, 1969. At that time, Anna, John and Ed were living at the farm, as well as three siblings who had not yet graduated from high school.

12. Ed testified he was getting $3,000 per month for his work on the farm.

13. Anna deeded any and all interest in the property by Warranty Deed to John Mohnen in 1990. That deed was recorded and was a public record.

14. Anna died testate in May 1996. She was living with her daughter Theresa in White Lake at the time of her death.

15. The parcels of land, of which only four are actually disputed are described as:

Parcel 1: The South Half of the Northwest Quarter, Section Fifteen, Township One Hundred Two, Range Sixty-six, West of the Fifth Principal Meridian, Aurora County, South Dakota;

Parcel 2: The North Half of the Northwest Quarter, Section Fifteen, Township One Hundred Two, Range Sixty-six, West of the Fifth Principal Meridian, Aurora County, South Dakota;

Parcel 3: The Northeast Quarter, Section Three, Township One Hundred Two, Range Sixty-six, West of the Fifth Principal Meridian, Aurora County, South Dakota;

Parcel 4: The Southeast Quarter, Section Thirty-four, Township One Hundred Three, Range Sixty-six, West of the Fifth Principal Meridian, Aurora County, South Dakota;

Parcel 5: The Southwest Quarter, Section Thirty-five, Township One Hundred Three North, Range Sixty-six, West of the Fifth Principal Meridian, Aurora County, South Dakota.

16. The initial Complaint included the Southeast Quarter of Section Thirty-five. There was no evidence this property was ever owned by anyone other than John Mohnen and now the John J. Mohnen Trust. The Plaintiff conceded such

facts at trial after having in their possession title work proving that fact for more than three years and not dismissing that property from the action.

17. After the death of Joe Mohnen John took over the role of Joe, his father, not only taking care of and managing the land, but also caring for Anna and the siblings who were still at home.

18. The testimony of Ed Mohnen is not reliable. The Court recognizes that Ed Mohnen was previously convicted of a felony for theft of cattle and/or conversion of property. Ed Mohnen's testimony was self-serving and at times not believable, such as when he indicated he did not know that he owed the bank the money in the matter in which he was convicted.

19. The testimony of Gabriel Mohnen and of Theresa Ishmael was that John Mohnen paid all of the bills all of the time and that Ed never paid any of the bills.

20. The testimony was that even when Ed paid John $8,000 for rent, John would then give him the money back at almost that same amount.

21. There is evidence that after Joe's death the taxes were paid by John or while using John's money. After John's death the trust paid the taxes.

22. There was no testimony that Ed paid any of the bills related to the home, including insurance, electricity, food, or any other necessity of life.

23. All of the children of Joe were aware that Joe died in 1969. All of them returned for the funeral and should have known of his death and been put on notice as to the ownership of the land. John had continued exclusive, adverse and open possession of the land from Joe's death.

24. Anna Mohnen deeded all of the property included in this litigation to John Mohnen in 1990. The deed was a public record, and all of the children of Joe or

Anna Mohnen had notice, whether constructive or actual, that such deed and ownership of the land was affected.

25. All of the heirs of Joe and Anna Mohnen were aware that Anna Mohnen died in 1996 and all returned for the funeral and were aware that John had and continued to have open, adverse, continuous and exclusive possession of the land.

26. All of the heirs in the 1980's prior to Anna's death were asked to sign a deed releasing their interest in the property and had notice concerning questions about the interest in the land.

27. Testimony by both Theresa Ishmael and Gabriel Mohnen was that none of Joe's children ever made a claim to the property. There was no testimony any heir ever claimed ownership in the property while John was alive. John's possession of the land was at all times open, adverse, continuous and exclusive.

28. There was evidence that numerous members of the family returned home to hunt every year, and none ever questioned or made a claim against John's open, adverse, continuous and exclusive possession of the land.

29. There was clear and convincing evidence that John occupied the land from the death of Joe until his death in 2018 and that each and every heir knew that he occupied the land.

30. Anna died in 1990. In Anna's estate, her Will specifically states that any and all interest in the land was to go to John. No heir brought suit against John's possession of the land until twenty-two years after Anna's death.

31. Ed and other heirs should have known they might have an interest in the land after Joe's death in 1969. No heir took any action after Joe's death to

determine their interest in the land until Ed brought suit after John died, which was fifty years after Joe's death.

32. Ed and the other heirs knew they might have an interest in the land in the 1980's when they were asked to sign a quit claim deed to John, but neither Ed nor any other heir brought an action against John until after John died twenty-eight years later.

33. Ed claimed he first knew of a question about the land ownership in 2016. Ed waited until after John died two years later to start his action.

34. Other heirs have deeded their interest, if any, in the property, to the Trust.

35. None of the heirs who are deceased made any claim to the land in any probate matter.

36. No other surviving heir except Ed have made any claim to the land.

37. Ed lost a huge amount of money in a fantastical belief he had won the Australian lottery. Ed was convicted of a felony and a civil judgment was taken against him for conversion of collateral, which he sold to send cash to claim his lottery winnings. That judgment had to be paid by John's Trust so that land owned by John would not be taken by the bank.

38. The Owner and Encumbrance report completed by Aurora County Land & Title Company was not complete and was not adequate for the Court to rely upon.

39. This action was brought only by Ed. Notice was not given to any of the other heirs except John Mohnen's Trust and/or his estate. Theresa Ishmael, as Trustee, of the Trust would also have had notice.

40. The Plaintiff made no attempt to determine the interest held by any living or deceased heirs or heirs of the deceased and the myriad of interest that may or

may not have been made or claimed by heirs of deceased children of Anna, Joe or other siblings. The Court was left without adequate information to make any determination as to the quiet title action and the ownership of the property.

41. Ed's claim that throughout John's life he believed the land was owned solely by John is contradictive by the evidence. In 1969 Joe died, in 1980 Ed was asked to sign a quit claim deed. In addition, any testimony by Ed is unreliable. While under oath Ed testified to mislead the Court. Ed was convicted in a previous felony action.

42. There is no question that John Mohnen was in actual, open, visible, notorious, continuous, and hostile occupation for the statutory period and more.

43. John held a legal title to the property from a deed from Anna and from Anna's estate.

44. The testimony that should have come from John or even from Anna was not available because of laches. Ed waited until after John's death in 2018 and long after Anna's death to bring any action.

45. Ed's use of the land for many years was as a tenant paying rent. Previous to that Ed was as an employee, paid a wage, significantly in excess of that which was reasonable at the time.

46. The Defendant's ability to prove adverse possession or other facts in the case was significantly affected by laches. Therefore the actions of the Plaintiff in delaying bringing suit support the claim of laches and adverse possession.

47. Laches should be found by the Court. The Defendants have proven that Ed knew or should have known of questions concerning the ownership of the land in 1969, the 1980's, 1990's and 1996 and even 2016 because of evidence. The other siblings knew or should have known of questions concerning the

ownership of the land at the same times as above. On at least three occasions all of the siblings had notice, including Ed, (1) all were home first for the funeral of Joe; (2) all were home for the funeral of Anna in 1996 and on the occasion of the deed in 1990 from Anna to John that ownership of the land should be investigated.

48. The delay in bringing the action, in some cases fifty years and other cases twenty-eight years and another case twenty-three years and in the last case until after John was dead supports the claim of laches and the claim of adverse possession.

49. Ed not only knew or should have known of any possible claim, but he delayed making that claim while either (1) receiving significant income at the time greatly in excess for his work as a laborer on the farm, (2) later renting the 800 acres at $8,000 a year, most of which he received back, both of which were beneficial to him.

50. The prejudice to the Defendant because of not having Anna or John to testify at trial was significant.

51. Ed's claim that he was not on notice about questions concerning the land title until 2016 is not logical, reasonable or reliable.

52. Even if Ed's testimony is partially reliable, Ed again under laches delayed bring suit for at least two more years after he claimed that in 2016 he initially found out the land might be in question. Ed delayed suit until after the death of John in 2018.

53. Ed's testimony that he did not know in 1980's anything about land issues when he was asked to sign a deed is not credible. Ed's claim that he did not

know of questions concerning the land after Joe's death in 1969, Anna's deed in 1990, or Anna's death in 1996 is not credible.

54. The evidence is that John J. Mohnen Trust and/or John Mohnen's Estate or John himself paid the taxes since 1969. Since 2016 the taxes have been paid by the trust, but previous to that the testimony by Theresa Ishmael and Gabriel Mohnen was that Ed never paid any bills related to the farm, including insurance or utilities, or even food, and that whenever he did pay any bill he was reimbursed by John or paid by John before paying that bill.

55. The fact of the death of Joe, the deed by Anna, and the death of Anna, all of which are public knowledge, and that the Plaintiff delayed taking any action are sufficient to show that there was knowledge by the parties and laches and adverse possession and payment of taxes are relevant and the Court should find in favor of the Defendant.

CONCLUSIONS OF LAW

1. The evidence offered at trial by the Plaintiff concerning all issues was inadequate.
2. The title evidence offered at trial was inadequate for the Court to rule for the Plaintiff in the quiet title action.
3. The evidence concerning ownership, however fractional, which is necessary for the determination of a quiet title action was not provided to the Court by the Plaintiff.
4. An action being brought in the name of Ed alone concerns only Ed's interest in the property. No other possible heir was served, and the action should be dismissed for failure of service.

5. Adverse possession and payment of taxes were adequately proven considering that laches existed.
6. The quiet title action should be dismissed with prejudice and title should be found held by the John J. Mohnen Trust.

Dated this 21 day of April, 2022.

Albert Steven Fox
131 S Main – PO Box 131
Chamberlain SD 57325-0131
605 234 2222
Attorney for Defendants

CERTIFICATE OF SERVICE

The undersigned certifies that he served a copy of the Estate of John J. Mohnen and John J. Mohnen Trust Proposed Findings of Facts and Conclusions of Law upon the person herein next designated, on the 21 day of April, 2022, by Odyssey Efile Service.

Brad Schreiber	Timothy R. Whalen
1110 E Sioux Ave	PO Box 127
Pierre SD 57501	Lake Andes SD 57356

Which address is the last address of the addressee known to the subscriber.

Dated this 21 day of April, 2022.

Albert Steven Fox
LARSON LAW, P.C.
P.O. Box 131
Chamberlain, SD 57325-0131
605 234 2222

Filed: 4/21/2022 11:44 AM CST Aurora County, South Dakota 01CIV19-000033

Aurora County Land Title Company
Davison County Title Company
PO Box 1345, 305 North Kimball
Mitchell, South Dakota 57301
Phone: (605) 996-6462 / Fax: (605) 996-6180

Prepared For: The Schreiber Law Firm

OWNER AND ENCUMBRANCE REPORT

Order Number: 087-18OE

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1. The real estate referred to in this report is described as follows:

   Parcel 1: The Southeast Quarter (SE1/4) of Section Thirty-Five (35), Township One Hundred Three (103) North, Range Sixty-Six (66), West of the 5th P.M., Aurora County, South Dakota.

   Parcel 2: The Northwest Quarter (NW1/4), of Section Fifteen (15), Township One Hundred Two (102) North, Range Sixty-Six (66) West of the 5th P.M. Aurora County, South Dakota; and

   Parcel 3: The Northeast Quarter (NE1/4), Section Three (3), Township One Hundred Two (102) North, Range Sixty-Six (66) West of the 5th P.M. Aurora County, South Dakota; and

   Parcel 4: Southeast Quarter (SE1/4), Section Thirty-Four (34), Township One Hundred Three (103) North, Range Sixty-Six (66), West of the 5th P.M., Aurora County, South Dakota; and

   Parcel 5: The Southwest Quarter (SW1/4) Section Thirty-Five (35), Township One Hundred Three (103) North, Range Sixty-Six (66), West of the 5th P.M., Aurora County, South Dakota.

2. The apparent record title holder to the above-described real estate is vested as follows:

   Parcel 1: The John J. Mohnen Trust

   Parcel 2: Joe Mohnen S1/2NW1/4 15-102-66
   The John J. Mohnen Trust and Joe Mohnen N1/2NW1/4

   Parcel 3: The John J. Mohnen Trust and Joe Mohnen

   Parcel 4: Joe Mohnen

   Parcel 5: Joe Mohnen

3. The above-described real estate is encumbered by the following liens:

   Lease notice between John J. Mohnen and Edward O. Mohnen, recorded on August 22, 2016, in Misc. Book 49 on page 198.

EXHIBIT
1

4. There are no unsatisfied judgments, federal or state tax lien notices, or bankruptcy notices, of record in the Davison County Register of Deed's Office, against the following named persons or corporations, Except as may be shown hereon, for the past ten (10) years. No search has been made as to name variations of the parties, other than as stated hereon.

   Names Search: The John J. Mohnen Trust and Joe Mohnen

   Judgments:

   Civil File #17-24 against Edward Mohnen in favor of John J. Mohnen Trust in the amount of $67,601.04, file May 5, 2020.

   Probate 19-002 regarding the estate of Joe Mohnen

   Probate File #19-003 regarding the estate of Ann Mohnen, filed on April 30, 2019.

   CIVIL FILE #19-33 Edward O. Mohnen (Plaintiff) vs Estate of John J. Mohnen, John J. Mohnen Trust, Aurora County, South Dakota, and any and all spouse of the above named persons or unknown heirs, heirs-at-law, devisees, Legatees, executors, administrators, personal representatives, agents or legal representative or creditors of any deceased person; and all persons unknown who have or claim to have any interest, estate in, or lien or encumbrance upon the premises described in the complaint (defendants) Dolores Waters, James Mohnen, Jesse Mohnen, Mary M Koch-Vinz, Ronald Kettner, Rose Rynish, Bruce Kettner, Doris Maas, Elaine Koleske, Janette Priebe, Leo Mohnen, Paul Mohnen, Roealie Mohnen, Shane Mohnen, and Estate of Anna Mohnen (Third Party Defendants)

   Probate File #20-003 regarding the estate of John Mohnen, filed on March 19, 2020.

   Civil File #20-10: John J Mohnen (Plaintiff) vs Edward O. Mohnen, Dolores Water, James Mohnen, Bruce Kettner, Doris Maas, Elains Koleske, Janette Priebe, Jesse Mohnen, Mary M. Koch-Vinz, Ronald Kettner, Rose Rynish, Sharon Beckmann, Leo Mohnen, Paul Mohnen, Rosalie Mohnen and Shane Mohnen, filed April 13, 2020.

5. 2017 Real Estate Tax Information payable in 2018:

   Tax Parcel No.: 2367
   Total Taxes: $1,714.52
   Total Paid: $1,714.52

   Tax Parcel No.: 1372
   Total Taxes: $1,130.04
   Total Paid: $1,130.04

   Tax Parcel No.: 5581
   Total Taxes: $786.18
   Total Paid: $786.18

   Tax Parcel No.: 1313
   Total Taxes: $1,972.82
   Total Paid: $1,972.82

   Tax Parcel No.: 2363

Total Taxes: $1,796.40
Total Paid: $1,796.40

Tax Parcel No.: 2366
Total Taxes: $2,135.28
Total Paid: $2,135.28

Delinquent Taxes: NONE

6. This Report specifically does not include information relating to:
   a. Any encroachments, measurements, party walls, overlap boundary line disputes, or other matters which would be disclosed by an accurate survey or inspection of the real estate.
   b. Easements or claims of easements.
   c. Restrictive Covenants, Conditions, Agreements or Easements that may affect said real estate.
7. This Report is not a title opinion or a title insurance policy.
8. This Report is not to be construed as a legal opinion of title, nor is it a substitute for an Abstract of Title.
9. This Report is based upon a search of the public records and the liability of Davison County Title Company by reason of losses and damages that may occur by reason of any errors and omissions in this report, is limited to the fee it received for the preparation and issuance of this Report, or the amount of $100.00, whichever is greater.
10. This Report does not include a search for levied or pending assessments.
11. Name searches have been made only on the current owner and contract for deed purchasers, if any.
12. The apparent record owners as shown are the grantees on the last deed of record.

Certified to this 17th day of September, 2021, at 8:00 a.m.

Davison / Aurora County Land Title Company

By: Kristie L. Rake

EXHIBIT 500

Prepared by:
David J. Larson
Larson Law P.C.
P.O. Box 131
Chamberlain, SD 57325
605 234 2222

FILED
MAR 22 2022
AURORA COUNTY CLERK OF COURTS
FIRST JUDICIAL CIRCUIT COURT OF SD

State of SD# 460
County of Aurora
Recorded this 23 day of August 20 16
at 11:00 o'clock A M
recorded in book 63 of Deeds page 473-474
Register of Deeds Fee 30.00

REGISTER OF DEEDS SEAL AURORA COUNTY, SOUTH DAKOTA

WARRANTY DEED

John J. Mohnen, a single **man,** of 25556 374th Avenue, White Lake, Aurora County, State of South Dakota, 57383, for and in consideration of **Other good and valuable considerations and One** Dollar(s), GRANT, CONVEY, AND WARRANT TO: **The John J. Mohnen Trust**, of 25556 374th Avenue, White Lake, South Dakota 57383 P.O., the following described real estate in the County of Aurora in the State of South Dakota:

Southeast Quarter of Section Thirty-five, Township One Hundred Three North, Range Sixty-six;
Northwest Quarter of Section Fifteen, Township One Hundred Two North, Range Sixty-six;
Northeast Quarter of Section Three, Township One Hundred Two North, Range Sixty-six;
Southeast Quarter of Section Thirty-four, Township One Hundred Three North, Range Sixty-six;
Southwest Quarter of Section Thirty-five, Township One Hundred Three North, Range Sixty-six, all in Aurora County, South Dakota.

Subject to existing reservations, easements and rights of way.

Exempt SDCL 43-4-22(18) Exempt from Transfer Fee

Dated this 18 day of August, 2016

John J. Mohnen

John J. Mohnen

STATE OF SOUTH DAKOTA :
:SS
COUNTY OF BRULE :

On this the 18 day of Aug., 2016, before me, the undersigned officer personally appeared John J. Molinen known to be or satisfactorily proven to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

(County Seal)

Notary Public, South Dakota
My Comm. Exp. 9-25-21

Exhi

Last Will and Testament of

ANNA M. MOHNEN

I, ANNA M. MOHNEN, of White Lake, Aurora County, South Dakota, being of sound mind and memory, do hereby make, publish and declare this to be my Last Will and Testament, hereby revoking any and all Wills previously made or purportedly made by me.

1. Upon my death, I direct my Executor hereinafter named to pay all of my just debts, including the costs of my funeral and last illness, and the expenses of the administration of my estate as soon after my death as practical.

2. I give, devise and bequeath unto my grandson, Gabriel Mohnen, the Sounder Hammond Organ, the book case with all music books, recorder and tapes usually kept therein.

3. I give, devise and bequeath the two wooden candle stick holders to my daughter, Sharon Mohnen Beckmann.

4. I give, devise and bequeath the Dressmaker sewing machine, the GE toast and broil oven, and the Reader's Digest Children's Songbook to my son, Edward Mohnen.

5. I hereby direct my executor hereinafter named to pay from my estate onto St. Peter's Church of White Lake, South Dakota, the sum of $200.00 to be used for Masses for me.

6. I hereby give, devise and bequeath any and all real property or interest in real property of which I may die possessed to my son, John, if he survives me. If my son, John, should fail to survive me, then and in such event, the real property shall go to my son, Edward.

7. All of the rest, remainder and residue of my estate, of whatever kind or nature, I hereby give, devise and bequeath unto my children who shall survive me, equally share and share alike.

8. I hereby name, constitute and appoint my son, John Mohnen, as the Executor of this, my Last Will and Testament, and I direct the Court to require no bond of him as such. Should my son, John, fail to survive me, or if he should otherwise be unwilling or unable to qualify, then and in such event, I hereby nominate, constitute and appoint my son, Edward Mohnen, as such Executor, also without bond.

Dated at Chamberlain, Brule County, South Dakota, this 7th day of January, 1987.

Anna M Mohnen

THE FOREGOING INSTRUMENT, consisting of two (2) typewritten pages, was on the day of the date thereof, to-wit: the 7th day of January, 1986, signed, published and declared by the Testatrix, ANNA M. MOHNEN, to be her Last Will and Testament, and we, in the presence of said Testatrix, and at the request of her, and in the presence of each other, have subscribed our names hereto as witnesses.

Kay J Andera residing at Chamberlain SD

Leonard E Andera residing at Chamberlain, SD

STATE OF SOUTH DAKOTA)
:ss. ACKNOWLEDGMENT OF WILL
COUNTY OF BRULE)

WE, ANNA M. MOHNEN, LEONARD E. ANDERA and KAY J. ANDERA, the Testatrix and the Witnesses respectively, whose names are signed to the attached and foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the Testatrix signed willingly or directed another to sign for her, and that she executed it as her own free and voluntary act for the purposes therein expressed; and that each of the Witnesses in the presence and hearing of the Testatrix, signed the Will as witness and to the best of their knowledge, the Testatrix was at the time eighteen or more years of age, of sound mind and under no constraint or undue influence.

Anna M Mohnen
Testatrix

Kay J Andera
Witness

Leonard E Andera
Witness

Subscribed, sworn to and acknowledged before me by the Testatrix, ANNA M. MOHNEN, and sworn to before me by LEONARD E. ANDERA and KAY J. ANDERA, Witnesses, this 7th day of January, 1987.

Doris Ellwanger
NOTARY PUBLIC
Commission expires: 2-26-93

(NOTARIAL SEAL)

Page 2

138

#599

WARRANTY DEED

ANNA M. MOHNEN, a single person, GRANTOR, of Rt. 1, Box 118, White Lake, SD 57383 for and in consideration of the sum of ONE & NO/100 ($1.00) DOLLAR, GRANTS, CONVEYS AND WARRANTS to JOHN MOHNEN, a single person, GRANTEE, of Rt. 1, Box 118, White Lake, SD 57383, P.O., the following described real estate in the County of Aurora and the State of South Dakota:

The Northwest Quarter (NW1/4) of Section Fifteen (15) and the Northeast Quarter (NE1/4) of Section Three (3) in Township One Hundred Two (102) North, Range Sixty-six (66) West of the 5th P.M.; and the Southeast Quarter (SE1/4) of Section Thirty-four (34) and the Southwest Quarter (SW1/4) of Section Thirty-five (35) in Township One Hundred Three (103) North, Range Sixty-six (66) West of the 5th P.M., all in Aurora County, South Dakota.

The Grantor is the mother of the Grantee. This instrument contains all of the information required by SDCL 7-9-7.

This transfer is exempt from transfer fee undr the provisions of SDCL 43-4-22(5).

Dated this 4th day of October, 1990.

Exempt From Transfer Fee

Anna M. Mohnen

STATE OF SOUTH DAKOTA)
: SS.
COUNTY OF AURORA)

On this the 4th day of October, 1990, before me, the undersigned officer, personally appeared ANNA M. MOHNEN, known to me or satisfactorily proven to be the person whose name is subscribed to the within and foregoing instrument and acknowledged that she executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

NOTARIAL SEAL
LEONARD E. ANDERA
NOTARY PUBLIC
SEAL
SOUTH DAKOTA
(STAMP SEAL NO IMPRINT)

Leonard E Andera
NOTARY PUBLIC
Commission expires: 7-7-91.

State of South Dakota)
) ss.
County of Aurora)

Filed for record this 10 day of October A.D. 1990 at 9:45 o'clock A.M. and recorded in Book 53 of Deeds page 138.

(SEAL)

Bernadeen Wulf
Register of Deeds

Fee: $3.00

bw

Prepared by:
Albert Steven Fox
Larson Law P.C.
P.O. Box 131
Chamberlain, SD 57325
(605) 234-2222

Enter ✓
Alpha ✓
Numer. ✓
Record ✓

State of SD #407
County of Aurora
Recorded this 15 day of June 2020
at 10:00 o'clock A M
recorded in book 64 of Deeds page 867-868
Arlene Kocher
Register of Deeds Fee 30.00

REGISTER OF DEEDS SEAL AURORA COUNTY, SOUTH DAKOTA

FILED

MAR 22 2022

Deborah Thiry
AURORA COUNTY CLERK OF COURTS
FIRST JUDICIAL CIRCUIT COURT OF SD

DEED

97404 SD

Sharon Beckmann, 1224 Elkay Dr., Eugene, Lane County, State of Oregon ~~54165~~, for and in consideration of **Other good and valuable consideration and One** Dollar(s), CONVEY(S) AND DEEDS any and all interest I have or may have in the future, including any and all rights to the below-described property to: **John J. Mohnen Trust, Theresa Ishmael, Trustee,** 505 E First St., White Lake, South Dakota, 57383, the following described real estate in the County of Aurora in the State of South Dakota:

The Northwest Quarter (NW ¼) of Section Fifteen (15) and the Northeast Quarter (NE ¼) of Section Three (3) in Township One Hundred Two (102) North, Range Sixty-six (66) West of the 5th P.M.; and the Southeast Quarter (SE ¼) of Section Thirty-four (34) and the Southwest Quarter (SW ¼) of Section Thirty-five (35) in Township One Hundred Three (103) North, Range Sixty-six (66) West of the 5th P.M., all in Aurora County, South Dakota.

Dated this 8 day of June, 2020.

Exempt from Transfer Fee

Exempt SDCL 43-4-22(18)

Sharon Beckmann
Sharon Beckmann

State of Oregon :
:SS
County of Lane :

On this the 8th day of June, 2020, before me, the undersigned officer, personally appeared Sharon Beckmann, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

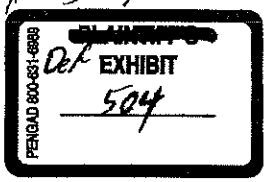
In witness whereof I hereunto set my hand and official seal.

(Notary Seal)

OFFICIAL STAMP
KRISTINE ROBIN RHODES
NOTARY PUBLIC - OREGON
COMMISSION NO. 980566
MY COMMISSION EXPIRES NOVEMBER 18, 2022

Kristine Robin Rhodes
Notary Public, Oregon
My comm. Exp. November 18, 2022

Ex 504



Prepared by:
Albert Steven Fox
Larson Law P.C.
P.O. Box 131
Chamberlain, SD 57325
(605) 234-2222

Enter ✓
Alpha ✓
Numer. ✓
Record ✓

State of SD # 273
County of Aurora
Recorded this 13 day of April 2020
at 10:10 o'clock A.M.
recorded in book 64
page 803-804
Register of Deeds Fee 30.00

FILED
MAR 22 2022
AURORA COUNTY CLERK OF COURTS
FIRST JUDICIAL CIRCUIT COURT OF SD

QUIT CLAIM DEED

David Mohnen, 20045 E Jude, Rhododendron, Clackamas County, State of Oregon 97049, for and in consideration of **Other good and valuable consideration and One** Dollar(s), CONVEY(S) AND QUIT CLAIM(S) TO: **John J. Mohnen Trust dated August 18, 2016,** %Theresa Ishmael, 505 E First St., White Lake, South Dakota, 57383, the following described real estate in the County of Aurora in the State of South Dakota:

The Northwest Quarter (NW ¼) of Section Fifteen (15) and the Northeast Quarter (NE ¼) of Section Three (3) in Township One Hundred Two (102) North, Range Sixty-six (66) West of the 5th P.M.; and the Southeast Quarter (SE ¼) of Section Thirty-four (34) and the Southwest Quarter (SW ¼) of Section Thirty-five (35) in Township One Hundred Three (103) North, Range Sixty-six (66) West of the 5th P.M., all in Aurora County, South Dakota.

Dated this 3 day of July, 2019.

Exempt from Transfer Fee

Exempt SDCL 43-4-22(18)

David Mohnen

David Mohnen

State of Oregon :
:SS
County of Clackamas :

On this the 3 day of JULY, 2019, before me, the undersigned officer, personally appeared David Mohnen, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

(Notary Seal)

Lisa E. Jaggard
Notary Public, Oregon
My comm. Exp. 1-31-20

OFFICIAL STAMP
LISA E JAGGARD
NOTARY PUBLIC-OREGON
COMMISSION NO. 946407
MY COMMISSION EXPIRES JANUARY 31, 2020

Exhibit 505 Grantor s of

Jackson County, State of South Dakota

for and in consideration of One Dollar and other good and valuable consideration ~~XXXXXX~~

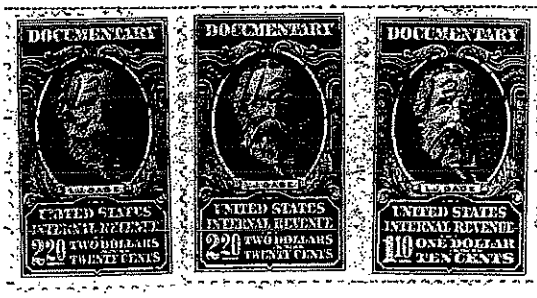
GRANTS, CONVEYS, AND WARRANTS TO Joe Mohnen and Anna M. Mohnen, husband and wife; and John J. Mohnen

Grantee, of White Lake, South Dakota P. O., the following described real estate in the County of Aurora, in the State of South Dakota.

PLAINTIFF'S EXHIBIT 505 PENGAD 800-631-6989

An undivided one-half interest in the Northeast Quarter (NE¼) of Section Three (3), Township One Hundred Two (102), North Range Sixty-six (66), West of the 5th P. M., Aurora County, South Dakota

FILED
MAR 22 2022
Deborah Shiny
AURORA COUNTY CLERK OF COURTS
FIRST JUDICIAL CIRCUIT COURT OF SD



Dated this 5th day of June, 1961.

Marian Boeding

Lawrence Boeding

State of SOUTH DAKOTA
County of JACKSON } ss.

On this the 5th day of June, 1961, before me Donald L. Heck, the undersigned officer, personally appeared Marian Boeding and Lawrence Boeding, known to me or satisfactorily proven to be the person s whose names are subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained.

257 # 951

ANTY DEED
ATE FORM

TO

UTH DAKOTA, } ss.

this 15

, 1961

M., and recorded

of Deeds on

Register of Deeds.

Deputy.

eturn to

M

EXHIBIT 506 Grantor s of

Colusa County, State of California

for and in consideration of One Dollar and other good and valuable consideration ~~DOLLARS~~

GRANTS, CONVEYS, AND WARRANTS TO Joe Mohnen and Anna M. Mohnen, husband and wife; and John J. Mohnen

Grantee, of White Lake, South Dakota P. O., the following described real estate in the County of Aurora, in the State of South Dakota.

An undivided one-half interest in the Northeast Quarter (NE¼) of Section Three (3), Township One Hundred Two (102), North Range Sixty-six (66), West of the 5th P. M., Aurora County, South Dakota

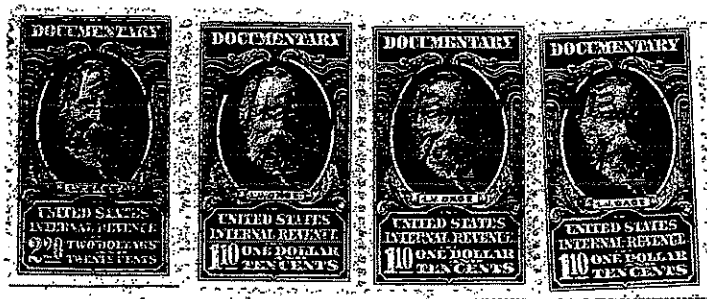
PENGAD 800-631-6989 EXHIBIT 506

FILED

MAR 22 2022

Deborah Shivy

AURORA COUNTY CLERK OF COURTS
FIRST JUDICIAL CIRCUIT COURT OF SD



Dated this 12th day of June, 19 61

Patricia Steffes

Leo Steffes

State of CALIFORNIA }
County of Colusa } ss.

On this the 12th day of June, 19 61, before me W. H. BEDUHN, the undersigned officer, personally appeared Patricia Steffes and Leo Steffes, wife and husband, known to me or satisfactorily proven to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained.

ANTY DEED
ATE FORM

TO

UTH DAKOTA, } ss.

this 13th

, 19 61

M., and recorded

of Deeds on

Register of Deeds.

Deputy.

eturn to

M

FILED
MAR 22 2022
Deborah Thiry
AURORA COUNTY CLERK OF COURTS
FIRST JUDICIAL CIRCUIT COURT OF SD

Exhibit

PENGAD 800-631-6989 EXHIBIT 507

grantor ___ *of* Rapid City, Pennington *County,*

State of South Dakota. *for and in consideration of*

Four Thousand ($4,000.00)- - - - - - - - - - - - - - - - - - *DOLLARS*

GRANTS, CONVEYS AND WARRANTS TO Joe Mohnen, Anna M. Mohnen and John Mohnen,

grantees, of White Lake, South Dakota. *P. O. the following described real estate in the County of* Aurora *in the State of South Dakota:*

North-Half (N½) of the Northwest Quarter (NW¼) of Section Fifteen (15), Township One Hundred Two (102) North, of Range Sixty-Six (66), West of the 5th. P.M., situated in Aurora County, South Dakota.

Dated this 1st *day of* June, *19* 64

Katherine Mohnen

STATE OF SOUTH DAKOTA,
County of Aurora } *ss.*

On this the 1st *day of* June *19* 64, *before me,* W.C. Miller *the undersigned officer, personally appeared* Katherine Mohnen, a widow, *known to me or satisfactorily proven to be the person whose name* is *subscribed to the within instrument and acknowledged that* s*he executed the same for the purposes therein contained.*

RANTY
EED

TO

UTH DAKOTA, } ss.

rd. this 7 day of

, 194 4 at

M., and recorded in

, Page 241

Register of Deeds.

Deputy.

App. 0049

Two Thousand Five Hundred and No/100---------- DOLLARS,

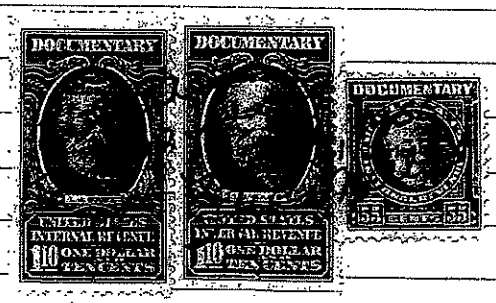
GRANTS, CONVEYS and WARRANTS to Joe Mohnen 508

antee, of

White Lake, South Dakota, *P. O., the*

following described real estate in the County of Aurora *in the State of South Dakota:*

The South Half ($S\frac{1}{2}$) of the Northwest Quarter ($NW\frac{1}{4}$) of Section Fifteen (15), Township One Hundred Two (102) North, of Range Sixty-Six (66), West of the 5th P.M., situated in Aurora County, South Dakota;



Dated this 21st *day of* March *19*55

John P. Mohnen

Katherine Mohnen

STATE OF SOUTH DAKOTA }
County of Aurora } *ss.*

On this 21st *day of* March *in the year 19*55*, before me personally appeared* John P. Mohnen and Katherine Mohnen, husband and wife,

known to me (~~or proved to me on the oath of~~) *to be the persons who* are *described in and who executed the within instrument, and acknowledged to me that*

NTY DEED

TO

TH DAKOTA, } ss.

this 32

2 10 57, at

d 20 minutes A M.,

ook 40 of

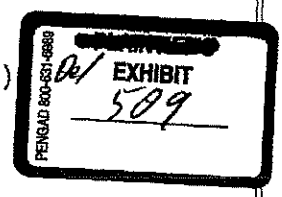
Register of Deeds

Deputy

grants and conveys to Joe Mohnen EXHIBIT 509 , *grantee*

of White Lake, S. Dak. *P. O. all of the right, title, and interest which the grantor county now owns and has heretofore acquired by tax proceeding in and to the following described real estate in the County of* Aurora , *State of South Dakota:*

Southwest Quarter (SW¼) of Section Thirty-five (35) in Township One Hundred Three (103) North, of Range Sixty-six (66), West of the 5th P.M.



FILED
MAR 22 2022
AURORA COUNTY CLERK OF COURTS
FIRST JUDICIAL CIRCUIT COURT OF SD

In testimony whereof the grantor has caused this instrument to be executed by its Chairman of the Board of County Commissioners and attested by its Auditor on this 5th *day of* March , *19* 47

Aurora *County*

By D W Bosworth
Chairman of Board of County Commissioners.

Attest:
H P Hansen

Auditor of Aurora *County*

STATE OF SOUTH DAKOTA
County of Aurora } *ss.*

On this the 5th *day of* March , 1947 , *before me,* J. J. Harkness Clerk of Courts, *the undersigned officer, personally appeared* D. W. Bosworth , *Chairman of the Board of County Commissioners of* Aurora *County, South Dakota, known to me or satisfactorily proven to be the person and officer described in the foregoing instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.*

In witness whereof I hereunto set my hand and official seal.

J J Harkness

unty to Land
d by Tax
ceding

ISTER of DEEDS
one, S. D.
that the within in-
d in this office for
18 day
A. D. 1948,
o'clock A. M., and was
Book 86 of
on page 429
is Pennell
Register of Deeds.

Deputy.

John P. Mohnen + Katherine Mohnen (his wife) Grantor
of White Lake. S. Dak. P.O. Aurora County. State of South Dakota
for and consideration of One Dollar + other consideration Dollars
GRANTS, CONVEYS and WARRANTS To
Joe J. Mohnen
White Lake. S. Dak. P.O. the following described real
the County of Aurora in the State of South Dakota
to-wit.
South East quarter (S.E.1/4) Thirty four
(34) Township One hundred three (103)
Range Sixty Six (66). North of 5th Principal
Meridian.
Subject to mortgage of record together
with taxes thereon.

Exhibit 510

PENGAD 800-631-6989 EXHIBIT 510

FILED
MAR 22 2022
AURORA COUNTY CLERK OF COURTS
FIRST JUDICIAL CIRCUIT COURT OF SD

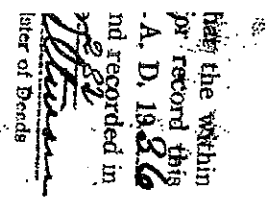
Dated at White Lake. S.Dak this 2 day of January 1935

Peter Mohnen
Katheryan Mohnen
John P. Mohnen
Katherine Mohnen

State of South Dakota. } as. Acknowledgsment.
County of Aurora. --- }

On this 2 day of January in the year 1935
before me John P. Tibert a Notary Public. within and for said County
and State personally appeared Peter Mohnen + Katheryan (his wife)
John P. Mohnen + Katherine Mohnen (his wife)
known to me to be the person
who are described in and who executed the within instrument and
acknowledged to me that they executed the same.

John P. Tibert
Notary Public.


filed for the within
for record this
A. D. 19 26
and recorded in
Register of Deeds

IN THE SUPREME COURT OF THE STATE OF SOUTH DAKOTA

Appeal No. 30003

EDWARD O. MOHNEN,
Plaintiff and Appellee,

vs.

ESTATE OF JOHN J. MOHNEN and JOHN J. MOHNEN TRUST,
Defendants and Appellants,

and

AURORA COUNTY, SOUTH DAKOTA, et al.,
Defendants and Appellees,

and

ESTATE OF JOSEPH J. MOHNEN and ESTATE OF ANNA MOHNEN,
Intervenors and Appellees.

APPEAL FROM THE CIRCUIT COURT
FIRST JUDICIAL CIRCUIT
AURORA COUNTY, SOUTH DAKOTA

THE HONORABLE DAVID KNOFF
Circuit Court Judge

APPELLEE EDWARD O. MOHNEN
APPELLEE ESTATE OF JOSEPH J. MOHNEN and APPELLEE ESTATE OF ANNA MOHNEN
JOINT BRIEF

Notice of Appeal filed May 24, 2022

Brad A. Schreiber
The Schreiber Law Firm,
Prof. L.L.C.
1110 E Sioux Ave
Pierre, SD 57501
Attorney for Appellee Mohnen

Rachel Mairose
Aurora County State's Attorney
PO Box 577
Plankinton, SD 57368
Attorney for Appellee Aurora County, SD

Timothy R. Whalen
Whalen Law Office
PO Box 127
Lake Andes, SD 57356
Attorney for Appellees Estate of Joseph J. Mohnen Estate of Anna Mohnen

Albert Steven Fox
Larson Law, P.C.
PO Box 131
Chamberlain, SD 57325

Ronald A. Parsons, Jr.
Johnson Janklow et al
101 S Main Ave Ste 100
Sioux Falls, SD 57104
Attorneys for Appellants

TABLE OF CONTENTS

TABLE OF CASES

CASES

STATE STATUTES

I. PRELIMINARY STATEMENT

This appeal brief is intended to be the joint brief of Appellees, Edward O. Mohnen, Appellee estate of Joseph J. Mohnen and Estate of Anna Mohnen. Throughout this brief, Appellants, Estate of John J. Mohnen and John J. Mohnen Trust, will be referred to as "Appellant." Appellee, Edward O. Mohnen, will be referred to as "Appellee Mohnen." Appellees, Aurora County, South Dakota, et al, will be referred to as "Appellee Aurora County, et al." Intervenors and Appellees, Estate of Joseph J. Mohnen and Estate of Anna Mohnen, will be referred to as "Intervenors or Appellees." References to transcripts and records will be referred to as follows:

Settled Record ..... SR

Trial Transcript ..... TT

Each citation will be followed by the appropriate page number(s).

II. JURISDICTIONAL STATEMENT

This appeal is being taken from a judgment. (SR 550 and 763). Said Judgment was filed April 22, 2022. (SR 763) Appellants' Notice of Appeal was served and filed on May 24, 2022. (SR 767).

III. STATEMENT OF LEGAL ISSUES

I. Does the equitable doctrine of laches bar the

claims to the farm by Edward Mohnen and other descendants of Joseph Mohnen who are heirs of his intestate estate?

The lower court held it does not.

1. *Clarkson and Co. v. Continental Resources, Inc.*, 2011 S.D. 22, 806 N.W.2d 615
2. *Webb v. Webb*, 2012 S.D. 41,814 N.W.2d 818

II. Did John Mohnen and his successor trust acquire ownership of any part of the farm he did not already own by adverse possession?

The lower held they did not.

1. *Gangle v. Spiry*, 2018 S.D. 55, 926 N.W.2d 55
2. *City of Deadwood v. Summit, Inc.*, 2000 S.D. 29, 607 N.W.2d 22
3. *Murphy v. Connolly*, 81 S.D. 644, 140 N.W.2d 394 (1996)
4. *Iverson v. Iverson*, 87 S.D. 628, 213 N.W.2d 708

III. Was the division of the interests in the parcels of the farm incorrect?

The lower court assigned fractional interests to each individual parcel of the farm based on its assessment of those interests.

IV. STATEMENT OF CASE

This case is about identifying the true owners of certain real property located in Aurora County, South Dakota. It is the result of failing to probate estates and failing to record deeds and other documents so that title can be accurately traced to the rightful owners.

Edward Mohnen served and filed a quiet title complaint in November 2019 asserting an interest in real property

located in Aurora County. Defendants are all parties that may claim or have an interest in the same land. Joseph J. Mohnen and Anna E. Mohnen were Ed's parents, now deceased. Prior to the filing of Ed's Complaint to quiet title, it was determined that his parents' estates had never been probated. This was significant because most, if not all of the real property involved would have passed through their estates and distributed in accordance with South Dakota laws of intestacy or through their wills. Accordingly, counsel was retained, and probate proceedings were initiated. In August 2020, both estates filed a motion to intervene in the quiet title action. The motion was granted. John Mohnen is a brother to Ed, who passed away prior to this litigation.

Prior to the litigation, an Owners and Encumbrances Report was completed by Aurora Land Title Company which outlined the ownership status of each parcel at issue herein. A trial to the court was held on March 16, 2020. Subsequent thereto the court ordered findings of fact and conclusions of law. Appellant has failed to appeal from any of the trial court's findings and conclusions.

V. STATEMENT OF FACTS

Joe and Anna Mohnen were the parents of 15 children who lived on a farm in Aurora County, South Dakota. TT6:14-

2; 7:1-17.

During Joe's life various parcels of property were acquired where he owned them either in their entirety, or with his wife and son, John Mohnen. All of the children grew up on the farm, however John stayed on the farm his entire life. TT 9:8-18; 12:23-25; 13:1-19.

Edward (Ed) was the fifth to the youngest child who left the farm for military service for two years in 1966, but otherwise has lived on the farm. TT: 9:8-18. At one point he was asked to move out by his nephew, Gabriel (Gabe) Mohnen. TT 19:8-18.

Gabe is a co-trustee and beneficiary of the John J. Mohnen Trust. Ed refused to move out and still lives at the farm because he has nowhere to go. TT 19:8-18

Presently there are six surviving siblings. TT 7:16-17.

Joe died intestate on May 3, 1969. At that time, Anna, John and Ed were living at the farm, as well as three siblings who had not yet graduated from high school. TT:18-25; 8:1-13.

Anna died testate in May 1996. She was living with her daughter Teresa in White Lake at the time of her death. TT 8:19-24.

Throughout John's life of farming, Ed worked and lived

on the farm for free and received $3,000 per month from John. Ed also had a side business fixing engines. He continued on the farm even after John retired. TT 15:24-25; 14:1-9.

His arrangement with John changed where Ed paid John $8000 per year to rent the land. John died in 2018. Ed paid the taxes on the land from 2003 to 2016, however there is a dispute as to whether John actually gave money to Ed to pay those taxes. TT 32:24-25; 33:1-7.

Gabe has been paying the taxes since 2016. TT 121:16-20.

Other expenses are disputed as to who paid the expenses and the court was not able to determine exactly who paid what expenses. (SR 640, Finding of Fact #11).

The parcels of land which are in dispute are:

Parcel 1: The South half of the Northwest quarter, Section 15, Township 102, Range 66, West of the 5th P.M. Aurora County, South Dakota;

Parcel 2: The North half of the Northwest quarter, Section 15, Township 102, Range 66, West of the 5th P.M., Aurora County, South Dakota;

Parcel 3: The Northeast quarter, Section 3, Township 102, Range 66, West of the 5th P.M., Aurora County, South Dakota;

Parcel 4: The Southeast quarter, Section 34, Township 103, Range 66, West of the 5th P.M., Aurora County, South Dakota;

Parcel 5: The Southwest quarter, Section 35, Township

103, Range 66, West of the 5th P.M., Aurora County, South Dakota;

(SR 640, Finding of Fact #12).

Five parcels are at issue, however, parcels one and two are one quarter of ground with mixed ownership. The initial complaint included the Southeast quarter of Section 35. There is no dispute this ground is owned by the John Mohnen Trust and Plaintiffs and Intervenors conceded this at trial. Therefore, four parcels, as laid out in the complaint, are at issue. (SR 640, Finding of Fact #13).

Throughout John's life and after the death of Joe, Ed believed the land was owned by John. TT 13:1-11.

John took over the role of Joe, not only taking care of and managing the land, but also Anna and the siblings who were still home. TT 13:15-25; 14:1-23.

John (or Ed for that matter) never married. (SR 640, Finding of Fact #16).

At one point in the eighties, Ed thought he may have an interest in the land because he and the other siblings were asked to sign a quit claim deed to John. TT 103:16-22.

Anna deeded her interest in the property to John, as well as some of the siblings. Ed Did not sign the deed.

John deeded his interest in land he owned to the John J. Mohnen Trust.

In the fall of 2016 Ed wanted to put 400 plus acres into a government program for John. While looking into this he was told John was not the only owner of the land and he would not be able to enroll the land. TT 19:21-25; 20:1-5.

Ed also had some personal and legal issues around this time. (SR 640, Finding of Fact #21).

He erroneously believed he won an Australian lottery and lost a large sum of money through fraud. He also had criminal issues related to selling cattle that were subject to a lien by a bank. He received a suspended imposition of sentence. A civil judgment was placed against him by the bank. TT 27:9-5; 28:1-18.

John's trust ultimately paid the civil judgment for Ed. Ed's niece now assists him with his finances. TT 30:16-18.

An Owner and Encumbrance report was completed by Aurora County Land Title Company. Its findings are consistent with the evidence as to who is listed as the record owner of the land and thus are presumed to own the property. Corresponding to the parcels laid out below the owner(s) are:

Parcel 1: Joe Mohnen;

Parcel 2: John J. Mohnen Trust and Joe Mohnen;

Parcel 3: John J. Mohnen Trust and Joe Mohnen;

Parcel 4: Joe Mohnen; and

Parcel 5: Joe Mohnen.

TT 56-61. (Exhibit 1, SR 326).

As stated earlier, Joe Mohnen died intestate in 1969.

Pursuant to the law of intestacy at the time of Joe's death, Joe's interest would be shared one-third by Anna and 1/3 by the children of Joe and Anna. See SDCL 29-1-5 in effect at the time.

Anna died testate in 1996 and deeded her interest in the parcels to John prior to her death. Through two deeds, John was a joint owner with Joe and Anna when those parcels were acquired. TT 41:19-25; 42:1-25; 43.

Probates have been commenced for both Joe and Anna's estates. TT 43:14-25.

This quiet title action by Ed is to assert his interest in the estate through Joe's estate. Clearly, Joe's estate is the record owner as set out above, so he has met his burden to show title. (SR 640, Finding of Fact #29).

Joe's estate is an intervenor whose interest is aligned with Ed's interest, albeit not equal in interest. Ed would be a beneficiary of Joe's estate. The intervenor actually holds title. Consequently, the real property subject of this action is held jointly as tenants in common as between John J. Mohnen and his estate in trust

(collectively hereinafter from time to time referred to as "Defendants") and Joe's heirs through the Joseph J. Mohnen Estate. (SR 640, Finding of Fact #30).

Anna's will, as it related to the land, devises any interest in her estate to John. The probate of that will was not an issue before the court at trial. TT 43:21-25.

VI. STATEMENT OF LAW

A. Appellant has failed to appeal the Findings of Fact and Conclusions of Law of the trial court.

The parties submitted findings of fact and conclusions of law. Following that the trial court entered its own findings of fact and conclusions consistent with those filed by Appellee. (SR 640). The court also issued a Memorandum Decision. (SR 629). The purpose of entering findings is to permit a meaningful review. *AgFirst Farmers Co-op v. Diamond C Dairy, LLC*, 2013 S.D. 19, ¶13, 827 N.W.2d 843, 846. In the *AgFirst* case, the court went on to state, without findings of fact, there is no way to determine the basis for the circuit court's conclusions or whether any findings were clearly erroneous. *Id.* Herein, although findings were properly entered by the parties and by the court there is no way to ascertain what findings or conclusion Appellant takes issue with without specifying where the court specifically erred.

The standard of review is that a circuit court's findings of fact will be upheld unless they are clearly erroneous. *In re Estate of Flaws*, 2016 S.D. 60, ¶19, 885 N.W.2d 336, 342-343. Findings of fact will be overturned on appeal if a complete review of the evidence leaves the court with a definite and firm conviction that a mistake has been made. *In re Estate of Fox*, 2019 S.D. 16, ¶12.

The court's findings of fact and conclusions of law incorporated the memorandum decision. (SR 640). Specifically, conclusion of law 22 states: "The Court's Memorandum Decision dated April 8, 2022, is hereby fully incorporated herein by this reference thereto as further conclusion of law by the court." Further, Appellant's jurisdictional statement provides that they are appealing from the judgment, SDCL 15-26A-3(1). (SR 636). See Appellant's Brief page 2.

Appellants have the burden to show the findings of fact are clearly erroneous or that the conclusions of law are incorrect. *Hawkins v. Peterson*, 474 N.W.2d 90, 92 (S.D. 1991). Without specifically addressing any findings of fact or conclusions of law the trial court must be affirmed for the reason that Appellants have failed to meet their burden of proof.

B. Laches.

Laches is an equitable defense. *Clarkson and Co. v. Continental Resources, Inc.*, 2011 S.D. 72, 12, 806 N.W.2d 615. To prove laches, the Defendants must show that: (1) the Plaintiff had full knowledge of facts upon which the action is based, (2) regardless of this knowledge, the Plaintiff engaged in an unreasonable delay before commencing the suit, and (3) that allowing the Plaintiff to maintain the action would prejudice the Defendant. *Webb v. Webb*, 2012 S.D. 41, 814 N.W.2d 818.

Here, Ed did not find out the land was not entirely in John's name until he applied for government benefits in 2016. TT 19:21-25; 20:1-5. Appellant quotes the trial transcript of Ed's testimony in support of their argument that he had knowledge of an interest in the land as early as the 1980s. TT 2:17-19. However, the following colloquy between counsel and Ed is noted in the next four lines of the transcript.

Q. Since the '80s, did you think you had an interest, or did you know?

A. No, I - I just figured as long as I live there, I should have something.

TT 23:20-23.

Clearly, by his own testimony Ed was unaware that he had any "interest" in the land.

There are insufficient facts to show there was prior knowledge or intent by the parties to create an unreasonable delay to prejudice the Appellants. In fact, upon discovery of relevant information, the Appellees and Intervenors responded promptly and appropriately.

The record owner of the property was laid out by the title search. Those owners are presumed until adverse possession is shown. TT 60:1-25; 61:19-25; See also Trial Exhibit 1. The trial court should be affirmed on this issue.

C. Adverse possession.

In order for the Appellants to establish an adverse possession claim, the Appellants must prove that they were in "… actual, open, visible, notorious, continuous, and hostile occupation for the statutory period." *Gangle v. Spiry*, 2018 S.D. 55, 916 N.W.2d 55. See also SDCL 15-3-1 which provides:

> No action for the recovery of real property, or for the recovery of the possession thereof, shall be maintained unless it appears that the plaintiff, his ancestor, predecessor, or grantor was seized or possessed of the premises in question within twenty years before the commencement of such action.

The burden to prove an adverse possession claim is by clear and convincing evidence. *Id.*

Proof of individual elements of adverse possession present questions of fact for the court, wile the ultimate conclusion of whether they are sufficient to constitute adverse possession is a question of law. *City of Deadwood v. Summit, Inc.*, 2000 S.D. 29, 9, 607 N.W.2d 22, 25.

SDCL 15-3-7 creates a presumption that the person holding legal title to property has been in possession of the property, unless someone else can prove adverse possession for at least twenty years prior to commencement of the action.

Here, Appellee and the Intervenor Joseph J. Mohnen Estate, and the heirs thereof, are co-owners of record of the real property subject to this action with John's trust. Furthermore, Appellee secured a title search which verified all or a portion of the property subject to this suit remains in Joe's name. TT 61:24-25; 62; 63; 64; 65:1-11.

The only way the Intervenor Joseph J. Mohnen and Joe's heirs' co-ownership interest can be defeated is by a conveyance by them or by a valid and legal adverse possession claim.

There is no evidence of a conveyance by the Appellee of Intervenor Joseph J. Mohnen Estate, or the heirs thereof, to the Appellant for the land subject of this action.

The possession of land by one tenant in common is "… presumptively the possession of all the tenants in common, and one cotenant cannot hold property adversely to another cotenant unless he has ousted the latter." *Murphy v. Connolly*, 81 S.D. 644, 140 N.W.2d 394 (1996).

In order for an ouster or ejectment to occur, there must be clear and unequivocal actions which establish same and the "mere possession by one tenant in common who receives all the rents and profits and pays the taxes on the property, no matter how long a period, cannot be set up as a bar against the cotenants." *Iverson v. Iverson*, 87 S.D. 628, 213 N.W.2d 708, 710-711.

Here, while it is true that John used and farmed the land, he did not present any evidence that he acted in such a way that clearly and unequivocally communicated an ouster or ejectment of his co-owners. The testimony of Theresa Ishmael and Gabriel Mohnen unequivocally support this conclusion. Without ouster, an interest in real property as a tenant in common entitles the co-tenants to the same and equal rights to the property under all circumstances. *Id.* Ed has been living on the property for nearly his entire life. He has worked the farm and rented (at a low amount) for a long period of time. He was simply unaware of his ownership. At one point when he thought he may have an

interest, he refused to sign a quit claim deed. This is not a basis for adverse possession.

Theresa Ishmael testified as follows:

Q. Ms. Ishmael, Ed's never been ousted from the farm, has he?

A. Not that I know of.

TT 96: 14-1 (SR 338).

Gabriel Mohnen testified as follows:

Q. And he's never been ousted from that property, has he?

A. Excuse me?

Q. He's never been ousted from that property.

A. If he's still there, then I guess your answer is already answered.

Q. No. It could have happened before today.

A. Not to my knowledge.

Q. Okay, so nobody's ousted Ed at -

A. Would that be the same hearsay comment as my 50 years from bills?

THE COURT: Yeah, just - hold on.

Q. (By Mr. Schreiber) well, let's wait until -

THE COURT: Stop. Just answer the question that's asked of you. If any attorney wants to object to the question, it's up to the attorney to make the objection.

So go ahead. If you want to reask the question, you can.

MR. SCHREIBER: I do.

Q. (By Mr. Schreiber) Mr. Mohnen, you're not aware of anybody who's ousted Mr. Mohnen from that property, are you?

A. "Mr. Mohnen" meaning Ed.

Q. Ed.

A. No.

TT 122:11-25; 123:1-8 (SR 338).

Here, because the Appellant cannot prove independent ownership through conveyance or alternatively, the necessary facts for the elements of actual, open, visible, notorious, continuous, and hostile occupation for a successful adverse possession claim, the Appellants cannot succeed on their claims.

Appellants further claim that their payment of taxes and handling of financial matters for the property affords them valid title to the property in question.

The court in *Iverson* held that "mere possession by one tenant in common who receives al the rents and profits and pays the taxes on the property, no matter how long a period, cannot be set up as a bar against the cotenants." *Iverson*, 213 N.W.2d at 710-711.

Who paid the taxes was never fully established at trial. However, Ed testified as follows:

Q. Ed, did you pay any taxes on the - property taxes while you were living there?

A. Yes, I did.

Q. On what portion of the land?

A. All of it.

Q. Everything that we went through on Exhibit 5 through 8, you have paid all the property taxes?

A. Yes.

TT 24:22025; 25:1-4.

In any event, payment would have been made by a co-tenant and would not amount to adverse possession.

The trial court should be affirmed on this issue.

D.Ownership of Real Property.

The trial court ordered that ownership of the real property which is the subject of this action is as follows:

> Parcel #1: The South One-half of the Northwest Quarter (S1/2NW1/4), Section Fifteen (15), Township One Hundred Two (102) North, Range Sixty-six (66) West of the 5th P.M., Aurora County, South Dakota, is owned jointly, as tenants in common, as follows: The Estate of Joseph J. Mohnen: an individual two-thirds interest, and John J. Mohnen Trust: an undivided one-third interest;
>
> and

Parcel #2: The North One-half of the Northwest Quarter (N1/2NW1/4), Section Fifteen (15), Township One Hundred Two (102) North, Range Sixty-six (66) West of the 5th P.M., Aurora County, South Dakota, is owned jointly, as tenants in common, as follows: The Estate of Joseph J. Mohnen: an individual one-third interest, and John J. Mohnen Trust: an undivided two-thirds interest,

and

Parcel #3: The Northeast Quarter (NE1/4), Section Three (3), Township One Hundred Two (102) North, Range Sixty-six (66) West of the 5th P.M., Aurora County, South Dakota, is owned jointly, as tenants in common as follows: The Estate of Joseph J. Mohnen: an undivided one-third interest, and John J. Mohnen Trust: an undivided two-thirds interest,

and

Parcel #4: The Southeast Quarter (SE1/4), Section Thirty-four (34), Township One Hundred Three (103) North, Range Sixty-six (66) West of the 5th P.M., Aurora County, South Dakota, is owned jointly, as tenants in common, as follows: The Estate of Joseph J. Mohnen: an undivided two-thirds interest, and John J. Mohnen Trust: an undivided one-third interest,

and

Parcel #5: The Southwest Quarter (SW1/4), Section Thirty-five (35), Township One Hundred Three (103) North, Range Sixty-six (66) West of the 5th P.M., Aurora County, South Dakota, is owned jointly, as tenants in common as follows: The Estate of Joseph J. Mohnen: an undivided two-thirds interest, and John J. Mohnen Trust: an undivided one-third interest, as tenants in common.

This description is not consistent with the evidence, the Court's Memorandum Decision or the Court's Findings of

Fact and Conclusions of Law. In the trial court's Memorandum Decision (SR 629), the first sentence of the CONCLUSION states: the record owner of the property was laid out in the title search. Those owners are presumed until adverse possession is shown. As previously stated, in the trial court's Findings of Fact and Conclusions of Law (SR 640), specifically Conclusion 22 states: The Court's Memorandum Decision dated April 8, 2022, is hereby fully incorporated herein by this reference thereto as further Conclusions of Law by the Court.

The trial court's conclusion regarding ownership mirrored the title search, Exhibit 1, (SR 326) and opinion of Kristie Rake who performed the title search. TT 56-71. Appellants failed to offer any evidence to the contrary. Clearly, the intent of the court was that judgment would be a reflection of the title search. Exhibit 1 (SR 326). The Judgment should be amended to reflect the correct property descriptions set forth in Exhibit 1 as follows:

> Parcel 1: The Southeast Quarter (SE1/4) of Section Thirty-five (35), Township One Hundred Three (103) North, Range Sixty-Six (66), West of the 5th P.M., Aurora County, South Dakota.
>
> Owner: The John J. Mohnen Trust.
>
> Parcel 2: The Northwest Quarter (NW1/4), of Section Fifteen (15), Township One Hundred Two (102) North, Range Sixty-Six (66) West of the 5th P.M. Aurora County, South Dakota;

Owner: Joe Mohnen S1/2NW1/4, 15-102-66, The John J. Mohnen Trust and Joe Mohnen N1/2NW1/4[1]

Parcel 3: the Northeast Quarter (NE1/4), Section Three (3), Township One Hundred Two (102) North, Range Sixty-Six (66) West of the 5th P.M. Aurora County, South Dakota; and

Owner: The John J. Mohnen Trust and Joe Mohnen

Parcel 4: Southeast Quarter (SE1/4), Section Thirty-Four (34), Township One Hundred Three (103) North, Range Sixty-Six (66), West of the 5th P.M., Aurora County, South Dakota; and

Owner: Joe Mohnen

Parcel 5: The Southwest Quarter (SW1/4) Section Thirty-five (35), Township One Hundred Three (103) North, Range Sixty-six (66), West of the 5th P.M., Aurora County, South Dakota.

Owner: Joe Mohnen

(SR 326)

VII. CONCLUSION

Appellants failed to properly appeal the trial court's Findings of Fact and Conclusions of Law which is detrimental to their appeal. If Appellants survive this challenge, the trial court should still be affirmed on all issues. The trial court's conclusions of law are supported by the facts and not in error.

---

[1] Parcel 2 is the NW1/4 of 35-103-66. Joe Mohnen owns the S1/2 of this ¼. The trust and Joe Mohnen own the N1/2 of this ¼ as tenants in common. TT 62:15-25; 63:1-3.

For the reasons set forth herein, Appellees Edward O. Mohnen, Estate of Joseph J. Mohnen and Estate of Anna Mohnen request that the trial court be affirmed.

Dated October 11, 2022.

THE SCHREIBER LAW FIRM, Prof. L.L.C.
Attorney for Appellee Edward O. Mohnen

Brad A. Schreiber
1110 E Sioux Ave
Pierre, SD 57501
Phone (605) 494-3004

WHALEN LAW OFFICE
Attorney for Appellees Estate of Joseph J. Mohnen and Estate of Anna Mohnen

/s/ Timothy R. Whalen
Timothy R. Whalen
310 Main St
Lake Andes, SD 57356
Phone (605) 487-7645

CERTIFICATE OF SERVICE

I, Brad A. Schreiber, hereby certify that on October 4, 2022, I caused a copy of the foregoing **APPELLEE EDWARD O. MOHNEN, APPELLEE ESTATE OF JOSEPH J. MOHNEN AND APPELLEE ESTATE OF ANNA MOHNEN JOINT BRIEF** to be served upon

Ronald A. Parsons, Jr.
Albert Steven Fox
Attorney for Defendants and Appellants
Estate of John J. Mohnen and
John M. Mohnen Trust
ron@janklowabdallah.com
steve@larsonlawpc.com

Rachel Mairose
Attorney for Aurora County, SD
Rachel@mairoseandsteele.com

by electronic service

and by first class mail, postage prepaid, upon the following:

Theresa Ishmael
505 E 1st St
White Lake, SD 57383

Doris Maas
38370 252nd St
Plankinton, SD 57368

Bruce Kettner
2853 W Warner Estates Dr
Appleton, WI 54913

Sarah Mohnen
1582 Redwing Dr
Neenah, WI 54952

Elaine Koleske
4529 County Rd PP
Center Valley, WI 54106

Janette Priebe
W3878 Jeske Rd
Seymour, WI 54165

Gabriel Mohnen
34606 250th St
Chamberlain, SD 57325

Delores Waters
920 Lincoln St
Menasha, WI 54952

David Mohnen
20045 E Jude
Rhododendron, OR 97049

Mary M. Koch-Vinz
509 East St
Spencer, SD 57374

Johnathan Mohnen
3910 Fisk Ave
Oshkosh, WI 54904

Jesse Mohnen
4981 Depot Rd
New London, WI 54962

Paul Mohnen
313 Grandview Dr
Menasha, WI 54952

Rosalie Mohnen
705 5th St
Menasha, WI 54952

Shane Mohnen
4981 Depot Rd
New London, WI 54961

Ronald Kettner
1147 Meadow Ln
Neenah, WI 54956

Shawn Mohnen
1023 Dove St
Oshkosh, WI 54902-3301

Mark Mohnen
N168 Crooked Pine Ct
Appleton, WI 54915

Randy Mohnen
5278 County Rd II
Larsen, WI 54947

Cheryl Christianson
N201 Island Rd
Neenah, WI 54956

Jill Hartges
110 Parkway Ct
Combined Locks, WI 54113

Ronald Kettner
W6950 County Rd S
Shiocton, WI 54170

Rose Rynish
W6828 Midway Rd
Hortonville, WI 54944

Sharon Beckman
1224 Elkay Dr
Eugene, OR 97404

Jesse Mohnen
3915 Royal Bay Ridge Rd
New Franken, WI 54229

Lawrence Mohnen
N5423 Obertin Rd
New London, WI 54961

Merlyn Kettner
W6950 County Rd
Shiocton, WI 54170

Steve Mohnen
9090 N Loop Rd
Larsen, WI 54947

Kristy Mohnen
9090 N Loop Rd
Larsen, WI 54947

Brad A. Schreiber

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

APPEAL NO. 30003

EDWARD O. MOHNEN,

Plaintiff and Appellee,

vs.

ESTATE OF JOHN J. MOHNEN and JOHN J. MOHNEN TRUST,

Defendants and Appellants,

and

AURORA COUNTY, SOUTH DAKOTA, et al.,

Defendants and Appellees,

and

ESTATE OF JOSEPH J. MOHNEN and ESTATE OF ANNA MOHNEN,

Intervenors and Appellees.

APPEAL FROM THE FIRST JUDICIAL CIRCUIT
AURORA COUNTY, SOUTH DAKOTA

THE HONORABLE DAVID KNOFF
CIRCUIT COURT JUDGE

REPLY BRIEF OF APPELLANTS JOHN J. MOHNEN TRUST and ESTATE OF JOHN J. MOHNEN

Notice of Appeal filed on May 24, 2022

ATTORNEYS FOR APPELLANTS JOHN J. MOHNEN TRUST AND ESTATE OF JOHN J. MOHNEN:

Albert Steven Fox
LARSON LAW, P.C.
P.O. Box 131
Chamberlain, SD 57325-0131
(605) 234-2222
steve@larsonlawpc.com

Ronald A. Parsons, Jr.
JOHNSON JANKLOW ABDALLAH & REITER LLP
101 S. Main Ave., Suite 100
Sioux Falls, SD 57104
(605) 338-4304
ron@janklowabdallah.com

ATTORNEYS FOR APPELLEE AURORA COUNTY, SD:

Rachel Mairose
AURORA COUNTY STATE'S ATTORNEY
P.O. Box 577
Plankinton, SD 57368
(605) 942-7725
Rachel@mairoseandsteele.com

ATTORNEYS FOR APPELLEES ESTATE OF JOSEPH J. MOHNEN ESTATE OF ANNA MOHNEN:

Timothy R. Whalen
WHALEN LAW OFFICE
P.O. Box 127
Lakes Andes, SD 57356
(605) 487-7091
whalawtim@cme.coop

ATTORNEYS FOR APPELLEE EDWARD O. MOHNEN:

Brad A. Schreiber
THE SCHREIBER LAW FIRM, PROF. L.L.C.
1110 E. Sioux Ave
Pierre, SD 57501
(605) 494-3004
brad@xtremejustice.com

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STATUTES:

REPLY ARGUMENT

1. The appellee brief opens with the curious suggestion that John's Trust and Estate (collectively "John's Trust") did not appeal from the lower court's findings of fact and conclusions of law. (Appellee Brief at 9). That incorrect claim can be dispelled simply by reviewing the notice of appeal. (R. 669). The appellee brief also suggests that "there is no way to ascertain what findings or conclusion [sic] Appellant takes issue with without specifying where the court specifically erred" and that "[w]ithout specifically addressing any findings of fact or conclusions of law the trial court must be affirmed for the reason that Appellants have failed to meet their burden of proof." (Appellee Brief at 9-10). That argument also is incorrect and based on a false premise.

The opening brief clearly identified each of the factual and legal points in the lower court's decision it contends were decided incorrectly. John's Trust contended that the lower court's conclusions holding that each element of laches (knowledge, unreasonable delay, and prejudice) were not met all were wrong and based on an incorrect reading of the law (pages 20-27) as well as incorrect findings regarding the facts. In particular, the lower court's findings that Edward and the other Mohnen siblings did not learn about their interest in the farm until 2016, despite Edward specifically admitting under oath that everyone knew about it back in the 1980's, were identified as clearly erroneous:

> Here, the lower court's failure to invoke laches was based on its incorrect assessment that John's fourteen siblings did not know of their interest in the farm until 2016, when Edward testified he was trying to put John's land into a 'government program' and someone from 'Fish and Wildlife' told him the land belonged to Joseph. That and similar findings by the lower court are contradicted by the known facts.

(Page 24). The opening brief further challenged the lower court's legal conclusions holding that the elements of adverse possession had not been met, specifically including its assessment that the facts did not demonstrate ouster, as well as its view of the law on constructive ouster as applied to cotenants. (Pages 27-36). Finally, the opening brief challenged, point by point and deed by deed, the lower court's declarations of title regarding each of the parcels at issue. (Pages 36-38).

The appellee brief's claim that it does not understand what parts of the lower court's resolution of the issues that John's Trust has challenged on appeal thus is hard to credit and feels more like wishful thinking than serious legal argument.

Laches

2. On the issue of laches, the appellee brief only touches upon the knowledge element of laches and declines to address every other argument made in the opening brief. (Appellee Brief at 11-12).

The appellee brief asks this Court to disregard the undisputable fact, confirmed by Edward's own testimony, that in the 1980's every single Mohnen sibling was put on notice by Anna and John's attorney that they

had an interest in the land when they were asked to sign quitclaim deeds giving up that interest. It does so on the basis of one snippet of testimony: Edward's confusingly vague response to a compound question:

> Q: So *since the '80s*, did you think you had an interest or did you know?
>
> A: No, I – I just figured as long as I live there, I should have something.

(R. 360). Whatever it actually means, that confused response does nothing to contradict the known facts regarding Edward and every other Mohnen sibling having been placed on direct notice by an attorney of their interest in the property approximately 35 years before anyone bothered to file any claim. (R. 360-61, 369, 425, 438-39) (Edward admitting: "Well, back in the '80s, we all got together and we were all going to sign it over to John until two of the siblings said they wanted their share. And then that all broke up").

Adverse possession

3. On the issue of adverse possession, the appellee brief makes three points, none of which have resonance.

a. First, the opening brief states: "There is no evidence of a conveyance by the Appellee of Intervenor Joseph J. Mohnen Estate, or the heirs thereof, to the Appellant for the land subject of this action." (Appellee Brief at 13). But that is not so. Actually, the clear weight of the uncontested evidence indicates that that *most* of Joseph's Mohnen's heirs

may have conveyed their interests in the farm to John or Anna in the 1980's. As Theresa, the youngest Mohnen sibling, testified:

> Q: Do you remember a time when the family was asked to sign over their interests to Johnnie?
>
> A: Yes.
>
> Q: Okay. And what do you remember about that?
>
> A: *I remember they said everybody did but two.*
>
> Q: And you were willing to sign your interest over –
>
> A: Yes.
>
> Q: -- to Mom? In fact, that was the request, wasn't it? Sign over to Mom.
>
> A: Well, it was to Mom, and then Mom deeded it all to Johnnie.

(R.425). Theresa further testified:

> Q: . . . I believe there was a discussion that you testified to – and maybe I'm wrong – but it was my understanding that there were a couple of occasions where the kids got together and said there was a discussion about signing everything over to John, the kids?
>
> A: At one time Johnnie wanted – Mom wanted some improvements done on the house, and Johnnie was afraid to do it because – if he would lose it, --
>
> Q: Okay.
>
> A: – so he tried – we went to Andera and – or however you pronounce his name – and then he wrote to everybody and asked them to sign everything over to Mom, and I guess *everybody did* but two.

(R.438-39, 60). No one contradicted or disputed Theresa's testimony on

this point at trial. In fact, Edward confirmed it. (R. 360-61).

The only reason that we do not know the full story, moreover, is that Edward and the descendants of his siblings waited until everyone else with relevant knowledge died of old age before bringing their claims more than thirty years after those conveyances were made and all of the records and legal files were gone. In other words, the only reason we do not have more confirming evidence is the unreasonable delay and prejudice resulting from laches.

b. Second, the appellee brief touches on the issue of ouster, stating that "while it is true that John used and farmed the land, he did not present any evidence that he acted in such a way that clearly and unequivocally communicated an ouster or ejectment of his co-owners." (Appellee Brief at 14).

Once again, that is just not so. At a minimum, John's intent to hold the entire farm for himself and adversely to Edward and the other siblings was established by the 1980's when every one of the siblings was asked to convey their interest in the farm to Anna, who in turn would convey it John; again in 1990, when Anna openly deeded the entire farm to John and publicly recorded the deed in 1990, without objection by anyone; still again 1998, when John leased the farm to Edward and charged him rent to use the land; and yet again when John terminated his lease to Edward and rented the farm to someone else. As set forth in the opening brief, all

these events are sufficient to constitute ouster under the meaning of the law, including that of constructive ouster, which the appellee brief pointedly declines to address.

The appellee brief's main strategy on this issue is to cite to the negative responses of Theresa and her son, Gabriel Mohnen, when posed the question during the three-hour trial of whether they were aware of Edward having been "ousted" from the property. (Appellee Brief at 14-16). But to the extent Theresa and Gabriel can even be said to have understood the legal concept of "ouster" under the law of adverse possession, their testimony established only that they did not have any knowledge of relevant facts. It decidedly did not establish that no ouster ever occurred under the meaning of the law.

And once again, Edward and the descendants of his siblings waited decades to bring this stale claim, until long after everyone with relevant factual knowledge on the issue of ouster—John Mohnen, Anna Mohnen, and Attorney Leonard Andera—had died of old age. The prejudice resulting from that long and extended delay meant that no one was left alive to contradict Edward's claims.

c. Third, the appellee brief points out that Edward dubiously testified that he had paid all of the property taxes on the farm over the years, even though he simultaneously claimed to believe that John owned the entire farm that entire time. (Appellee Brief at 16-17).

Of course, he was not able to produce any documentation whatsoever that he had ever done so. As the appellee brief concedes, and the circuit court found in implicitly rejecting Edward's testimony, "[w]ho paid the taxes was never fully established at trial." (Appellee Brief at 17; R. 634).

Why was that critical fact on the issue of adverse possession under one of the available statutory avenues (SDCL 15-3-15) unable to be established? Because the appellees waited until John, who paid the property taxes on this farm that he owned and worked his entire life, had died of old age so that he could not contradict Edward's claims. In other words, because of the prejudice resulting from laches.

Division of parcels

4. Finally, on the issue of the circuit court's slicing up of the parcels of this working farm, the appellee brief concedes that the judgment got it completely wrong. (Appellee Brief at 18-19 – "This description [in the Judgment] is not consistent with the evidence, the Court's Memorandum Decision, or the Court's Findings of Fact and Conclusion of Law"). The appellees thus have conceded prejudicial legal error and conceded that the judgment is not supported by the evidence. They ask this Court to *amend* the judgment on appeal to reflect the results of a bare title search performed by a witness called by appellees who conceded that she was not asked and did not attempt to determine who actually owned the property. (Appellee Brief at 19; R. 401-02, 408).

Although appellees are on firm ground in conceding that the judgment is wholly unsupported by the evidence, the "solution" they propose fares no better and does not in any way reflect the true ownership of the farm, as set forth in detail in the opening brief. The only remedy sustained by the equities in this case is reversal and remand with instructions to enter judgment quieting title to the farm in favor of the John J. Mohnen Trust on the basis of both laches and adverse possession.

CONCLUSION

WHEREFORE, Appellants respectfully request that this Honorable Court, *reverse* and remand with instructions to enter judgment quieting title to the parcels of land at issue in favor of the John J. Mohnen Trust.

Respectfully submitted this 4th day of November, 2022.

LARSON LAW, P.C.

BY: */s/ Ronald A. Parsons, Jr.*

Albert Steven Fox
P.O. Box 131
Chamberlain, SD 57325-0131
(605) 234-2222
steve@larsonlawpc.com

Ronald A. Parsons, Jr.
JOHNSON JANKLOW ABDALLAH
& REITER LLP
P.O. Box 2348
Sioux Falls, SD 57101-2348
(605) 338-4304
ron@janklowabdallah.com

Attorneys for Appellants
John J. Mohnen Trust and
Estate of John J. Mohnen

CERTIFICATE OF COMPLIANCE

In accordance with SDCL 15-26A-66(b)(4), I certify that this brief complies with the requirements set forth in the South Dakota Codified Laws. This brief was prepared using Microsoft Word and contains 1,845 words, excluding the table of contents, table of cases, jurisdictional statement, and certificates of counsel. I have relied on the word and character count of the word-processing program to prepare this certificate.

/s/ Ronald A. Parsons, Jr.
Ronald A. Parsons, Jr.

CERTIFICATE OF SERVICE

The undersigned hereby certify that a true and correct copy of the foregoing REPLY BRIEF OF APPELLANTS was served via email upon the following counsel of record:

Brad A. Schreiber: brad@xtremejustice.com

Timothy R. Whalen: whalawtim@cme.coop

Rachel Mairose: rachel@mairoseandsteele.com

and by U.S. Mail, first class and postage prepaid, upon the following:

Theresa Ishmael
505 East 1st Street
White Lake, SD 57383

Gabriel Mohnen
34606 250th St.
Chamberlain, SD 57325

Doris Maas
38370 252nd St.
Plankinton, SD 57368

Delores Waters
920 Lincoln St.
Menosha, WI 54952

Bruce Kettner
2853 W. Warner Estates Dr.
Appleton, WI 54913

David Mohnen
20045 E. Jude
Rhododendron, OR 97049

Sarah Mohnen
1582 Redwing Dr.
Neenah, WI 54952

James Mohnen
3925 W. Larsen Rd.
Larsen, WI 54947

Elaine Koleske
4529 County Rd. PP
Center Valley, WI 54106

Johnathan Mohnen
3910 Fisk Ave
Osh Kosh, WI 54904

Janette Priebe
W3878 Jeske Rd.
Seymour, WI 54165

Jesse Mohnen
4981 Depot Rd.
New London, WI 54962

Leo Mohnen
9090 N. Loop Rd.
Larsen, WI54947-9748

Mary M. Koch-Vinz
509 East Street
Spencer, SD 57374

Paul Mohnen
313 Grandview Dr.
Menasha, WI 54952

Rosalie Mohnen
705 5th St.
Menasha, WI 54952

Shane Mohnen
4981 Depot Rd.
New London, WI 54961

Ronald Kettner
1147 Meadow Lane
Neenah, WI 54956

Shawn Mohnen
1023 Dove St
Oshkosh WI 54902-3301

Mark Mohnen
N168 Crooked Pine Ct.
Appleton, WI 54915

Randy Mohnen
5278 County Rd II
Larsen, WI 54947

Cheryl Christianson
N201 Island Rd
Neenah, WI 54956

Jill Hartges
110 Parkway Ct
Combined Locks, WI 54113

Ronald Kettner
W6950 County Rd. S
Shiocton, WI 54170

Rose Rynish
W 6828 Midway Rd
Hortonville, WI 54944

Sharon Beckman
1224 Elkay Dr.
Eugene, OR 97404

Jesse Mohnen
3915 Roral Bay Ridge Rd.
New Franken, WI

Lawrence Mohnen
N5423 Obertin Rd.
New London, WI 54961

Merlyn Kettner
W 6950 Cty. Road
Shiocton, WI 54170

Steve Mohnen
9090 N Loop Rd
Larson, WI 54947

Kristy Mohnen
9090 N Loop Rd
Larson, WI 54947

on this 4th day of November, 2022.

/s/ Ronald A. Parsons, Jr.
Ronald A. Parsons, Jr.