

STATEMENT OF LEGAL ISSUES

1. WAS PLAINTIFFS' ACTION ON THE FEE LANDS BARRED BY THE STATUTE OF LIMITATIONS?

The Circuit Court failed to address or specifically rule on this preemptive issue in its Memorandum Decision or Judgment, but rather quieted title to the Fee Lands in the Plaintiffs.

Cowell v. Springs Co., 100 US 55; 25 L.Ed. 547 (1897)

Gorman Mining Co. v. Alexander, 2 SD 557; 51 N.W. 346 (1892)

Estate of Lamb v. Morrow, 117 N.W. 1118 (IA 1908)

SDCL §15-3-3

2. WERE THE FEE LANDS ABANDONED?

The Circuit Court erroneously ruled that the Fee Lands had been abandoned.

Barney v. Burlington Northern R.R. Company, Inc., 490 N.W.2d 726 (SD 1992)

(cert. den. 507 U.S. 914)

Helvering v. Jones, 120 F.2d 828 (8<sup>th</sup> Circ. 1941)

Aasland v. County of Yankton, 280 N.W.2d 666 (SD 1979)

Shaw v. Circuit Court of Hamlin County, 27 S.D. 49; 129 N.W. 907 (1911)

SDCL §43-25-8

SDCL §5-2-11

SDCL §31-19-42

3. DID THE KROLL AND CLARK DEEDS CONVEY FEE SIMPLE TITLE?

The Circuit Court erroneously ruled that the Kroll and Clark deeds conveyed an easement.

Brown v. Washington, 924 P.2d 908 (Wash. 1996)

4. HAVE THE FEE LANDS BEEN ADVERSELY POSSESSED BY NHRRA?

The Circuit Court failed to address or specifically rule on this issue in its Memorandum Decision or Judgment, but quieted title to the Fee Lands in the Plaintiffs.

Schultz v. Dew, 1997 SD 72; 564 N.W.2d 320

Schilling v. Backer, 2004 SD 45; 678 N.W.2d 802

SDCL §15-3-10

SDCL §15-3-7

SDCL §15-3-11

5. DOES NHRRA HOLD CLEAR TITLE UNDER SDCL CHAPTER 43-30?

The Circuit Court failed to address or specifically rule on this issue in its Memorandum Decision or Judgment, but quieted title in the Plaintiffs.

SDCL §43-30-12

SDCL §43-30-3

SDCL §43-30-7

6. DID THE CIRCUIT COURT ERR IN GRANTING CERTAIN PLAINTIFFS SUMMARY JUDGMENT AS TO THE EXCLUDED PROPERTY?

The Circuit Court failed to address or specifically rule on this issue in its Memorandum Decision or Judgment, but quieted title in the Plaintiffs.

Crowley v. Trezona, 408 N.W.2d 332 (SD 1997)

Rowbotham v. Jackson, 68 SD 566; 5 N.W.2d 36 (1942)

State Dep't of Revenue v. Thiewes, 448 N.W.2d 1 (SD 1989)

SDCL §43-4-3

SDCL §21-41-11

SDCL §15-6-56(c)

7. HAS THE 1875 ACT RIGHT-OF-WAY BEEN ABANDONED?

The Circuit Court erroneously ruled that the 1875 Act right-of-way had been abandoned.

Idaho v. Oregon Short Line Railroad Co., 617 F. Supp. 207

Barney v. Burlington Northern R.R. Company, Inc., 490 N.W.2d 726 (SD 1992)

(cert. den. 507 U.S. 914)

United States v. Washington Improvement and Development Co., 189 F. 674

(C.C.E.D. Wash. 1911)

Central Transportation Co. v. Pullman's Palace Car Co., 139 U.S. 24; 11 Sup. Ct.

478; 35 Law. Ed. 55 (1891)

16 U.S.C. §1248(c)

43 U.S.C. §912

43 U.S.C. §940

43 U.S.C. §937

43 U.S.C. §913

43 U.S.C. §939

SDCL §15-6-12(h)