IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

Appeal No. 31124

* * * *

JAY BRYANT, Plaintiff and Appellee,

v.

JED ALLEN BRYANT, Defendant and Appellee,

and

LENORA K. BRYANT, Defendant and Appellant.

* * * *

APPEAL FROM THE CIRCUIT COURT OF
THE FOURTH JUDICIAL CIRCUIT
MEADE COUNTY, SOUTH DAKOTA

* * * *

THE HONORABLE JOHN H. FITZGERALD
Circuit Court Judge

* * * *

APPELLANT'S BRIEF

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PRELIMINARY STATEMENT

Appellant Lenora K. Bryant will be referred to as "Lenora". Appellee Jay C. Bryant is referred to as "Jay". Appellee Jed Allen Bryant is referred to as "Jed". The Circuit Court in Meade County, South Dakota, Judge John Fitzgerald presiding, is referred to as "Trial Court".

References to the Clerk of Court's certified record are prefaced with "CR". References to specific pages in the Appendix to this brief are prefaced with "A". References to the transcript for the March 20, 2025 trial will be prefaced with "TT" for 'trial transcript'. References to the transcript for the March 26, 2024 hearing will be prefaced with "MHT" for 'motion hearing transcript'.

Meade County Probate File 46PRO22-13 will be referred to as the "Probate File". References to the Clerks of Court's certified record for the Probate File are prefaced with "PCR".

JURISDICTIONAL STATEMENT

This is an appeal of the *Court's Findings of Fact and Conclusions of Law and Judgment Quieting Title to Real Property*, which was entered and filed on the 30th day of April, 2025 by the Honorable Judge John Fitzgerald of the Fourth Judicial Circuit Court, Meade County, South Dakota. CR 124-132; A 1-9. The *Order for Rule 54(B) Certification* was entered by the Trial Court on June 17, 2025. CR 142-145. Notice of Entry of *Court's Findings of Fact and Conclusions of Law and Judgment Quieting Title to Real Property* was filed and served on June 17, 2025. CR 146-147. The *Notice of Appeal* was filed and served on June 20, 2025. CR 161-162.

LEGAL ISSUES

1. **Whether the Trial Court erred by not quieting title in the property to include a one-half ownership interest held by Lenora.**

The Trial Court determined that Lenora is estopped and precluded from arguing that she continues to own an undivided half interest in the Property. CR 131; A8; (Conclusion of Law #24).

Relevant Authority:

SDCL § 15-2-6(1);

Wehrkamp v. Wehrkamp, 2009 SD 84, 773 N.W.2d 212;

Hahne v. Hahne, 444 N.W.2d 360 (S.D. 1988);

Ahl v. Arnio, 388 N.W.2d 532 (S.D. 1985); and

Wold v. Lawrence County Com'n, 465 NW2d 622 (S.D. 1991).

2. **Whether the Trial Court erred by acting as a Pseudo-Advocate.**

Approximately twenty-three days after trial, the Trial Court sua sponte raised a defense of judicial estoppel benefitting Jay by entering the *Notice of Opportunity to Present Response to Judicial Estoppel* (filed on April 11, 2025). CR 110; A 10. The Trial Court also introduced evidence into the record post-trial with the *Notice to Counsel*. CR 121-123; A 45-47. Lastly, the Trial Court interrogated a witness in an adversarial manner during trial in an adversarial manner. A 35-38 (TT 53:22-55:7).

Relevant Authority:

SDCL § 15-2-6(1);

SDCL § 43-4-1;

United States v. Sineneng-Smith, 140 S.Ct. 1575, 206 L.Ed.2d 866 (2020);

Hayes v. Rosenbaum Signs & Outdoor Adv., Inc., 2014 SD 64, 853 N.W.2d 878;

May v. First Rate Excavate, Inc., 2025 S.D. 17, ___ N.W.2d ___; and

Healy Ranch Partnership v. Mines, 2022 SD 44, 978 N.W.2d 768.

3. Whether the Trial Court erred in entering the Court's Findings of Fact and Conclusions of Law and Judgment Quieting Title to Real Property.

The Trial Court entered various findings of fact and conclusions of law. CR 124-132; A 1-9.

Relevant Authority:

SDCL § 21-41-1;

SDCL § 43-25-1;

SDCL § 43-28-17;

In re Estate of Hoffman, 2002 SD 129, 653 N.W.2d 94;

Stacey Taylor Trippet Special Trust v. Blevins, 1996 SD 29, 545 N.W.2d 216; and

Wehrkamp v. Wehrkamp, 2009 SD 84, 773 N.W.2d 212.

STATEMENT OF THE CASE AND FACTS

Case History

This proceeding was initiated by Jay's *Summons* and *Complaint* (only naming Jed as a Defendant) filed on October 30, 2023. CR 1-6. While there is no evidence of Jed being personally served with the *Summons* and *Complaint*, Jed filed and served the *Answer and Counterclaim of Jed Allen Bryant* on December 28, 2023. CR 8-12. A motions hearing was held on March 7, 2024. CR 23-24. Another motions hearing was held on March 26, 2024. CR25-26. On April 28, 2024, Jay filed his *Amended Complaint*

for Partition and to Quiet Title of Real Property which also added Lenora as a Defendant.[1] CR 29-35. While there is no evidence of Lenora being personally served with the *Summons* and *Amended Complaint for Partition and to Quiet Title of Real Property*, Lenora filed and served *Lenora K. Bryant's Answer* on May 29, 2024. CR 41-44. A status hearing was held on January 7, 2025, wherein the Trial Court bifurcated the trials on the issue of quieting title and partition without objection from the parties. CR 47-48, 53. The Court Trial on the issue of quieting title was held on March 20, 2025. CR 124; A 1. *Plaintiff's Proposed Findings of Fact and Conclusions of Law* were filed on March 26, 2025. CR 94-98. On March 26, 2025, Jed and Lenora filed *Jed Allen Bryant and Lenora Kay Bryant's Joint Proposed Findings of Fact and Conclusions of Law*. CR 99-108.

The Trial Court entered and filed its *Notice of Opportunity to Present Response to Judicial Estoppel* on April 11, 2025. CR 110; A 10. The Court entered and filed its *Notice to Counsel* on April 29, 2025. CR 121-123; A 45-47.

The Trial Court entered and filed its written *Court's Findings of Fact and Conclusions of Law and Judgment Quieting Title to Real Property* on April 30, 2025. CR 124-132; A 1-9.

On June 16, 2025, Lenora filed and served *Lenora K. Bryant's Motion for Rule 54(B) Relief* (CR 133), as well as the *Stipulation Regarding Lenora K. Bryant's Motion for Rule 54(B) Relief*, which was filed on June 16, 2025 as well. CR 134-141. On June 17, 2025, the Trial Court entered its *Order for Rule 54(B) Certification*. CR 142-145.

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[1] The *Amended Complaint* also added a claim for adverse possession and unjust enrichment, though Jay has not advanced those claims. CR 32-33.

Notice of Entry of Court's Findings of Fact and Conclusions of Law and Judgment Quieting Title to Real Property as well as the *Order for Rule 54(B) Certification* was served on June 17, 2025. CR 146-160. The *Notice of Appeal* was filed and served on June 20, 2025. CR 161-162.

Statement of Facts

The real property at issue in this quiet title action is the following described real property located in Meade County, South Dakota:

> **Township Four (4) North, Range Seven (7) East, B.H.M.:**
> **Section 17: Southwest Quarter Southwest Quarter.**

("Property"). CR 90-93. The Property was conveyed to Paul Bryant ("Paul") and Lenora Bryant, as husband and wife by a Warranty Deed executed on October 18, 1978, and recorded the same day in the office of the Meade County Register of Deeds in Book 352, Page 250 ("1978 Deed"). CR 86; A 11. The 1978 Deed conveyed to each Paul and Lenora an undivided one-half (1/2) interest in the Property as "husband and wife, as Joint Tenants and not as Tenants in Common with [sic] right of survivorship". CR 86; A 11.

A divorce action was initiated by Paul and by February 1991 Paul and Lenora entered into a *Stipulation, Child Custody and Property Settlement Agreement in Meade County Court* file 90-433 ("Stipulation"). CR 80-85; A 13-18. Paragraph IX of the Stipulation provided that Paul would take the Property. CR 81. Paragraph XVII of the Stipulation provided "That each of the parties hereto hereby agrees to execute any and all documents necessary to carry into full force and effect the provisions contained in this document." CR 82.

There is no deed or other conveyance of record with the Meade County Register of Deeds conveying Lenora's undivided one-half (1/2) interest to Paul. CR. There is no

evidence that Lenora ever conveyed her interest in the Property to Paul or any third party, and there is zero evidence that Paul ever attempted to enforce paragraphs IX or XVII of the Stipulation. CR.

Paul conveyed his interest to a friend, Marion Knutsen ("Marion") as a gift without consideration as exempt under exemption #16 (*See* SDCL § 43-4-22(16)). CR 87. Marion conveyed his interest to Jay and Jed, also as a gift without consideration. CR 83; *Supra*. Marion, Jay, and Jed were not good faith purchasers for value of their interests in the Property. CR.

The current owners of record of the Property are Lenora, Jay, and Jed. CR 90-93; A 19-21. Lenora is the owner of record of an undivided one-half (1/2) interest in the Property. CR 91; A 20. Jay is the owner of record of an undivided one-fourth (1/4) interest in the Property. CR 91; A 20. Jed is the owner of record of an undivided one-fourth (1/4) interest in the Property. CR 91; A 20.

Jay brought a quiet title action in this matter against Jed and Lenora to determine ownership of the Property (the other part of this bifurcated matter is for partition of the Property). CR 29-35. Jay admits that this "…dispute as to ownership of the property arises from [Lenora's] specific agreement to transfer title to the land to Paul as part of her agreement to settle the divorce…." *Memorandum of Law*, p. 3 (filed March 18, 2025). CR 76. Jay's *Amended Complaint*, filed with the Court on April 28, 2024 ("*Amended Complaint*"), asserts that "[f]or his specific claim against Defendant Lenora K. Bryant the Plaintiff alleges that Lenora K. Bryant has no legal interest in the subject property **by**

virtue of her Agreement with Paul…." Amended Complaint, ¶ 19. CR 31 (emphasis added).[2]

Jay's *Amended Complaint* further asserts that "Pursuant to the Title Standards of the State of South Dakota as set forth in 21-03 the Stipulation and Agreement and subsequent Order of the Court, [sic] transferred any title to the subject property Defendant Lenora K. Bryant may have had as a matter of law." Amended Complaint, ¶ 22. CR 32.[3]

Trial was held on the issue of quieting title on March 20, 2025. CR 124. Neither Jay nor Jed asserted the defense of judicial estoppel or other defenses at trial nor in Jay's proposed Findings of Fact and Conclusions of Law. CR.

On April 11, 2025, the Trial Court sua sponte entered the *Notice of Opportunity to Present Response to Judicial Estoppel* ("Notice"), giving the parties ten days to provide a written response as to whether or not judicial estoppel applied to this matter – the Notice did not articulate what particular issue(s) the Trial Court thought judicial estoppel may or may not apply to. CR 110; A 10.

On April 22, 2025, Lenora filed *Lenora K. Bryant's Response Re: Judicial Estoppel*, which expressly stated in the second paragraph "[w]hile it is not clear what particular issue, claim, or assertion the Court is referencing for which judicial estoppel may or may not apply, Lenora will attempt to address potential concerns here." CR 111-114. *Lenora K. Bryant's Response Re: Judicial Estoppel* argued that if judicial estoppel

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[2] The "Agreement with Paul" as asserted by Jay is reference to the Stipulation.

[3] Lenora objects to the contention that the Title Standards effectuated a conveyance – this is further discussed, below.

applies, it applies to Jay prosecuting the quiet title action with a position that is inconsistent with the position he took in the Probate. CR 111-114.

On April 27, 2025, Jay filed his *Memorandum of Law Re: Judicial Estoppel*, arguing that Lenora's claim to an interest in the property should be denied due to the divorce action. CR 115-120 ("…this Court should find that Defendant Lenora Bryant's claim to an undivided one-half interest in land, which she had previously disclaimed, should be denied and title quieted in the names of Jay Bryant and Jed Bryant…." at CR 119).

On April 29, 2025, the Court, sua sponte, entered its *Notice to Counsel* (with the *Judgment and Decree of Divorce* ("Decree of Divorce") attached). CR 121-123; A 1-9. The Decree of Divorce included no verbiage specific to the Property and did nothing to actually convey the Property under the Stipulation. CR 122-123; A 45-47.

On April 30, 2025, the Trial Court entered the *Court's Findings of Fact and Conclusions of Law and Judgment Quieting Title to Real Property*, concluding that "Lenora Bryant's claim to an undivided half interest…is extinguished" and that "Jay and Jed Bryant are vested with title to the [Property]….". CR 124-132; A 1-9. This appeal followed. CR 161-162.

STANDARD OF REVIEW

Findings of fact, whether based on oral or documentary evidence, may not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. *See* SDCL § 15–6–52(a).

> Conclusions of law are reviewed under a de novo standard, with no deference to the trial court's conclusions of law. In deciding a mixed question of law and fact, the standard of review for the application of law to fact depends on the nature of the inquiry. If the question requires us to consider legal concepts in the mix of fact

> and law and to exercise judgment about the values that animate legal principles, then the concerns of judicial administration will favor the appellate court, and the question should be classified as one of law and reviewed de novo. The construction and application of statutes of limitation presents a legal question that this Court reviews de novo.

Estate of Henderson v. Estate of Henderson, 2012 SD 80, ¶ 9, 823 N.W.2d 363 (internal citations omitted).

"Interpretation of contracts is a question of law, reviewed de novo." *Tibbitts v. Anthem Holdings Corp.*, 2005 SD 26, 694 N.W.2d 41 (internal citation omitted).

ARGUMENT

ISSUE 1: The Trial Court erred by not quieting title in the Property to include a one-half ownership interest held by Lenora.

Jay seeks to divest Lenora of her interest in the Property via the Stipulation, which must fail because he must recover upon the strength of his own title.

> An action to quiet title may be maintained by any person having an estate or interest in land, either legal or equitable. Dalrymple v. Sec. Loan & Title Co., 9 N. D. 306, 83 N.W. 245; Tuffree v. Polhemus, 108 Cal. 670, 41 P. 806. Of course, it must be conceded that in an action to determine adverse claims the plaintiff must recover upon the strength of his own title, and that a failure to show ownership will be fatal to plaintiff's action.

Morse v. Pickler, 28 S.D. 612, 134 N.W. 809, 810 (S.D. 1912).

The Trial Court erred in three separate ways by not quieting title in the Property to include a one-half ownership interest owned by Lenora: A. claims against Lenora's interest are barred by the twenty year statute of limitations, B. the Title Standards did not divest Lenora of her interest, and C. Jay cannot use an equitable quiet title action to determine Lenora's adverse claim in the property.

A. The statute of limitations to enforce the Stipulation expired years ago.

Paul did not enforce the Stipulation within the twenty year statute of limitations. Assuming Jay even had standing to raise the issue (which the Trial Court did not rule on), Jay's claim must fail due to expiration of the applicable statute of limitations.[4]

> While we have consistently applied contract principles to the interpretation of a divorce agreement, when it comes to the limitations period for enforcement of the agreement, if it is incorporated into the divorce decree, such agreement merges into the decree and becomes part of the judgment. [A parties'] claim for enforcement of the stipulation is an action upon a judgment or decree. See SDCL 15-2-6(1). Therefore, it is not the six-year statute of limitations applicable to contracts, but the twenty-year limitations period applicable to judgments that pertains to this action.

Wehrkamp v. Wehrkamp, 2009 SD 84, ¶ 7, 773 N.W.2d 212 (internal citations omitted); *see also* SDCL § 15-2-6(1).

Even if there were any person or entity with standing to enforce Paul's interest in the Stipulation, such claim is unequivocally barred by the twenty year statute of limitations. Any cause of action Paul had against Lenora to enforce the Stipulation began to accrue when the Decree of Divorce was filed on March 19, 1991. *Hahne v. Hahne*, 444 N.W.2d 360 (S.D. 1988).[5] Therefore, any efforts to enforce Paul's interests or rights under the Stipulation would have had to be taken prior to the expiration of the twenty (20) year statute of limitations – which was May 20, 2011. Because Paul never sought to enforce paragraphs IX or XVII of the Stipulation to receive Lenora's interest in the Property, the Stipulation bears no relevancy to the outcome of this matter.

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[4] The issue of Jay's standing to enforce the Stipulation was raised numerous times throughout these proceedings and in the Probate. CR, PCR.

[5] Jay admits that Paul "never exercised his right to require Defendant, Lenora Bryant to execute a Quit Claim Deed . . . ." CR 115.

This action was not initiated until well after twelve (12) years after the statute of limitations expired.

The Trial Court is clearly erroneous by not applying the relevant statute of limitations and determining that Lenora owns an undivided one-half interest in the Property.

B. The Title Standards did not divest Lenora of her ownership interest in the Property.

Application of the South Dakota Title Standards did not divest Lenora of her interest in the Property. Appendix A to SDCL Chapter 43-30 is known as the "State Bar of South Dakota Title Standards". 2023 SDTS (SDCL Ch. 43-30 Appendix). "The Standards themselves are not the authority." 2023 SDTS Introduction.

Despite the 2023 SDTS not being an authority, the 2023 SDTS does seem to provide for a divorce decree to act as a conveyance if there is an express statement "… by the court that should the defendant fail to execute appropriate instrument of conveyance, the decree thus being entered shall act in lieu of such conveyance...." SDTS 12-03(2). No such language appears in the Divorce Decree.[6] CR 122-123; A 45-47.

Additionally, and even if the State Bar of South Dakota Title Standards were authority, the Title Standards in place at the time of the 1991 divorce make no mention of situations involving divorce, and do not seem to contain a provision similar to 2023 SDTS, 12-03. Appendix to chapter 43-30 Title Standards in effect in 1991.

Contrary to Jay's allegation in paragraph 22 of his *Amended Complaint*, the State Bar of South Dakota Title Standards do not divest Lenora of her interest in the Property.

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[6] Travis Martin also testified to this at TT 50:19-51:10.

C. Jay cannot use an equitable quiet title action to divest Lenora of her interest in the Property.

Jay cannot use an equitable quiet title action to divest Lenora of her ownership interest in the Property. This quiet title action is equitable in nature:

> We note that although a quiet title action is statutory, SDCL ch. 21-41, it can essentially be an equitable action. When the action seeks to determine adverse claims in the property, it is equitable in nature.

Ahl v. Arnio, 388 N.W.2d 532, 534 (S.D. 1985). "...a party cannot have an equitable remedy if an adequate legal remedy is available." *Wold v. Lawrence County Com'n*, 465 NW2d 622, 624 (S.D. 1991) (internal citations omitted).

Because Paul had a legal remedy to divest Lenora of her ownership interest in the Property by enforcing the Stipulation within the twenty year statute of limitation, Lenora cannot be divested of her ownership interest in the Property under the Stipulation using equitable relief. The Trial Court was clearly erroneous when it granted Jay equitable relief to divest Lenora of her ownership interest in the Property in the quiet title action.

ISSUE 2: The Trial Court erred by acting as a Pseudo-Advocate.

Approximately twenty-three days after trial the Trial Court sua sponte raised a defense of judicial estoppel benefitting Jay. CR 110; A 10. Admittedly, caselaw supports the proposition that the Trial Court can raise the issue of judicial estoppel on its own motion:

> ...because judicial estoppel is intended to protect the integrity of the fact-finding process by administrative agencies and courts, the issue may properly be raised by courts, even at the appellate stage, on their own motion.

Hayes v. Rosenbaum Signs & Outdoor Advertising, Inc., 2014 SD 64, ¶ 13, 853 N.W.2d 878 (internal citations omitted).

Nearly three weeks after the trial on the declaratory judgment action, the Court sua sponte filed its *Notice of Opportunity to Present Response to Judicial Estoppel* on April 11, 2025. CR 110; A 10.

However, the way that the Trial Court raised the issue of judicial estoppel in this matter gives rise to other issues for which Lenora asks the Supreme Court to provide guidance on, including: A. whether the Trial Court erred by participating as a pseudo-advocate, B. whether the Trial Court erred by applying judicial estoppel in relation to the divorce proceeding, and C. whether the Trial Court erred by not applying judicial estoppel in relation to the probate proceeding.

A. The Trial Court erred by participating as a pseudo-advocate.

The Trial Court erred by participating as a pseudo-advocate.

> …as a general rule, our system is designed around the premise that parties represented by competent counsel know what is best for them, and are responsible for advancing the facts and argument entitling them to relief.

United States v. Sineneng-Smith, 140 S.Ct. 1575, 206 L.Ed.2d 866 (2020) (internal citation omitted).

Notwithstanding the *Hayes* case, judicial estoppel is a defense and the South Dakota Supreme Court recently articulated its dislike for trial courts raising defenses sua sponte:

> When a court raises issues sua sponte and participates as a pseudo-advocate at . . . evidentiary hearings, the circuit court abandons its post of neutrality, threatening the integrity of the very process it was tasked with protecting.

May v. First Rate Excavate, Inc., 2025 SD 17, n.8, (internal citations omitted). *See also Ally v. Young*, 2023 SD 65, ¶ 50 and n.14, 999 N.W.2d 237.

The Court raised this new issue sua sponte after the trial and without giving any meaningful direction to the actual issue the Court thought judicial estoppel may apply to. CR 110; A 10. Similar to the *May* case, the Trial Court here erred by raising this issue on its own and after the trial, abandoning its role as a neutral arbiter and threatening the integrity of the very process it was tasked with protecting.

Additionally, the Trial Court inserted itself and interrogated Mr. Martin in an adversarial manner about application of the Title Standards and whether the "ingredients of a deed" are included in the Stipulation. CR ___; A___; TT 53:22-55:7. The Trial Court erred by acting as a pseudo-advocate through adversarial interrogation of Mr. Martin.[7]

While a Trial Court may raise the issue of judicial estoppel under the *Hayes* case, Lenora asks the Supreme Court to find that the Trial Court erred by raising the issue of judicial estoppel under these circumstances and for the other reasons outlined herein because it was inconsistent with prohibitions against a Court acting as a pseudo-advocate.

B. The Trial Court erred by applying judicial estoppel in relation to the Stipulation.

The Trial Court erred in its application of judicial estoppel to the Stipulation. As already discussed above, the South Dakota Supreme Court has:

> …consistently applied contract principles to the interpretation of a divorce agreement, when it comes to the limitations period for enforcement of the agreement, if it is incorporated into the divorce decree, such agreement merges into the decree and becomes part of the judgment. [A parties'] claim for enforcement of the stipulation is an action upon a judgment or decree. See SDCL 15-2-6(1). Therefore, it is not the six-year statute of limitations applicable to contracts, but the twenty-year limitations period applicable to judgments that pertains to this action.

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[7] Additional argument relating to the adversarial interrogation of Mr. Martin is further explored later in this Brief.

Wehrkamp v. Wehrkamp, 2009 SD 84, 773 N.W.2d 212 (internal citations omitted); *see also* SDCL § 15-2-6(1).

While the Decree of Divorce incorporated the Stipulation, the Stipulation contemplated Lenora later executing a deed or otherwise conveying the Property after entry of the Decree of Divorce, and specifically provided "[t]hat each of the parties hereto hereby agrees to execute any and all documents necessary to carry into full force and effect the provisions contained in this document." Stipulation, ¶ XVII; CR83. The Stipulation further contemplated "[t]hat in the event the Court grants a decree of divorce…" (CR 83). To view the Stipulation itself as a grant or conveyance divesting Lenora of her interest in the Property would require a position that said Stipulation was a conditional grant, which cannot be done: "A grant cannot be delivered to the grantee conditionally." SDCL § 43-4-8 (in relevant part). Furthermore, an agreement to convey real property is not an actual grant or conveyance of any real property. *See Stacey Taylor Trippet Special Trust v. Blevins*, 1996 SD 29, 545 N.W.2d 216.

Lastly, "[t]ransfer is an act of the parties, or of the law, by which the title to property is conveyed from one living person to another." SDCL § 43-4-1. No such transfer of Lenora's interest in the Property ever occurred. CR.

To determine that the Stipulation affirmatively divested or conveyed Lenora's interest in the Property on grounds of judicial estoppel goes against long-standing law and is a misapplication of the doctrine of judicial estoppel. *Supra.*

The Trial Court was clearly erroneous in applying judicial estoppel in relation to the Stipulation, and should be reversed on this ground alone.

C. The Trial Court erred by not applying judicial estoppel in regards to the Probate proceeding.

If application of judicial estoppel is appropriate in this matter, it would be against Jay in relation to the Probate proceeding.

On or about February 20, 2024, Jay filed a *Motion to Consolidate the Probate and Partition Action*, asking the Court to consolidate the present action with the Estate of Paul Bryant Probate file. CR 20-21.

The South Dakota Supreme Court recently applied the equitable doctrine of judicial estoppel against Bret Healy because, in a prior action, he unsuccessfully alleged that there was an actual conveyance of land (in alleging a fraudulent transfer), then in the subsequent quiet title lawsuit claimed that property was not conveyed. *Healy Ranch Partnership v. Mines*, 2022 SD 44, ¶¶ 51-58, 978 N.W.2d 768.[8]

In *Healy*, the Court stated that for judicial estoppel to apply:

> The later position must be clearly inconsistent with the earlier one; the earlier position was judicially accepted, creating the risk of inconsistent legal determinations; and the party taking the inconsistent position would derive an unfair advantage or impose an unfair detriment to the opponent if not estopped.

Healy, at ¶ 55 (internal citations omitted). The Court further noted that:

> Judicial estoppel is not limited to situations in which the party has prevailed on the merits by pressing the prior position; rather, it requires only "judicial acceptance" of the prior position, meaning that the court "adopted the position urged by the party, either as a preliminary matter or as part of a final disposition."

Healy, at ¶ 59 (internal citations omitted).

The facts in this case are similar to the *Healy* case insofar as Jay asserted in the Probate matter that there was no transfer of the Property from Lenora to Paul, and that a

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[8] In contrast to this case, Jay argued in the Probate that no conveyance occurred, and now argues a conveyance did occur.

claim would need to be made against Lenora to divest her of her ownership interest in the Property and enforce the Stipulation and Agreement. Now, in this subsequent quiet title action (much like was done in the *Healy* matters), Jay changes his position entirely and asserts the stipulation divested Lenora of her interest in the Property.

At the March 26, 2024 hearing, Counsel for Jay unequivocally stated:

i) "…Lenora Bryant should have quitclaimed her share of the land to Paul Bryant after the divorce. That may or may not have happened. There's no deed of record from Lenora to Paul…." MHT 3:9-12.

ii) "I think I have a claim against the estate and against Lenora Bryant to bring that back into the – that 40 acres – her share of that 40 acres, of what she claims is her share of the 40 acres, back into the estate of Paul Bryant." MHT 3:20-24.

iii) "…Paul Bryant certainly has a cause of action against Lenora Bryant for – the estate of Paul Bryant for her refusal, or her claim, continued claim apparently … of ownership to this 40 acres…." MHT 19:4-8.

iv) "I think title to this matter is confused to say the least. I believe that the estate owns the cause of action against Lenora Bryant and that the estate should assert that cause of action…."[9] MHT 23:17-20.[10]

A 41-43 (MHT 3, 19, 23).

As shown in Jay's *Petition for Appointment of Special Administrator*, filed on July 15, 2024 in Meade County Probate File 46PRO22-13 ("Petition"), Plaintiff hired attorney Greg Strommen "for the purposes of pursuing a claim against Lenora K. Bryant"

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[9] The Trial Court adopted the position Jay took on the preliminary matter in the Probate: "[b]ut can't your client petition for a special administrator on that issue?", to which Jay's response was "[w]e could, but then we're right back here…." MHT 23:23-24:1. Jay abandoned his request for a special administrator in the Probate and pursued this quiet title action instead.

[10] However, even when Jay raised this issue, the applicable statutes of limitations had long-expired. *Supra.*

(at ¶ 1) "for the refusal to provide a Quitclaim Deed to Paul A. Bryant for certain real property…" (at ¶ 2). PCR 180; A 22. The Petition further admitted and affirmatively argued that, in order for Lenora to be divested of her ownership interest in the relevant property, Paul's Estate would have to make a claim against Lenora to enforce the original Stipulation and Agreement, to wit:

> Upon appointment of the Special Administrator the Special Administrator would pursue a claim to enforce the original Stipulation and Agreement…

PCR 181; A 23 (at ¶ 7). Jay acknowledged in the Probate that Lenora was never divested of her interest in the Property, yet now in this quiet title action claims that Lenora was divested of her interest by virtue of the Stipulation.

Jay filed his *Response to Estate's Objection to Appointment of Special Administrator* in the Probate matter on or about September 15, 2024 ("Jay's Response"), and specifically acknowledged and cited caselaw that "…a Stipulation in a divorce is a contract that can be enforced as a contract in the divorce proceeding…." PCR 207.

Both the Petition (at ¶ 7) and Jay's Response (at ¶ 10 and the final paragraph) took the position that the divorce Stipulation and Agreement would have to be enforced by the Estate making a claim against Lenora – even going so far as asserting in Jay's Response that the Estate would have to do it (to have standing) through contempt proceedings in the divorce file.[11] PCR 181, 208; A 23.

Much like Bret Healy did in the cases he was involved in, Jay now prosecutes his quiet title action with an entirely different and inconsistent theory. The Trial Court clearly

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[11] Even if the Estate had pursued Lenora, the applicable statute of limitations had long-expired, which is discussed further, below.

erred by not applying judicial estoppel against Jay in relation to this matter and the Probate, and should be reversed.

ISSUE 3: Whether the Trial Court erred in entering the Court's Findings of Fact and Conclusions of Law and Judgment Quieting Title to Real Property.

The Trial Court clearly erred in entering Findings of Fact 13, 15, 16, 19, and 22, and Conclusions of Law 7, 12, 17, 21, 22, and 24. CR 126-131; A 1-9.[12] *See* SDCL § 15–6–52(a).

Notably, the Trial Court made no credibility determinations after trial, and only Lenora called an expert witness. CR.

A. The Trial Court erred by entering Finding of Fact 13 which states:

> 13. On March 2, 1994, Paul Bryant transferred, by Warranty Deed, the entirety of the 40 acres that is the subject of this quiet title action to Marion Knutson, his friend. According to trial testimony, Paul transferred the property to avoid losing the property to creditors due to medical bills for an illness from which Paul thought he would not recover. However, the illness was not severe, and Paul Bryant lived long thereafter.

CR 126. While there is no dispute that the March 2, 1994 Deed to Marion Knutson conveyed all of Paul Bryant's interest in the Property, there is simply no evidence that he conveyed Lenora's interest in the Property.

It is not disputed that there is no recorded deed from Lenora conveying her interest in the Property to anyone. Because there is no conveyance from Lenora divesting herself of her interest in the Property, Paul could only have conveyed his interest in the Property to Marion:

> Transfer is an act of the parties, or of the law, by which the title to property is conveyed from one living person to another.

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[12] Lenora also contends that Findings of Fact 8 and 9 are not accurate, however acknowledges that the inaccuracies are harmless errors.

SDCL § 43-4-1. There is no authority present in this case for Paul to have conveyed Lenora's interest in the Property to Marion – therefore, the Trial Court erred by finding that the March 2, 1994 deed conveyed "…the entirety of the 40 acres…" to Marion.

It has long been the law in South Dakota that you cannot convey another person's interest in real property (with some exceptions not present in this case):

> **An estate in real property**, other than an estate at will or for a term not exceeding one year, **can be transferred only by operation of law, or by an instrument in writing, subscribed by the party disposing of the same**, or by his agent thereunto authorized by writing.

SDCL § 43-25-1 (emphasis added). There is nothing in the record evidencing that Paul acted as Lenora's agent when he executed the deed to Marion.[13]

What Paul's gift conveyance to Marion did was sever the joint tenancy interest. Property held by multiple parties in joint tenancy can be unilaterally converted into a tenancy in common:

> A joint tenancy exists when the four unities of time, title, interest, and possession are present. See Zulk v. Zulk, 502 N.W.2d 116, 118 (S.D.1993) (citations omitted). Destruction of one of the four unities terminates a joint tenancy and converts it into a tenancy in common. See Schimke v. Karlstad, 87 S.D. 349, 208 N.W.2d 710, 711 (1973). Under South Dakota law, a joint tenant with right of survivorship has the right to unilaterally terminate the joint tenancy at any time without the knowledge or consent of the other joint tenants. Id. A joint tenancy can be dissolved in several ways.

In re Estate of Hoffman, 2002 SD 129, ¶ 9, 653 N.W.2d 94.

Because there is no operation of law and Paul was not an agent to convey Lenora's interest in the Property to Marion, the Trial Court erred and was clearly

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[13] It is also noteworthy that Marion was not a good faith purchaser for value. *Supra*.

erroneous, by entering Finding of Fact 13 insofar as the deed to Marion did not convey "the entirety of the 40 acres".

B. The Trial Court erred by entering Finding of Fact 15 which states:

> **15. The March 2, 1994, Warranty Deed contains both a change in Paul Bryant's marital status and an unreserved conveyance of the 40 acres to Marion Knutson. This conveyance is a public record which appears to show that Lenora Bryant had been divested of her interest in the property. Further, the conveyance demonstrates that Paul Bryant mistakenly believed Lenora Bryant's deed as agreed in their Stipulation and ordered by the Court in its Judgment had been properly filed, and that Paul was the fee owner of the 40 acres.**

CR 126-127. To allow someone to be divested of their real property based on a co-owner's belief would require this Court to ignore SDCL §§ 43-25-1 – the Trial Court erred by finding "[t]his conveyance is a public record which appears to show that Lenora Bryant had been divested…and that Paul was the fee owner of the 40 acres." *Supra*. The only evidence in the record relating to the deed to Marion is that Paul did not want his interest to get "…tied up with the medical costs of his – of his medical situation at that time," (TT 22:23-23), and that Marion was not a good faith purchaser for value. CR 87.

Because Finding of Fact 15 is not supported by the evidence and ignores longstanding law, the Trial Court was clearly erroneous when it entered Finding of Fact 15.

C. The Trial Court erred by entering Finding of Fact 16 which states:

> **16. On March 12, 1996, Marion Knutson transferred the same 40 acres by Warranty Deed to Paul and Lenora Bryant's two minor children, Jay Bryant and Jed Bryant, as joint tenants with right of survivorship and not as tenants in common.**

CR 127. Incorporating the arguments, above, the Trial Court was clearly erroneous by determining that Marion's conveyance conveyed Lenora's interest in the Property. *Supra*. Therefore, the Trial Court erred in determining that Marion's deed transferred Lenora's interest in the Property.

D. The Trial Court erred by entering Finding of Fact 19 which states:

> **19. On July 28, 2023, Black Hills Title issued an Owner's and Encumbrance Report on the subject property which indicates, "Lenora K. Bryant- as to an undivided one-half interest" in the subject property, and "Jay Christian Bryant and Jed Allan Bryant, as to an undivided one-half interest" in the subject property, and that, "[N]o examination had been made of the title… and [the Report] "do[es] not include additional matters which might have been disclosed by an examination of the record title." Answer and Counterclaim of Jed Allen Bryant, Exhibit A, filed Dec. 28, 2023. In other words, the Meade County Clerk of Courts' records were not examined.**

CR 127. The Trial Court was clearly erroneous in finding that "[i]n other words, the Meade County Clerk of Courts' records were not examined."

The Parties stipulated to Mr. Martin being declared as an expert witness in this matter. TT 3:23-4:8. No other expert witness was called for testimony.

Travis Martin is a licensed title examiner with Black Hills Title Company. A 28-29 (TT 40:13-16 and 41:1-2). By law, Mr. Martin's company is required to have "copies of all the documents at the courthouse. [They're] a backup for the register of deeds office essentially." A 29 (TT 41:10-14). In preparing an Owner and encumbrance Report, Mr. Martin analyzes the chain of title from the patent forward, then takes the search to the register of deed's office to make sure there's no discrepancies. A29-30 (TT 41:14-42:8) Exhibit B admitted at trial is an Owner and Encumbrance Report for the Property in this matter. CR 90-93; A 19-21; TT42:43:5.

Mr. Martin testified that:

A Per our research in the county records, we determined that Lenora K. Bryant owned a divided one-half interest, and then another half interest was shared by Jay Christian Bryant and Jed Allen Bryant as joint tenants.

TT44:2-5. There is no evidence in the record to refute this fact, and Jay presented no expert witness to dispute this. CR.

When Jay's attorney asked Mr. Martin about the disclaimer on the O&E Report indicating it is not a title report, he explained that he does review documents recorded with the Register of Deeds Office:

BY MS. MEYERS:
Q I note on Exhibit B on the very last -- or second to the

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last page that it states, "This is not a title report, since no examination has been made of the title." What does that mean? I mean you said it's an O&E. How is it different?
A It's not title insurance, so we won't insure off of an O&E report. I can't write a title policy based on just an O&E report. Our liability is less as far as an O&E report goes.
Q So you're looking at documents that are recorded at the register of deeds office, correct?
A Correct.

TT 47:24-48:11. Mr. Martin unequivocally testified that Exhibit 1 (the Stipulation) does not extinguish Lenora's interest in the Property. A 35-36 (TT 52:23-53:15).[14]

Because there is no evidence in the record (whether by another expert witness or otherwise) to detract from the facts as testified to by Mr. Martin relating to the review of the County records, the Trial Court was clearly erroneous by entering Finding of Fact 19.

E. The Trial Court erred by entering Finding of Fact 22 which states:

> **22. The circumstantial evidence produced indicates that Paul Bryant believed that the March 19, 1991 Stipulation, Court Order and Judgment were followed, and Paul Bryant was the sole owner of the 40 acres.**

CR 128. Circumstantial evidence based on another person's belief cannot divest Lenora of her ownership interest. *Supra.* Circumstantial evidence cannot trump the race notice law. *See* SDCL § 43-28-17. In case analyzing whether an agreement constituted a conveyance, this Court stated:

> Under SDCL 43-4-1 a transfer of realty occurs only by the act of the parties, which act never occurred here. A grant does not take effect until delivery by the grantor. SDCL 43-4-7. Further, a grant cannot be delivered conditionally to a grantee. "Delivery ... is necessarily absolute; and the instrument takes effect thereupon discharged of any condition on which the delivery was made." ¶10 Trippet Trusts' reliance upon SDCL 43-28-17 as authority for the proposition that the document in question constitutes a conveyance to Trippet simply begs the question. That statute is a priority statute determining that the grantee who files a conveyance of real property takes over subsequent attempted transfers by the original grantor which are void. For SDCL 43-28-17 to apply there must be a "conveyance" to the grantee to begin with, which is the issue now before us.

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[14] It should be noted that the Court interrogated Mr. Martin as well, asserting that the Stipulation contained the elements of the deed. *Supra.*

Stacey Taylor Trippet Special Trust v. Blevins, 1996 SD 29, 545 N.W.2d 216, ¶¶ 9-10 (S.D. 1996). There was no absolute grant from Lenora. CR. The Trial Court was clearly erroneous in entering Finding of Fact 22.

F. The Trial Court erred by entering Conclusion of Law 7 which states:

> 7. The missing deed arises from a prior judicial action dated March 19, 1991. By the parties' Stipulation that was adopted by the Court and expressly adopted in its Judgment and Decree of Divorce, the contemplated deed was intended to transfer and convey Lenora Bryant's undivided half interest in the 40 acres to Paul Bryant. That deed was not filed in the Meade County Register of Deeds office, nor was it produced at trial.

CR 129. The Trial Court properly concluded that the Stipulation contemplated Lenora would execute a deed to convey her interest in the Property in the future – however there is no "missing" deed! The Trial Court erred in entering Conclusion of Law 7 insofar as "[t]hat deed was not filed" – because there never was a deed and Paul never sought his legal relief to enforce the Stipulation (see prior argument). Because there was no deed and Paul never enforced the Stipulation, the Court erred in entering this Conclusion of Law 7.

G. The Trial Court erred by entering Conclusion of Law 12 which states:

> 12. Lenora Bryant requests that the Court recognize that she continues to have an undivided half interest in the 40 acres as created by the October 18, 1978, Warranty Deed. In essence, Lenora requests the Court allow her to keep the two parcels of real property, even though she agreed and was ordered by the Circuit Court to transfer her undivided half interest in the 40 acres to Paul Bryant in March of 1991 in exchange for the other described property.

CR 129. Simply put, this is not a conclusion of law and the Trial Court erred in entering Conclusion of Law 12 for the reasons set forth, above. *Supra*. To the extent Conclusion of Law 12 is a finding of fact, the Trial Court was clearly erroneous. *Supra*.

H. The Trial Court erred by entering Conclusion of Law 17 which states:

> **17. Here, there has been a prior judicial proceeding, *Paul Bryant v. Lenora Bryant*, Meade County Civil Action 90-433, involving the same subject matter as this judicial action to quiet title.**

CR 131. While the Stipulation contemplated the Property, the subject matter jurisdiction was established by virtue of the divorce, not a quiet title action. The Trial Court erred by entering Conclusion of Law 17.

I. The Trial Court erred by entering Conclusion of Law 21 which states:

> **21. In this subsequent action to quiet title to the same 40 acres, Lenora Bryant is asserting an inconsistent position—that she is not bound by her prior agreement to transfer and convey her undivided half interest in the 40 acres of real property.**

CR 131. The Trial Court's conclusion that Lenora is asserting an inconsistent position is incorrect. The undersigned was not able to locate any authority standing for the proposition that imposition of judicial estoppel was appropriate when contesting a contract under similar circumstances. Simply put, Paul should have attempted to enforce the Stipulation prior to expiration of the applicable statute of limitations. *Supra*. The Trial Court erred by entering Conclusion of Law 21.

J. The Trial Court erred by entering Conclusion of Law 22 which states:

> **22. If this Court adopts Lenora Bryant's now inconsistent position, it would result in an unfair gain because according to trial testimony, Lenora did receive the other property and valuable consideration from Paul Bryant, but Paul did not receive Lenora's interest in the 40 acres as Ordered by the Court.**

CR 131. Whether an interested party experiences an "unfair gain" in a quiet title action is simply beyond the scope and jurisdiction of a quiet title action. SDCL § 21-41-1. Paul never sought to enforce the Stipulation, and he was represented by an attorney in the Divorce while Lenora was not. No authority was located to support a conclusion that an

unfair gain divests one of their property interest, and the Trial Court erred by entering its Conclusion of Law 22.

K. The Trial Court erred by entering Conclusion of Law 24 which states:

> **24. Thus, under the principle of judicial estoppel, Lenora Bryant is estopped and precluded from arguing that she continues to own an undivided half interest in the 40 acres.**

CR 131. Again, Lenora has never conveyed her interest in the Property, and the Stipulation contemplated Lenora executing a deed at some point in the future and after entry of the Divorce Decree; Paul never pursued his legal remedy to enforce the Stipulation. *Supra.* The Trial Court erred by entering Conclusion of Law 24 – to hold otherwise would require ignoring stare decisis and overrule the *Wehrkamp* precedent. *Supra.*

CONCLUSION

The Trial Court was clearly erroneous by not determining Lenora holds a one-half interest in the Property and is its entry of the various findings of fact and conclusions of law as outlined herein. The Trial Court further erred by participating as a pseudo-advocate and not determining that Jay did not have standing to enforce the Stipulation. Lenora requests this Court reverse the Trial Court and find Lenora owns an undivided one-half interest in the Property.

Dated this 17th day of September, 2025.

BENNETT MAIN GUBBRUD & WILLERT, P.C.
Attorneys for Lenora K. Bryant

By: _____
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CERTIFICATE OF COMPLIANCE

COME NOW, the Appellant, Lenora K. Bryant, by and through her attorney of record, Kellen B. Willert, of Bennett Main Gubbrud & Willert, P.C., 618 State Street, Belle Fourche, South Dakota, and pursuant to SDCL § 15-26A-66(4), hereby certifies that she has complied with the type volume limitation of SDCL § 15-26A-66(4) in that Appellant's Brief is double-spaced and proportionally spaced in Times New Roman, 12-point, with a total word count of 6,573 and a total character count of 32,558. The Appellant's Brief and all copies are in compliance with this rule.

Dated this this 17th day of September, 2025.

BENNETT MAIN GUBBRUD & WILLERT, P.C.
Attorneys for Lenora K. Bryant

By: _____

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CERTIFICATE OF SERVICE AND FILING

I, Kellen B. Willert, attorney for Lenora K. Bryant, do hereby certify that on the 17th day of September, 2025. I caused a full, true, and complete copy of APPELLANT'S BRIEF to be served *electronically* through the Odyssey electronic filing system:

N. Drew Skjoldal
Attorney for Jed Bryant
P.O. Box 759
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Attorney for Jay Bryant
P.O. Box 560
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Pat.meyers@midconetwork.com

I further certify that on the same day I caused the APPELLANT'S BRIEF to be filed *electronically* through the Odyssey electronic filing system and the original APPELLANT'S BRIEF to be filed by U.S. Mail with:

Shirley Jameson-Fergel
Clerk of the Supreme Court
State of South Dakota
500 East Capitol Avenue
Pierre, SD 57501-5070
SCClerkBriefs@ujs.state.sd.us

by depositing said copy in envelope securely sealed with first class postage thereon fully prepaid in the U.S. Mail in Belle Fourche, South Dakota, and addressed as shown above.

Dated this 17th day of September, 2025.

BENNETT MAIN GUBBRUD & WILLERT, P.C.
Attorneys for Lenora K. Bryant

By: _____
Kellen B. Willert

APPENDIX

STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	) SS.	
COUNTY OF MEADE	)	FOURTH JUDICIAL CIRCUIT

JAY BRYANT, Plaintiff, v. **JED ALLEN BRYANT and LENORA K. BRYANT,** Defendants.	**46CIV23-000284** **COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW AND JUDGMENT QUIETING TITLE TO REAL PROPERTY**

On March 20, 2025, a trial was held in this quiet title action before Circuit Court Judge John Fitzgerald at the Meade County Courthouse, Sturgis, South Dakota. The interested parties all appeared: Jay Bryant with his Attorney, Patricia Myers, Jed Bryant with his attorney, Drew Skjoldal, and the two brothers' mother, Lenora Bryant, with her attorney, Kellen Willert.

The Court having heard the testimony and having reviewed the file and being fully advised, now makes its findings and conclusions and judgment.

FINDINGS OF FACT

1. The property subject to this quiet title action is legally described as:

> The Southwest Quarter of the Southwest Quarter (SW1/4) of Section Seventeen (17), Township Four (4) North, Range Seven (7) East, Black Hills Meridian, Meade County, South Dakota.

This legal description consists of 40 acres more or less of real property; hereinafter referred to as the "40 acres" or "subject property."

2. Paul Bryant, deceased, is the father, and Lenora Bryant is the mother of the two brothers, Jay and Jed Bryant, named parties in this action.

3. On October 18, 1978, Paul Bryant and his then wife, Lenora Bryant, received the subject property by Warranty Deed. The grantors were Paul Bryant's parents. The Warranty Deed

indicated the that grantees, Paul and Lenora Bryant, were husband and wife, and they received the subject property as joint tenants with right of survivorship and not as tenants in common.

4. On March 19, 1991, Paul Bryant and wife Lenora Bryant divorced. *Paul Bryant v. Lenora Bryant*, Meade County Civil Action 90-433. This Court has taken notice of the content of the divorce file, which is a public record of the Meade County Clerk of Courts' Office in Sturgis, South Dakota.

5. To settle the divorce, both parties signed a Stipulation, Child Custody and Property Settlement Agreement (herein after "Agreement" or "Stipulation") before a notary public. On January 14, 1991, Plaintiff Paul Bryant signed the Stipulation before a notary and Attorney Mike Jackley. On February 12, 1991, Defendant Lenora Bryant signed that Stipulation before Notary Karen Lynch. The acknowledgment before a notary stated, "that the person whose name is subscribed ...acknowledged that [he or she] executed the same for the purposes therein contained."

6. The signed Agreement provided, "this agreement shall constitute a complete and final property settlement between the parties." It further provided that their Agreement could be entered as the part of the Judgment and Decree of Divorce and would constitute a final and complete property settlement between the parties if accepted by the Court.

7. On page six of the filed document titled "Stipulation, Child Custody and Property Settlement Agreement," Civ. No. 90-433, appears Circuit Court Judge Scott Moses' signature attested to by the Clerk of Courts on March 19,1991. Above Judge Moses's signature, the document says, "The foregoing Stipulation, Child Custody and Property Settlement Agreement in all of its terms and provisions is approved and adopted by the Court this 19th day of March, 1991."

8. The parties' Agreement, adopted by the Court, specifically provides in Paragraph IX,

> Plaintiff (Paul Bryant) shall take as his own separate property, free and clear from any claim of the Defendant (Lenora Bryant), the following described property: Southwest Quarter of the Southwest Quarter of Section 17, Township 4 North, Range 7 East, BHM, Meade County, South Dakota, and be responsible for all debts and taxes thereon.

This is the legal description of the 40 acres of real property subject to this quiet title action.

9. Paragraph X of the parties' Agreement states,

> Defendant (Lenora Bryant) shall take as her own and separate property, free from any claim of Plaintiff, the following described real property: Lot 1-E of the

> Subdivision of Lot One of the Southeast Quarter of the Southeast Quarter of Section Nine in Township Three North of Range Six East, and a Portion of the North Half of the Northeast Quarter of the Northeast Quarter of Section Sixteen, Township Three North of Range Six East of the Black Hills Meridian, Meade County, South Dakota, and shall be responsible for all taxes and debts on said property....

10. In addition to the exchange of real property owned by the parties, the Agreement divided personal property and debts, and issues of child support, health insurance for the minor children, and the parties' custody and visitation rights were settled therein. At the time of the divorce, the two children were minors. Jay Bryant, DOB 1/16/78, was age 13, and Jed Bryant, DOB 6/24/1982, was 9 years old.

11. On page two, in paragraph two, of the document titled "Judgement and Decree of Divorce," Civ. No. 90-433, also dated March 19, 1991, the Court expressly adopts the parties' Stipulation.

12. Meade County File Civil 90-433 is a public record of a judicial action of the Circuit Court in Meade County, South Dakota. No subsequent Orders of the Court have amended that action's Orders with respect to the 40 acres.

13. On March 2, 1994, Paul Bryant transferred, by Warranty Deed, the entirety of the 40 acres that is the subject of this quiet title action to Marion Knutson, his friend. According to trial testimony, Paul transferred the property to avoid losing the property to creditors due to medical bills for an illness from which Paul thought he would not recover. However, the illness was not severe, and Paul Bryant lived long thereafter.

14. The March 2, 1994, Warranty Deed states in its first line that Paul Bryant is a "single person," and then grants, conveys, and warrants the 40 acres. This Warranty Deed contains no reservations nor any mention that Paul Bryant is other than the sole owner of the real property. A change from married to a single person occurs from either divorce or death of a spouse. The title company Owner's and Encumbrance Report contains no explanation for the change in Paul's marital status between the October 18, 1978, and the March 2, 1994, Warranty Deeds.

15. The March 2, 1994, Warranty Deed contains both a change in Paul Bryant's marital status and an unreserved conveyance of the 40 acres to Marion Knutson. This conveyance is a public record which appears to show that Lenora Bryant had been divested of her interest in the property. Further, the conveyance demonstrates that Paul Bryant mistakenly believed Lenora Bryant's deed as agreed

in their Stipulation and ordered by the Court in its Judgment had been properly filed, and that Paul was the fee owner of the 40 acres.

16. On March 12, 1996, Marion Knutson transferred the same 40 acres by Warranty Deed to Paul and Lenora Bryant's two minor children, Jay Bryant and Jed Bryant, as joint tenants with right of survivorship and not as tenants in common.

17. Paul Bryant died on November 8, 2021, leaving a written will. His death occurs approximately 30 years after the divorce from Lenora Bryant.

18. After Paul Bryant died and while the estate was being probated, it was discovered that, contrary to the clear intention of the parties, the specific language in their Stipulation, and the Order and Judgment of the Court, there is no deed on file that transferred Lenora Bryant's undivided half interest in the real property subject to this action to Paul Bryant.

19. On July 28, 2023, Black Hills Title issued an Owner's and Encumbrance Report on the subject property which indicates, "Lenora K. Bryant- as to an undivided one-half interest" in the subject property, and "Jay Christian Bryant and Jed Allan Bryant, as to an undivided one-half interest" in the subject property, and that, "[N]o examination had been made of the title… and [the Report] "do[es] not include additional matters which might have been disclosed by an examination of the record title." Answer and Counterclaim of Jed Allen Bryant, Exhibit A, filed Dec. 28, 2023. In other words, the Meade County Clerk of Courts' records were not examined.

20. For approximately 30 years after her divorce from Paul, Lenora Bryant exercised no rights of possession, exerted no claim of ownership, and paid no real estate taxes on the real property. At no time did she assert any claim to the rents or profits from the 40 acres. The first time she made claim to ownership was after the Owner's and Encumbrance Report was prepared.

21. Issuance of the July 28, 2023, Owner's and Encumbrance Report triggered the claim now made by Lenora Bryant—that she still owns an undivided one-half interest in the 40 acres. This claim is made despite the fact that in a prior judicial proceeding to which she was a party, Lenora Bryant agreed to transfer such interest to Paul Bryant.

22. The circumstantial evidence produced indicates that Paul Bryant believed that the March 19, 1991 Stipulation, Court Order and Judgment were followed, and Paul Bryant was the sole owner of the 40 acres.

23. Jay Bryant and Jed Bryant have been in the physical possession of the property for years.

24. The prior judicial action contained promises, solemnized by the Court, regarding future actions required of both Paul and Lenora Bryant.

CONCLUSIONS OF LAW

1. This is an In Rem quiet title action. The Circuit Court has original jurisdiction over actions involving a dispute to title to real property located in Meade County, South Dakota. South Dakota Codified laws ("SDCL") § 16-6-9(3). The Circuit Court has jurisdiction over both legal and equitable actions. SDCL§ 16-6-8.

2. The property involved in this action is the same property involved in a prior judicial action, Meade County Civil Action 90-433, a divorce action over which the Circuit Court has original jurisdiction. SDCL§ 16-6-9 (4).

3. Proper notice was given to all parties who have an interest or claim in the property subject to this action.

4. A quiet title action may be maintained by any person having or claiming to have an interest in real property to determine their interest against all persons who appear from the records in the Register of Deeds, the County Treasurer, Clerk of Courts or other public records of the county against all persons who may have a claim, estate or interest in the validity of any adverse claims of ownership of the real property. *See* SDCL § 21-41-1.

5. The defense of equitable estoppel is available in actions to quiet title. *See Krafi v. Corson County*, 24 N.W.2d 643 (S.D. 1946).

6. Based upon the totality of the evidence, a mistake was made more than 34 years ago which led to failure to finalize an intended real property conveyance required by Court Order. No evidence has established how or what caused the mistake to occur, and no evidence was offered to explain whether the contemplated deed was executed, or if executed, what happened to that deed (e.g., it was lost).

7. The missing deed arises from a prior judicial action dated March 19, 1991. By the parties' Stipulation that was adopted by the Court and expressly adopted in its Judgment and Decree of Divorce, the contemplated deed was intended to transfer and convey Lenora Bryant's undivided half interest in the 40 acres to Paul Bryant. That deed was not filed in the Meade County Register of Deeds office, nor was it produced at trial.

8. The chain of title for the property at issue on file at the Meade County Register of Deeds office has a defect. The defect was caused by the fact that Paul Bryant transferred the entirety of the 40 acres by Warranty Deed on March 2, 1994. At the time of that transfer, the record reflected that Paul owned a half interest as a joint tenant with Lenora Bryant in those 40 acres. The Meade County Register of Deeds record reflects that at that time, Lenora Bryant's undivided half interest in the 40 acres had not been transferred as she previously agreed. Lenora's inaction creates a cloud on the title of the 40 acres.

9. Lenora Bryant had a duty to transfer her interest in the 40 acres to Paul Bryant because of her Agreement, adopted by Order of the Court in March 1991. As the grantor, she was the only person who could fulfill this judicially created obligation.

10. That obligation was hers after the Divorce, and it was not fulfilled. The Court having jurisdiction over that prior action did not alter or modify that obligation.

11. The March 19, 1991, Judgment and Decree of Divorce ended a prior judicial action that finalized the parties' divorce and imposed reciprocal obligations.

12. Lenora Bryant requests that the Court recognize that she continues to have an undivided half interest in the 40 acres as created by the October 18, 1978, Warranty Deed. In essence, Lenora requests the Court allow her to keep the two parcels of real property, even though she agreed and was ordered by the Circuit Court to transfer her undivided half interest in the 40 acres to Paul Bryant in March of 1991 in exchange for the other described property.

13. To reach that conclusion requires the Court to overlook the judicial action taken in Meade County Circuit Court File 90-433. In that prior action, Lenora Bryant acknowledged the parties' Stipulation in writing before a notary, in which she agreed to exchange her interest in the 40 acres at issue for other specifically described real property, and the Court expressly adopted the parties' Stipulation in its Judgement and Decree of Divorce. Lenora properly received the other

described property from Paul Bryant, and was thereby obligated to transfer and convey in exchange her interest in the 40 acres to Paul Bryant.

14. The South Dakota Supreme Court stated,

> Judicial estoppel cannot be reduced to an equation, but courts will generally consider the following elements in deciding whether to apply the doctrine: The later position must be clearly inconsistent with the earlier one, the earlier position was judicially accepted creating the risk of inconsistent legal determinations; and the party taking the inconsistent position would derive an unfair advantage of or impose an unfair detriment to the opponent if not estopped.

Canyon Lake Park, LLC v Loftus Dental, 2005 S.D. 82, ¶ 34, 700 N.W.2d 729 (quoting *Watertown Concrete Products, Inc. v Foster*, 2001 SD 79. ¶ 12, 630 N.W.2d 108, 112-13 (Citing New Hampshire v. Maine, 532 U.S. 742, 750, 121 S.CT. 1808, 1814-15, 149 L.Ed.2d. 968,977)). "Unlike collateral estoppel or equitable estoppel, judicial estoppel requires neither privity between the parties in the two proceedings, nor detrimental reliance by the other party." Id., at 180 (quoting Comment, *Precluding Inconsistent Statements: The Doctrine of Judicial Estoppel*, 80 NWULREV 1244, 1249 (1986)).

16. Judicial estoppel is unique. "Quasi estoppel is an equitable remedy applicable when a party maintains a position inconsistent with a position previously acquiesced in or of which the party accepted a benefit, and these inconsistent positions are to another disadvantage." *Bailey v. Duling*, 2013 S.D.15, ¶ 31, 827 N.W.2d 351, 362 (citing *Fed. Land Bank v. Houck*, 68 S.D. 449, 460, 4 N.W.2d 213, 218-19 (1942) (quoting 31 C.J.S. Estoppel § 107)). [Quasi estoppel is] "[i]ntended to prevent parties from benefiting by taking two clearly inconsistent positions to avoid certain obligations or effects, the doctrine is sometimes used interchangeably with judicial and equitable estoppel but is more closely akin to judicial estoppel." *Bailey*, 2013 S.D.15, ¶ 31, 827 N.W.2d 351, 362 (internal citation omitted). The "rule [of judicial estoppel] requires that a party's prior inconsistent assertion be judicially adopted before judicial estoppel can be successfully invoked." *Bailey*, 2013 S.D.15, ¶ 33, 827 N.W.2d 351, 362 (citing Michael D. Moberly & Laura L. Farley, *Blowing Hot and Cold on the Frozen Tundra: A Review of Alaska's Quasi-Estoppel Doctrine*, 15 ALASKA L.REV. 281, 297 (1998)). "Sometimes called the "prior success rule," the doctrine applies to parties who have unequivocally and successfully asserted a position in a prior proceeding; thus, they are estopped from asserting an inconsistent position in a subsequent proceeding." *Bailey*, 2013 S.D.15, ¶ 33, 827 N.W.2d 351, 362-63 (quotation in

original). "Judicial estoppel requires the earlier position was judicially accepted." *Id.*, *see Wilcox v. Vermeulen*, 2010 S.D. 29, p 10, 781 N.W.2d 464, 468.

17. Here, there has been a prior judicial proceeding, *Paul Bryant v. Lenora Bryant*, Meade County Civil Action 90-433, involving the same subject matter as this judicial action to quiet title.

18. In *Paul Bryant v. Lenora Bryant*, Meade County Civil Action 90-433, Lenora Bryant was successful in asserting her position. Lenora and Paul agreed that Lenora would obtain described real property and other consideration in exchange for conveyance of her undivided half interest in the 40 acres to Paul Bryant.

19. This quiet title action involves the same 40 acres as in *Paul Bryant v. Lenora Bryant*, Meade County Civil Action 90-433.

20. Lenora Bryant's prior position was accepted by the Court and Ordered by the Meade County Circuit Court on March 19, 1991, Judgment and Decree of Divorce.

21. In this subsequent action to quiet title to the same 40 acres, Lenora Bryant is asserting an inconsistent position—that she is not bound by her prior agreement to transfer and convey her undivided half interest in the 40 acres of real property.

22. If this Court adopts Lenora Bryant's now inconsistent position, it would result in an unfair gain because according to trial testimony, Lenora did receive the other property and valuable consideration from Paul Bryant, but Paul did not receive Lenora's interest in the 40 acres as Ordered by the Court.

23. In considering Lenora K. Bryant's Response Re: Judicial Estoppel, filed Apr. 22, 2025, the Court notes that while Jay Bryant has made several different arguments since his father's death in an effort to correct record ownership of the 40 acres, the intent of each of Jay's arguments is consistent—to remove the cloud from the title to the 40 acres and quiet title in favor of himself and his brother, Jed Bryant. Here, Lenora's position in the 1991 divorce proceeding is clearly inconsistent in both form and purpose from her position in this quiet title proceeding.

24. Thus, under the principle of judicial estoppel, Lenora Bryant is estopped and precluded from arguing that she continues to own an undivided half interest in the 40 acres.

Let judgment quieting title enter accordingly.

Based upon the foregoing Findings of Fact and Conclusions of Law and being fully advised in the premises, now, therefore, IT IS

ORDERED & ADJUDGED that Lenora Bryant's claim to an undivided half interest in the real property legally described as the Southwest Quarter of the Southwest Quarter of Section Seventeen (17), Township Four (4) North, Range Seven (7) East of the Black Hills Meridian in Meade County, South Dakota is extinguished.

IT IS FURTHER ORDERED& ADJUDGED that Jay and Jed Bryant are vested with title to the above-described property as joint tenants with right of survivorship and not as tenants in common in accordance with a Warranty Deed dated March12,1996 on file with the Meade County Register of Deeds. Their title is free and clear of any claim of Lenora Bryant,

Dated this 30th day of April, 2025 at Sturgis South Dakota

BY THE COURT:

Attest:
Drury, Reese
Clerk/Deputy

Honorable John H. Fitzgerald
Circuit Court Judge

STATE OF SOUTH DAKOTA | IN CIRCUIT COURT

COUNTY OF MEADE | FOURTH JUDICIAL CIRCUIT

****

JAY BRYANT,
Plaintiff,

46CIV23-284

NOTICE OF OPPORTUNITY TO PRESENT RESPONSE TO JUDICIAL ESTOPPEL

vs.

JED ALLEN BRYANT and
LENORA K. BRYANT,
Defendants.

****

Counsel is given the opportunity to present written responses to whether or not Judicial Estoppel has application to this matter within the next ten (10) days.

Dated this 11th day of April 2025 at Sturgis, South Dakota.

Attest:
Drury, Reese
Clerk/Deputy

BY THE COURT:

Hon. John Fitzgerald
Circuit Court Judge

FILED

MAR 20 2025

SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM
4TH CIRCUIT CLERK OF COURT

WARRANTY DEED—STATE FORM

SEIBERT L. BRYANT, a/k/a LEACH BRYANT and EDNA E. BRYANT, a/k/a EDNA BRYANT, husband and wife,

BOOK 352 PAGE 250

grantors, of Meade County,

State of South Dakota for and in consideration of One ($1.00) Dollar and other good and valuable consideration DOLLARS

GRANT, CONVEY, AND WARRANT, TO PAUL A. BRYANT and LENORA K. BRYANT, husband and wife, as Joint Tenants and not as Tenants in Common with right of survivorship

grantees, of Piedmont, South Dakota P. O. the following described real estate in the County of Meade in the State of South Dakota:

TOWNSHIP FOUR (4) NORTH, RANGE SEVEN (7) EAST, BLACK HILLS MERIDIAN, MEADE COUNTY, SOUTH DAKOTA:

SECTION 7: LOTS ONE AND TWO, EAST HALF NORTHWEST QUARTER
SECTION 8: NORTHWEST QUARTER, WEST HALF EAST HALF
SECTION 17: SOUTHWEST QUARTER SOUTHWEST QUARTER

TRANSFER FEE PAID, $ 36

$ 35.16 STATE OF SOUTH DAKOTA, COUNTY OF MEADE—SS

Transfer fee ... 18 ... Oct. ... 350 ... 3.50

Register of Deeds — Deputy FEES 5.00

Dated this 18th day of October 1978

Seibert L. Bryant, a/k/a Leach Bryant

Edna E. Bryant, a/k/a Edna Bryant

STATE OF SOUTH DAKOTA, } ss.
County of MEADE }

On this the 18th day of October 1978, before me, Russell C. Molstad the undersigned officer, personally appeared SEIBERT L. BRYANT, a/k/a LEACH BRYANT and EDNA E. BRYANT, a/k/a EDNA BRYANT, husband and wife, 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.

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

My commission expires: July 23, 1984

Russell C. Molstad, Notary Public

EXHIBIT 2

APP 11

46CIV23-284

B000055

STATE OF SOUTH DAKOTA) IN CIRCUIT COURT
) EIGHTH JUDICIAL CIRCUIT
COUNTY OF MEADE) CIV. NO. 90-433

Meade County, South Dakota
Filed at ___ o'clock ___ M
MAR 19 1991
Clerk of Courts
Deputy

PAUL ALLEN BRYANT,
SSN [redacted],
Plaintiff,

vs.

LENORA KAY BRYANT,
SSN
Defendant.

STIPULATION, CHILD CUSTODY AND PROPERTY SETTLEMENT AGREEMENT

Come now the Plaintiff and the Defendant in the above-entitled cause, which is an action for divorce, and for the purpose of aiding the Court in the disposition of said matter now before it, stipulate and agree as follows:

I.

That the parties hereto, by the execution of this Stipulation, do submit to the jurisdiction and the authority of the above-entitled Court.

II.

That the purpose of this Agreement is to set forth the terms and conditions of the property settlement and child custody and visitation settlement between the parties in connection with the above-entitled divorce action.

III.

That the Defendant has been duly served with Summons and Complaint in this action, has not answered or made an appearance of any kind, and by the execution of this Stipulation hereby agrees that the above-entitled matter may be brought on for hearing at anytime upon the motion of the Plaintiff without further notice to the Defendant herein. It is further agreed that the Plaintiff and Defendant waive the making and entry of formal Findings of Fact and Conclusions of Law in this matter.

IV.

That neither party is a member of the Armed Forces of the United States.

FILED

MAR 20 2025

SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM
4TH CIRCUIT CLERK OF COURT

By

46CIV23-284 [redacted]

V.

That the Social Security Number of the Plaintiff is 504-66-6773 and the Social Security Number of the Defendant is _____.

VI.

The parties shall have joint legal care, custody and control of the minor children of the parties, to-wit:

Jay Christian Bryant born January 16, 1978
and
Jed Allen Bryant, born June 24, 1982

and the Defendant shall be the prime custodial parent and the Plaintiff shall have reasonable rights of visitation which shall include an extended period in the summer.

VII.

Defendant shall maintain health insurance on the minor children of the parties, and be responsible for all medical and dental expenses not covered by insurance.

VIII.

Plaintiff shall not pay child support to Defendant as he is disabled.

IX.

Plaintiff shall take as his own and separate property, free and clear from any claim of Defendant, the following described real property:

Southwest Quarter of the Southwest Quarter of Section 17, Township 4 North, Range 7 East, BHM, Meade County, South Dakota,

and be responsible for all debts and taxes thereon.

X.

Defendant shall take as her own and separate property free from any claim of Plaintiff the following described real property:

Lot 1-E of the Subdivision of Lot One of the Southeast Quarter of the Southeast Quarter of Section Nine, in Township Three North of

Range Six East, and a Portion of the North Half of the Northeast Quarter of the Northeast Quarter of Section Sixteen, Township Three North of Range Six East of the Black Hills Meridian, as shown by plat recorded in the office of the Register of Deeds of Meade County, South Dakota, in Plat Book 4 on Page 340, subject to easements and reservations of record,

and shall be responsible for all taxes and debts on said property including the loan from First Western Bank, Sturgis, South Dakota in the approximate amount of $10,500.00 and shall hold Plaintiff harmless from said debts.

XI.

Plaintiff shall take as his own and separate personal property free from any claim of Defendant all personal effects and property now in his possession, including but not limited to hay and hay and pasture income, tractor, swather baler, Ford Pickup, Datsun Pickup, 1980 Volvo, 1987 Toyota Pickup, any savings or checking accounts in his name only.

XIV.

Defendant shall take as her own and separate property, free and clear from any claim of Plaintiff the following personal property: All personal property and effects now in her possession, including but not limited to household furnishings, 1990 Toyota automobile (upon which Defendant also assumes all responsibility for the debt thereon and holds Plaintiff harmless from such debt.)

XIII.

Plaintiff shall assume full responsibility for and hold Defendant harmless for the following debts: Mayo Clinic in the approximate amount of $3,098.00; Methodist Hospital in the approximate amount of $9,450.00.

XIV.

In addition to those debts listed above as being her responsibility, Defendant shall assume full responsibility for and hold Plaintiff harmless for the following debts: Sears in the approximate amount of $500.00 and debt on purchase of carpet in the approximate amount of $1,200.00.

XV.

Each party shall be responsible for his own attorney fees

and costs in this action.

XVI.

That each of the parties hereto and hereby releasees the other from any and all obligations arising out of the marriage of the parties hereto or otherwise, except as set forth herein.

XVII.

That each of the parties hereto hereby agrees to execute any and all documents necessary to carry into full force and effect the provisions contained in this document.

XVIII.

That in the event the Court grants a Decree of Divorce in this matter, the parties agree that this Stipulation and Property Settlement Agreement may be entered as a part of the Order and the terms and conditions of this Stipulation may be part of such Judgment and Decree of Divorce. This agreement shall constitute a complete and final property settlement between the parties. However, in the event that the Court does not accept any part of this Stipulation and Property Settlement Agreement, the same shall be deemed null and void by all the parties hereto and no Decree of Divorce may be entered by default herein without due notice of the application for Default Judgment in completion of all of the requirements of law relative to the taking and entry of default judgment. In addition thereto, in the event the Court modifies any part of this Stipulation or fails to accept it in its entirety, then and in that event all notice requirements shall be deemed not to have been waived and all of the provisions waived herein by either party are deemed to be null and void.

Dated this 14 day of JAN, 1991.

Paul Allen Bryant

Paul Allen Bryant

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

On this the 14th day of January, 1991, before me, the undersigned officer, personally appeared Paul Allen Bryant, 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 have set my hand and official seal.

Notary Public
My Commission Expires:

MICHAEL R. JACKLEY
Notary Public
My Commission Expires January 29, 1996

(SEAL)

Lenora Kay Bryant

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

On this the 12th day of February, 1991, before me, the undersigned officer, personally appeared Lenora Kay Bryant, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

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

Notary Public
My Commission Expires:

KAREN J. LICH
NOTARY PUBLIC
STATE OF SOUTH DAKOTA
MY COMMISSION EXPIRES
AUGUST 19, 1998

(SEAL)

* * * * * * * * * * * * * *

The foregoing Stipulation, Child Custody and Property Settlement Agreement, in all its terms and provisions is approved and adopted by the Court this 19 day of March, 1991.

BY THE COURT:

Scott Moore

CIRCUIT COURT JUDGE

ATTEST:

PATRICIA M. WILLIAMS

Clerk

By: Rita M. Long

Deputy

(SEAL)

Meade County, South Dakota
Filed at ___ o'clock ___ M

MAR 19 1991

Patricia M. Williams Clerk of Courts

_____ Deputy

FILED

MAR 20 2025

SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM
4TH CIRCUIT CLERK OF COURT

By _____

1855 Ball Park Road * PO Box 909 * Sturgis, SD 57785
Phone (605) 347-4402 * Fax (605) 347-4403
E-mail: ordersmeade@bhtitle.com
E-mail: closingsmeade@bhtitle.com

Office File No.: 101157

Date: March 03, 2025

Parties: Bryant

Description: SW¼SW¼ of Section 17, T4N, R7E, BHM

Services Rendered

Owners & Encumbrance Report	$179.99

Invoice Total: **$179.99**

Customers:

Kellen Willert
Bennett Main Gubbrud & Willert Law Firm
kellen@bellelaw.com

Black Hills Title - Belle Fourche closing department
travis@bhtitle.com

Thank you!

OWNERS & ENCUMBRANCE REPORT

File No.: 101157

To: Kellen Willert
Bennett Main Gubbrud & Willert Law Firm

The real property referred to in this report is described as follows:

Township 4 North, Range 7 East of the Black Hills Meridian, Meade County, South Dakota:
Section 17: SW¼SW¼

For information purposes only, the property address is purported to be:

13704 Tilford Rd., Sturgis, SD 57785

As of February 21, 2025, at 8 AM, we find the last conveyance of record runs to:

Lenora K. Bryant, as to an undivided one-half interest

Jay Christian Bryant and Jed Allan Bryant, as joint tenants with right of survivorship and not as tenants in common, as to an undivided one-half interest

We find the following outstanding mortgages, mechanics liens, contracts for deed, and / or UCC financing statements of record:

None

Real Estate Taxes:

The 2025 real estate taxes and/or any special assessments, a lien, not yet due and payable.

The 2024 real estate taxes payable in 2025 are as follows:
1st half due by April 30, 2025: $654.43, unpaid
2nd half due by October 31, 2025: $654.43, unpaid
Tax Parcel ID 22.17.33.

The 2024 special assessment payable in 2025 are as follows:
1st half due by April 30, 2025: $75.00, unpaid
2nd half due by October 31, 2025: $0.00, paid in full
Tax Parcel ID 22.17.33.

The 2024 mobile home taxes payable in 2025 are as follows:
1st half due by April 30, 2025: $15.59, unpaid
2nd half due by October 31, 2025: $15.59, unpaid
Tax Parcel ID MH22.17.33.

The 2024 special assessment payable in 2025 are as follows:
1st half due by April 30, 2025: $75.00, unpaid
2nd half due by October 31, 2025: $0.00, paid in full
Tax Parcel ID MH22.17.33.

The 2024 mobile home taxes payable in 2025 are as follows:
1st half due by April 30, 2025: $26.50, unpaid
2nd half due by October 31, 2025: $26.50, unpaid
Tax Parcel ID MH22.17.33A.

The 2024 special assessment payable in 2025 are as follows:
1st half due by April 30, 2025: $75.00, unpaid
2nd half due by October 31, 2025: $0.00, paid in full
Tax Parcel ID MH22.17.33A.

We have searched our General Index for judgments, state and federal tax liens and county liens against the above named grantees and find the following:

County Assistance Lien of Record, against Jay Bryant, PO Box 426, Piedmont, SD 57769, plus any costs and interest, in favor of County of Meade, South Dakota.

THIS IS NOT A TITLE REPORT, since no examination has been made of the title to the above described property. Our search for apparent encumbrances was limited to our Tract Indices, and therefore above listings do not include additional matters which might have been disclosed by an examination of the record title, including any bankruptcy matters. We assume no liability in connection with this Owners and Encumbrance Report and will not be responsible for errors or omissions therein. The charge for this service will not include supplemental reports, rechecks, or other services.

Black Hills Title, Inc.

By: 

STG Privacy Notice 2 (Rev 01/26/09) Independent Agencies and Unaffiliated Escrow Agents

WHAT DO/DOES THE Black Hills Title, Inc. DO
WITH YOUR PERSONAL INFORMATION?

Federal and applicable state law and regulations give consumers the right to limit some but not all sharing. Federal and applicable state law regulations also require us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand how we use your personal information. This privacy notice is distributed on behalf of Black Hills Title, Inc. , and its affiliates (" N/A "), pursuant to Title V of the Gramm-Leach-Bliley Act (GLBA).

The types of personal information we collect and share depend on the product or service that you have sought through us. This information can include social security numbers and driver's license number.

All financial companies, such as Black Hills Title, Inc. , need to share customers' personal information to run their everyday business —to process transactions and maintain customer accounts. In the section below, we list the reasons that we can share customers' personal information; the reasons that we choose to share; and whether you can limit this sharing.

Reasons we can share your personal information	Do we share?	Can you limit this sharing?
For our everyday business purposes— to process your transactions and maintain your account. This may include running the business and managing customer accounts, such as processing transactions, mailing, and auditing services, and responding to court orders and legal investigations.	Yes	No
For our marketing purposes— to offer our products and services to you.	Yes	No
For joint marketing with other financial companies	No	We don't share
For our affiliates' everyday business purposes— information about your transactions and experiences. Affiliates are companies related by common ownership or control. They can be financial and non-financial companies.	Yes	No
For our affiliates' everyday business purposes— information about your creditworthiness.	No	We don't share
For our affiliates to market to you	Yes	No
For non-affiliates to market to you. Non-affiliates are companies not related by common ownership or control. They can be financial and non-financial companies.	No	We don't share

We may disclose your personal information to our affiliates or to non-affiliates as permitted by law. If you request a transaction with a non-affiliate, such as a third party insurance company, we will disclose your personal information to that non-affiliate. [We do not control their subsequent use of information, and suggest you refer to their privacy notices.]

Sharing practices	
How often do/does Black Hills Title, Inc. notify me about their practices?	We must notify you about our sharing practices when you request a transaction.
How do/does Black Hills Title, Inc. protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal and state law. These measures include computer, file, and building safeguards.
How do/does Black Hills Title, Inc. collect my personal information?	We collect your personal information, for example, when you • request insurance-related services • provide such information to us We also collect your personal information from others, such as the real estate agent or lender involved in your transaction, credit reporting agencies, affiliates or other companies.
What sharing can I limit?	Although federal and state law give you the right to limit sharing (e.g., opt out) in certain instances, we do not share your personal information in those instances.

Contact Us	If you have any questions about this privacy notice, please contact us at: Black Hills Title, Inc. , 1855 Ball Park Rd., Sturgis, SD 57785

STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	) SS	
COUNTY OF MEADE	)	FOURTH JUDICIAL CIRCUIT
	)	46PRO22-000013
In The Matter of The ESTATE OF PAUL A. BRYANT, Deceased	)	**PETITION FOR APPOINTMENT OF SPECIAL ADMINISTRATOR**

Comes now, Gregory G. Strommen, Attorney at law, who moves this Court for an Order appointing him as Special Administrator of the Estate of Paul A. Bryant. In support of his Petition the Petitioner states and alleges as follows:

1. The Petitioner has been retained by one of the heirs to the Estate, Jay Bryant, for purposes of pursuing a claim against Lenora K. Bryant and Jed Bryant, the Personal Representative of the Estate of Pual A. Bryant.

2. Jed Bryant, the Personal Representative of the Estate of Paul A. Bryant, has refused to pursue a claim against Lenora K. Bryant for the refusal to provide a Quitclaim Deed to Paul A. Bryant for certain real property awarded to the Decedent pursuant to a Judgment and Decree of Divorce which Lenora K. Bryant claims an undivided one-half interest in real property at issue.

3. This claim would return to the Estate of Paul A. Bryant the one-half interest in the land claimed by Paul A. Bryant.

4. Jed Bryant as the Personal Representative and as one of Lenora K. Bryant sons, has refused to pursue the claim against Lenora K. Bryant presumably for the reason that Lenora K. Bryant plans to transfer the interest in the real property at issue that she claims ownership of to Jed Bryant, either during her lifetime or at the time of her death.

5. Jay Bryant is the son of Lenora K. Bryant, and is alienated from his mother, Lenora K. Bryant.

6. Upon information and belief the Personal Representative, Jed Bryant, has refused to pursue the claim against Lenora K. Bryant due to his personal interest in obtaining ownership of the real property at issue herein he currently has an undivided one-fourth interest in the real property at issue herein and Jay Bryant owns an undivided one-fourth interest in the real property at issue.

7. Upon appointment of the Special Administrator the Special Administrator would pursue a claim to enforce the original Stipulation and Agreement which was incorporated into a Judgment and Decree of Divorce to require Lenora K. Bryant to Quitclaim her interest to the Estate of Pual A. Bryant for distribution to the heirs pursuant to the Last Will and Testament. Further, the Special Administrator would pursue claims against Jed Bryant pursuant to SDCL 29A-3-712 in that his administration of the Estate has been improper and had a breach of his fiduciary duty.

Wherefore, Petitioner prays that this court appoint him as Special Administrator of the Estate of the decedent Paul A. Bryant, that the costs of the Special Administrator plus damages as set forth in SDCL 29A-3-713 and 29A-3-614 against Jed Bryant personally as well as Lenora K. Bryant.

Dated this 11 day of July, 2024.

Petitioner, Gregroy G. Strommen

Dated this 12 day of July, 2024.

PATRICIA A. MEYERS PC

Patricia A. Meyers
Attorney for Jay Bryant
3422 Brookside Dr.
Rapid City SD 57702
Tel: (605) 390-4551

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she served a copy of the foregoing document, Petition for the Appointment of Special Administrator, upon the person herein next designated, on the below shown, by placing the same in the service indicated, postage prepaid, addressed as follows:

Candi Thomson PO Box 145 Sturgis SD 57785 Phone: 605-347-2551 E-Mail: candi@thomsonlawoffice.com	[ ] U.S. Mail [ ] Federal Express [ ] Hand Delivery [ ] Facsimile Transmission [x] Odyssey File and Serve [x] Electronic Mail

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

Dated this 12th day of July, 2024.

PATRICIA A. MEYERS PC

Patricia A. Meyers

Patricia A. Meyers
Attorney for Jay Bryant
3422 Brookside Dr.
Rapid City SD 57702
Tel: (605) 390-4551

STATE OF SOUTH DAKOTA)
)
COUNTY OF MEADE)

IN CIRCUIT COURT

FOURTH JUDICIAL CIRCUIT

JAY BRYANT,

Plaintiff,

vs.

JED ALLEN BRYANT and LENORA K. BRYANT,

Defendants.

Court Trial

46CIV23-284

BEFORE: **THE HONORABLE JOHN FITZGERALD**
Circuit Court Judge
Sturgis, South Dakota
March 20, 2025, at 8:30 a.m.

APPEARANCES:

For the Plaintiff: Patricia A. Meyers, Attorney at Law
P.O. Box 560
Rapid City, South Dakota 57709

For the Defendant Jed Bryant: N. Drew Skjoldal, Attorney at Law
P.O. Box 759
Spearfish, South Dakota 57783

For the Defendant Lenora Bryant: Kellen B. Willert, Attorney at Law
618 State Street
Belle Fourche, South Dakota 57717

Q Tell me what you understood about the deed between Paul and Marion Knutson.
A Well, what I understood about it was that Dad effectively transferred the deed to Marion for a dollar, and then after that, Marion transferred it back to me and Jed for -- after a period of time then for that same dollar.
Q Now the deed is dated 3/2 of 1994, correct?
A Yes, ma'am.
Q How old were you then?
A '94? Like 17, 16.
Q And Jed Bryant would be how old?
A 11.
Q And was your father ill?
A Yes, he was.
Q And what is your understanding of why your father transferred the deed to Mr. Knutson?
A Well, he wasn't exactly sure if he was going to live, you know, to sell it or anything like that, so it was out of protecting his interest in not wanting to see it get lost to medical back debt and stuff like that due to possible surgeries or possible acquiring medical debt that he may be acquiring. So he didn't want it tied up with the medical costs of his -- of his medical situation at that time.
Q In 1994, did anyone live on this 40 acres?
A What's that?

Q In 1994, did anyone live on the 40 acres?
A No, no one lived there in '94.
MS. MEYERS: I'd offer Exhibit 3, Your Honor.
THE COURT: Any objection, Mr. Skjoldal?
MR. SKJOLDAL: None from me, Your Honor.
THE COURT: Mr. Willert?
MR. WILLERT: No, Your Honor, no objection.
THE COURT: It's received.
Q (BY MS. MEYERS) Now looking at Exhibit No. 4 which is the next page.
A Okay.
Q Mr. Knutson conveyed or gave your dad a warranty deed dated March 12th of 1996, correct?
A Correct.
Q Do you know why?
A I do not.
Q Okay. And at that time you would have reached the age of majority in 1996?
A Yeah, I would have been about 18.
Q And your brother Jed would have still been, what, about 14 at that time?
A About 14, yes.
MS. MEYERS: Now I'd offer Exhibit 4, Your Honor.
THE COURT: Any objection, Mr. Skjoldal?
MR. SKJOLDAL: No, Your Honor.

Meade County. It is a little unique, but you know, that's pointed out. It doesn't say judgment and decree of divorce as the forms I'm familiar with today do. But nonetheless, you know, this is the sworn document, and the only way this can be resolved is this action. So proceed.

MR. WILLERT: Your Honor, I'd like to call Travis Martin.

THE COURT: Okay.

TRAVIS MARTIN,

called as a witness, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WILLERT:

Q Mr. Martin, could you please introduce yourself to the court?

A Yes, I am Travis Martin with Black Hills Title Company out of Belle Fourche.

Q And how many offices does Black Hills Title have?

A We have an office in Meade County and Lawrence County. We have an office that we field out of our Butte County office, that's actually Harding County. So Harding, Butte, Meade, Lawrence, and Weston County.

Q Is that Wyoming?

A Yes, Wyoming.

Q Okay. And the parties have already stipulated to you being an expert. And so what is your specialty, would you say?

A I'm a title examiner. A licensed title examiner since 2005. So chain of title is what I do pretty much all day.
Q Okay. And how many chains of title for properties in South Dakota have you examined over the years?
A Probably too many to count. I would say varying lengths of title, of chains of title. Probably between three and five thousand may be a low estimate.
Q Sure. And that's probably an unfair question, but I wanted to ask it anyway.

So can you describe for the Court what the process and methodology for examining chain of title is?

A Certainly. By law, title companies are to have copies of all documents at the courthouse. We're a backup for the register of deeds office essentially. So when we get an order in for a title search, we pull all of the documents in that chain of title from the patent, the first document from the government to the first owner to present and examine each one of those documents to follow that chain of title and to see if there's any other encumbrances on the property. And then we further take that -- our search to the courthouse itself to compare our documents against the county register of deed's office to make sure there's no discrepancies, and if there are, we point those out to each other to make sure our documents align.
Q Okay. And is part of your business with Black Hills Title

to produce owner and encumbrance reports?
A Yes.
Q And what is that?
A An owner and encumbrance report, or O&E report, basically just shows ownership of the property, how the property is vested, and it would show any other -- specifically liens on the property, whether that be mortgages or judgments or county liens, things like that. Also the taxes would show.
Q Okay. And you've been sitting in court throughout the course of this trial, correct?
A Yes.
Q Are you aware of whether an O&E report was produced?
A Yes.
MR. WILLERT: May I approach, Your Honor?
THE COURT: Yes.
Q (BY MR. WILLERT) I'm going to hand you what's marked as Exhibit B. If you could make a moment and review that, please. And do you recognize Exhibit B?
A I do.
Q What is it?
A That is an O&E report that was produced at the request of your office, I believe.
Q And is this a fair and accurate copy of what you say it is?
A Yes.
MR. WILLERT: Your Honor, I offer Exhibit B.

THE COURT: Any objection, Ms. Meyers?
MS. MEYERS: No objection.
THE COURT: Mr. Skjoldal?
MR. SKJOLDAL: No objection.
THE COURT: It's received.
Q (BY MR. WILLERT) Mr. Martin, I'm going to ask you to flip to Exhibit 2 which should be up there in front of you.
A Yes.
Q And does this O&E report cover the property identified in Exhibit 2 in Section 17?
A Yes, it does have portion of that property, specifically the southwest quarter of the southwest quarter in Section 17 of Township Four, Range Seven.
Q Okay. And if we flip to Exhibit 3, we have another warranty deed. Is this deed conveying some interest in that same property?
A Yes, that's correct.
Q And let's flip to Exhibit 4. And here we have another deed from Marion Knutson to Jed and Jay. Does this deed convey some interest in that same property?
A Yes, it does.
Q Okay. And so this O&E report, Exhibit B, does this disclose the current owners of record for this property?
A We believe it would, yes.
Q Okay. And how is the property owned according to the

owners of record?

A Per our research in the county records, we determined that Lenora K. Bryant owned a divided one-half interest, and then another half interest was shared by Jay Christian Bryant and Jed Allen Bryant as joint tenants.

Q And what is joint tenants, what does that mean?

A They own a portion of the entirety of the whole, and so in this case their whole is a half, if that makes sense. They own a half interest as jointly together. So they own the whole together.

Q And in your document, in Exhibit B, it also says with the right of survivorship. What does that mean?

A That if one of them were to become deceased, the property or their interest in that property would then transfer to the other joint owner.

Q And so what would the ownership relationship be between Lenora in relation to the boys' interests?

A That ownership interest would be as tenants in common.

Q And what does that mean?

A That there's no right of survivorship implied there. She owns it by herself as a half interest, and the boys would own theirs as joint tenants, their half interest. So there's no -- basically there's no right of survivorship in a situation like that. The joint tenancy -- you'll need one to sell, or both to sell.

A Correct.
Q Are you aware of any written documents being recorded with the Meade County Register of Deeds that would set forth the nature of Paul's claim, interest or charge in terms of enforcing the divorce stipulation in Exhibit 1?
A No, we didn't find any recorded documents with the register of deeds office.
Q If any such documents existed and were in fact recorded with the register of deeds office, would that be reflected on the O&E report?
A Yeah, we would -- on an O&E we probably would have made exception to it in the vesting. On a standard to be determined title search, or title search, it would show as an exception to the title.
Q But again, that would only happen if there was such a document that was recorded?
A Correct, or we had been presented with it or made aware of it.

MR. WILLERT: That's all the questions I have for now, Your Honor.

THE COURT: Okay. Ms. Meyers, cross?

MS. MEYERS: Yes.

CROSS EXAMINATION

BY MS. MEYERS:

Q I note on Exhibit B on the very last -- or second to the

last page that it states, "This is not a title report, since no examination has been made of the title." What does that mean? I mean you said it's an O&E. How is it different?

A It's not title insurance, so we won't insure off of an O&E report. I can't write a title policy based on just an O&E report. Our liability is less as far as an O&E report goes.

Q So you're looking at documents that are recorded at the register of deeds office, correct?

A Correct.

Q And you look -- do you actually run the parties' names through the UJS e-courts website?

A Correct.

Q And if a stipulation, child custody and property settlement agreement that's marked as Exhibit 1 up there showed up on the UJS website, would you have obtained a copy of Exhibit 1 to review?

A Potentially. Again, it depends on the age. This is over 20 years old, and again, title companies generally feel that at that point in time if there was an action to be brought as far as issues with that, it would have been disclosed and brought of record at that point, or by that time.

Q So per your own internal policy, you wouldn't have bothered

A Correct, yes.
Q Okay. And your company believes that, as you've stated, it's Lenora K. Bryant as to an undivided one-half interest, and then Jay and Jed Bryant as joint tenants to the other undivided one-half interest, correct?
A Correct.
Q This Exhibit 1 that you've been handed today, does that change your opinion that's stated in this owners and encumbrance report?
A Not necessarily. Per the record, this is the ownership. Without -- I guess without these proceedings and knowledge of this issue, we would have -- we would have presented title like this without any exceptions. Title companies are risk mitigators. I guess even further than that, we're risk eliminators. So we are dealing with risk here. Without an issue being brought forward, we would say that this was the title or the ownership interest as per the record and that's where we would leave that, but if we were to insure this property at this point knowing that there's this action going on, we would make exception to that and want it cleared up so there's no risk to a future buyer.
Q I understand.

And one last question. Being presented this document that's marked as Exhibit 1, does this document extinguish Lenora K. Bryant's ownership from a title perspective?

A It does not.
MS. MEYERS: I'm going to -- excuse me. I'm going to object. It calls for a legal conclusion.
THE COURT: Well, it's overruled. He can -- I'll consider it.
MR. SKJOLDAL: If I can restate.
Q (BY MR. SKJOLDAL) In your experience, you're an expert in title examination. Being presented with this Exhibit 1 that is before you, does that extinguish Lenora K. Bryant's ownership interest in this property from a title perspective?
MS. MEYERS: Same objection. Calls for a legal conclusion.
THE COURT: It's overruled. He can answer.
A We would look at that document and say that it does not on itself extinguish her interest. We would want something more of record in the public record in the register of deeds office against the land records to show that that was extinguished, that's why we would call for some kind of deed or an action.
MR. SKJOLDAL: Thank you, sir.
THE WITNESS: Yeah.
THE COURT: Mr. Martin, before I let Mr. Willert re-examine, I have a couple questions.
THE WITNESS: Certainly.
THE COURT: Do you know what the title standard was in

effect back in the early 1990s?
THE WITNESS: I don't know what those exactly were.
THE COURT: Or the mid-1990s?
THE WITNESS: No. I came into the title company in 2004, I believe --
THE COURT: Okay.
THE WITNESS: -- is when I started. And the new standards I think were 2002 had taken effect by then.
THE COURT: Mr. Martin, how many quiet title trials have you testified in in the past?
THE WITNESS: Fortunately I've not been called to testify to quiet title.
THE COURT: You've never been in a quiet title action trial?
THE WITNESS: No, we've been -- our documents have been subpoenaed of course and presented by the attorneys, but not personally.
THE COURT: Okay. Would you agree that the ingredients of a deed are that it have a description of the property to be conveyed?
THE WITNESS: Correct, yes.
THE COURT: Sworn to by the grantor?
THE WITNESS: Yep.
THE COURT: And contain a consideration?
THE WITNESS: Yes.

THE COURT: Okay. Does that stipulation contain the elements of a deed?

THE WITNESS: I'm trying to get the exact paragraph here. I don't know that I see consideration discussed. I would say it wouldn't meet the requirements of a deed.

THE COURT: Okay. Thank you. Mr. Willert, you can redirect.

MR. WILLERT: I have no further questions, Your Honor.

THE COURT: Okay. Ms. Meyers?

MR. WILLERT: I guess, Your Honor, I'd object to recross with there having been no redirect.

THE COURT: But I asked questions so I think that anybody at that point can ask further questions when the Court asked a couple questions, so I'll let her.

RECROSS EXAMINATION

BY MS. MEYERS:

Q Reading Exhibit 1 as a whole, it's clear that the consideration was I get this property, you get that property, right? If you look at exhibit -- at paragraph Roman numeral nine and paragraph Roman numeral ten in conjunction with Roman numeral 17. "I'm going to give you this. You're going to give me that." That's consideration, isn't it?

MR. WILLERT: I'd object, Your Honor. That's calling for a legal conclusion.

STATE OF SOUTH DAKOTA)
) SS. CERTIFICATE
COUNTY OF MEADE)

I, TAMMY STOLLE, RPR, an Official Court Reporter and Notary Public in the State of South Dakota, Fourth Judicial Circuit, do hereby certify that I reported in machine shorthand the proceedings in the above-entitled matter and that pages 1 through 69, are a true and correct copy, to the best of my ability, of my stenotype notes of said proceedings had before the HONORABLE JOHN FITZGERALD, Circuit Court Judge.

Dated at Sturgis, South Dakota, this 6th day of August, 2025.

/s/Tammy Stolle
TAMMY STOLLE, RPR
Registered Professional Reporter
My Commission Expires: 2/2/28

STATE OF SOUTH DAKOTA)	IN CIRCUIT COURT
)	
COUNTY OF MEADE)	FOURTH JUDICIAL CIRCUIT

JAY BRYANT,

Plaintiff,

vs.

JED ALLEN BRYANT,

Defendant.

Motions Hearing

46CIV23-284

BEFORE: **THE HONORABLE JOHN FITZGERALD**
Circuit Court Judge
Sturgis, South Dakota
March 26, 2024, at 9:00 a.m.

APPEARANCES:

For the Plaintiff: Patricia A. Meyers, Attorney at Law
P.O. Box 560
Rapid City, South Dakota 57709

For the Defendant: N. Drew Skjoldal, Attorney at Law
P.O. Box 759
Spearfish, South Dakota 57783

For the Personal Representative Jed Bryant: Candi Thompson, Attorney at Law
P.O. Box 1456
Sturgis, South Dakota 57785

Honor. I think I have a viable claim in the probate action that would impact both -- you're going to hear the same set of facts from both parties in the same case, in each case, so we could do it twice, or we could do it once, that's what I'm suggesting.

THE COURT: I've got a couple questions for you, Ms. Meyers. So who is Marion Knutson, a single person?

MS. MEYERS: Well, that's the whole -- kind of the interesting twist in this case is that Ms. Lenora Bryant should have quitclaimed her share of the land to Paul Bryant after the divorce. That may or may not have happened. There's no deed of record from Lenora to Paul, but Paul at some point believing he owned the land, wholly owned the 40 acres, deeded the 40 acres to Marion Knutson, a friend of his, and Marion Knutson then deeded the 40 acres to the two boys, which is what I believe was the intent of the decedent all along was that his two boys inherited these 40 acres.

Lenora Bryant now is claiming a one -- or a one-half interest in the 40 acres. I think I have claim against the estate and against Lenora Bryant to bring that back into the -- that 40 acres -- her share of that 40 acres, or what she claims is her share of the 40 acres, back into the estate of Paul Bryant.

THE COURT: Okay. So Paul by warranty deed or quitclaim

ordered it twice and I can't get it?

But anyway, Judge, I think that I disagree with Ms. Thomson that a cause of action is in fact a claim that the estate can assert, and Paul Bryant certainly has a cause of action against Lenora Bryant for -- the estate of Paul Bryant for her refusal, or her claim, continued claim apparently, according to Ms. Thomson's assertions, of ownership to this 40 acres, and I have not been able to get the title company to give me a chain of title. Maybe Ms. Thomson will have better luck with them, but I have not found the deed from Paul to Marion. But I believe that Paul believed after the divorce he owned the entire 40 acres, and I think Lenora believes that too, but I have not joined her as a party. There has not been an order entered to allow me to amend the complaint yet to assert that claim against Lenora. But I don't see any purpose in finishing the probate, then reopening the probate essentially and having a special administrator appointed to do exactly what we're going to do in the probate. They're the same people. They're the same set of facts. So why aren't we doing it in one action now?

MS. THOMSON: Your Honor, I believe --

THE COURT: Go ahead.

MS. THOMSON: I believe it's already been stated that Jed Bryant would have a conflict of interest and not be the

Lenora is a party to the partition where she has nothing to do with the estate. There's different parties in the two actions.

Whatever Jay wants to do with the estate, whether he wants to formally petition for Jed's removal, for the appointment of a separate and independent special administrator or personal representative, he can do. That has nothing to do with the partition. He hasn't filed the necessary documents to make that happen as far as I've seen. He's free to pursue whatever type of remedy he may wish related to each action. Joining the two actions together doesn't make things any more efficient in my opinion and I'd ask the Court to deny the motion to consolidate.

THE COURT: Ms. Meyers, I'll give you the last word.

MS. MEYERS: Well, there really isn't anything to add, Your Honor. I think title to this matter is confused to say the least. I believe that the estate owns the cause of action against Lenora Bryant and that the estate should assert that cause of action because it's incumbent upon the estate to gather all of the assets and a cause of action is an asset of the estate.

THE COURT: But can't your client petition for a special administrator on that issue?

MS. MEYERS: We could, but then we're right back here and

STATE OF SOUTH DAKOTA)
) SS. CERTIFICATE
COUNTY OF MEADE)

I, TAMMY STOLLE, RPR, an Official Court Reporter and Notary Public in the State of South Dakota, Fourth Judicial Circuit, do hereby certify that I reported in machine shorthand the proceedings in the above-entitled matter and that pages 1 through 25, are a true and correct copy, to the best of my ability, of my stenotype notes of said proceedings had before the HONORABLE JOHN FITZGERALD, Circuit Court Judge.

Dated at Sturgis, South Dakota, this 4th day of August, 2025.

/s/Tammy Stolle
TAMMY STOLLE, RPR
Registered Professional Reporter
My Commission Expires: 2/2/28

STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	) SS.	
COUNTY OF MEADE	)	FOURTH JUDICIAL CIRCUIT

JAY BRYANT, Plaintiff, v. **JED ALLEN BRYANT and LENORA K. BRYANT,** Defendants.	**46CIV23-000284** **NOTICE TO COUNSEL**

Please be advised that pursuant to SDCL § 19-19-201, the Court will take notice of the entirety of *Paul Bryant v. Lenora Bryant*, Meade County Civil Action 90-433, including the Judgment and Decree of Divorce, dated March 19, 1991, a copy of which is attached hereto.

Dated this 29th day of April, 2025.

BY THE COURT:

Honorable John H. Fitzgerald
Circuit Court Judge

Attest:
Donovan, Kirsten
Clerk/Deputy

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

IN CIRCUIT COURT
EIGHTH JUDICIAL CIRCUIT
CIV. NO. 90-433

PAUL ALLEN BRYANT,

Plaintiff,

vs.

LENORA KAY BRYANT,

Defendant.

Meade County, South Dakota
Filed at ___ o'clock ___ M
MAR 19 1991
Patricia M. Williams Clerk of Courts
Deputy

JUDGMENT AND DECREE OF DIVORCE

The above entitled action having come on regularly for trial at the Courtroom of the Courthouse in the County of Meade, in the Eighth Judicial Circuit in the City of Sturgis, South Dakota on the 19th day of March, 1991, at the hour of 11:30 o'clock in the a.m., on that day before the Honorable Scott C. Moses, Judge of said Court in accordance with the Stipulation of the parties, by which it was stipulated and agreed that this action might be brought on for trial on Motion of the Plaintiff appearing in person and by his attorney, Michael A. Jackley, and the Defendant not appearing in any manner, and it appearing to the satisfaction of the Court, and the Court hereby finding:

That the Summons and Complaint in this action were served more than sixty (60) days prior to the commencement of this action and evidence having been offered and received in support of the allegations contained in the Plaintiff's Complaint, and the Court having duly considered the same, and it appearing to the satisfaction of the Court and the Court hereby finding that the parties hereto were married on or about the 10th day of June, 1975, at Lewiston, Montana, and are now husband and wife.

That the parties have entered into a child custody and property settlement agreement between them, subject to the approval of the Court; that said child custody and property settlement agreement and the terms thereof are fair and equitable and that the same should be approved; and that the matter having been submitted to the Court thereon for its decision and the parties having duly waived in writing the making and entry of Findings of Fact and Conclusions of Law and having agreed, the Court may enter herein such Judgment as the Court deems proper without the necessity of formal decision in the form of Findings of Fact and Conclusions of Law or otherwise.

91-309

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Now, therefore, on Motion of Michael A. Jackley, Attorney for the Plaintiff, it is hereby:

ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. That the bonds of matrimony existing between the Plaintiff and the Defendant be and the same hereby are set aside and each of the parties is granted the rights and status of a single person and that an absolute divorce is hereby granted to the Plaintiff from the Defendant on the grounds of extreme cruelty.

2. That the child custody and property settlement agreement which is denominated "Stipulation, Child Custody and Property Settlement Agreement," and which was identified as Exhibit "A" and offered and received in evidence at the trial of this action, be and the same is hereby and in all things approved and confirmed, and that such agreement is hereby incorporated by reference into this Judgment and Decree of Divorce with the same force and effect as though set forth fully herein.

Dated this 19th day of March, 1991.

BY THE COURT:

Scott C. Moses
Circuit Court Judge

ATTEST:

PATRICIA M. WILLIAMS
Clerk

By: Patricia M. Lang
Deputy

(SEAL)

Meade County, South Dakota
Filed at ___ o'clock ___ M
MAR 19 1991
Patricia M. Williams Clerk of Courts
Deputy

91-310

5

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

Appeal No. 31124

JAY BRYANT, Plaintiff and Appellee

vs.

JED ALLEN BRYANT, Defendant and Appellee

and

LENORA K. BRYANT Defendant and Appellant

APPEAL FROM THE
FOURTH JUDICIAL CIRCUIT
MEADE COUNTY
THE HONORABLE JOHN H. FITZGERALD, CIRCUIT COURT JUDGE

APPELLEE'S BRIEF

Notice of Appeal was filed **JUNE 20, 2025**

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(605)892-2011 Attorney for Defendant/Appellant

Filed: 12/3/2025 12:16 PM CST Supreme Court, State of South Dakota #31124

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PRELIMINARY STATEMENT

For the convenience of the Court, Appellee/Plaintiff, Jay Bryant, will be referred to as Appellee or Jay, Appellant/Defendant, Lenora Bryant will be referred to as Appellant or Lenora, Documents from the record of the Fourth Circuit Clerk of Court are cited to as SR_____. The Trial transcript will be referred to as TT____.

JURISDICTIONAL STATEMENT

Appellee/Plaintiff agrees with the Appellant's Jurisdictional statement.

STATEMENT OF LEGAL ISSUES AND AUTHORITIES

Issue 1: Whether the Trial Court erred by not quieting title in the property to include a one-half ownership interest held by Lenora.

The trial Court held that Lenora was judicially stopped from asserting any claim to the real property at issue.

Fox v Burden, 1999 SD 154, 603 NW2d 916

Canyon Lake Park, LLC v Loftus Dental, 2005 SD 82, 700 NW2d 729

Bailey v Duling, 2013 SD 14, 837NW2d 351

SDCL 15-2-6(1)

Issue 2: Whether the trial court erred by acting as a psuedo-advocate.

The Appellant/Defendant failed to object to any of the Court's questions or requests to take judicial notice or for additional briefing on an issue of law raised sua sponte.

State v Nelson, 1998 SD 124, 587 NW2d 439

Issue 3: Whether the Trial Court erred in entering the Court's Findings of Fact and Conclusions of Law and Judgment Quieting Title to Real Property.

The Court's Findings of Fact and Conclusions of Law were correct and supported by the evidence submitted.

STATEMENT OF THE CASE AND FACTS

Plaintiff and Appellant, Lenora K. Bryant and Paul Bryant divorced on March 19,1991. The parties had two children, Jay Bryant (Appellee) and Jed Bryant. During the marriage Paul Bryants' parents conveyed, by warranty deed dated October 18, 1978, certain real property to Lenora and Paul Bryant as joint tenants with the right of survivorship. FOF 3. At the time of the divorce, the parties entered a stipulation for the division of property and custody of their children dated January 14,1991. FOF 4 and Plaintiff's Exhibit 1. The Court approved the agreement, and a Judgment and Decree of Divorce was entered which incorporated the party's agreement. FOF 4 Over the ensuing years Paul Bryant treated the real property at issue herein as his separate property he neither sought agreement from Lenora nor did she object to his use and care of the property.

At one point Paul Bryant conveyed by warranty deed his interest in the real property to Marion Knutson. FOF 13 and Plaintiff's exhibit 3 Marion Knutson later conveyed to Jed Bryant and Jay Brant the real property at issue herein as joint tenants with the right of survivorship. FOF 13,14 and Exhibit 4 Paul Bryant died on November 8, 2021and Jed Bryant was appointed as the personal representative of the Estate of Paul Bryant FOF 17.

Jay and Jed cannot get along. There have been multiple attempts by Jed to preclude Jay from using the property by means of protection orders. Jay commenced this action by summons and complaint seeking a partition on October 30, 2023. SR1,2 Upon

discovering that Paul had neglected during his life to pursue recording a deed from Lenora for her interest in the property pursuant to the Judgment and Decree of Divorce, Jay amended his complaint to include a quiet title action to quiet title to the property and terminate Lenora's claim. SR 27,29 Jay attempted to require Jed, as the personal representative, to enforce the Judgment and Decree of Divorce by moving the probate court for the appointment of a special administrator to enforce the judgment against Lenora. Additionally, Jay also moved the Probate Court to consolidate the probate and the quiet title action. These attempts were denied by the probate court. SR 53,176

In the course of the litigation the trial court determined that it would bifurcate the various claims made by Jay in his complaint to determine first the issue of ownership rights. The real property at issue in this quiet title action is located in Meade County, South Dakota and described as:

> Township four (4) North, Range Seven (7) East, B.H.M.; Section 17: Southwest Quarter Southwest Quarter.

It is acknowledged that no deed or other conveyance of record with the Meade County Register of Deeds conveying Lenora's undivided one-half interest to Paul, despite her agreement to do so. Jay does not dispute that Paul did not seek to enforce this provision of the decree, apparently believing based upon Lenora's own conduct that she was not making any sort of a claim to the property. TT 29; 16-23.

Lenora admitted that she and Paul, in dividing their property in the divorce proceeding, that the boys, i.e. Jay and Jed, were to receive the land. TT 12 lines 9-11; Over the ensuing years Paul and Jay made improvements to the land, moved a mobile home onto the land to rent to Paul's brother who lived there and paid rent. TT 24;14-25.

Jed moved a mobile home onto the land and both Jay and Jed made improvements to the land and cared for the land including cutting and selling the hay, fixing fences and improving a road to the mobile homes on the property. TT 26; 16-25. Jed presently lives on the land and pays and has always paid the real estate taxes on the land.

STANDARD OF REVIEW

Appellee agrees with the Standard of Review set forth by the Appellant in her brief pages 8-9.

ARGUMENT AND AUTHORITY

ISSUE 1: The trial Court did not err by quieting the title in the names of Jed and Jay Bryant as joint tenants with the right of survivorship.

Initially, Lenora contends that Jay's claim must fail because the statute of limitation to enforce the Stipulation and Judgment as incorporated in the Judgment and Decree of Divorce is 20 years and that because Paul failed to enforce the Stipulation within the twenty year statute of limitations that Jay has no ability to enforce the Decree and essentially that Lenora is not bound by the Decree. SDCL 15-2-6(1) provides as follows:

> Except where, in special cases, a different limitation is prescribed by statute, the following civil actions **other than for the recovery of real property,** [emphasis added] can be commenced only within twenty years after the cause of action shall have accrued;
> (1) an action upon a judgment or decree of any court of this state,....

There can be no dispute that this is an action to determine the respective ownership interests in the property and to recover any interest that Lenora now claims to the land. Jay is attempting to recover the undivided one half interest in the real property

that Lenora was supposed to convey to Paul pursuant to the Judgment and Decree of Divorce. This one-half interest would have been part of Paul's estate and Jay was a beneficiary of his father's estate.

Lenora raises the issue of Jay's standing to raise or pursue this claim to quiet title despite her own admission that it was always the intent of herself and Paul that the boys (Jed and Jay) were to receive the property. TT 12; 9-13 and TT 13; 5-10. Additionally, under the case of Fox v. Burden, 1999 SD 154, 603 NW 2d 916, Jay clearly has standing to assert this claim. While it is well settled that divorce stipulations are governed by the law of contract; their interpretation is a matter of law for the Courts to decide." Hisgen v. Hisgen, 1996 SD 122, P4, 554 NW2d 494, 496(citations omitted). The Court in Fox, supra *at P6* stated "[t]o determines "the proper interpretation of a contract the Court must seek to ascertain and give effect to the intention of the parties." Citing to Singpiel v. Morris, 1998 SD 86, P8, 582 NW2d 718 (additional citations omitted)

In the instant case the agreement specifically provides that Paul was to become the sole owner of the land at issue and this agreement is ratified and confirmed by Lenora's admission that the 40 acres went to Paul while she received other real property in the divorce. The intent of the parties clearly expressed by Lenora was that the boys were to get the 40 acres. TT 12; 9-11; TT12; 5-10. Additionally, Lenora accepted the benefit of her agreement to convey her interest by accepting the real property identified in the agreement she was to own free of any claim by Paul. The trial court did not even have to determine the intent of the parties as it was clearly stated both in the agreement and by Lenora, who only now is asserting a claim to the land, Land that she agreed to

convey to Paul and was ordered to convey to Paul pursuant to the Judgment and Decree of Divorce.

In Wehrkamp v. Wehrkamp, 2009 SD 84, 773 NW2d 212 the Court clarified its holding in Fox v. Burden, *1999 SD 154,603 NW2d 916*, stating:

> While we have consistently applied contract principles to the interpretation of a Divorce agreement, when it comes to the limitations period for purposes of Enforcement of the agreement, if it is incorporated into the divorce decree such Agreement merges into the decree and becomes part of the judgment.

In Fox, supra, the Court found that the daughter of the parties had standing to enforce the judgment and decree of divorce, the Court noted that "[a]n equitable right in the [insurance] policy may arise from a settlement of property rights in connection with a divorce proceeding is not questioned." citing to Bentley v. New York Life Insurance Co., 488 NW2d 77- 79(1992) quoting Jacoby v. Jacoby, 69 SD 432, 434, 11NW2d 135(1943). Thus, Jay was a third-party beneficiary of the settlement agreement of the parties. Additionally, Paul died testate and his will provided that only Jay and Jed were to be his heirs. As to the fact that Paul transferred his interest at one time to Marion Knutson, Jay's undisputed testimony (which is supported by the fact that Marion Knutson ultimately conveyed the land to Jed and Jay, after Jay reached the age of majority) was that Paul did so because he was afraid he would lose the land due to medical bills.

Similar to the facts in Fox, supra, there is a specific reference to the land in the agreement and as such Lenora's rights to the land were contracted away by her signing of the agreement. In Wehrkamp v. Wehrkamp, 1984 SD 357 NW2d 264 (SD1984) in addressing the division of future earning capacity acquired during the marriage due to the

acquisition of an advanced degree during the marriage the Court commented "this case is a classic situation requiring application of equitable principles to prevent an extraordinary injustice." In the instant case, to deprive Jay of the benefit both his father and mother intended for him to have under the terms of their divorce agreement would be an extraordinary injustice.

A. The Statute of Limitations contained in SDCL 15-2-6(1) does not apply under the facts of this case.

Lenora claims that the statute of limitations precludes any enforcement of the decree of divorce. However, it is clear that Lenora contracted away any ownership in the property she may have had during the marriage. Her failure to execute the deed as required by her own agreement created a cloud on the title to the land which needs to be resolved. In the alternative the action is for the recovery of real property.

B. The Title Standards did not divest Lenora of her ownership interest in the property

Jay concedes that the Title Standards did not divest Lenora of any ownership interest she may have had in the property despite the fact that she clearly waived and contracted away her ownership interests in the property in question.

C. A quiet title action is the only remedy available to Jay

As set forth in the probate file both Jed Bryant and Lenora Bryant vigorously opposed both a claim made in that proceeding on behalf of the Estate of Paul Bryant, they opposed consolidation of the Estate file with the Probate file. The Estate of Paul Bryant should have been allowed the opportunity to enforce the decree of divorce against Lenora. The Probate Court disagreed thus the only avenue for a legal remedy is the

equitable remedy provided for by the quiet title action contained in SDCL §21-41 which specifically allows the Court to address competing or adverse claims to the same real property. Jay is asserting the claim against Lenora both pursuant to his own deed but also as an heir to the assets of Paul Bryant and these 40 acres if Lenora retained an interest post-divorce, the claim against Lenora to force her to relinquish such claim is an asset of Paul Bryant's estate.

ISSUE 2: A. The Appellant failed to raise the claim that the trial court acted as a Pseudo-Advocate

It is the well settled principle of this Court that "[t]o preserve issues for appellate review litigants must make known to trial courts the action they seek to achieve or object to the actions of the court, giving their reasons." State v. Nelson, 1998 SD 124, p. 17, 587 NW2d 439, 443. The trial court gave notice to the respective parties of its intent to consider the issue of judicial estoppel on April 11, 2025. SR 110. At no time did Lenora's counsel object to the Court's consideration of the issue of judicial estoppel although counsel did claim it was unclear to him what issue judicial estoppel may apply to.

Finally, Lenora did not raise the issue of the Court acting as pseudo counsel for the Plaintiff nor was any objection made to the court's questions posed to Lenora's expert witness. Thus, Lenora is barred from appealing these issues now. With regard to the claim the Court was acting as pseudo-counsel, the questions asked by the Court apparently had no bearing on the Court's ultimate decision and the issue complained of with regard to the title standards were not addressed by the Court.

B. and C. The trial court properly applied the doctrine of judicial estoppel given the facts of this case.

The South Dakota Supreme Court stated in Canyon Lake Park, LLC v. Loftus Dental, 2005 SD 82, P 34, 700 NW2d 729:

> Judicial estoppel cannot be reduced to an equation, the Courts will generally consider the following elements in deciding whether to apply the doctrine: The later position must be clearly inconsistent with the earlier one, the earlier position was judicially accepted creating the risk of inconsistent legal determinations; and the party taking the inconsistent position would derive an unfair advantage of or impose an unfair detriment to the opponent if not estopped. (citations omitted)

Here, Lenora took the position in the divorce proceedings that she gave up all of her right title and interest in and to certain real property. That position was adopted and incorporated into the Decree of Divorce. She now asserts due to the failure of Paul to compel her to comply with the prior order of the Court that she continues to own the interest in the real property that she gave up in the divorce proceeding, so that she could receive free of any claim by Paul other real property.

While the Court raised the issue of judicial estoppel *sua sponte* both parties were given ample opportunity to address the issue and it is not uncommon for a trial court to raise issues of applicable law for the parties to address.

However, judicial estoppel could not apply to Jay taking inconsistent positions in a probate and in this proceeding since the doctrine "applies to parties who have unequivocally and successfully asserted a position in a prior proceeding; thus they are estopped from asserting an inconsistent position in a subsequent proceeding." Bailey v. Duling, 2013 SD 15, P31, 827 NW2d 351, 362-363. In this case even if Jay had asserted an inconsistent position in the probate case, he was not successful. Again, to allow a party

to fail to comply with an order of the court specifically ordering her to convey her claim to the real property at issue here to now assert a claim for that same property is undeniably an inconsistent position and would work a grave injustice on Jay.

ISSUE 3: The Trial Court's Findings of Fact and Conclusions of Law were correct or immaterial to the application of Judicial Estoppel.

It appears that the Trial Court was looking at the totality of the evidence when it found that Paul believed he had sole ownership of the 40 acres since Paul was identified as a single person and that he did not describe his interest as an undivided interest in the 40 acres. What the Court concluded was that both Lenora and Paul conducted themselves throughout the more than 30 years post-divorce as if a deed had been delivered and recorded.

The Court was further correct when it found in paragraph 19 of its Findings of Fact that the Meade County Clerk of Courts records were not examined. If the records had been examined, the title company would have found that the Decree of Divorce which restored Paul to his status as a single person and specifically addressed conveyance of this particular property. Mr. Martin simply testified that he reviewed the documents found in the Register of Deeds office and that is all he is obligated to do because it was not an O & E report. Mr. Martin further testified that they would not have issued title insurance solely on an O & E report. TT 47:24-48: 11 meaning that to issue a title insurance policy a further examination of documents retained by the Clerk of Courts would also have been examined.

The remainder of the issues raised by the Appellant are not addressed due to the repetitive nature of the argument.

CONCLUSION

In conclusion, the facts are not in dispute and the law applied by the trial court to quiet the title was correct. The trial court did not divest title from Lenora, it simply applied the appropriate doctrine to clear the cloud on the title created by the failure of Lenora to provide the Quit Claim Deed she agreed to execute and was ordered to provide to convey her interest in the real property. The cloud on the title was created by this failure, it did not confer ownership on Lenora. As pointed out by the trial court the public record of the title to this land reflects a deed to Lenora and Paul as husband and wife as joint tenants with the right of survivorship, the next entry is a Warranty Deed to Marion Knutson by Paul Bryant a single man, demonstrates that Paul Bryant mistakenly believed that Lenora Bryant's deed as agreed to in their Stipulation and ordered by the Court had been properly executed and recorded and that Paul Bryant was the fee owner of the 40 acres. The final deed of record from Marion Knutson to Jay Bryant and Jed Bryant as joint tenants with the right of survivorship conveyed those same 40 acres. To hold that Lenora can benefit from her own breach of the Decree of Divorce would work an extraordinary injustice on Jay Bryant.

Dated this 3rd day of December, 2025.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the ____ day of December, 2025. I caused a full, true, and complete copy of APPELLEE'S BRIEF to be served electronically through the Odyssey electronic filing system upon:

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CERTIFICATE OF COMPLIANCE

Patricia A. Meyers, counsel for Appellant, certifies that this brief contains 3,219 words, and that the name and the version of the word processing software used to prepare the brief is Word, Times New Roman font 12 and left justified.

Dated this 31 day of December, 2025.

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CERTIFICATE OF PROOF OF FILING

I further certify that on the same day I caused APPELLEE'S BRIEF to be filed electronically through the Odyssey electronic filing system and the original APPELLEE'S BRIEF to be filed by U.S. Mail with:

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IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

Appeal No. 31124

* * * *

JAY BRYANT, Plaintiff and Appellee,

v.

JED ALLEN BRYANT, Defendant and Appellee,

and

LENORA K. BRYANT, Defendant and Appellant.

* * * *

APPEAL FROM THE CIRCUIT COURT OF
THE FOURTH JUDICIAL CIRCUIT
MEADE COUNTY, SOUTH DAKOTA

* * * *

THE HONORABLE JOHN H. FITZGERALD
Circuit Court Judge

* * * *

APPELLANT'S REPLY BRIEF

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NOTICE OF APPEAL WAS FILED JUNE 20, 2025.

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PRELIMINARY STATEMENT

Much of the Statement of the Case and Facts as recited in Jay's Appellee's Brief does not cite to the record and injects matters that don't appear to be a part of the record. *See* SDCL § 15-26A-60(5). Appellant Lenora K. Bryant ("Lenora") adopts and incorporates the Preliminary Statement, Statement of the Case and Facts, and arguments as set forth in the Appellant's Brief in an effort to keep this Reply Brief concise. *See* Appellant's Brief.

ARGUMENT

ISSUE 1: The Trial Court erred by not quieting title in the Property to include a one-half ownership interest held by Lenora.

Jay spends most of his effort in relation to Issue 1 arguing that he has standing to try to enforce the *Judgment and Decree of Divorce*. Appellee's Brief, pp. 4-7. This fact is important because he's attempting to prosecute a long-stale legal claim using equitable relief to bypass the applicable statute of limitations. Jay is required to rely on the strength of his own title, and does not do so here. *See* Appellant's Brief, p. 9 (citing *Morsle v. Pickler*, 28 S.D. 612, 134 N.W. 809, 810 (SD 1912).

Without citing to a particular page or paragraph, Jay cites the *Fox v. Burden*[1] case in support of his conclusory statement that "Jay clearly has standing to assert this claim". Appellee's Brief, p. 5. Absent further analysis from Jay on the *Fox* case, it is quite difficult for Lenora to address this part of the argument. The issues raised in the *Fox* case

[1] *Fox v. Burden* was later overruled to the extent that it applied the six (6) year contract statute of limitations to enforce a divorce stipulation because the twenty (20) year statute of limitations is applicable. *See Wehrkamp v. Wehrkamp*, 2009 S.D. 84, ¶ 6, 773 N.W.2d 212. The *Wehrkamp* case is cited numerous times in the Appellant's Brief. *See* Appellant's Brief, pp. 10, 16, and 29.

to toll the statute of limitations were never raised by Jay in this matter, and the *Fox v. Burden* case is not relevant to this matter.

Jay's citation to the *Hisgen v. Hisgen* case is accurate insofar as "Divorce stipulations are governed by the rules of contract; their interpretation is a matter of law for the courts to decide." *Hisgen v. Hisgen*, 1996 S.D. 122, ¶ 4, 554 N.W.2d 494; *See also* Appellee's Brief, p. 5. However, *Hisgen* is not relevant in this matter because interpretation is not an issue and Jay opted to bring a quiet title action instead of an action to enforce the Stipulation/*Judgment and Decree of Divorce.*[2]

Jay's citation to the *Wehrkamp* case is accurate because a divorce stipulation becomes part of a divorce decree for the purposes of the applicable twenty (20) year statute of limitations. *See* Appellee's Brief, p. 6; this citation was also included in Appellant's Brief, p. 10.

A. The statute of limitations to enforce the Stipulation expired years ago.

Paul did nothing to enforce the Stipulation within the twenty year statute of limitations. Appellee's Brief, p. 3.

> . . . in South Dakota, statutes of limitation are not mere technicalities. We have consistently held that compliance with statutes of limitations is strictly required and doctrines of substantial compliance or equitable tolling are not invoked to alleviate a claimant from a loss of his right to proceed with a claim.

Murray v. Mansheim, 2010 S.D. 18, ¶ 21, 779 N.W. 2d 379 (internal citations omitted). "These principles most important to statutes of limitation are advanced by refusing to judicially modify the harsh effect imposed by a statute of limitations." *Id.* "It is clear that

[2] Even had Jay brought a specific performance or other enforcement action and could establish standing, Jay would be barred by the applicable statute of limitations.

statutes of limitation are in place to prevent the prosecution of stale claims and to punish litigants who sleep on their rights." *Moore v. Michelin Tire Co., Inc.*, 1999 S.D. 152, ¶ 25, 603 N.W.2d 513 (internal citations omitted). It is undisputed that Paul slept on his rights to enforce the Stipulation/*Judgment and Decree of Divorce*, and his stale claims cannot now be prosecuted.

As Jay admits, there is no conveyance of Lenora's ownership interest and Paul never sought to enforce the *Judgment and Decree of Divorce*:

> It is acknowledged that no deed or other conveyance of record with the Meade County Register of Deeds conveying Lenora's undivided one-half interest to Paul, despite her agreement to do so. Jay does not dispute that Paul did not seek to enforce this provision of the decree, apparently believing based upon Lenora's own conduct that she was not making any sort of a claim to the property. TT 29; 16-23.

Appellee's Brief, p. 3. It is also noteworthy that the statute of limitations expired in 2011 while Paul was still alive (he passed away on November 8, 2021). Probate CR 1 (*Application for Informal Probate and Appointment of Personal Representative*); *see also* Lenora's argument that the statute of limitations expired on May 20, 2011 at Appellant's Brief, p. 10. Jay also does not dispute the fact that Marion, Jay, and Jed were not good faith purchasers for value of their interests of the Property. Appellant's Brief, p. 6, and Appellee's Brief. Even if a result is arguably harsh, that is no reason (or authority) for this Court to ignore the applicable statute of limitations.

Jay acknowledges that the proper remedy he seeks in this matter would have been to enforce the *Judgment and Decree of Divorce*. *See* Appellee's Brief, p. 3.

Jay concludes his argument for Issue 1.C with an admission that he pursues "…the claim against Lenora to force her to relinquish such claim is [sic] an asset of Paul Bryant's estate." Appellee's Brief, p. 8. The preceding quote is a judicial admission that

Jay is attempting to enforce the *Judgment and Decree of Divorce* to force Lenora to relinquish her ownership interest. "It is well-established that a party . . . may make admissions in a brief which are binding upon the party and estops the party from denying the admission . . . ." *Estate of Tallman, Matter of*, 1997 S.D. 49, 562 N.W.2d 893, 897 (internal citations omitted).

Enforcement of the *Judgment and Decree of Divorce* in this matter is subject to the twenty (20) year statute of limitations that expired May 20, 2011. *See* Appellant's Brief, pp.10-11.

Jay seems to argue that: the twenty (20) year statute of limitations in SDCL § 15-2-6(1) is not applicable, and that Jay seeks to 'recover' real property. In reality, Jay is (at best) attempting to divest Lenora of her ownership interest in the property because he asserts that "Jay is attempting to recover the undivided one-half interest in the real property Lenora was supposed to convey to Paul *pursuant to the Judgment and Decree of Divorce*." Appellee's Brief, p. 5 (emphasis added).[3] The only way for Jay to divest Lenora of her undivided one-half record ownership interest in the Property is to enforce the Stipulation/*Judgment and Decree of Divorce*, for which the twenty (20) year the statute of limitations in SDCL § 15-2-6(1) applies.

Jay does not point this Court to any authority to get around the now-expired statute of limitations. Appellee's Brief.

The Trial Court clearly erred by not applying the relevant statute of limitations and determining that Lenora owns an undivided one-half interest in the Property.

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[3] This also begs the rhetorical question – how could Jay get back or regain (i.e., 'recover') something that he never had?

B. The Title Standards did not divest Lenora of her ownership interest in the Property.

This issue will not be further addressed because:

> Jay concedes that the Title Standards did not divest Lenora of any ownership interest she may have had in the property despite the fact that she clearly waived and contracted away her ownership interests in the property in question.

Appellee's Brief, p. 7.[4]

C. Jay cannot use an equitable quiet title action to divest Lenora of her interest in the Property.

Jay cannot use an equitable quiet title action to divest Lenora of her ownership interest in the Property. Jay does not deny that he is using the quiet title action to seek equitable relief. Appellee's Brief.

Jay's argument relating to using a quiet title action to divest a record owner of her interest in real property is four (4) sentences long and Jay does not point the Court to any authority in support of his argument. Appellee's Brief, pp. 7-8.

Interestingly, Jay admits that enforcement of the *Judgment and Decree of Divorce* was the appropriate avenue to obtain the relief he seeks: "[t]he Estate of Paul Bryant should have been allowed the opportunity to enforce the decree of divorce against Lenora." Appellee's Brief, p. 7. Jay goes on to state that "[t]he Probate Court disagreed thus the *only avenue for a legal remedy is the equitable remedy* provided for by the quiet title action…." Appellee's Brief, pp. 7-8 (emphasis added – a legal remedy is not an equitable remedy). However, this assertion is not accurate because Jay could have

[4] However, Jay's statement about divesting Lenora of her ownership interest is also an admission that this case is about divesting Lenora of her ownership interest in the Property (as opposed to 'recovery' of real property). *See* argument on Issue I.A, above.

appealed the decision in the Probate Court – but didn't.[5]

Jay ends his argument on this issue with " . . . the claim against Lenora to *force her to relinquish* such claim is [sic] an asset of Paul Bryant's estate." Appellee's Brief, p. 8 (emphasis added).[6]

Because Paul had a legal remedy to divest Lenora of her ownership interest (or force her to relinquish her ownership interest) in the Property by enforcing the Stipulation via the *Judgment and Decree of Divorce* within the twenty year statute of limitations, Lenora cannot be divested of her ownership interest in the Property under the Stipulation using equitable relief: " . . . a party cannot have an equitable remedy if an adequate legal remedy is available." *Wold v. Lawrence County Com'n*, 465 N.W.2d 622, 624 (S.D. 1991) (internal citations omitted).

Under the circumstances, the Trial Court clearly erred when it granted equitable relief to divest Lenora of her ownership interest in the Property because a legal remedy was available to enforce the Stipulation/*Judgment and Decree of Divorce*. Jay points this Court to no authority allowing equitable remedies just because a legal remedy has become stale due to expiration of the applicable statute of limitations.

ISSUE 2: The Trial Court erred by acting as a Pseudo-Advocate.

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[5] However, even had Jay appealed and obtained a favorable result, the applicable twenty (20) year statute of limitations would still resolve the matter in Lenora's favor.

[6] This is further acknowledgment from Jay that this case is not about the 'recovery' of real property, but rather to divest Lenora of or force her to relinquish her legal record ownership interest in the Property.

A. The Trial Court erred by participating as a pseudo-advocate.[7]

The Trial Court erred by participating as a pseudo-advocate.

Jay's only citation to authority supporting his argument under Issue 2.A is to the *State v. Nelson* case, which in turn that case cited to SDCL § 23A-44-13 (South Dakota's Criminal Procedure code) and is not applicable in this civil case. *State v. Nelson*, 1998 S.D. 124, ¶ 7, 587 N.W.2d 439; *see also* Appellee's Brief, p. 8. However, Lenora agrees that generally issues should be preserved at trial – the problem in this case is there does not appear to be any procedural mechanism other than an appeal to raise such issues post-trial and after the Trial Court has already made its decision.

The circumstances in this case are not too different from the circumstances in the recently decided *May v. First Rate Excavate, Inc.* or *Ally v. Young* cases argued in the Appellant's Brief. *See* Appellant's Brief, p. 13 (citations to the *May* and *Ally* cases).

While a Trial Court may raise the issue of judicial estoppel under the *Hayes* case (*see* Appellant's Brief, p. 12), Lenora asks the Supreme Court to find that the Trial Court erred by raising the issue of judicial estoppel under these circumstances and for the other reasons Lenora has outlined because it was inconsistent with prohibitions against a Court acting as a pseudo-advocate. However, this issue may become moot should this Court reverse the Trial Court on Issue 1.

B. The Trial Court erred by applying judicial estoppel in relation to the Stipulation.[8]

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[7] Lenora's Appellant Brief appears to be missing a record citation on page 14 – it does not appear a supplemental Clerks Certificate for Record on Appeal has been prepared after the filing of the transcripts ordered for this appeal – the citation on page 14 to the trial transcript is found on Appendix pages 36-38.

[8] Jay combined Issues 2B and 2C into the same argument, but Lenora will keep these separate issues divided for clarity in her argument.

The Trial Court erred in its application of judicial estoppel in regards to the Stipulation. Jay argues that " . . . Lenora took the position in the divorce proceedings that she gave up all of her right title and interest in and to certain real property". This is not true because the Stipulation expressly contemplated her having to take additional steps in order to actually convey her interest – i.e. the execution and delivery of a deed; in the absence of Lenora executing and delivering a deed, Paul's remedy was to enforce the Stipulation via the *Judgment and Decree of Divorce*, subject to the applicable statute of limitations.

Jay points this Court to zero authority to refute the facts that:

> [t]o view the Stipulation itself as a grant or conveyance divesting Lenora of her interest in the Property would require a position that said Stipulation was a conditional grant, which cannot be done: "A grant cannot be delivered to the grantee conditionally." SDCL § 43-4-8 (in relevant part). Furthermore, an agreement to convey real property is not an actual grant or conveyance of any real property. *See Stacey Taylor Trippet Special Trust v. Blevins,* 1996 SD 29, 545 N.W.2d 216.

Appellant's Brief, p. 15. Likewise, Jay does not point this Court to authority to ignore the fact that there has not been a transfer of Lenora's interest in the Property or application of SDCL § 43-4-1 wherein "title to property is conveyed from one living person to another." SDCL § 43-4-1; *see also* Appellant's Brief, p. 15.

There is no transfer of Lenora's interest from Lenora to another individual.[9] CR. The legal remedy of enforcing the *Judgment and Decree of Divorce* was available to Paul

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[9] Jay admits that "[i]t is acknowledged that no deed or other conveyance or record with the Meade County Register of Deeds conveying Lenora's undivided one-half interest to Paul [sic] despite her agreement to do so." Appellee's Brief, p. 3.

Bryant, however that legal remedy expired in 2011 due to expiration of the statute of limitations while he was still living. Probate CR 1 (*Application for Informal Probate and Appointment of Personal Representative*); *see also* Lenora's argument that the statute of limitations expired on May 20, 2011 at Appellant's Brief, p. 10. Jay does not point this Court to any authority supporting the proposition that an equitable remedy can be used to avoid the potentially harsh consequences of failing to prosecute a legal remedy before the applicable statute of limitations expires.

The Trial Court clearly erred by applying judicial estoppel in relation to the Stipulation, and should be reversed.

C. The Trial Court erred by not applying judicial estoppel in regards to the Probate proceeding.

If application of judicial estoppel is appropriate in this matter, it should be against Jay in relation to the Probate proceeding. Jay argues that "[i]n this case even if Jay had asserted an inconsistent position in the probate case, he was not successful." Appellee's Brief, p. 9.

Jay aptly cites the *Bailey v. Duling* case insofar as the prior success rule " . . . applies to parties who have unequivocally and successfully asserted a position in a prior proceeding; thus, they are estopped from asserting an inconsistent position in a subsequent proceeding." *Bailey v. Duling*, 2013 S.D. 15, 827 N.W.2d 351; *see also* Appellee's Brief, p. 9.

However, the *Bailey* case went on to state:

> Most circuits have refused to apply the doctrine of judicial estoppel unless the inconsistent assertion in the subsequent litigation was adopted *in some manner* by the court in the prior litigation. On the question of prior success, the problem with defendants' argument is that there was no

resolution from the IRS on whether the Trust was valid.

Bailey v. Duling, 2013 S.D. 15, 827 N.W.2d 351 (internal citations omitted)(emphasis added). The probate court did, "in some manner", adopt Jay's argument insofar as a different proceeding outside of the Probate was necessary to enforce the *Judgment and Decree of Divorce*.

Jay did not address Lenora's argument in relation to analysis under the *Healy* cases. *See* Appellant's Brief, pp. 16-18. However, this Court likely needs not to address this issue because the Trial Court should be reversed on Issue 1, making this issue moot.

To the extent this issue is not moot depending on this Court's determinations on the other issues, the Trial Court clearly erred by not applying judicial estoppel against Jay in relation to this matter and the Probate, and should be reversed.

ISSUE 3: Whether the Trial Court erred in entering the Court's Findings of Fact and Conclusions of Law and Judgment Quieting Title to Real Property.

The Trial Court clearly erred in entering Findings of Fact 13, 15, 16, 19, and 22, and Conclusions of Law 7, 12, 17, 21, 22, and 24. CR 126-131; A 1-9; *see* SDCL § 15–6–52(a); *see also* the Appellant's Brief, pp. 19-27.

Jay offers no authority in support of his arguments on Issue 3. Appellee's Brief, p. 10. The only specific finding that Jay defends in this appeal is Finding of Fact 19, which states:

> 19. On July 28, 2023, Black Hills Title issued an Owner's and Encumbrance Report on the subject property which indicates, "Lenora K. Bryant- as to an undivided one-half interest" in the subject property, and "Jay Christian Bryant and Jed Allan Bryant, as to an undivided one-half interest" in the subject property, and that, "[N]o examination had been made of the title... and [the Report] "do[es] not include additional matters which might have been disclosed by an examination of the record title." Answer and Counterclaim of Jed Allen Bryant, Exhibit A, filed Dec. 28, 2023. In other words, the Meade County Clerk of Courts' records were not examined.

CR 127; *see also* Appellant's Brief, pp. 22-24 and Appellee's Brief, p. 10.

Jay points this Court to zero evidence to refute the arguments made by Lenora in this appeal or to substantiate his assertion that Finding of Fact 19 was correct. In fact, during Jay's cross examination of Mr. Martin, Jay specifically proved that the record title documents and the Court database (UJS e-Courts) were used:

9	Q	So you're looking at documents that are recorded at the
10		register of deeds office, correct?
11	A	Correct.
12	Q	And you look -- do you actually run the parties' names
13		through the UJS e-courts website?
14	A	Correct.

CR __; A 34; TT 48:9-14. Jay points to no facts refuting Mr. Martin's expert witness testimony that he reviewed the record title and the Court's records in order to produce the O & E Report. *See* Appellee's Brief.

Because Jay did not address the various other Findings of Fact and Conclusions of Law Lenora asserts were erroneously entered, Lenora relies on her prior arguments. *See* Appellant's Brief, pp. 19-27.

The Trial Court should be reversed for clear error in entering Findings of Fact 13, 15, 16, 19, and 22, and Conclusions of Law 7, 12, 17, 21, 22, and 24.

CONCLUSION

The Trial Court clearly erred by not determining that Lenora is the record owner of an undivided one-half interest in the Property, and it erred in its entry of the various findings of fact and conclusions of law as outlined herein and in the Appellant's Brief. The Trial Court further erred by participating as a pseudo-advocate and not determining that Jay did not have standing to enforce the Stipulation.

Lenora requests this Court reverse the Trial Court, remand for a determination that Lenora owns an undivided one-half interest in the Property, and enable the bifurcated

case to proceed with adjudication of the partition action.

Dated this this 16th day of December, 2025.

BENNETT MAIN GUBBRUD & WILLERT, P.C.
Attorneys for Lenora K. Bryant

By:_____

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[CERTIFICATE OF COMPLIANCE TO FOLLOW]

CERTIFICATE OF COMPLIANCE

COMES NOW, the Appellant, Lenora K. Bryant, by and through her attorney of record, Kellen B. Willert, of Bennett Main Gubbrud & Willert, P.C., 618 State Street, Belle Fourche, South Dakota, and pursuant to SDCL § 15-26A-66(4), hereby certifies that she has complied with the type volume limitation of SDCL § 15-26A-66(4) in that the Appellant's Reply Brief is double-spaced and proportionally spaced in Times New Roman, 12-point, with a total word count of 3,101 and a total character count of 15,349. The Appellant's Reply Brief and all copies are in compliance with this rule.

Dated this this 16th day of December, 2025.

BENNETT MAIN GUBBRUD & WILLERT, P.C.
Attorneys for Lenora K. Bryant

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CERTIFICATE OF SERVICE AND FILING

I, Kellen B. Willert, attorney for Lenora K. Bryant, do hereby certify that on the 16th day of December, 2025. I caused a full, true, and complete copy of Appellant's Reply Brief to be served electronically through the eFileSD electronic filing system upon:

N. Drew Skjoldal
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I further certify that on the same day I caused the Appellant's Reply Brief to be filed electronically through the eFileSD electronic filing system and the original Appellant's Reply Brief to be filed by U.S. Mail with:

Shirley Jameson-Fergel
Clerk of the Supreme Court
State of South Dakota
500 East Capitol Avenue
Pierre, SD 57501-5070
SCClerkBriefs@ujs.state.sd.us

by depositing said copy in envelope securely sealed with first class postage thereon fully prepaid in the U.S. Mail in Belle Fourche, South Dakota, and addressed as shown above.

Dated this 16th day of December, 2025.

By: _____
Kellen B. Willert