

No.

IN THE
SUPREME COURT of the UNITED STATES

Marby Hogen and Susan Hogen,

Petitioners,

v.

Steven C. Hogen, as Personal Representative
of the Estate of Arline H. Hogen, Deceased;
Steven C. Hogen, as a Trustee of the Curtiss A.
Hogen Trust B, as created under the Last Will
and Testament of Curtiss A. Hogen; and
Steven C. Hogen, individually,

Respondents.

On Petition For Writ of Certiorari
To The Supreme Court of North Dakota

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Does the decision of the Supreme Court of North Dakota deprive the Petitioners of established property rights in violation of the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States?
2. Has the State of North Dakota, acting through its judiciary, deprived the Petitioners of their vested property rights without any real opportunity to protect such rights in violation of the Due Process Clause of the Fourteenth Amendment?
3. Were Petitioners denied vested property interests, in violation of the Due Process Clause of the Fourteenth Amendment, when the State of North Dakota's judiciary determined the Petitioners' property interests could be extinguished by either a court appointed personal representative or court appointed trustee although Petitioners were never provided notice, nor made parties to either the probate proceedings or trust litigation that occurred after their property interests were created?

LIST OF ALL PARTIES TO THE PROCEEDING

The caption of this Petition contains all of the parties to the litigation below. For purposes of adding clarity to this Petition for Writ of Certiorari, the Petitioners identify the relationship of the parties to this Petition.

Petitioner Susan Hogen, a resident of Fargo, North Dakota, is the wife of Rodney Hogen. Petitioner Marby Hogen is the daughter of Rodney Hogen. In this Petition, Petitioners assert the North Dakota judiciary, in violation of the Fourteenth Amendment to the Constitution of the United States of America, deprived Susan Hogen of a life estate and deprived Marby Hogen of a remainderman's interest in real property transferred to them by Rodney Hogen in February 20, 2014, quit claim deeds.

Respondent Steven C. Hogen is a resident of West Fargo, North Dakota. Steven C. Hogen was a party to the litigation below as an individual, as the personal representative of his mother Arline H. Hogen's estate, and as a trustee of a testamentary trust created by his father Curtiss A. Hogen. Curtiss A. Hogen died in 1993 and his wife, Arline H. Hogen died in 2007. Brothers Rodney Hogen and Steven Hogen were the only remaindermen beneficiaries of their father's testamentary trust and the only devisees under their mother's Will.

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PETITION FOR WRIT OF CERTIORARI

Petitioners, Susan Hogen and Marby Hogen, respectfully pray that a writ of certiorari issue to review the judgment of the Supreme Court of North Dakota that deprives landowners of property without due process of law while simultaneously denying landowners equal protection of settled law.



OPINIONS BELOW

The opinion of the Supreme Court of North Dakota is reported in Hogen v. Hogen, 2019 ND 17, 921 N.W.2d 672. The decision is found at Appendix E, pages 35 through 46.

The unreported Memorandum and Order Re: Motion for Summary Judgment of the Barnes County District Court dated March 15, 2018, granting summary judgment to the Respondents is found at Appendix A, pages 1 through 14.

Within his Memorandum and Order Re: Motion for Summary Judgment, the Barnes County District Judge took judicial notice of trust litigation involving the testamentary trust of Curtiss A. Hogen filed as Cass County [North Dakota] District no. 09-2015-CV-01717. Appendix A, pages 9-10. These unreported opinions are in the Appendix on pages 118 through 191. Specifically, the Order for Summary Judgment in the Cass County District Court trust litigation is found at Appendix O, pages 118 through 128. The Order on

Petition for Complete Settlement and Distribution is found at Appendix P, pages 129 through 134. The Post-Trial Order is found at Appendix Q, pages 135 through 173, and the Order Approving Final Report and Account is found at Appendix R, pages 174 through 191.

When issuing his order for summary judgment, the Barnes County District Court also relied upon his interpretation of the reported case of Estate of Hogen, 2015 ND 125, 863 N.W.2d 876. This decision is found at Appendix N, pages 82 through 117.

BASIS FOR JURISDICTION

The Court has jurisdiction under 28 U.S.C. § 1257(a). Pursuant to Supreme Court Rule 13.1, this petition is filed within 90 days of the denial of the petition for rehearing by the North Dakota Supreme on February 21, 2019. Appendix F, pages 47-48.

CONSTITUTIONAL PROVISIONS AND STATUTES AND RULES INVOLVED IN THIS PETITION

Article XIV, § 1, of the Articles of Amendment to the Constitution of the United States of America states:

§ 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the state wherein they reside. No state shall make or enforce any law which shall abridge the

privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Petitioners assert they have been denied the protection of North Dakota's settled law, including the equal protection of the following current provisions of the North Dakota Century Code (hereafter, abbreviated "N.D.C.C."), a part of North Dakota's version of the Uniform Probate Code:

N.D.C.C. § 30.1-12-01. (3-101) Devolution of estate at death--Restrictions

The power of a person to leave property by will, and the rights of creditors, devisees, and heirs to the person's property, are subject to the restrictions and limitations contained in this title to facilitate the prompt settlement of estates. Upon the death of a person, the decedent's real and personal property devolves to the persons to whom it is devised by the decedent's last will or to those indicated as substitutes for them in cases involving lapse, renunciation, or other circumstances affecting the devolution of testate estate, or in the absence of testamentary disposition, to the decedent's heirs, or to those indicated as substitutes for them in cases involving renunciation or other circumstances affecting devolution of intestate estates, subject to homestead allowance, exempt property, and family allowance, to rights of creditors, elective share of the surviving spouse, and to administration.

N.D.C.C. § 30.1-03-03. (1-403) Pleadings—When parties bound by others—Notice. This statute, relating to both formal procedures in estates and trust, and, because of its length, is found at Appendix H, pages 51 through 53.

The Petitioners further assert they have deprived of protection of the following historic statutes which were repealed when North Dakota adopted its version of the Uniform Trust Code on August 1, 2007.

N.D.C.C. § 59-03-14. Whole estate vests in trustees. Except as otherwise provided in this chapter, every express trust in real property, valid as such in its creation, vests the whole estate in the trustees, subject only to the execution of the trust. The beneficiaries take no estate or interest in the property but may enforce the performance of the trust.

N.D.C.C. § 59-03-20. When estate of trustee ceases. When the purpose for which an express trust was created ceases, the estate of the trustee also ceases.

The above two historic statutes concerning real estate trusts were in effect since North Dakota's statehood through July 31, 2007. These historic statutes were in effect at the time Curtiss A. Hogen created his testamentary trust, and at the time his Will was probated in 1993. The statutes were in effect on the date of the death of his surviving wife, Arline H. Hogen on March 23, 2007, who was the sole income beneficiary of her husband's testamentary trust. Appendix V, pages 215-216.

STATEMENT OF THE CASE

Petitioners Susan Hogen and Marby Hogen assert, in violation of rights guaranteed to them under the Fourteenth Amendment, the North Dakota judiciary has deprived them of property they obtained in two Quit Claim Deeds delivered to them on February 20, 2014, by Rodney Hogen [Susan's husband and Marby's father]. Appendix T, pages 204 to 208. Petitioner Marby Hogen asserts, through the two Quit Claim Deeds, she received a remainderman's interest in and to Cass County and Barnes County, North Dakota, farmland. Petitioner Susan Hogen asserts, through the two Quit Claim Deeds, she received a life estate interest in and to said farmlands. Although Susan Hogen's life estate interest arises out of a reservation contained in two (2) quit claim deeds, a reservation can effectively convey to Susan a life estate since Rodney Hogen's intent to provide her with a life estate is clearly shown by the language of the deeds. Malloy v. Boettcher, 334 N.W.2d 8 (N.D. 1983).

Petitioners respectfully submit their first two stated issues stem from Justice Kennedy's statements made in *Stop the Beach Renourishment, Inc. v. Fla. Dep't of Envtl. Prot.*, 560 U.S. 702, 737, 130 S. Ct. 2592, 2615, 177 L. Ed. 2d 184 (2010) [a decision where a majority of the justices accepted Justice Scalia's proposition that it is appropriate to "set(..) aside judicial decisions that take private property"; *id.*, page 720]:

The Court would be on strong footing in ruling that a judicial decision

that eliminates or substantially changes established property rights, which are a legitimate expectation of the owner, is “arbitrary or irrational” under the Due Process Clause. *Lingle*, 544 U.S., at 542, 125 S.Ct. 2074; see *id.*, at 548–549, 125 S.Ct. 2074 (KENNEDY, J., concurring); see also *Perry v. Sindermann*, 408 U.S. 593, 601, 92 S.Ct. 2694, 33 L.Ed.2d 570 (1972) (“[P]roperty” interests protected by the Due Process Clauses are those “that are secured by ‘existing rules or understandings’ ” (quoting *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 577, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972))). Thus, without a judicial takings doctrine, the Due Process Clause would likely prevent a State from doing “by judicial decree what the Takings Clause forbids it to do by legislative fiat.” *Ante*, at 2601.

The third issue presented by the Petitioners, embraces federal rights addressed by this Court in *Richards v. Jefferson County, Ala.*, 517 U.S. 793, 116 S. Ct. 1761, 135 L.Ed.2d 76 (1996), holding that a stranger to a judicial proceeding, whose interests are not adequately represented by a party to the judicial proceeding, cannot be bound by such proceedings. The Supreme Court of North Dakota, in its opinion below, bound Petitioners to Steven Hogen’s sales of all of Petitioners’ interest in lands without making them a party in either the Arline H. Hogen estate proceedings or the Curtiss A. Hogen Trust proceedings.

All three (3) of Petitioners' stated issues stem from Petitioners' belief that the Fourteenth Amendment has ensured them "...notice reasonably calculated, under all the circumstances, to apprise" the Petitioners that their interest in lands could be sold by a court empowered trustee or court empowered personal representative and a meaningful opportunity provided Petitioners, in a judicial proceeding, to present their objections to the sale. See, *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314, 70 S. Ct. 652, 657, 94 L. Ed. 865 (1950). Petitioners assert that the North Dakota judiciary violated the Petitioners' due process rights when the judiciary empowered Steven Hogen, as trustee or as personal representative, to sell the Petitioners' vested property interest in farm lands without affording Petitioners with notice and a meaningful opportunity to be heard as to their defenses to the sale. *Alward v. Borah*, 381 Ill. 13, 44 N.E.2d 865 (1942). Because the provisions of N.D.C.C. § 30.1-03-03 clearly require both pleadings and notice to bind interested persons, the Petitioners assert it is the North Dakota judiciary – and not the legislature – that deprives Petitioners of their property without due process of law.

As to Petitioners' lands derived from Arline H. Hogen's Will, the Supreme Court of North Dakota ruled, "We agree with the district court's conclusion that Steven Hogen's power over the Estate property as personal representative is superior to any title or interest of Marby and Susan Hogen in the Estate property and that any conveyance of that property to a third party by the personal representative extinguishes their title or interest in the land." *Hogen v. Hogen*,

supra., ¶16. Appendix E, pages 44-45. As to Petitioners' lands derived from Curtiss A. Hogen's testamentary trust, the Supreme Court of North Dakota ruled, "We conclude the court did not err in granting summary judgment determining Marby and Susan Hogen had no interest in the Trust land." *Id.*, ¶17; Appendix E, page 45.

To understand why the Petitioners believe the North Dakota judiciary deprived Petitioners of property in violation of their rights guaranteed to them by the Fourteenth Amendment to the Federal Constitution, one needs not only an understanding of the background relating to the quiet title action below, but also, the background of the settled law denied the Petitioners concerning their title to the farmlands conveyed to them by Rodney Hogen, a devisee of his mother's probated Will, and a vested remainderman beneficiary of his father's testamentary trust.

1. Pertinent background relating to farm lands traced to Arline H. Hogen.

Much of the factual and procedural background relating to Petitioners' real estate interest that can be traced to decedent Arline H. Hogen is set forth in ¶6 of Hogen v. Hogen , *supra.*, [Appendix E, pages 38-39]:

[¶6] After the probate court issued an order approving the final accounting and settlement in the probate of Arline Hogen's estate in 2013 and before this Court's decision in *Estate of Hogen*, 2015 ND 125, 863 N.W.2d 876, Rodney Hogen

and his wife, Susan Hogen, executed quit claim deeds in February 2014, granting all their right, title, and interest in the tracts of land to their daughter, Marby Hogen, while reserving a life estate for themselves. In June 2017, Marby and Susan Hogen brought this quiet title action against Steven Hogen personally and as personal representative of the Estate and as trustee of the Trust to quiet their title to the land described in the February 2014 quit claim deeds. In June 2017, lis pendens were filed against the land in the recorder's offices in Barnes and Cass Counties, giving notice of the pending quiet title action.

Adding to the above background statement, the Petitioners state that Rodney Hogen and Steven C. Hogen were equal devisees under their mother's probated Will. Appendix W, page 218. Prior to the Petitioners receiving their interest in the farmlands from Rodney Hogen in February, 2014, Steven C. Hogen never claimed [either personally, or as personal representative] any of the farmlands inherited by Rodney Hogen through his mother's Will would need to be sold to pay for the determined "retainer" against Rodney [a court-imposed "retainer" that arose out of Rodney's post-death farming of his inherited lands]. Although Rodney Hogen's appeal trailed the quit claim deeds, neither Susan nor Marby Hogen were made parties to the appeal, nor any of the supervised proceedings that trailed the Supreme Court of North Dakota's remand after its decision in Estate of Hogen,

supra. After the remand of this decision, Steven sought, without notice to either Marby or Susan Hogen, supervised probate administration, a form of probate procedure requiring court approval of the distribution of the estate. N.D.C.C. § 30.1-16-04; Appendix H, pages 54-55. In judicially approved settlements, involving estates and trusts, interested persons are not bound unless they have been afforded mailed notice of pleadings that give reasonable information of the interests to be affected by the proceedings. See, N.D.C.C. § 30.1-03-03 [Appendix H, pages 51 through 53] and N.D.C.C. § 30.1-03-01 [Appendix H, pages 50-51].

A. Petitioners' Quiet Title action [with respect to Arline H. Hogen's Estate].

At the time the Petitioners initiated their quiet title action, the Petitioners had not been served any pleading in the probate proceedings informing them their interest in the farmlands would [or could] be affected by supervised administration in the probate proceedings. In the quiet title action, Steven C. Hogen, as personal representative of his mother's estate, did not plead a counterclaim against Petitioners' interest in the farmlands. Steven C. Hogen's Answer in the quiet title action is found at Appendix U, pages 209 through 214.

B. Settled probate law denied the Petitioners.

In ¶16 of Hogen v. Hogen, *supra*., the Supreme Court of North Dakota holds, "We agree with the

district court's conclusion that Steven Hogen's power over the Estate property as personal representative is superior to any title or interest of Marby and Susan Hogen in the Estate property and that any conveyance of that property to a third party by the personal representative extinguishes their title or interest in the land." Appendix E, pages 44-45. By said holding, the North Dakota judiciary has empowered Steven C. Hogen, as a personal representative, to extinguish the Petitioners' interest in the farmlands, without notice, pleadings and a meaningful opportunity to be heard. Petitioners assert this holding, if not reversed by this Court, deprives the Petitioners of vested property rights without due process of law. It allows a court appointed personal representative to arbitrarily deprive a landowner/litigant of vested property interests without a meaningful opportunity for the landowner/litigant to defend against the extinguishment of title. The Supreme Court of North Dakota's holding conflicts with this Court's decision in *Mullane v. Cent. Hanover Bank & Tr. Co., supra*.

The Supreme Court of North Dakota has historically recognized that a devisee's interest in inherited real property devolves upon death through the probated Will. See, Feickert v. Frounfelter, 468 N.W.2d 131, 132 (N.D. 1991) ("Property passes upon death, not upon distribution"), Brigham Oil and Gas, L.P. v. Lario Oil & Gas Co., 2011 ND 154, ¶ 15, 801 N.W.2d 677, ("ownership interest, rather than a 'mere expectancy'"); Estate of Eagon, 2017 ND 243, ¶ 14, 902 N.W.2d 751 ("property passes upon death, not upon distribution.") and ("Under N.D.C.C. § 30.1-12-01 (U.P.C. § 3-101), upon death a person's real and

personal property devolves to the devisees, subject to administration. Consequently, Margie Eagon's ten children had equal ownership interests in the royalty payments upon her death, subject to administration."); TeSoro v. LaDue, 133 N.W.2d 566, 569 (N.D. 1965) (ownership occurs "on death" and "(u)pon this death title to his property passed to his heirs"); State ex rel. Kelly v. McMaster, 13 N.D. 58, 99 N.W. 58, 63 (1904) ("upon his death the property passed to his heirs"); Morrison v. Hawksett, 64 N.W.2d 786, 787 (N.D. 1954) ("Under the laws of this state, title to the property {of the decedent} vested in her heirs at law immediately upon her death."); Noss v. Hagen, 274 N.W.2d 228, 232-33 (N.D. 1979) ("Under settled principles of law, real property in an intestate's estate pass immediately to the heirs upon the intestate's death."); Matter of Estate of Feldmann, 2017 ND 255, ¶ 10, 903 N.W.2d 280 ("Real property passes to heirs immediately upon death of the devisor (to include growing crops."); Brooks v. Bogart, 231 N.W.2d 746, 752 (N.D. 1975); Franson v. Casey, 73 N.W.2d 436, 442 (N.D. 1955) ("His heirs, immediately upon his death, became the owners of the real property in his name and the descent of title to the property by operation of law created in them a tenancy in common."); Stevahn v. Meidinger, 79 N.D. 323, 57 N.W.2d 1 ("The title to lands, unless otherwise devised vests *eo instante* upon death in the heirs of the decedent; the right of the personal representative being limited to selling the land for debts."); and, all heirs "became tenants in common"); and Anderson v. Shelton, 92 N.W.2d 166, 172-173 (N.D. 1958) ("{T}he true title had passed on the death of Theodore N. Shelton to his four children in equal shares subject to the administration of the estate.").

Since the date of his mother's death on March 23, 2007, devisee Rodney Hogen had vested real estate interest in his inherited lands. As of the date of his mother's death, Rodney Hogen enjoyed a right to freely alienate his inherited property interests to Petitioners, which was fully accomplished by appropriate deed conveyance. Marby Hogen and Susan Hogen were not afforded equal protection of settled law.

2. Pertinent background relating to farm lands traced to Curtiss A. Hogen [related to Trust land].

Curtiss A. Hogen died on September 9, 1993. Curtiss A. Hogen was survived by his wife, Arline H. Hogen, and their two (2) adult children, Steven C. Hogen and Rodney Hogen. Arline H. Hogen died on March 23, 2007, and was survived by her two adult children, Steven and Rodney.

In 1993, Curtiss' Last Will and Testament was probated in Cass County District Court, with the following disposition of his then-owned Cass County and Barnes County real property, upon his sons surviving his wife's death:

- (3) Upon the death of the survivor of my said spouse and me, my Trustee shall divide this Trust into equal separate shares so as to provide One (1) share for each then living child of mine and One (1) share for each deceased child of mine who shall leave issue then

living.

Appendix V, page 216.

Rodney Hogen and Steven C. Hogen were also named co-trustees of Curtiss A. Hogen's testamentary trust. Appendix V, page 217.

On February 20, 2014, Co-Trustee Rodney Hogen, acting alone, executed two quit claim deeds transferring to Rodney Hogen and his brother Steven C. Hogen, as tenants in common all lands held by the Curtiss A. Hogen testamentary trust. Appendix S, pages 192 through 203. After the trust deeds were executed, Rodney Hogen then executed and delivered the two February 20, 2014, quit claim deeds that gave Susan Hogen her life estate and Marby Hogen her remainderman's interest in the lands once held in the Curtiss A. Hogen testamentary trust. Appendix T, pages 204 through 208.

On July 13, 2015, Steven C. Hogen petitioned the District Court of Cass County, North Dakota, to exercise its jurisdiction to supervise the Trust B created under the Last Will and Testament of Curtiss A. Hogen, Deceased. Neither Marby nor Susan Hogen were ever made a party to that action [hereafter "Trust proceedings"].

In the Trust proceedings, Rodney Hogen moved for summary judgment claiming his father's testamentary trust terminated the day Arline H. Hogen died [March 23, 2007] and that the two quit claim deeds he executed as a Co-Trustee [to himself

and his brother Steven C. Hogen as grantees; see Appendix S, pages 192 through 203] were ministerial acts. Appendix O, pages 123-124; Appendix X, pages 223-224. The District Court supervising the Trust proceedings denied summary judgment, determining the testamentary trust had not terminated at the death of Arline H. Hogen and the two quit claim deeds executed by Co-Trustee Rodney Hogen did not involve a ministerial act. When denying Rodney Hogen summary judgment, the District Court made one important finding that is relevant to the Petitioners' assertion they have been deprived of property without due process of law. When denying Rodney Hogen summary judgment, the District Court supervising the Trust proceedings, determined:

... Curtiss made his intent regarding the purpose of the Trust quite clear and unambiguous. Its first purpose was to provide support for Arline during her lifetime. That purpose ended upon her death. The second purpose was for the corpus of the Trust to be divided into equal shares for each of his then-living children, and then, for each share to be distributed to each living children. At the time of Arline's death, Steven and Rodney were his only living children. Steven argues the second purpose of the Trust has not been fulfilled, because the Trust has not yet been properly divided and distributed. The facts support Steven's argument. ... [Appendix O, pages 123-124]

At one point during the Trust proceedings, Steven C. Hogen attempted to amend his Petition to seek the “expungement of deeds” to Marby Hogen. In its Memorandum and Order Granting Motion to Amend Petition, the district court overseeing the Trust proceedings denied Steven C. Hogen’s attempt to “expunge” the two (2) quit claim deeds to Marby, determining in pertinent part, “[t]his case deals with an adjudication of the rights, obligations and liabilities of Rodney and Steven solely as it relates to the Trust,” and “[t]hat portion of the proposed AMENDED PETITION which requests the Court adjudicate the validity of the Quit Claim Deeds to Marby Hogen (or any rights she may have in the property) are not allowed.” See ¶10 of the Trust Court’s Memorandum Opinion found on Appendix X, pages 225-226. In its Post-Trial Opinion and Order, the District Court supervising the Trust proceedings determined, “Additionally, this case does not involve third persons, not made parties to this case.” Appendix Q, page 138.

On March 7, 2017, the District Court, supervising the Trust proceedings, suspended Rodney Hogen as a co-trustee, voided the February 20, quit claim deeds made by Rodney Hogen in his capacity as co-trustee to himself and Steven C. Hogen, and authorized Steven C. Hogen to allocate and sell “Trust” lands. Appendix P, pages 132 through 134.

**A. Petitioners’ Quiet Title Action
[Curtiss A. Hogen’s Trust]:**

Susan and Marby Hogen initiated their quiet title action on June 5, 2017, against Steven S. Hogen

personally, in his capacity as personal representative of his mother's estate, and as trustee of his father's testamentary trust. Neither Susan Hogen nor Marby Hogen were ever made a party to the Trust proceedings.

In the quiet title action initiated by the Petitioners, Steven C. Hogen claimed, in his answer, the subject real property was "owned by the Curtiss A. Hogen Trust B and the Estate of Arline H. Hogen, each of which has an undivided interest in the property." Appendix U, pages 210-211.

In the quiet title action, the District Court issued its judgment [Appendix D, pages 26 through 34] determining "neither Marby Hogen nor Susan Hogen hold any title or interest in any of the above described real property held by the Trust, and the Quit Claim Deeds recorded as Document No. 141518 at the Cass County Recorder's Office and Document No. 277184 at the Barnes County Recorder's Office are declared null and void to the extent they purport to convey any title or interest in the Trust's real property to Marby Hogen or to Susan Hogen." Appendix D, page 33.

In Petitioners' appeal from the adverse judgment in their quiet title action, the Supreme Court of North Dakota determined, "(w)hen Rodney Hogen issued the quit claim deeds to Marby and Susan Hogen in February 2014, his interest in the land held by the Estate was still subject to administration. We agree with the district court's conclusion that Steven Hogen's power over the Estate property as personal representative is superior to any title or interest of

Marby and Susan Hogen in the Estate property and that any conveyance of that property to a third party by the personal representative extinguishes their title or interest in the land. We affirm the summary judgment as to the Estate land.” Appendix E, pages 44-45.

As to the Trust land, the Supreme Court of North Dakota accepted the lower court’s analysis that “the Trust was the absolute owner of the Trust land, Steven Hogen had sole authority as trustee to act on behalf of the Trust, Steven Hogen was authorized to sell Trust property, and Steven Hogen had not executed or delivered deeds for Trust property to the Trust’s remainder beneficiaries. The court concluded Rodney Hogen had no claim to the Trust land and to the extent his quit claim deeds purported to convey Trust land to Marby and Susan Hogen, those deeds were nullities.” Appendix E, page 45.

B. Petitioners were denied settled trust law [as to Trust land].

Historic N.D.C.C. § 59-03-20 is a statute of uses, which by its operation, automatically vested legal title in all real property, once in the Trust, in beneficiaries Steven Hogen and Rodney Hogen automatically and without need for a trustee’s deed, on the day Arline Hogen died [March 23, 2007]. Since both Steven Hogen and Rodney Hogen survived their mother, their real estate interest [both legal and equitable title] fully vested in them at the time of their mother’s death by operation of law. Hull v. Rolfsrud, 65 N.W.2d 94, 108 (N.D. 1954); N.D.C.C. § 30.1-12-01.

Without “active” duties, the trust is passive, or dry, and the trustee has no title to the lands. Smith v. Security Loan & Trust Co. of Casselton, 8 N.D. 451, 79 N.W. 981 (1899).

From his parents’ Wills, Rodney Hogen received an ownership in real property, and not a “mere expectancy.” “Property passes upon death, not upon distribution.’ *Feickert v. Frounfelter*, 468 N.W.2d 131, 132 (N.D. 1991). Section 30.1-12-01 (U.P.C. § 301) N.D.C.C., provides ‘[u]pon the death of a person, the decedent’s real and personal property devolves to the persons to whom it is devised by the decedent’s last will, subject to ... administration.’” Brigham Oil and Gas, L. P. V. Lario Oil & Gas Co., *supra*., ¶ 15. Whether Rodney Hogen’s real property interest was classified as a contingent interest, future interest, or fully vested interest, Rodney Hogen always had the right to alienate his real property interest under N.D.C.C. § 47-09-02.

As to the Trust land since the death of his father in 1992, and as to the Estate land since the death of his mother in 2007, Rodney Hogen had a vested interest in real property by way of either his father or mother’s will, which interest could be freely alienated to his wife/daughter. Hull v. Rolfsrud, *supra*., page 108-109, and N.D.C.C. § 47-09-02 which allows transfer of any interest in property of any kind. In Hull v. Rolfsrud, *supra*., the Supreme Court of North Dakota determined a beneficiary’s vested interest in a trust may be alienated by the beneficiary, unless restrained by the terms of the trust. See, *Syllabus by the Court* No. 9, stating, “(w)here beneficial interests in the trust have

vested in the beneficiaries they may alienate such interests unless restrained by the terms of the trust.” No restraints on alienation of property existed by the terms of the trust, the terms of any will, or by any statute when Rodney Hogen quit claimed his vested property interests to Susan Hogen and Marby Hogen.

It is respectfully submitted, the real property rights of Marby Hogen and Susan Hogen as to Trust land are always controlled by historic N.D.C.C. § 59-03-20 [“When the purpose for which an express trust was created ceases, the estate of the trustee also ceases.”], a statute traced back to Dakota Territory’s 1877 Field Code. As of March 23, 2007 – the date of death of Arlene H. Hogen, the sole life income beneficiary – the Trust had no legal title to the subject real property. The North Dakota Supreme Court also disregarded Manice v. Manice, 4 Hand 303, 363-364, 43 N.Y. 303, 364, 1871 WL9576 (N.Y. Ct. of App. 1871), construing the Field Code provision. By operation of law [historic N.D.C.C. § 59-03-20,], the legal title, once enjoyed by the Trustees, had been transferred to Rodney and Steven equally. As to the Estate land, N.D.C.C. § 30.1-12-01, also acts to vest ownership immediately upon death of the decedent.

The North Dakota Supreme Court denied Marby Hogen and Susan Hogen the equal protection of settled law and the protections of historic statutes (N.D.C.C. § 59-03-20 and N.D.C.C. § 59-03-14) when it did not recognize the vested title transfer to Marby Hogen and Susan Hogen through Rodney Hogen’s quit claim deeds.

REASONS FOR GRANTING THE WRIT

Contrary to settled law and the protections of historic statutes, the North Dakota Supreme Court has issued a judicial decision that by fiat eliminates established property rights. Susan Hogen and Marby Hogen had a legitimate expectation that they had acquired property by appropriate quit claim deed from grantor Rodney Hogen. Marby Hogen and Susan Hogen were not afforded equal protection of settled law, and the decision was arbitrary or irrational under the Due Process Clause resulting in a deprivation of property. The North Dakota Supreme Court decision conflicts with the spirit of the decision(s) of this Supreme Court of the United States of America striking down judicial decisions that deprive litigants of their established property rights – all such aberrant judicial decisions should be set aside. *Stop the Beach Renourishment, Inc. v. Fla. Dep't of Envtl. Prot.*, 560 U.S. 702, 720 (2010); as acknowledged by Justice Scalia on page 714, “It would be absurd to allow a State to do by judicial decree what the Takings Clause forbids it to do by legislative fiat. See *Stevens v. Cannon Beach*, 510 U.S. 1207, 1211–1212, 114 S.Ct. 1332, 127 L.Ed.2d 679 (1994) (SCALIA, J., dissenting from denial of certiorari).” All consistent with Justice Scalia’s observation, at page 715: “If a legislature *or a court* declares that what was once an established right of private property no longer exists, it has taken that property ...” – making it a decision that should be set aside.

The third issue presented by the Petitioners, embraces federal rights addressed by this Court in

Richards v. Jefferson County, Ala., supra., holding that a stranger to a judicial proceeding, whose interests are not adequately represented by a party to the judicial proceeding, cannot be bound by such proceedings. The Supreme Court of North Dakota, in its opinion below, bound Petitioners to Steven C. Hogen's sales of all of Petitioners' interest in lands without making them a party in either the Arline H. Hogen estate proceedings, or the Curtiss A. Hogen Trust proceedings. The North Dakota Supreme Court decision conflicts with well-established notions for proper exercise of judicial function under our system, early made known. "The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury." *Marbury v. Madison*, 5 U.S. 137, 163 (1803).

The Petitioners seek a decision of the Supreme Court of the United States of America that recognizes what the Fourteenth Amendment has ensured – "...notice reasonably calculated, under all the circumstances, to apprise" the Petitioners that their interest in lands could be sold by a court empowered trustee or court empowered personal representative and a meaningful opportunity provided Petitioners, in a judicial proceeding, to present their objections to the sale. See, *Mullane v. Cent. Hanover Bank & Tr. Co.*, *supra*. If not set aside by this Supreme Court's decision, the North Dakota judiciary shall have violated Petitioners' due process rights when it empowered Steven C. Hogen, as trustee or as personal representative, to sell the Petitioners' vested property interest in farm lands without affording Petitioners with notice and a meaningful opportunity to be heard

as to their defenses to the sale. Alward v. Borah, *supra*. Because the provisions of N.D.C.C. § 30.1-03-03 clearly require both pleadings and notice to bind interested persons, the Petitioners assert it is the North Dakota judiciary – and not the legislature – that deprives the Petitioners of their property without due process of law.

The protection of settled laws, guaranteed by the Fourteenth Amendment to the Constitution of the United States of America, should have afforded to Marby Hogen and Susan Hogen. This Supreme Court should not allow any state court judiciary to undermine a fundamental civil right of any person to acquire property, nor should it allow state courts created to redress wrongs based on settled law, to ignore those rights and laws.

CONCLUSION

Without legal basis, the judgment of the Supreme Court of North Dakota deprives Petitioners of their property without due process of law for it eliminates established property rights legitimately expected to exist. It is absurd to allow a judicial decree to deprive landowners of property, or civil rights without adherence to law. It is equally absurd to allow the judiciary to ignore rights and law.

For the foregoing reasons, the Petition for Writ of Certiorari should be granted.

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