

No. 91-233

IN THE SUPREME COURT OF THE STATE OF MONTANA

1991

---

MILDRED I. BESTUL, et al,

Plaintiffs and Respondents,

-VS-

WILLIAM (Wm.) ZWICKY, et al,

Defendants and Appellants.

---

APPEAL FROM: District Court of the Tenth Judicial District,  
In and for the County of Petroleum,  
The Honorable Peter Rapkoch, Judge presiding.

COUNSEL OF RECORD:

For Appellant:

Thomas Alan Kragh, Rosscup & Kragh, Polson, Montana;  
Bruce J. Meagher, Omholt, Meagher, Forsythe &  
Klessig, Iola, Wisconsin.

For Respondent:

Robert J. Waller, Waller & Womack, Billings,  
Montana; Gary A. Goetzke, Attorney at Law, St.  
Paul, Minnesota.

---

**FILED**

OCT 18 1991

Filed: *Ed Smith*  
CLERK OF SUPREME COURT  
STATE OF MONTANA

Submitted on briefs: October 10, 1991

Decided: October 18, 1991



---

Clerk

Justice R. C. McDonough delivered the Opinion of the Court.

The appellants appeal the judgment of the District Court of the Tenth Judicial District, in and for the County of Petroleum, quieting title to a royalty interest in the respondents. We affirm.

In 1914 eight people formed, and invested money in, a hybrid partnership called "The Scandinavia Investment Company." Wm. Zwicky was named as trustee to hold title to the property of the partnership. Six of the persons owned ten percent and two owned twenty percent of the whole. The partnership purchased property in Petroleum County. Wm. Zwicky, as trustee, later conveyed this land to a third-party, reserving a royalty interest therein to the grantor. From this point on it becomes murky as to what happened to the reserved royalty interest, the partnership interests, and especially the one-tenth partnership interest which is still being litigated in this quiet title action. It is also murky as to how the partnership was dissolved and the property distributed to the partners.

All of the evidence is documentary evidence including old letters from one partner to the other partners: a 1956 stipulation and agreement between the trustees' heirs, purchaser, and heirs of the partners as to who owned what at what time in the partnership: and old and incomplete probate records.


The parties made cross-motions for summary judgment. There was no dispute as to any of the documents and there was no other evidence available other than the documentary evidence presented.

The court then, on the basis of the record and the inferences which could be drawn therefrom, eventually made findings of fact and conclusions of law and entered judgment for the respondents.

The issue is whether the court was correct in awarding the disputed share of the royalty interest to the respondents.

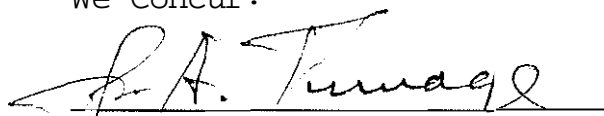
The evidence available in the record is sparse. However, the evidence does furnish reasonable grounds for different conclusions and the court did not misapprehend the effect of such evidence. It is up to the trial court to give appropriate weight to such evidence. The District Court made its findings, applied applicable law and its judgment should be affirmed, and it is so ordered.

Pursuant to Section I, Paragraph 3(c), Montana Supreme Court 1988 Internal Operating Rules, this decision shall not be cited as precedent and shall be published by its filing as a public document with the Clerk of the Supreme Court and by a report of its result to Montana Law Week, State Reporter and West Publishing Company. Let remittitur issue forthwith.



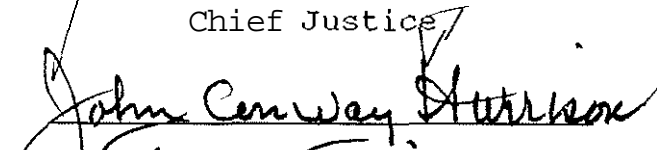
---

We Concur:

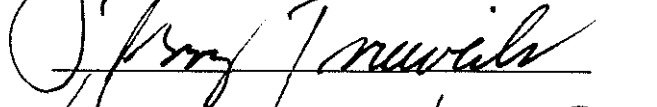


---


Chief Justice



---



---



---

Justices



State of Montana  
Office of Clerk of the Supreme Court  
Helena 59520  
406-444-3858

ED SMITH  
CLERK

October 18, 1991

CERTIFICATE OF SERVICE

I hereby certify that the following order was sent by United States mail, prepaid, to the following named:

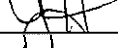
Thomas Alan Kragh  
ROSSCUP & KRAGH, P.C.  
410 1st Street East  
Polson, MT 59860

Bruce J. Meagher  
OMHOLT, MEAGHER, FORSYTHE & KLESSIG  
169 North Main Street  
P.O. Box 335  
Iola, Wisconsin 54945

ROBERT J. WALLER  
Waller & Womack  
P.O. Box 1115  
Billings, MT 59103-1115

GARY A. GOETZKE  
Attorney at Law  
1791 Ashland Ave.  
St. Paul, MN 55104

ED SMITH  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

BY:   
Deputy