


DISTRICT COURT, WELD COUNTY, COLORADO 901 9th Avenue Greeley, CO 80631	DATE FILED: January 24, 2019 3:58 PM CASE NUMBER: 2000PR300
In the Matter of the Estate of:  Deceased	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> Case Numbers: 2000 PR 300 2017 PR 30715 Division 1 Courtroom
ORDER REGARDING MOTIONS FOR DETERMINATION OF QUESTIONS OF LAW	

Pending before the Court are motions for determination of law filed by the parties to this action. Although framed somewhat differently, the parties essentially seek the answer to the following questions:

1. Was the transfer of mineral interests by the devisees under the Decedent’s will to Incline Niobrara Partners, LP (“Incline”) and Atomic Capital Minerals, LLC (“Atomic”) legally valid, thereby divesting the devisees and the Decedent’s estate of any further ownership interest from that point forward?

Or instead,

2. Was it a legal prerequisite for a personal representative to be appointed before a valid transfer of the mineral interests could occur?

The Court concludes the devisees had full authority to transfer their mineral interests to Incline and Atomic, thereby vesting sole ownership of the mineral interests to Incline and Atomic, and a personal representative’s deed was not a legal prerequisite for a valid transfer. The Court further finds that neither the estate nor the devisees thereafter possessed any ownership interest in the minerals to transfer to Wolfhawk Energy Holdings, LLC (“Wolfhawk”), and therefore, the personal representative’s deed purportedly conveying the mineral rights to Wolfhawk is null and void.

I. LEGAL STANDARD

Under C.R.C.P. 56(h), “[a]t any time after the last required pleading, with or without supporting affidavits, a party may move for determination of a question of law.

If there is no genuine issue of material fact necessary for determination of the question of law, the Court may enter an order deciding the question.” “The purpose of Rule 56(h) is to ‘allow the court to address issues of law which are not dispositive of a claim (thus warranting summary judgment) but which nonetheless will have a significant impact upon the manner in which the litigation proceeds.’” *Board of County Comm’rs v. United States*, 891 P.2d 952, 963 n.14 (Colo. 1995) (citing 5 Robert Hardaway & Sheila Hyatt, *Colorado Civil Rules Annotated* § 56.9 (1985)).

II. ANALYSIS

The parties agree to the salient facts. [REDACTED] (“Decedent”) died on September 5, 2000, and her will was admitted to informal probate in Case No. 2000PR300 on September 11, 2000. Under the provisions of the will, the residuary estate was to be divided between Decedent’s son, [REDACTED] (50%); Decedent’s daughter, [REDACTED] (30%); and Decedent’s two grandchildren, [REDACTED] and [REDACTED] (10% each). Pursuant to Decedent’s nomination in the will, [REDACTED] was appointed to serve as personal representative of the Decedent’s estate.

[REDACTED] in his capacity as personal representative, filed an estate inventory with the Court on January 24, 2001, but the mineral interests were not included in the inventory. Notice to creditors was published in the *Greeley Tribune*, with a deadline of January 15, 2001 to file claims. A timely claim was filed by North Colorado Medical Center, which was paid in full by the personal representative. No other creditor claims were filed against the estate.

The personal representative filed a verified statement to close administration of the estate on May 4, 2001, pursuant to C.R.S. § 15-12-1003, in which he represented that all administrative matters had been completed. Because there were no matters pending or proceeding in this probate action one year after the statement to close administration was filed, the personal representative’s appointment was terminated by operation of law on May 5, 2002, *Id.*, and the case was closed. A certified copy of Decedent’s will and certificate of death were recorded with the Weld County Clerk and Recorder on June 21, 2001, presumably by the personal representative.

The Decedent died owning a percentage of the mineral interests located in and under a parcel of property located at East One-Half of the North West Quarter of Section 23, Township 6 North, Range 66 West of the 6th P.M., in Weld County, Colorado. The personal representative did not transfer the mineral interests to the four devisees during the original administration of the estate between 2000 and 2002.

On June 10, 2017, [REDACTED] [REDACTED] in his individual capacity and not as personal representative, completed a sworn affidavit of heirship affirming that he was the son of Decedent, that Decedent died owning the mineral interests subject to this action, and the Decedent bequeathed her ownership of the mineral interests to [REDACTED]

That same day, [REDACTED] [REDACTED] conveyed his entire ownership interest in the minerals to Atomic through a mineral deed, which was recorded with the Weld County Clerk and Recorder on June 13, 2017.

[REDACTED] [REDACTED] conveyed her entire ownership interest in the minerals to Incline on September 6, 2017 through a mineral and royalty deed, which was recorded with the Weld County Clerk and Recorder on September 11, 2017. On September 13, 2017, [REDACTED] conveyed her ownership interest to Incline through mineral and royalty deed, and recorded with the Weld County Clerk and Recorder on September 20, 2017. [REDACTED] [REDACTED] conveyed her entire ownership interest in the minerals to Incline through mineral and royalty deed on September 29, 2017, which was recorded with the Weld County Clerk and Recorder on October 2, 2017.

None of the four devisees sought to reopen the probate estate action prior to conveying their mineral interests to Atomic and Incline.

Incline filed a petition under C.R.S. § 15-12-1302 for determination of heirs and ownership of the mineral interests on December 14, 2017, seeking an order confirming the succession of ownership of the minerals under a will from Decedent to [REDACTED] [REDACTED] and that Incline and Atomic were grantees of those mineral interests from the devisees. Incline provided notice of the petition to determine heirs and interests in property to [REDACTED]

After transferring their entire ownership interests to Incline and Atomic, one or more of the devisees were contacted by Wolfhawk to discuss a possible transfer of the mineral interests to Wolfhawk. [REDACTED] [REDACTED], with the assistance of legal counsel, filed a petition to reopen the probate estate in 2000PR300 on December 22, 2017, and to reappoint him as personal representative. [REDACTED] [REDACTED] represented under oath in the petition to reopen the probate estate that the mineral interests had not yet been distributed. Distribution of the mineral interests was the only reason listed in the petition as a basis to reopen the probate estate. [REDACTED] [REDACTED] neglected to inform the Court in the petition to reopen the estate that the devisees had already conveyed their entire ownership of the mineral interests to Atomic and Incline.

Acting on the information presented by [REDACTED] [REDACTED] under oath, that the mineral interests had not previously been distributed, the Court reopened the probate estate and reappointed [REDACTED] [REDACTED] as personal representative on January 5, 2018. Inexplicably, [REDACTED] [REDACTED] and his attorney failed to provide Atomic or Incline with notice of the petition to reopen the estate and reappoint him as personal representative in Case 2000PR300. [REDACTED] [REDACTED] acting solely in his capacity as personal representative of the estate, conveyed all of the Decedent's mineral interests to Wolfhawk through a personal representative's mineral deed on January 18, 2018.

The Court did not independently make the connection that the same mineral interests were involved in the two pending petitions in Cases 2000PR300 and 2017PR30715. There were no objections to the petition for determination of heirs filed by the devisees or anyone else in 2017PR30715, and the Court issued a decree on February 23, 2018, finding that the four devisees under the will received the mineral interests from the Decedent, and that Atomic and Incline were the grantees of the mineral interests from devisees.

Soon thereafter, Wolfhawk and Incline/Atomic filed a flurry of motions in the respective cases claiming that they were the lawful grantees of the mineral interests, requesting to intervene, and seeking to set aside orders issued in the cases. Atomic and Incline argue that the mineral deeds they entered with each of the devisees conveyed all rights and interests in the minerals to Atomic and Incline, because ownership of the mineral interests passed to the devisees through succession under the will when the Decedent passed away. Wolfhawk and the devisees argue that a personal representative's deed was required before a valid conveyance of the mineral interests could occur, and therefore the mineral deeds executed by the devisees to Atomic and Incline are invalid transfers. The Court agrees with Atomic and Incline.

Subject to the rights of creditors, a person is empowered in Colorado with the right to leave property to others through a will. C.R.S. § 15-12-101. "Upon the death of a person, his real and personal property devolves to the persons to whom it is devised by his last will" *Id.* Legal title to the mineral interests, therefore, passed to the devisees upon the death of Decedent in 2000. Unless it is necessary for the personal representative to take possession of property lawfully devised under a will for administration purposes, the property may be left with the person presumptively entitled to that property. C.R.S. § 15-12-709.

The devisees' legal title to the mineral interests, as would be true for any other property they were bequeathed under the will, were understandably subject to divestment during administration of the probate estate. *Collins v. Scott*, 943 P.2d 20, 22 (Colo. App. 1996). For example, if it had been necessary to sell the mineral interests or other property to satisfy creditor claims, the personal representative could have divested the devisees of their legal title to the mineral interests. However, the personal representative never divested the devisees of their legal title to the mineral interests during the original administration of the Estate between 2000 and 2002, because there was no administrative reason necessitating such action. Therefore, legal title over the mineral interests remained with the four devisees under the will from the date of the Decedent's death in 2000 through the conveyances to Atomic and Incline in 2017. Because the probate estate had long been closed and the personal representative's authority to act on behalf of the Estate terminated, the devisees had full authority to convey legal title of the mineral interests they inherited from Decedent, under the will and by operation of law, to Atomic and Incline in 2017. *Collins*, 943 P.2d at 23.

Atomic and Incline, and not the Estate or devisees, possessed full legal title and interest in the minerals on December 22, 2017, when [REDACTED] filed the motion to reopen the estate. Simply stated, there was no proper administrative purpose for reopening the estate because neither the estate nor devisees had any ownership interest in the minerals on December 22, 2017, and distribution of the mineral interests was the sole reason listed in the petition for reopening the estate. The issuance of the personal representative's deed by [REDACTED] to Wolfhawk on January 18, 2018 did not invalidate the prior transfers by the devisees to Atomic and Incline. *Collins, id.* The mineral deed signed by [REDACTED] purporting to transfer the mineral interests to Wolfhawk, which were no longer owned by the estate or devisees, is null and void.

Although not germane to the Court's determination that Atomic and Incline own these mineral rights and for that reason the personal representative's deed purporting to convey the mineral rights to Wolfhawk is null and void, there are other questions that this Court wishes to address with [REDACTED] related to his conduct as fiduciary of the estate. First, [REDACTED] failed to include any information about the conveyances made by the devisees to Atomic and Incline in the petition he filed to reopen the estate. Second, in the petition to reopen the estate, he represented that the mineral interests would be distributed to the devisees in the percentages listed under the will, yet the Court has subsequently learned that he attempted to convey through the personal representative's deed the entirety of the Decedent's mineral interests to

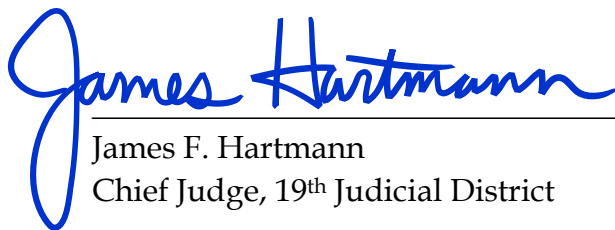
Wolfhawk, apparently without any conveyance to the devisees. This is contrary to what he told the Court he intended to do in the petition to reopen the estate.

III. CONCLUSIONS AND ORDER

1. The devisees under the Decedent's will – [REDACTED] – acquired legal title to the Decedent's mineral interests on the date of her passing, September 5, 2000.
2. The devisees were never divested of their legal title to the mineral interests by the personal representative during the initial administration of the estate, and therefore, the devisees possessed legal title to the mineral interests at the time they conveyed the mineral interests to Atomic and Incline in 2017.
3. Neither the Decedent's estate nor the devisees retained any legal title or interest in the mineral rights on December 22, 2017, when [REDACTED] filed the petition to reopen the estate and he was reappointed as personal representative.
4. The personal representative's deed attempting to convey the mineral interests to Wolfhawk, executed on January 18, 2018, is null and void.
5. The Court orders [REDACTED] to appear in person before the Court on February 13, 2019 at 9:00 a.m., to address the conduct of [REDACTED], as described in the previous section of this order. See C.R.S. § 15-10-504(2)(f).

Dated: January 24, 2019.

BY THE COURT


James F. Hartmann
Chief Judge, 19th Judicial District