COLORADO COURT OF APPEALS

DATE FILED: November 19, 2020
CASE NUMBER: 2019CA1441

Court of Appeals No. 19CA1441
Lincoln County District Court No. 17CV30018
Honorable Gary M. Kramer, Judge

John Craig, III, as trustee of the John Foster Craig III Living Trust and Craig Family Trust; Duane P. Aranci, as trustee of the Duane P. Aranci Revocable Trust; Conrad B. Schafer; Theodore L. Lyons; William J. Lyons; Mary L. Lyons; Almeda Palmer; Stanbert Clay; Alice Clay; Steven Clay; Sylvia Vick; Virgil Peterson; Joie A. Poss; Joella Winterberg; Cindy Rogers, on behalf of the Estate of Richard Winterberg; Elaine Trujillo; John Forristall, Forristall Ranch Inc., F & E Farms LLC; Collie Land LP; Withers Land Company; Steven Miller; Rhonda Miller; Faye D. Miller, individually and as trustee of the Donnie Miller Family Trust; and PRCC Resources LLC,

Plaintiffs-Appellants,

v.

Anadarko E & P Onshore LLC; Anadarko Land Corporation; and all unknown persons who claim any interest in the subject matter of this action,

Defendants-Appellees.

JUDGMENT AFFIRMED

Division II
Opinion by JUDGE GOMEZ
Román and Fox, JJ., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(e)
Announced November 19, 2020

Astrella Law P.C, Lance Astrella, Denver, Colorado; Hamre, Rodriguez, Ostrander & Dingess, P.C., Donald M. Ostrander, Steven Louis-Prescott, Denver, Colorado; Connelly Law, LLC, Sean Connelly, Denver, Colorado, for Plaintiffs-Appellants

Davis Graham & Stubbs LLP, Jonathan W. Rauchway, Kyler Burgi, Denver, Colorado, for Defendants-Appellees

¶ 1 In this unique case, we review the trial court's interpretation of mineral reservation clauses from century-old deeds to determine who owns the oil underlying eleven parcels of land in Lincoln County: Anadarko Land Corporation (Anadarko), the successor to subsurface mineral estates formerly owned by the original grantor, Union Pacific Railroad Company (Union Pacific); or the plaintiff landowners, the successors of the original grantees.

¶ 2 Union Pacific sold the eleven land parcels, comprising several hundred acres, to the original grantees around the turn of the twentieth century through contracts that reserved "all coal and other minerals" to itself. But, in an era predating copy machines, the county clerk and recorder recorded the deeds by copying the language of the original deeds onto pre-printed forms that included a boilerplate reservation of "all oil, coal and other minerals." In order to conform those forms to the originals, the clerk struck through the word "oil" so that the reservation language in the recorded deeds reads "all ~~oil,~~ coal and other minerals."

¶ 3 This case turns on the interpretation of those strikethroughs. The landowners assert that the strikethroughs unambiguously signify an intent not to reserve any oil rights but to convey such

rights to the grantees. Anadarko asserts that the strikethroughs are ambiguous and that the parties' intent, gleaned from other evidence of the transactions, was to reserve the oil rights for Union Pacific. After a bench trial, the trial court found in favor of Anadarko. We affirm.

I. Factual Background

¶ 4 In the midst of the Civil War, Congress created Union Pacific to facilitate westward expansion through railroad construction and operation. Congress funded Union Pacific's construction of a railroad from Nebraska to California through land grants, granting Union Pacific millions of acres of land on either side of the railroad track that it could sell to finance its construction. The eleven parcels at issue were part of that land grant.

¶ 5 Union Pacific sold the parcels in the early 1900s. Each sale followed the same process. The sales started with a Union Pacific representative and a buyer signing a contract using the same preprinted form with spaces to add the date, the buyer's name, the legal description of the land, and the price and payment schedule. The original parties executed the contracts between 1900 and January 1902. They were installment contracts, whereby the buyer

would make payments annually over a period of years, the buyer would return the contract to Union Pacific with the last payment, and then, "subject . . . to the exceptions, reservations, and conditions below written," Union Pacific would issue a deed to the buyer or the buyer's assignee.

¶ 6 Those reservations included a term in each contract reserving to Union Pacific "[a]ll coal and other minerals within or underlying said lands." None of the contracts used the word "oil" or showed any strikethrough or other alteration of the reservation language. Each provided that "[t]he exceptions, reservations, covenants, and conditions hereinabove written shall each be written into the conveyance of said premises, which may hereafter be made, and shall run with the land." None of the available documents from the original parties — including letters transmitting the final payments, assignments of interests from some of the buyers to third parties prior to issuance of the deeds, and "contract cards" Union Pacific maintained summarizing each contract — suggested the parties ever renegotiated or modified the mineral reservations.

¶ 7 Once the parties completed performance of the contracts, the buyers (or their assignees) were responsible for recording the deeds

they received from Union Pacific. The buyers took the deeds to the Lincoln County Clerk and Recorder. But the clerk didn't record the original deeds, and those originals have since been lost to history. Instead, the clerk copied the language of the original deeds onto pre-printed form deeds that were specific to Union Pacific (since it sold so much land) and maintained in a dedicated book. The clerk altered the forms to match the originals as closely as possible. If the original included words not on the pre-printed form, the clerk wrote or typed those words onto the form. Conversely, if the form included words that didn't appear in the original, the clerk struck through those words to make the form track the original.

¶ 8 The mineral reservation in all the recorded deeds is identical. Because the deeds were not recorded until after 1902, the form the clerk used included newer boilerplate language Union Pacific had added following the 1901 discovery of oil in Colorado, reflecting a reservation of "all oil, coal and other minerals" in place of the former "all coal and other minerals." But because the original deeds presented to the clerk didn't include the word "oil," the clerk struck that word on the form deeds, so that the reservation in the recorded

deeds reads "all ~~oil,~~ coal and other minerals." The original parties didn't sign the recorded deeds.

¶ 9 Union Pacific also created a set of deeds for each sale and retained those deed copies for all but one of the parcels at issue. In nine of the copies, the reservation reads (without strikethroughs or references to oil) "all coal and other minerals." In one, it reads "all oil, coal and other minerals" but the word "oil" is, in the words of the trial court, "blacked out — not simply crossed out as in the deeds at issue, but completely overdrawn."

II. Procedural History

¶ 10 The landowners filed this action to quiet title, alleging that they, not Anadarko as the successor to Union Pacific, own the rights to oil under their lands. The trial court denied both sides' dispositive motions, concluding that extrinsic evidence would assist it in determining whether the deeds are ambiguous and, if so, ascertaining the original parties' intent. The case proceeded to a three-day trial to the court, during which the court heard testimony from three expert witnesses and admitted dozens of exhibits, including the recorded deeds, Union Pacific's deed copies, the signed contracts, and numerous other documents.

¶ 11 After trial, the court found for Anadarko in a highly detailed and thorough written order. The court found the recorded deeds are ambiguous. It therefore construed the deeds, using extrinsic evidence, to ascertain the intent of the original parties. Ultimately, it found that "the parties intended Union Pacific to reserve to itself all 'coal and other minerals' underlying the real property at issue" and that "[b]ecause the reservation of 'coal and other minerals' includes the reservation of oil, . . . the parties intended Union Pacific to reserve oil as well." Based on these findings, the court concluded Anadarko presently owns the rights to the oil beneath the landowners' land.

III. Analysis

¶ 12 The landowners contend the trial court erred in three ways: (1) by deeming the recorded deeds ambiguous notwithstanding the strikethrough of "oil," which the landowners interpret as unambiguously excluding oil from the reservations; (2) by making various errors in weighing the extrinsic evidence to interpret the recorded deeds; and (3) by failing to adhere to the plain language of the recorded deeds, as required by the Recording Act, section 38-

35-109, C.R.S. 2020, and the merger doctrine. We address each argument in turn.

A. Ambiguity of the Recorded Deeds

¶ 13 The landowners first challenge the trial court's determination that the recorded deeds are ambiguous. The crux of their argument is that the "oil" strikethroughs in the deeds unambiguously exclude oil from Union Pacific's reservations. We disagree.

¶ 14 The interpretation of deeds and the determination of whether deeds are ambiguous are questions of law that we review de novo. *Owens v. Tergeson*, 2015 COA 164, ¶ 17.

¶ 15 We generally construe deeds in accordance with the rules of construction of written instruments. *Id.* at ¶ 15. Our primary purpose in construing a deed is to ascertain the parties' intent. *Morales v. CAMB*, 160 P.3d 373, 375 (Colo. App. 2007). If a deed is unambiguous, it must be enforced as written. *Owens*, ¶ 15. In determining whether a deed is ambiguous, we "examine the instrument's language and construe it in harmony with the plain and generally accepted meaning of the words employed." *Id.* at ¶ 16 (quoting *Allen v. Reed*, 155 P.3d 443, 445 (Colo. App. 2006)). "An ambiguity is an uncertainty of the meaning of language used in a

written instrument, including a deed." *Hudgeons v. Tenneco Oil Co.*, 796 P.2d 21, 22 (Colo. App. 1990). A written instrument is ambiguous if it is fairly susceptible of more than one meaning. *Bledsoe Land Co. LLLP v. Forest Oil Corp.*, 277 P.3d 838, 843 (Colo. App. 2011). But the fact that the parties offer different meanings doesn't by itself create ambiguity. *Owens*, ¶ 16.

¶ 16 Courts need not "apply a rigid 'four corners' rule" in interpreting a deed. *E. Ridge of Fort Collins, LLC v. Larimer & Weld Irrigation Co.*, 109 P.3d 969, 974 (Colo. 2005) (quoting *Lazy Dog Ranch v. Telluray Ranch Corp.*, 965 P.2d 1229, 1235 (Colo. 1998)). Instead, courts may conditionally admit and consider extrinsic evidence to determine whether the deed is ambiguous. *See id.*; *see also Moeller v. Ferrari Energy, LLC*, 2020 COA 113, ¶ 15 ("[E]xtrinsic evidence may be used to determine, as a threshold matter, whether [a] deed is ambiguous."). "The fact that extrinsic evidence may reveal ambiguities in the [instrument] is especially true when construing an ancient document." *E. Ridge*, 109 P.3d at 974. Courts must be mindful, however, that "[a]llowing the introduction of extrinsic evidence many decades after the deed conveyances . . . invites uncertainty and litigation," particularly when "necessary

evidence has long since disappeared or sheds no real light on the parties' individual intentions." *McCormick v. Union Pac. Res. Co.*, 14 P.3d 346, 353 (Colo. 2000).

¶ 17 We agree with the trial court that the recorded deeds are ambiguous. The strikethroughs of "oil" are fairly susceptible to more than one meaning. On the one hand, they could be intended to signify that oil was expressly excluded from the reservations; on the other hand, they could be intended to erase any specific reference to oil and just broadly reserve "all other minerals."

¶ 18 For their part, the landowners contend that a deed that expressly strikes through a term that otherwise might fall within a broader catch-all category unambiguously excludes the stricken term. Essentially, they argue that a reservation clause reserving "all ~~oil,~~ coal and other minerals" is the equivalent of language reserving "all coal and other minerals except for oil." In support of this argument, they point to *Estate of Schumacher*, 253 P.3d 1280 (Colo. App. 2011).

¶ 19 But *Schumacher* doesn't support the landowners' position. In that case, a division of this court held that a testator can cancel part of a will "by drawing lines through one or more words of the

will." *Id.* at 1283 (citations omitted). The division ultimately upheld the trial court's finding that the testator performed a "revocatory act" when he crossed out two of his cousins' names in his will. *Id.* at 1282, 1286. In reaching that finding, the trial court had considered, among other things, testimony by a handwriting expert and testimony from the testator's lawyer concerning the testator's intent to remove his cousins from his will. *Id.* at 1281-82.

¶ 20 Thus, while the division in *Schumacher* affirmed the finding that the testator had revoked part of his will by striking through it, that finding depended on extrinsic evidence demonstrating who made the strikethrough and what his intent was in doing so.

¶ 21 Indeed, in another case involving strikethroughs, a division of this court agreed that a contract was ambiguous — and that the trial court properly admitted parol evidence to aid the jury in interpreting it — when it was unclear who had struck some of the contract language or why. *Hildebrand v. New Vista Homes II, LLC*, 252 P.3d 1159, 1165 (Colo. App. 2010). As the division explained, "where . . . the face of the contract shows a change, the terms may be proven by evidence outside of the document." *Id.*

¶ 22 Here, too, the strikethroughs created an ambiguity on the face of the written instruments. And, unlike in *Schumacher*, the parties stipulated that it was a third party who had crossed out a part of the instruments. In addition, the recorded deeds were not the original deeds and were not signed by the original parties. These facts raised questions about the intent behind the strikethroughs, rendering the recorded deeds ambiguous.

B. Interpretation of the Deeds

¶ 23 The landowners also argue that the trial court erred in its application of the extrinsic evidence to interpret the recorded deeds. In particular, they take issue with the trial court (1) failing to strictly construe the reservation clauses; (2) distinguishing between erasures and strikethroughs; and (3) disregarding evidence about Union Pacific's post-1902 form deeds. We discern no error.

¶ 24 Because the deeds are ambiguous, their meaning was a question of fact to be determined like any other disputed factual issue. *See E. Ridge*, 109 P.3d at 974. Also, because of the ambiguity, it was appropriate for the trial court to consider extrinsic evidence in determining the original parties' intent. *See Moeller*, ¶ 15.

¶ 25 We review a trial court's factual findings for clear error but review any underlying questions of law de novo. *Perfect Place, LLC v. Semler*, 2018 CO 74, ¶ 39. Findings of fact are clearly erroneous only if there is nothing in the record to support them. *Sos v. Roaring Fork Transp. Auth.*, 2017 COA 142, ¶ 22.

¶ 26 Here, the trial court's detailed factual findings are supported by abundant evidence, including, among other things,

- the written contracts, which were the only documents signed by the original parties and which reserved "all coal and other minerals" without any strikethroughs or references to oil;
- Union Pacific's deed copies, which the trial court found were intended to serve as "duplicates" of the original deeds, and in which all but one of the copies reserved "all coal and other minerals" without any strikethroughs or references to oil, and the other used a different preprinted form that included the word "oil" but had it blacked out;

- the absence of evidence in any of the other documents from the original parties suggesting they had renegotiated or modified the reservation clauses;
- a close comparison of the subject deeds and other deeds not at issue appearing in the same book of Union Pacific deeds, all indicating that the clerk added or struck words on the form deeds to make them conform to the words in the originals; and
- settled Colorado law providing that a deed reservation for "other minerals" reserves oil. *McCormick*, 14 P.3d at 354.

¶ 27 The landowners present three arguments challenging the trial court's weighing of this evidence. We address each in turn.

1. Strict Construction of Reservation Clauses

¶ 28 The landowners argue that the trial court failed to apply the canon requiring reservations to be strictly construed against the grantor, urging that "[n]o construction of these deeds, certainly not a 'strict' one, can bring the stricken '~~oil~~' within the reservation." Relatedly, they argue the trial court found merely a *lack of evidence* that the original parties intended to convey and receive oil, rather than finding — as necessary to overcome the strict construction of

the reservation — that the parties *expressly intended* for Union Pacific to reserve oil. We disagree with both arguments.

¶ 29 As to the first, while it's true that we generally construe reservations more strictly than grants and construe any ambiguities in a reservation against the grantor, *see Keith v. Kinney*, 140 P.3d 141, 146 (Colo. App. 2005), we don't rigidly apply this canon at the expense of all other rules of construction. Courts in our state have consistently looked to the parties' intent as the primary means of resolving ambiguity. *Moland v. Indus. Claim Appeals Office*, 111 P.3d 507, 511 (Colo. App. 2004). Only if the parties' intent cannot be inferred from the plain language of an instrument (other than an insurance contract) or through parol or extrinsic evidence do courts turn, as a last resort, to the principle of construing ambiguous language against one of the parties. *Id.*; *see also Moeller*, ¶ 15 (expressing, with regard to construction of reservation language in a deed, that "[w]hen an ambiguity persists despite the consideration of extrinsic evidence, the ambiguity is resolved in favor of the grantee"); *Keith*, 140 P.3d at 147-51 (affirming the trial court's resolution of ambiguous reservation language in a deed by assessing extrinsic evidence of the parties' intent rather than

construing the deed against the grantor). Here, because the trial court found considerable evidence demonstrating the parties' intent, it had no need to rely on this principle.

¶ 30 As to the second argument, the trial court found that "the parties intended Union Pacific to reserve to itself all 'coal and other minerals' underlying the real property at issue." It also recognized that "[b]ecause the reservation of 'coal and other minerals' includes the reservation of oil, . . . the parties intended Union Pacific to reserve oil as well." These findings are sufficient to support the judgment.

¶ 31 Elsewhere in its decision, the trial court cited *McCormick*, which concluded, in a dispute concerning several Union Pacific deeds dating from 1906 to 1909, that a reservation of "other minerals" includes oil. *See* 14 P.3d at 353-54. The plaintiffs in *McCormick* had argued, similar to the landowners' argument in this case, that oil couldn't have been included in the reservation because there was no indication the parties had contemplated it at the time (since oil production wasn't occurring in the state then). *Id.* at 348. Nonetheless, the supreme court held, based on its "study of Colorado precedent, custom, usage, and learned

commentary thereon," that the reservation for "other minerals" included oil as a matter of law. *Id.* at 354.

¶ 32 That holding applies equally here and is unaffected by the fact that the clerk created an ambiguity in the recorded deeds by striking through language in form deeds rather than recording the original deeds. The trial court found the strikethroughs were intended to leave the deeds as if they omitted the word "oil" and reserved "all coal and other minerals." And the meaning of "other minerals" in those deeds, recorded after 1902 based on contracts dating from 1900 to 1902, must be the same as it was for the deeds in *McCormick* executed later that same decade. *See id.* at 353-54.

2. Differentiation Between Erasures and Strikethroughs

¶ 33 The landowners take issue with the trial court's reasoning that what the clerk intended in marking through "oil" in the deeds was to "erase" that word (in a time before white-out was available) rather than to "strike" it from the deeds. They argue that there is no legal distinction between an erasure and a strikethrough, pointing to a case expressing that a testator can cancel words in a will not only "by drawing the pen through the words" but also "by any erasure

which shall be partial or complete." *In re Estate of Glass*, 14 Colo. App. 377, 383, 60 P. 186, 188 (1900).

¶ 34 But the issue here isn't whether the clerk's markings on the deeds should be deemed erasures or strikethroughs. It's what the intent was behind those marks. Irrespective of whether one might call the marks "erasures," "strikethroughs," or something else altogether, the only relevant considerations are that (1) the trial court found the intent was to treat the deeds as if "oil" didn't appear at all and the reservations listed only "all coal and other minerals" and (2) the evidence supports this finding.

3. Consideration of Post-1902 Form Deeds

¶ 35 The landowners argue the trial court's factual findings were clearly erroneous because they failed to account for the form language Union Pacific used in other deeds issued around the same time. They point out that in early 1902, following the discovery of oil in Colorado, Union Pacific modified its form deeds to include the word "oil," and that the subject deeds were recorded after 1902 but struck through the word "oil." The apparent suggestion is that if Union Pacific had intended to retain oil rights it would've included

its updated language in the deeds, rather than using older forms without the word "oil" or allowing "oil" to be struck.

¶ 36 The simple explanation, however, is that the original parties executed their contracts between 1900 and January 1902 — before Union Pacific modified its contracts and deeds to add a reference to oil. Each of those contracts required that "[t]he exceptions, reservations, covenants, and conditions" in the contract "shall each be written into" the deed issued years later, upon receipt of the final installment payment. For that reason, although the deeds weren't issued until after 1902, Union Pacific used its pre-1902 forms to correspond to the pre-1902 contracts (except, apparently, in one of the deeds, in which Union Pacific's deed copy reflects the use of a later form with the word "oil" blacked out).

¶ 37 Also, more generally, the supreme court held in *McCormick* that the different iterations of Union Pacific's deeds, whether reserving "all coal and other minerals" or "all oil, coal and other minerals," all reserved oil as a matter of law. 14 P.3d at 348, 354. The trial court didn't clearly err in holding the same here.

C. Application of the Recording Act and Merger Doctrine

¶ 38 Finally, the landowners contend that the trial court violated the Recording Act and the merger doctrine by attempting to reconstruct the original deeds rather than interpreting and applying the plain language of the recorded deeds. Again, we disagree.

¶ 39 As indicated previously, we review de novo the interpretation of a deed and the determination of whether that deed is ambiguous. *Moeller*, ¶ 13. We also review de novo the meaning and effect of statutory provisions. *Ryan Ranch Cmty. Ass'n v. Kelley*, 2016 CO 65, ¶ 25.

1. Recording Act

¶ 40 We agree that the landowners adequately preserved their arguments concerning the Recording Act. This includes their argument that the recorded deeds were either acknowledged or deemed acknowledged under section 38-35-106, C.R.S. 2020 — an issue that arose only when the trial court issued its final decision reasoning that the Recording Act didn't apply because the deeds were unacknowledged. *See Rinker v. Colina-Lee*, 2019 COA 45, ¶ 26 ("[W]here . . . the trial court rules sua sponte on an issue, the

merits of its ruling are subject to review on appeal, whether timely objections were made or not.").

¶ 41 We also agree that, regardless of whether the original parties ever acknowledged the recorded deeds, those deeds are deemed to have been properly acknowledged by operation of law. *See* § 38-35-106(2) ("Any unacknowledged or defectively acknowledged instrument which has remained of record for a period of ten years in such office shall be deemed to have been properly acknowledged. This section shall apply to all recorded instruments.").

¶ 42 But we disagree that the trial court's decision violated the Recording Act, which protects persons holding rights under a recorded instrument from claims asserted based on unrecorded instruments or documents. § 38-35-109(1). And we disagree that the court somehow modified or ignored the recorded, acknowledged deeds by using extrinsic evidence to ascertain their meaning. In considering the contracts, Union Pacific's deed copies, and the other evidence presented at trial, the trial court wasn't attempting to "reconstruct" the original deeds so much as it was endeavoring to interpret the ambiguous strikethroughs in the recorded deeds.

¶ 43 The landowners' argument presupposes that the strikethroughs unambiguously signified that the deeds did not reserve an interest in oil. But, as we have explained, those strikethroughs were ambiguous. Therefore, it was appropriate for the trial court to apply extrinsic evidence in ascertaining the parties' intent and the meaning and effect of the recorded deeds.

¶ 44 Nor does the trial court's decision undermine the Recording Act's purpose of "render[ing] titles to real property and every interest therein more secure and marketable." § 38-34-101, C.R.S. 2020; *see also Hicks v. Londre*, 125 P.3d 452, 455 (Colo. 2005). The court merely recognized, correctly, that where deeds are ambiguous courts may consider extrinsic evidence to interpret them. *See Moeller*, ¶ 15.

2. Merger Doctrine

¶ 45 We also disagree that the trial court's decision violated the merger doctrine. Under this doctrine, "a deed delivered and accepted as complete performance of a contract for the sale of land merges all prior negotiations and agreements into the deed." *Colo. Land & Res., Inc. v. Credithrift of Am., Inc.*, 778 P.2d 320, 322 (Colo. App. 1989). Thus, as the landowners point out, a deed is

determinative of parties' rights, even if it varies from the terms of their contract. *See Reed v. Dudley*, 35 Colo. App. 420, 422, 533 P.2d 507, 508 (1975).

¶ 46 The landowners argue that this doctrine precluded the trial court from using evidence of the parties' contracts to vary the terms of the recorded deeds. But again, their argument rests on the mistaken assumption that the deeds unambiguously did not reserve an interest in oil. That is not the case. Because the strikethroughs rendered the recorded deeds ambiguous, it was proper for the trial court to consider the contracts and other documents to resolve that ambiguity. *See Moeller*, ¶ 15; *Keith*, 140 P.3d at 147-51; *see also Huston v. Gaffner*, 67 Colo. 377, 381-82, 176 P. 952, 953-54 (1919) (considering the parties' contract in interpreting an ambiguous deed).

IV. Conclusion

¶ 47 The judgment is affirmed.

JUDGE ROMÁN and JUDGE FOX concur.

Court of Appeals

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PAULINE BROCK
CLERK OF THE COURT

NOTICE CONCERNING ISSUANCE OF THE MANDATE

Pursuant to C.A.R. 41(b), the mandate of the Court of Appeals may issue forty-three days after entry of the judgment. In worker's compensation and unemployment insurance cases, the mandate of the Court of Appeals may issue thirty-one days after entry of the judgment. Pursuant to C.A.R. 3.4(m), the mandate of the Court of Appeals may issue twenty-nine days after the entry of the judgment in appeals from proceedings in dependency or neglect.

Filing of a Petition for Rehearing, within the time permitted by C.A.R. 40, will stay the mandate until the court has ruled on the petition. Filing a Petition for Writ of Certiorari with the Supreme Court, within the time permitted by C.A.R. 52(b), will also stay the mandate until the Supreme Court has ruled on the Petition.

BY THE COURT: Steven L. Bernard
Chief Judge

DATED: March 5, 2020

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