



WHAT DILIGENCE IS DUE?

New Mexico Court of Appeals Rules 1948 Quiet Title Action is Subject to Collateral Attack for Failure to Undertake a Good Faith Effort to Locate Mailing Address of Severed Mineral Owners

By: [Clinton M. Goos](#)

On October 16, 2014, the New Mexico Court of Appeals issued its opinion overturning a district court ruling of summary judgment in the matter of *T.H. McElvain Oil & Gas Limited Partnership, et al. v. Benson-Montin-Greer Drilling Corp., Inc., et al.* [\[view\]](#). The Court of Appeals panel found that a 1948 quiet title action was subject to collateral attack by, and void as against, the heirs of a severed mineral owner, because the Panel found that the plaintiff in the 1948 case failed to attempt in good faith and with reasonable diligence to locate and serve notice upon the severed mineral owner. The ongoing dispute, which the Panel remanded back to district court, involves a 160-acre parcel in San Juan County, New Mexico (the “Parcel”). In 1927, the 2014 Plaintiffs’ predecessors, Judson Wilson and Eva C. Wilson and Mabel G. Wilson (the “Wilsons”) obtained fee title to the Parcel by general warranty deed. In 1928, the Wilsons conveyed the Parcel to David Miller, reserving the oil and gas minerals along with the right to prospect or develop them. After acquiring the property, David Miller quit-claimed his interest in the Parcel to his brother, Thomas Miller, who had paid one-half of the purchase price for the Parcel.

In 1948, Thomas Miller sued to quiet title to the Parcel, and the San Juan County District Court found Thomas Miller to be the fee simple owner of the Parcel. Miller’s petition in the 1948 quiet title action listed Judson Wilson, Eva Wilson, and Mabel Wilson as defendants in the case “if living, or if deceased, by their unknown heirs.” Plaintiff’s petition included a sworn statement by plaintiff’s counsel that plaintiff had been unable to learn or determine the names, places of residence, addresses, and whereabouts of the unknown heirs after diligent search and inquiry. The action also included the San Juan County Sheriff’s return on service indicating the sheriff had diligently searched for the defendants, but was unable to find them in San Juan County and was unable to find their addresses, places of residence, or whereabouts. The plaintiff in the 1948 quiet title action thereafter served the Wilsons (or their unknown heirs) with notice by publication.

Upon examination of the 1948 quiet title action, the appellate panel's order hinged on its finding that publication notice of the 1948 quiet title action was invalid, due to a number of facts. First, the express language in the 1927 deed to the Wilsons listed them as being "of San Diego, California." Furthermore, the Wilsons deed to David Miller in 1928 was notarized in San Diego, California. Moreover, the court found that Mabel Wilson, having been remarried and then known as Mabel Weeber, the only living joint tenant at the time of the 1948 quiet title action, continued to reside at the same address in San Diego in 1948 as where she lived in 1928. The court ultimately overturned summary judgment, ruling that upon inquiry as to the Wilson's address in San Diego, the 1948 quiet title plaintiff may have been able to locate, and personally serve, the Wilsons with notice of the suit. Thus, the court panel found the quiet title ruling was subject to collateral attack and void as against the Wilsons and their heirs.

While the case is pending on remand before the San Juan County District Court, it highlights the need for expert, due diligence work in the acquisition of oil and gas properties. Our experienced team of title and due diligence attorneys has been involved in many successful due diligence projects including the acquisition of multiple oil and gas wells and properties, midstream gathering systems, processing plants and a natural gas-fired, combined cycle cogeneration facility. Regardless of the asset, our attorneys have the experience and expertise to perform expedited due diligence reviews to help our clients determine the title issues and risks associated with the acquisition.

For more information on due diligence reviews, please contact [Clinton Goos](#) or [Elizabeth Odell](#).

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