ADVANCE SHEET HEADNOTE
May 6, 2024

**2024 CO 28**

**No. 22SC805, *Great Northern Properties LLLP v. Extraction Oil and Gas Inc.* – Centerline Presumption – Rule of Property Conveyance – Mineral Rights – Property Dedication**

Over 125 years ago, the supreme court adopted the "centerline presumption," a common law rule of conveyance which provides that a "conveyance of land abutting a highway or street is presumed to carry title to the center of that roadway to the extent that the grantor has any interest therein, unless a contrary intent appears on the face of the conveyance." *Asmussen v. United States*, 2013 CO 54, ¶ 18, 304 P.3d 552, 557 (citing *Olin v. Denver & Rio Grande R.R. Co.*, 53 P. 454, 455 (1898)). In the decades since this court decided *Olin*, it has consistently applied this standard. But the court has never explicitly addressed the question presented here: When the centerline presumption applies, is the conveyance of land abutting a road or highway presumed to carry title to the centerline of both the surface *and* the mineral estates beneath a dedicated right-of-way?

A division of the court of appeals answered this question by holding that, when the centerline presumption applies, the conveyance is presumed to carry title to the centerline of both the surface and mineral estates beneath a dedicated right-of-way to the owners of land abutting that right-of-way. *Great N. Props., LLLP v. Extraction Oil & Gas, Inc.*, 2022 COA 110, ¶ 17, 522 P.3d 228, 234. The division also concluded that, for the centerline presumption to apply, the grantor must divest *all* the property it owns abutting the right-of-way. *Id.* at ¶ 20, 522 P.3d at 235.

Today, the court affirms in part and reverses in part the division's judgment. The court affirms the portion of the judgment holding that, when the centerline presumption applies, a conveyance is presumed to carry title to the centerline of both the surface and mineral estates beneath a dedicated right-of-way to the owner of land abutting that right-of-way. But the court reverses the portion of the judgment concluding that the centerline presumption doesn't apply unless and until the grantor divests itself of all property it owns abutting a subject right-of-way. The court holds that the centerline presumption applies—irrespective of whether the grantor owns other property abutting the right-of-way—if the party claiming ownership to land abutting a dedicated right-of-way establishes that (1) the grantor conveyed ownership of land abutting a right-of-way; (2) the grantor owned the fee—to both the surface estate and the mineral rights—

underlying the right-of-way at the time of conveyance; and (3) no contrary intent appears on the face of the conveyance document.

**The Supreme Court of the State of Colorado**
2 East 14th Avenue • Denver, Colorado 80203

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**2024 CO 28**

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**Supreme Court Case No. 22SC805**
*Certiorari to the Colorado Court of Appeals*
Court of Appeals Case No. 21CA700

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**Petitioner:**

Great Northern Properties, LLLP, a Colorado limited liability partnership,

v.

**Respondents:**

Extraction Oil and Gas, Inc.; Richmark Energy Partners, LLC; and Richmark Royalties, LLC.

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**Judgment Affirmed in Part and Reversed in Part**
*en banc*
May 6, 2024

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**JUSTICE BERKENKOTTER** delivered the Opinion of the Court, in which **CHIEF JUSTICE BOATRIGHT**, **JUSTICE MARQUEZ**, **JUSTICE HOOD, JUSTICE GABRIEL, JUSTICE HART,** and **JUSTICE SAMOUR** joined.

JUSTICE BERKENKOTTER delivered the Opinion of the Court.

¶1 On its face, this case involves the relatively simple question of who owns the mineral rights beneath one block of a dedicated street in Greeley, Colorado. The answer to that question determines whether the landowners or the entity that developed the block back in the 1970s is entitled to receive certain oil and gas royalty payments.

¶2 Beneath the surface of this relatively simple question, however, lies a more technical one: How does a court determine who holds title to the mineral estate under a dedicated right-of-way when a grantor, who has an interest in the mineral rights under that right-of-way, executes a conveyance of the land abutting the right-of-way that is silent as to those rights? To answer this question, we take a deep dive into Colorado property law and examine our jurisprudence concerning the "centerline presumption," a common law rule of conveyance this court first embraced over 125 years ago. *Asmussen v. United States*, 2013 CO 54, ¶ 18, 304 P.3d 552, 557. The rule provides that a "conveyance of land abutting a highway or street is presumed to carry title to the center of that roadway to the extent that the grantor has any interest therein, unless a contrary intent appears on the face of the conveyance." *Id.* at ¶ 15, 304 P.3d at 556 (citing *Olin v. Denver & Rio Grande R.R. Co.*, 53 P. 454, 455 (1898)).

¶3 In the decades since this court decided *Olin*, we have consistently applied this standard. But we have never explicitly addressed the question presented here: When the centerline presumption applies, is the conveyance of land abutting a road or highway presumed to carry title to the centerline of both the surface *and* the mineral estates beneath a dedicated right-of-way?

¶4 The petitioner in this case, Great Northern Properties, LLLP ("GNP"), asserts that the answer to this question is no—in its view, when the presumption applies, the conveyance is presumed to carry title only to the surface estate. The respondents, Extraction Oil and Gas, Inc., Richmark Energy Partners, LLC, and Richmark Royalties, LLC (collectively, "Extraction"), counter that the answer is yes—when the presumption applies, the conveyance is presumed to carry title to both. A division of the court of appeals agreed with Extraction, holding that, when the centerline presumption applies, the conveyance is presumed to carry title to the centerline of both the surface and mineral estates beneath a dedicated right-of-way to the owners of land abutting that right-of-way. *Great N. Props., LLLP v. Extraction Oil & Gas, Inc.*, 2022 COA 110, ¶ 17, 522 P.3d 228, 234.

¶5 But in so holding, the division also concluded that, for the centerline presumption to apply, the grantor must divest *all* the property it owns abutting the right-of-way. *Id.* at ¶ 20, 522 P.3d at 235. Both parties argue, albeit for different reasons, that the division erred by tacking on this "complete divestiture"

requirement as a new, additional condition to determine when the centerline presumption applies.

¶6 After reviewing pertinent, well-settled principles of property conveyance and our centerline presumption jurisprudence, we affirm the division's decision insofar as it concludes that a grantor is presumed under the centerline presumption to intend to convey to the centerline both the surface and mineral estates beneath a dedicated right-of-way to the owners of land abutting that right-of-way. We emphasize, as we have over the past century, that the presumption applies only to the extent the grantor has any interest therein and only if no contrary intent appears on the face of the conveyance document.

¶7 However, we reverse the division's conclusion that the centerline presumption cannot apply to a particular property if a grantor owns any other property anywhere along the entire right-of-way. In adopting this standard, the division added a new condition for determining when this rule of conveyance applies—proof of complete divestiture along the entire right-of-way. We emphasize, in reversing this part of the division's opinion, that the presumption applies to the surface and mineral estates under a dedicated right-of-way if the party claiming ownership to land abutting the right-of-way establishes that (1) the grantor conveyed ownership of land abutting the right-of-way; (2) the grantor owned the fee—to both the surface estate and the mineral rights—underlying the

right-of-way at the time of the conveyance; and (3) no contrary intent appears on the face of the conveyance document.

¶8 Accordingly, we affirm in part and reverse in part the division's judgment.

## I. Facts and Procedural History

¶9 In 1974 and 1975, JRPW Construction Company ("the developer"), a real estate developer, platted and subdivided undeveloped pastureland that it owned in fee simple absolute in Greeley, Colorado into three parcels. To access the individual parcels, the developer dedicated a road ("11th Street") to the city in 1974. By the end of 1975, the developer had sold all three parcels. None of the deeds included any reservation of mineral rights or any other interests. Over time, the three parcels were further subdivided and conveyed to new owners.

¶10 In January 2019—almost forty-five years after the developer dedicated 11th Street and conveyed the parcels—the developer purported to convey to GNP its interest in the mineral estate beneath 11th Street. Shortly thereafter, GNP filed a C.R.C.P. 105 action to quiet title to the mineral estate, naming as defendants the owners of the parcels abutting 11th Street and Extraction, a mineral developer with oil and gas leases from each of the individual parcel owners and GNP. Extraction's leases permit it to drill and produce oil and gas from beneath 11th Street regardless of who owns the mineral estate, so GNP's suit sought, at least in part, to determine to whom Extraction must pay royalties.

¶11 In May 2019, Extraction moved pursuant to C.R.C.P. 56(h) for a determination of a question of law, asking the district court to decide whether the developer's conveyances of the parcels abutting 11th Street in 1974 and 1975 had also conveyed the mineral estate to the centerline of the street. Extraction argued that the centerline presumption applied and, as a result, the developer conveyed "to the purchasers of the abutting parcels" all its interests to the centerline of 11th Street, including the mineral estate. In response, GNP filed a cross-motion agreeing "on the necessity of a determination of law" but maintaining that the centerline presumption didn't apply to mineral rights and that it shouldn't be expanded in this manner.

¶12 The district court agreed with Extraction, concluding that the centerline presumption could be applied to a conveyance of the mineral estate beneath a right-of-way and that the developer therefore could be found to have "conveyed the mineral estate to the centerline of the roadway if the abutting lot owners carr[ied] their burden of [proof]" under *Asmussen*. GNP then moved for summary judgment declaring that GNP owned the mineral estate beneath the street, despite the court's earlier ruling in Extraction's favor. The court denied GNP's motion, concluding that the centerline presumption applied to the developer's earlier conveyances so the lot owners—not the developer—owned the mineral estate beneath 11th Street. This meant that the developer did not own the interests in the

mineral estates it purported to convey to GNP. The court entered final judgment quieting title to the entire mineral estate in favor of the two parcel owners who had participated in the case and who had not disclaimed their interests.[1]

¶13 GNP appealed, contending that the district court erred by determining that the centerline presumption can apply to convey the mineral estate beneath a right-of-way. In a unanimous, published decision, a division of the court of appeals affirmed the district court's determination of law. *Great N. Props.*, ¶ 17, 522 P.3d at 234. The division explained that Colorado law presumes a grantor's intent "to convey along with the property all its appurtenant advantages and rights . . . and that a grantor conveying property by deed intends to convey their entire interest unless a portion of that interest is expressly excepted from the conveyance." *Id.* at ¶ 15, 522 P.3d at 234. "As to mineral interests specifically," the division observed, "'a conveyance of land by general description, without any reservation of a mineral interest, passes title to both the land and the underlying mineral deposits.'" *Id.* at ¶ 16, 522 P.3d at 234 (quoting *O'Brien v. Vill. Land Co.*, 794 P.2d 246, 249 (Colo. 1990)). Based on "these fundamental rules of property conveyance," the division concluded, "[W]hen the centerline presumption

[1] The district court concluded that it could not quiet title in favor of the lot owners who didn't answer or participate in the case. It also noted that several of the named defendants disclaimed any interest in the mineral estate.

applies . . . , it applies to all interests the grantor possesses in the property underlying the right-of-way, including mineral interests." *Id.* at ¶¶ 13, 17, 522 P.3d at 233–34. In so concluding, the division rejected GNP's arguments that (1) the centerline presumption "violates the axiomatic principle that an unambiguous deed conveys only the property specifically described" and (2) a mineral estate beneath a statutorily dedicated right-of-way should not be presumptively transferred with parcels abutting that right-of-way because dedication severs the mineral estate from the right-of-way both horizontally and vertically. *Id.* at ¶¶ 28–29, 522 P.3d at 237.

¶14 From there, the division outlined a test to determine when the centerline presumption applies to a conveyance of land. Interpreting this court's centerline presumption precedent, the division concluded that the presumption applies only if the party claiming ownership to land abutting a right-of-way establishes that (1) the grantor conveyed ownership of land abutting a right-of-way; (2) the grantor owned the fee underlying the right-of-way at the time of conveyance; (3) the grantor conveyed *all* the property it owns abutting the right-of-way; and (4) no contrary intent appeared on the face of the conveyance document. *Id.* at ¶ 24, 522 P.3d at 236. Notably, the third element of the division's test means that the centerline presumption cannot apply if a grantor still owns any property anywhere along the entire right-of-way.

¶15 Applying this test, the division concluded that "the conditions for application of the centerline presumption have been met in this case." *Id.* at ¶ 26, 522 P.3d at 236. According to the division, once the developer "conveyed away the third parcel abutting 11th Street, the last of the conditions was satisfied and the grantees took title to both the mineral estate and whatever interests the grantor retained in the surface estate, to the centerline of the road." *Id.* at ¶ 27, 522 P.3d at 237. Consequently, the division affirmed, in relevant part,[2] the district court's judgment. *Id.* at ¶ 57, 522 P.3d at 242.

¶16 GNP petitioned this court for certiorari review. We granted that petition.[3]

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[2] The division reversed the district court's judgment quieting title to the entire mineral estate in the two non-defaulting defendants, concluding that the court could only quiet title in the mineral interests owned by those defendants. *Great N. Props.*, ¶¶ 56–57, 522 P.3d at 242. The parties don't challenge this portion of the division's judgment.

[3] We granted certiorari to review the following issues:

1. Whether a deed that describes land lying next to a dedicated right-of-way but does not purport to convey any interest in the right-of-way should be presumed to convey the mineral estate underneath the right-of-way.
2. Whether the court of appeals erred in determining that the centerline presumption does not apply if the grantor retains ownership of any property abutting the right-of-way.

## II. Analysis

¶17 This case presents two questions for our consideration. First, when the centerline presumption applies, is the conveyance of land abutting a dedicated right-of-way presumed to carry title to the centerline of both the surface and mineral estates beneath the right-of-way to the owners of the abutting land when the deed conveying the land is silent as to the mineral rights? Second, did the division err by concluding that the centerline presumption cannot apply if a grantor retains ownership of any property abutting the subject right-of-way?

¶18 To answer these questions, we begin by setting forth the standard of review. Then, after reviewing settled principles of property conveyance and our cases addressing the centerline presumption, we hold that a conveyance of land abutting a right-of-way is presumed to carry title to the centerline of the surface estate and the mineral estate below, to the extent the grantor has interests therein, unless a contrary intent appears on the face of the conveyance document. Thereafter, we address—and reject—the division's conclusion that the centerline presumption doesn't apply unless and until a grantor divests itself of *all* the property it owns abutting the subject right-of-way. Instead, we clarify that the centerline presumption applies to mineral interests under a right-of-way if the party claiming ownership to land abutting a right-of-way establishes that (1) the grantor conveyed ownership of land abutting a right-of-way; (2) the grantor

owned the fee—to both the surface estate and the mineral rights—underlying the right-of-way at the time of the conveyance; and (3) no contrary intent appears on the face of the conveyance document.

¶19 Applying these principles, we hold that the centerline presumption applies to the mineral estates at issue in this case.

## A. Standard of Review

¶20 "We review de novo a district court's order deciding a question of law pursuant to Rule 56(h)." *Bill Barrett Corp. v. Lembke*, 2020 CO 73, ¶ 13, 474 P.3d 46, 49; *see also Heights Healthcare Co. v. BCER Eng'g, Inc.*, 2023 COA 44, ¶ 15, 534 P.3d 939, 942. In this context, "[t]he summary judgment standard applies: an order is proper under Rule 56(h) '[i]f there is no genuine issue of any material fact necessary for the determination of the question of law.'" *Coffman v. Williamson*, 2015 CO 35, ¶ 12, 348 P.3d 929, 934 (second alteration in original) (quoting C.R.C.P. 56(h)). "If there is no genuine issue of any material fact necessary for the determination of the question of law, the court may enter an order deciding the question." C.R.C.P. 56(h).

## B. The Centerline Presumption Generally

¶21 This court has long been committed to the centerline presumption as a "general rule." *Asmussen*, ¶ 19, 304 P.3d at 557 (quoting *Olin*, 53 P. at 455). Specifically, we have held that, "'where a grantor conveys a parcel of ground

bounded by a street, his grantee takes title to the center of such street, to the extent that the grantor has any interest therein,' unless a contrary intent appears on the face of the conveyance." *Id.* (quoting *Olin*, 53 P. at 455); *see also Skeritt Inv. Co. v. City of Englewood*, 248 P. 6, 9 (Colo. 1926) ("[W]hen land abuts on a street or highway it is presumed that the grantor intended by his deed thereof to convey to the center of such street or highway."); *Overland Mach. Co. v. Alpenfels*, 69 P. 574, 575 (Colo. 1902) ("[A]s a general rule . . . a conveyance of a lot which borders upon a highway presumptively carries the title to the center of the street, if the grantor owns the land on which the highway is laid out . . . .").

¶22 In these cases, we described the centerline presumption broadly, explaining that, when the rule applies, it presumes the grantor intended to convey title to the center of the subject right-of-way. And as we considered whether to extend the presumption to new contexts, such as to railroad rights-of-way in *Asmussen*, we examined the varied purposes of the centerline presumption in detail. One purpose, we observed, is grounded in "the familiar rule of construction that a grantor will be presumed to intend to convey along with the property all its appurtenant advantages and rights." *Asmussen*, ¶ 19, 304 P.3d at 557; *see also Olin*, 53 P. at 455 ("When there is no reservation in an absolute deed, the most valuable estate passes of which the grantor is seised."). The centerline presumption, we further explained, honors the grantor's probable intent not "to retain ownership

in a narrow strip of land that is of little value to all but the adjacent landowner." *Asmussen*, ¶ 22, 304 P.3d at 558. And we noted cases from other jurisdictions that apply the centerline presumption "as an expression of public policy to avoid 'a prolific source of litigation' arising from 'narrow strips of land distinct in ownership from the adjoining territory.'" *Id.* at ¶ 16, 304 P.3d at 556 (quoting *Cuneo v. Champlin Refin. Co.*, 62 P.2d 82, 87 (Okla. 1936)).

¶23 Bearing these varied purposes in mind, we next consider GNP's argument that the presumption should not apply to the conveyance of a mineral estate under a right-of-way.

### C. The Centerline Presumption as Applied to Conveyance Documents That Are Silent as to the Mineral Estate

¶24 GNP contends that the division erred by "expand[ing] the application of the centerline presumption to mineral estates." It argues that the centerline presumption shouldn't apply to the mineral estate context because it "is a judicially created rule of construction that conflicts with . . . the plain meaning of the text in a deed." And, GNP asserts, advances in technology—specifically, "the advent of horizontal drilling"—have made the mineral rights beneath even narrow strips of land under rights-of-way quite valuable, belying the notion that a grantor's silence constituted an intent not to retain that estate. We are not persuaded.

¶25 GNP's plain meaning argument rests on the notion that silence in a deed cannot be construed to convey an interest. This argument falls short, however, because it disregards well-established caselaw recognizing "that a conveyance of land by general description, without any reservation of a mineral interest, passes title to both the land and the underlying mineral deposits." *O'Brien*, 794 P.2d at 249. To be sure, a grantor can reserve or except a mineral estate by using "clear and distinct wording in the conveyance." *Radke v. Union Pac. R.R. Co.*, 334 P.2d 1077, 1088 (Colo. 1959); *see also Moeller v. Ferrari Energy, LLC*, 2020 COA 113, ¶ 16, 471 P.3d 1258, 1262 ("A conveyance of real property, which is generally defined and designated in the deed's granting clause, passes all title to the land and the underlying mineral deposits, except those interests explicitly held back."). But, if a grantor doesn't expressly indicate an intent to reserve or except the mineral estate, "the ownership of the surface carries with it the ownership of the underlying minerals." *Radke*, 334 P.2d at 1088.

¶26 GNP's plain meaning argument also ignores this court's cases holding that an absolute deed unequivocally conveys the highest estate to the centerline of the road. *Asmussen*, ¶ 19, 304 P.3d at 557; *see also Olin*, 53 P. at 455. Since *Olin*, we've reiterated that a grantor passes its "most valuable estate" to the centerline of a right-of-way if the grantor conveys the land in an absolute deed without reservation or exception. 53 P. at 455. That is, a grantor need not expressly

indicate their intent to convey land abutting a right-of-way to the centerline of that right-of-way—their silence is sufficient. *Compare Marks v. Gaeckle*, 156 N.Y.S.3d 402, 404 (N.Y. App. Div. 2021) ("The centerline presumption can be rebutted, however, by a showing that the grantor intended to limit the grant to the edge of the road . . . ."), *with Overland*, 69 P. at 576–77 (interpreting a grantor's separate description of his interest in a street as an intent to sever and pass that interest as a distinct parcel).

¶27 GNP's argument regarding advances in technology is equally unavailing. According to GNP, horizontal drilling has caused "even a small fraction of an acre" to yield "significant oil and gas royalties." This matters, GNP contends, because the "primary purpose of applying the centerline presumption . . . is to effectuate the probable intent of the grantor" (quoting *Asmussen*, ¶ 22, 304 P.3d at 558). More specifically, it asserts, the centerline presumption assumes that a grantor generally doesn't intend to hold on to a narrow strip of land "that is of little value to all but the adjacent landowner" (quoting *id.*). But now, with advances in horizontal drilling, GNP argues, that assumption is misplaced because the minerals beneath even those narrow strips of land remain valuable to grantors and grantees alike.

¶28 Extraction doesn't dispute some of GNP's claims with respect to recent advances in drilling technology. Instead, it emphasizes that horizontal drilling of

the type that occurs today didn't exist during the only timeframe that matters here: 1974 and 1975, when the developer conveyed the three parcels that abut 11th Street. We agree. It is the value of the mineral interests at the time of the grantor's conveyance that controls, not the claimed value decades later. And, even if the mineral interests were valuable in 1975 and perceived by the developer as such, it could have explicitly reserved its rights in those interests in the conveyance documents—and here, there is no dispute that it did not do so. *See Moeller*, ¶ 16, 471 P.3d at 1262 (acknowledging a grantor's right to hold property back in a deed).

¶29 Plus, as we have already observed, courts apply the centerline presumption for many reasons, including as an expression of public policy to avoid "'a prolific source of litigation' arising from 'narrow strips of land distinct in ownership from the adjoining territory.'" *Asmussen*, ¶ 16, 304 P.3d at 556 (quoting *Cuneo*, 62 P.2d at 87); *see also duPont v. Am. Life Ins. Co.*, 187 A.2d 421, 423 (Del. Ch. 1963) ("[A]s a matter of policy, it is said, courts will require one who claims to have retained in himself 'vexatious' title to such property to have made known his intention in that regard by appropriate language in the deeds."); *Cox v. Freedley*, 33 Pa. 124, 125 (1859) (explaining that the "general rule" is "one of policy and convenience").

¶30 The force of this last rationale is arguably at its apex in a case like this. Were we to carve out a special exception to the centerline presumption here, grantors and their successors-in-interest could emerge en masse to seek disgorgement of oil

and gas royalties obtained by countless landowners over the last century. By explicitly acknowledging that when the centerline presumption applies, the conveyance of land abutting a right-of-way is presumed to carry title to the centerline of both the surface and mineral estates (unless a contrary intent appears on the face of the conveyance), we avoid this result. *Asmussen*, ¶ 16, 304 P.3d at 556.

¶31 Overall, the rationales that we have discussed over the past century for applying the centerline presumption strongly support construing the presumption to include the mineral estate context (where the other conditions are also met). Consequently, we hold that, when the centerline presumption applies, the conveyance of land abutting a road or highway is presumed to carry title to the centerline of "both the surface and the unsevered mineral estate." *Great N. Props.*, ¶ 17, 522 P.3d at 234.

¶32 Having answered this threshold question of law, we turn next to address the parties' challenge to the division's holding regarding *when* the centerline presumption applies.

## D. The Division Erred by Adding a Condition to When the Centerline Presumption Applies

¶33 As noted, both parties argue, albeit for different reasons, that the division erred by adding an additional condition to when the centerline presumption applies to a conveyance of land. We agree.

¶34 The division concluded that the centerline presumption applies if a party claiming ownership to mineral rights under a right-of-way establishes that (1) the grantor conveyed ownership of land abutting the right-of-way; (2) the grantor owned the fee underlying the right-of-way at the time of the conveyance; (3) the grantor conveyed *all* the property they owned abutting the right-of-way; and (4) no contrary intent appeared on the face of the conveyance document. *Id.* at ¶ 24, 522 P.3d at 236. According to the third element of the division's test, the presumption cannot apply if a *grantor* (not the landowner) still has a property interest anywhere along the entire right-of-way.

¶35 The division crafted this test based on its reading of our centerline presumption precedent. *Id.* at ¶ 18, 522 P.3d at 234. Starting with *Asmussen*, the division first recognized that "the centerline presumption applies only when a grantor conveys property abutting a right-of-way." *Id.* at ¶ 19, 522 P.3d at 234. Next, it acknowledged that the presumption "applies only when the grantor owns the land underlying the right-of-way at the time of the conveyance." *Id.* On this point, the division explained that "[t]his is not only a logical limitation on the rule, it is a precondition to applying the presumption." *Id.* (quoting *Asmussen*, ¶ 21, 304 P.3d at 558).

¶36 Later, it noted that "the centerline presumption applies 'unless a contrary intent appears on the face of the conveyance.'" *Id.* at ¶ 22, 522 P.3d at 235 (quoting

*Asmussen*, ¶ 20, 304 P.3d at 557). And, recognizing that the centerline presumption can be rebutted, the division identified ways a grantor could do so, such as by "expressly reserv[ing] and thereby sever[ing] the mineral estate underlying the right-of-way by 'clear and distinct wording in the conveyance' to that effect." *Id.* at ¶ 22, 522 P.3d at 235–36 (quoting *Radke*, 334 P.2d at 1088). Lastly, the division instructed that, "[t]o claim ownership of property to the centerline of a right-of-way under the centerline presumption," the burden is on "the adjacent landowner [to] trace title to the owner of the fee underlying the right-of-way." *Id.* at ¶ 23, 522 P.3d at 236. These fundamental principles—all of which align with this court's previous cases addressing the centerline presumption—are not at issue here.

¶37 The division, however, did not stop there. In addition, it concluded that the centerline presumption "should not apply if the grantor retains ownership of any property abutting the right-of-way." *Id.* at ¶ 20, 522 P.3d at 235. It devised this additional element after reviewing the purpose of the centerline presumption, which, recall, is principally to "effectuate the probable intent of the grantor." *Asmussen*, ¶ 22, 304 P.3d at 558. For the division, part of our explanation in *Asmussen* required as much. There, this court held that "[i]f the grantor owns the fee underlying the right-of-way, it is presumed that the grantor intends to convey it because a grantor generally does not intend to retain ownership in a narrow strip of land *that is of little value to all but the adjacent landowner*." *Id.* (emphasis added).

¶38 Focusing on this italicized language, the division reasoned,

> If the grantor still owns property contiguous to the right-of-way, it cannot be said that the property beneath the right-of-way is only useful (and equally so) to the owners of the adjacent parcels; rather, the land beneath the right-of-way remains beneficial to the grantor. *Cf. Strait v. Savannah Ct. P'ship*, 576 S.W.3d 802, 812 (Tex. App. 2019) (explaining as the reason for the similar "strip-and-gore" rule that "[w]here it appears that a grantor has conveyed all land owned by him adjoining a narrow strip of land that has ceased to be of any benefit or importance to him, the presumption is that the grantor intended to include such strip in such conveyance").

*Great N. Props.*, ¶ 20, 522 P.3d at 235.

¶39 In our view, the division makes too much of this language in *Asmussen* and, in doing so, adds an additional condition this court has never embraced. That additional condition, the parties tell us, is unworkable. It also effectively stymies the applicability of the centerline presumption—as to both surface and mineral estates—unless and until a grantor divests itself of all property it owns abutting a right-of-way. But, in *Asmussen*, we plainly explained that

> the centerline presumption is a common law rule of conveyance that presumes that a grantor who conveyed land abutting a right-of-way intended to convey land to the center of the right-of-way to the extent that the grantor owned the property underlying the right-of-way, and absent a contrary intent on the face of the conveyance.

¶ 34, 304 P.3d at 560–61.

¶40 We didn't include in this language a complete divestiture requirement. That is, we didn't place importance on whether the grantor owned *other* property contiguous to the right-of-way, a circumstance that may well be the case for

ranchers and farmers who own long stretches of property that abut rights-of-way. We instructed, rather, that the party claiming ownership to land bordering a right-of-way need merely show "that his or her title derives from the owner *of the land underlying the right-of-way*." *Id.*, 304 P.3d at 561 (emphasis added). This straightforward requirement accords with the settled principle of property conveyance that the interests that pass by deed don't "depend[] upon the acts and conduct of the respective parties *after obtaining title*." *Overland*, 69 P. at 577 (emphasis added).

¶41 The division's complete divestiture element also conflicts with an important feature of the centerline presumption: avoiding prolific, vexatious litigation. *Asmussen*, ¶ 16, 304 P.3d at 556. This element, if allowed to stand, would force a landowner litigating a case like this to produce evidence of the grantor's entire ownership portfolio anywhere along a right-of-way—no matter how long—and then chain title to every other parcel. We reject this untenable framework and instead emphasize that the centerline presumption applies irrespective of a grantee's ability to survey a grantor's chain of title and prove that the grantor doesn't own other property adjacent to the subject right-of-way. *McCormick v. Union Pac. Res. Co.*, 14 P.3d 346, 353 (Colo. 2000) (recognizing the prudence of avoiding uncertainty and increased litigation in the oil and gas industry).

¶42 For these reasons, we reject the division's adoption of a complete divestiture requirement and reiterate that the centerline presumption applies if the party claiming an interest in mineral rights under a right-of-way establishes that (1) the grantor conveyed ownership of land abutting a right-of-way; (2) the grantor owned the fee—to both the surface estate and the mineral rights—underlying the right-of-way at the time of conveyance; and (3) no contrary intent appears on the face of the conveyance document.

### E. Statutory Dedication Doesn't Sever the Mineral Estate

¶43 GNP finally argues that the mineral estate under 11th Street was horizontally severed from the surrounding property when the developer statutorily dedicated the street to the City of Greeley in 1974 and that it was vertically severed by the developer's subsequent conveyance of the property next to the right-of-way. In GNP's view, the developer retained its interest in the mineral estate under the street until it sold that interest to GNP in 2019. We aren't convinced.

¶44 We turn first to consider what property interests are created, terminated, or transferred by a dedication. Dedication is "the appropriation of an interest in land by the owner of such interest to public use." *Turnbaugh v. Chapman*, 68 P.3d 570, 572 (Colo. App. 2003) (citing *Hand v. Rhodes*, 245 P.2d 292 (Colo. 1952)). In other words, a dedication occurs when a landowner—i.e., a dedicator—appropriates

land to a government entity for public use. There are two types of dedications: common law dedication and statutory dedication. *Fortner v. Eldorado Springs Resort Co.*, 230 P. 386, 388 (Colo. 1924).

¶45 A common law dedication occurs if (1) the dedicator unequivocally intends to dedicate the property and (2) the government entity accepts the dedication. *Turnbaugh*, 68 P.3d at 572. Under a common law dedication, the government entity receives only an easement to use the land for public purposes. *Id.* at 573. As a result, the mineral and surface estates don't sever, and the dedicator retains title in those estates. *City of Denver v. Clements*, 3 Colo. 472, 480–81 (1877).

¶46 A statutory dedication occurs if the dedicator appropriates land to a city or a town. *Turnbaugh*, 68 P.3d at 572. Under a statutory dedication, the city or town has a vested "fee title" in "[a]ll streets . . . designated or described as for public use." § 31-23-107, C.R.S. (2023); *see also Martini v. Smith*, 42 P.3d 629, 633 (Colo. 2002). Long ago, we clarified that the General Assembly used the term "fee title" in this statute "not according to its technical legal meaning, but as vesting in the city a complete, perpetual, and continuous title to the space designated as streets, so long as it used them for the purpose intended." *City of Leadville v. Bohn Mining Co.*, 86 P. 1038, 1040 (Colo. 1906); *cf. Amada Fam. Ltd. P'ship v. Pomeroy*, 2021 COA 73, ¶ 30, 494 P.3d 633, 642 (describing "fee simple title" as "indefeasibly vest[ing] the entire estate in the grantee"). More specifically, the city or town's interest in

the statutorily dedicated property is limited to that which "is reasonably necessary to enable [the city or town] to utilize the surface and so much of the ground underneath as might be required for laying gas pipes, building sewers, and other municipal purposes." *City of Leadville*, 86 P. at 1040.

¶47 With this background in mind, we turn to GNP's contention that a statutory dedication effects a horizontal severance of the mineral estate under a right-of-way from the property abutting that right-of-way. GNP's only support for this argument is a Wyoming Supreme Court decision in which the divided court declined to apply Wyoming's version of the centerline presumption doctrine to convey the mineral estate underlying a statutorily dedicated street. *Town of Moorcroft v. Lang*, 779 P.2d 1180, 1182–83 (Wyo. 1989).

¶48 In *Town of Moorcroft*, the majority concluded that the presumption did not apply "to a case involving statutory dedication." *Id.* The majority explained that, unlike common law dedication, which results only in an easement across the surface estate, "a statutory dedication [in Wyoming] involves a severance of the surface and mineral estates of the street area." *Id.* at 1185. In the majority's view, "[t]he act of [statutory] dedication produces three separate interests," that is, (1) "an estate in fee simple determinable in the surface estate conveyed to the public authority"; (2) the possibility of reverter in that surface estate to the dedicator; and (3) "a mineral estate in fee lying below the street, and created by

horizontal severance upon dedication." *Id.* at 1184. Consequently, the majority reasoned that the mineral estate becomes a separate estate not presumptively conveyed via the centerline presumption. *Id.*

¶49 The dissent rejected the majority's conclusion that a statutory dedication severs the mineral estate. *Id.* at 1186 (Cardine, C.J., dissenting). According to the dissent, a statutory dedication "results in a severance of only the width, depth and length of the property required for the street." *Id.* at 1187. The dissent continued, the grantor "still retains the entire remaining estate, including the complete and undivided mineral estate underlying his property." *Id.* Accordingly, in the dissent's view, when the grantor later conveys the property, but doesn't expressly reserve or except the mineral estate, the "conveyance is presumed to transfer the entire estate owned by the grantor," including the mineral estate. *Id.* at 1188.

¶50 Like the dissent and the division below, we aren't persuaded by the *Town of Moorcroft* majority's reasoning. *Great N. Props.*, ¶ 48, 522 P.3d at 240–41. We see no reason to conclude that a statutory dedication causes a horizontal severance of a mineral estate. There is nothing in Colorado law that suggests that statutory dedication in and of itself horizontally severs a mineral estate from the surface estate. In contrast, it appears that its reading of Wyoming's unique dedication statute caused the majority in *Town of Moorcroft* to rule as it did.

¶51 This court's long-held view with respect to the reservation of mineral interests also requires a different result. As noted, "It is well established that a conveyance of land by general description without any reservation of a mineral interest, passes title to both the land and the underlying mineral deposits." *O'Brien*, 794 P.2d at 249. That is, severance of a mineral estate doesn't happen implicitly in Colorado. But that is essentially what GNP asks for here.

¶52 And, finally, recall that, under Colorado law, all that a city or town receives pursuant to a statutory dedication is a *qualified* "fee" in the property and so much of the ground beneath as "might be required for laying gas pipes, building sewers, and other municipal purposes." *City of Leadville*, 86 P. at 1040. The city or town doesn't acquire fee simple ownership of the road parcel or the mineral estate under the road. So long as the road exists, the dedicator or subsequent owner keeps the entire residue adjacent to and below the road as a contiguous estate. And, if the town's need for the road ends, its interest in the road is extinguished and reverts to and is reunified with the entire surrounding parcel of land. *Morrissey v. Achziger*, 364 P.2d 187, 189 (Colo. 1961).

¶53 Thus, the developer's dedication in 1974 didn't sever the mineral estates from the parcels abutting 11th Street. Instead, the developer retained the entire residue adjacent to and below the road as a contiguous estate. And the developer was free to convey that interest to the grantees, just as it did back in 1974 and 1975

by executing an absolute deed. In short, by conveying these interests almost fifty years ago, the developer had no interests left to convey to GNP in 2019. *Olin*, 53 P. at 456.

¶54 For these reasons, we reject GNP's argument that statutory dedication defeats application of the centerline presumption.

## F. The Centerline Presumption Applies Here

¶55 The current owners of the properties abutting 11th Street presented undisputed evidence that

1. The developer conveyed its three parcels—each abutting 11th Street—to the grantees.
2. The developer owned the unified fee (the surface estate and the mineral estate) underlying 11th Street at the time it conveyed by absolute deed the three abutting parcels. The deeds were silent as to the mineral estate.
3. Each deed contains the same language, granting "all of the following described lot [sic] or parcel(s) of land . . . together with . . . all the estate, right, title, interest, claim and demand whatsoever of [the developer]."

¶56 As pertinent here, the conveyance documents don't contain limiting language with respect to the mineral estate. And no other contrary intent with respect to the mineral estate appears on the face of the documents.

¶57 Accordingly, the current owners of the property abutting 11th Street took title to the most valuable estate the developer owned at the time of conveyance, which included both the surface and mineral estates to the centerline of the road.

## III. Conclusion

¶58 In sum, we affirm in part and reverse in part the division's judgment. We affirm the portion of the judgment holding that, when the centerline presumption applies, a conveyance is presumed to carry title to the centerline of both the surface and mineral estates beneath a dedicated right-of-way to the owners of land abutting that right-of-way. But we reverse the portion of the judgment concluding that the centerline presumption doesn't apply unless and until the grantor divests itself of all property it owns abutting a subject right-of-way. We now hold that the centerline presumption applies—irrespective of whether the grantor owns other property abutting the right-of-way—if the party claiming ownership to land abutting a dedicated right-of-way establishes that (1) the grantor conveyed ownership of land abutting a right-of-way; (2) the grantor owned the fee—to both the surface estate and the mineral rights—underlying the right-of-way at the time of conveyance; and (3) no contrary intent appears on the face of the conveyance document.