

**FILED**  
**October 26, 2016**

RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

**Chief Justice Ketchum, concurring:**

I agree that the Circuit Court of McDowell County was correct in finding that the oil and gas lease did not include coalbed methane gas. In arriving at this conclusion the circuit court relied upon extrinsic evidence to determine the parties' intent in a fact-based case-by-case approach adopted in *Energy Development Corporation v. Moss*, 214 W.V. 577, 591 S.E.2d 135 (2003). I would overrule *Moss* and adopt a bright-line rule to resolve this real estate law question.

In real estate law no title will be certain without bright-line rules. Without bright-line rules title abstractors and deed lawyers will be constantly filing declaratory judgment suits seeking a court opinion to clarify the ownership of real property (fee, surface and mineral). Rather than determining the parties' intent from the four corners of the conveying instrument there will be trials to determine the parties' intent from extrinsic and parol evidence.

We have previously recognized that there must be certainty of ownership in real estate law. "This Court's goal in the area of land ownership is to avoid bringing upon the people interminable confusion of land titles; instead, we must endeavor to prevent and eradicate uncertainty of such titles. *Faith United Methodist Church v. Morgan*, 231 W.Va. 423, 745 S.E.2d 461 (2013).