

IN THE CIRCUIT COURT OF DODDRIDGE COUNTY, WEST VIRGINIA

**EARL J. NICHOLSON and
JOYCE A. NICHOLSON,
Plaintiffs,**

Civil Action No.: 20-C-25

v.

**ANTERO RESOURCES CORPORATION,
SEVERIN POA GROUP, LLC, ET AL.,
Defendants.**

DECLARATORY JUDGMENT ORDER

On the 19th day of May, 2022 came John and Joyce Nicholson through counsel Andrew and Roger Cutright as well as in person; came also George Patterson on behalf of JEC Production, Robert R. Jones and Rockwell Resources; came also Frank Trey Simmerman, counsel for the Severin POA Group, LLC; came also Quentin Collie counsel for Antero Resources Corporation; for a hearing on the pending Motions. The Motions have been exhaustively briefed and responded prior to the hearing. On the 8th day of July, 2022 the Court allowed parties an additional twenty (20) days to supplement their written motions with further memoranda in support of their respective positions.

Upon mature consideration thereof, the Court issues the following Declaratory Judgment for reasons hereinafter set forth.

At issue is the interpretation of a provision contained in a May 12, 1902, Deed to Plaintiffs' predecessors in title, conveying 117.55 surface acres, which provides that "the parties of the first [part] [F.W. Severin] also reserve the one sixteenth of all the oil and gas in and under said land." Amended Complaint, ¶ 43, see also Ex. 2, Handwritten 1902 Deed from F.W. Severin to L.D. Nicholson.

Construction of the deed on its date of execution, April 18, 1902, supports the conclusion that the reservation of 1/16th of the oil and gas operates to reserve 1/2 of the oil and gas estate under West Virginia law in 1902 and the early 1900s. The law is clear in West Virginia that the reservation of 1/2 of the oil and gas royalty, i.e. a 1/16, as to a particular tract of real estate constitutes a valid reservation of a 1/2 interest in the oil and gas in place. *United Carbon Co. v. Presley*, 126 W.Va. 639, 29 S.E.2d 466 (1944). Consistent with the rationale of *United Carbon Co*, *supra*, a reservation of 1/16, being 1/2 of the usual and customary royalty of 1/8, a *fortiori* works a valid reservation of 1/2 of the minerals. This is especially the case when "...oil and gas in and under said land." is specified.

In *McCoy v. Ash*, 64 W.Va. 655 (1908), William A. Ash and his wife sold¹ to Isaac McCoy "one-sixteenth of all the oil and gas

¹ There is no indication in the opinion as to the date(s) of deeds/instruments.

underlying all of a certain tract or parcel of land" located in the McElroy District of Tyler County, West Virginia, and litigation ensued as to the right to one half² of the royalty; that is one sixteenth of the oil, coming from an oil well producing on what was referred to as "the little Gorrell Tract" by the parties. (emphasis added). In addressing the application of the underlying transaction as to ownership of mineral production proceeds from "the little Gorrell Tract", the West Virginia Supreme Court plainly noted that in the early 1900s in West Virginia, a statement in a deed of a conveyance of 1/16th was a plain declaration that the parties were facilitating the sale of half of the underlying mineral asset. Id.

Furthermore, there is no reason to treat a reservation interest differently than an interest conveyed as inasmuch as in 1902 the general rule in West Virginia was not to construe documents against the grantor. See *Koen v. Bartlett*, 41 W.Va. 559 (1895), Syl. Pt. 2 (stating that "[t]he rule that a deed is to be construed most strongly against the grantor is seldom to be relied upon.").

See also *Horner v. Gas Co.*, 71 W.Va. 345 (1912), wherein the West Virginia Supreme Court again interpreted the "one-sixteenth"

² The reality that the parties in *McCoy* were fighting over a ½ interest demonstrates the custom and understanding of one-sixteenth fractional language in the early 1900s within West Virginia jurisprudence/abstracting practices. The Court does not make this observation for purposes of considering extrinsic evidence. Rather, to point out the basis for our appellate court's rulings in support of the effect of such practice on the construction of such a reservation.

language in the context of an 1899 deed/mineral transaction to be a reservation of 1/2 of the oil and gas mineral estate.

Pursuant to, and consistent with the foregoing authority, the reservation of 1/16th set forth in the 1902 handwritten Deed plainly reserved 1/2 of the oil and gas estate. Thus, a 1/2 interest in the oil and gas estate is hereby affirmed by this Court as being vested in the heirs of F.W. Severin. The 1902 handwritten deed is unambiguous such that extrinsic evidence should not be considered in ruling on the merits of the 1902 handwritten deed reservation-which plainly confirms on it's face that the heirs of F.W. Severin are vested with a 1/2 interest in the oil and gas estate as per the applicable cited authority.

In short, unless there is additional language (for example, "to be produced" or similar language which indicates a contrary intent and indicative of a true production interest) in the deed evidencing that the parties actually contemplated the reservation of a production/royalty interest, the "royalty" interest language is tantamount to an interest in minerals in place. *McDonald v. Bennett*, 112 W.Va. 347, 164 S.E. 298 (1932). However, no such language is found in the subject conveyance. Without such language, the law recognizes the applicable reservation language as applying to oil and gas in place. *United Carbon Co. v. Presley*, 126 W.Va. 639, 29 S.E.2d 466 (1944).

Consistent with the foregoing, the Court finds, declares and affirms that F.W. Severin reserved 1/2 of the oil and gas mineral estate in the 1902 handwritten Deed.

Accordingly, all pending motions are disposed of consistent herewith. Provided, any matters regarding the effect of this ruling are hereby preserved.

It is so ORDERED.

Objections and exceptions are saved.

The Clerk shall transmit a copy of this Order to all counsel and parties of record.

Entered this 28th day of September, 2022.



TIMOTHY L. SWEENEY CIRCUIT COURT JUDGE