No. 23-ICA-154
(Consolidated with No. 23-ICA-155)

IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

NORTHEAST NATURAL ENERGY LLC;
NNE PROPERTIES LLC; PACHIRA ENERGY, LLC;
AND PACHIRA ENERGY HOLDINGS, LLC,

Defendants Below, Petitioners,

v.

LT REALTY UNLIMITED, LLC,

Plaintiff Below, Respondent.

BRIEF OF RESPONDENT LT REALTY UNLIMITED, LLC

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RESPONDENT'S BRIEF

I. STATEMENT OF THE CASE

This case involves the application of West Virginia's *ad valorem* delinquent and forfeited tax collection scheme in effect before the West Virginia Legislature's wholesale overhaul of that scheme in 1994.

Respondent, Plaintiff below, commenced this action on December 28, 2018. Respondent's complaint [J.A. 29] and subsequent amended complaints [J.A. 131, 737] contained three counts. Count I sought declaratory relief in the form of an order quieting title to a 2/8 undivided interest in the oil and gas in a 118 acre tract located in Clay District, Monongalia County.

All parties filed motions for partial summary judgment regarding the issue of ownership of the disputed 2/8 interest.[1] The motions were argued on September 28, 2020. [J.A. 1229]. By order entered March 17, 2023, the Circuit Court granted Respondent's motion for partial summary judgment and denied Petitioners' motions. [J.A. 1]. The order found that Respondent owned the disputed 2/8 interest in oil and gas. Pursuant to Rule 54(b) of the West Virginia Rules of Civil Procedure, The Circuit Court certified the March 17, 2023 order as a final order from which the parties could appeal. [J.A. 27].

[1]. Petitioners Northeast Natural Energy, LLC, Pachira Energy, LLC and Pachira Energy Holdings, LLC filed their motion on December 9, 2019. .. These Respondents renewed their motion for partial summary judgment on August 17, 2020. [J.A. 869, 1049].

Respondent filed its motion for partial summary judgment on December 12, 2019, [J.A. 427] . On August 17, 2020, Petitioners David Tennant and Yuri Popov filed their motion for partial summary judgment. [J.A. 1063] .

II. SUMMARY OF ARGUMENT

1. The Circuit Court correctly ruled that the 2/8 undivided interest in 118 acres oil and gas owned by George D. Tennant was forfeited to the state for nonentry. West Virginia law in effect prior to 1994 provided that failure to have interest in land assessed for taxes for five consecutive years resulted in the forfeiture of that land to the state for nonentry.

   The record of assessments, and in particular changes made to the 1941 Clay District Land Book rebut any presumption that the oil and gas interests in question was after 1941 assessed in the name of the surface owner, velvet Chisler.

   The 2/8 undivided interest in 118 acres oil and gas owned by George D. Tennant was last properly assessed for taxes in 1941. That interest was forfeited to the state for nonentry in 1947.

2. The Circuit Court correctly found that the December 28, 1992 tax deed to Shuman, Inc. included the disputed 2/8 interest in 118 acres oil and gas.

   West Virginia Code §11A-4-33 in effect at the time of the issuance of the tax deed defined the scope of title acquired by a grantee receiving a tax deed. Section 11A-4-33 provided that the grantee received all interest in the parcel in question owned by the state at the time of the issuance of the tax deed.

3. Petitioners' public policy arguments provide no basis to ignore unambiguous statutory enactments regarding the extent of title granted by a tax deed.

4. The Circuit Court correctly concluded that the habendum or granting clause contained in the deed from Elemental Resources, LLC to Respondent conveyed the 2/8 undivided interest in the 118 acres oil and gas at issue.

   The deed is unambiguous and therefore extrinsic evidence cannot be considered to discern the intent of the parties to the instrument.

III. STATEMENT OF FACTS

The 2/8 undivided interest in the 118 acres oil and gas at issue is part of land once owned by Marion Tennant. The Circuit Court found that by deed dated January 6, 1887, Marion Tennant acquired a tract in fee described as 143 acres located near Days Run in Clay District, Monongalia County. [J.A. 912]. By deed dated February 8, 1872, Marion Tennant acquired a parcel in Clay District, Monongalia County containing approximately 15 acres and abutting the 143 acre tract. By deed dated May 5, 1890, Marion Tennant and his spouse, Martha conveyed a 16 7/8 parcel from the southeastern corner of the 143 acre tract to Fletcher Wilson. Based on the descriptions in those deeds, approximately 141½ acres remained after the conveyance to Fletcher. A subsequent

survey of the property described below indicated the remaining parcel consisted of 136.92 acres. For the rest of their lives, Marion and Martha Tennant lived on the acreage remaining after the conveyance to Wilson and was referred to by the Tennants as the "Home" or "Farm" property. [J.A. 2-3].

Marion Tennant died testate on May 7, 1912. Marion owned several tracts of real estate in Clay District Monongalia County, including the Farm tract. Marion's will designated his wife Martha as executor of his estate. [J.A. 1081]. In addition to Martha, the heirs of Marion Tennant were their eight surviving children:

George D. Tennant
Annie J. Tennant Pyles
Sarah M. Tennant Haught
Enrod P. Tennant
Emma R. Tennant Hunnell
Louverna B. Tennant Shanes
Lillie Tennant Sine
John Julius Tennant

As described herein, Marion and Martha's son, George D Tennant, eventually acquired the disputed 2/8 undivided interest in 118 acres oil and gas.

Marion Tennant's will left the Farm tract to Martha. The will excepted the Pittsburgh coal in the tract from the bequest. Instead, Marion's will directed that the Pittsburgh coal in all the properties Marion owned at the time of his death, including the Farm tract, be sold and the proceeds distributed equally to their eight children. [J.A. 1081, 1154].

On April 1, 1922, Martha Tennant conveyed to her son John J. Tennant a 17.749 acre portion of the Farm tract. The deed excepted and reserved all coal within the 17.749 acres. The deed reserved to Martha a life estate in the oil and gas within said 17.749 acres and provided that son John had the remainder interest in the oil and gas in the 17.749 acres. [J.A. 1154-55].

By deed dated September 29, 1923, Martha and her eight children conveyed the Pittsburgh coal in the Farm tract to Henry Phillips. [J.A. 1155]. In conjunction with this sale, a survey of the Farm tract was conducted to describe the boundaries of the Farm and of the Pittsburgh coal tract purchased by Phillips. That survey found that the Farm tract contained 136.92 acres. March 17, 2023 order, ¶9 [J.A. 4]. As a result of this coal sale and the conveyance to John J. Tennant, Martha Tennant owned approximately 118 acres of the surface of the Farm tract; all the oil and gas in the 118 acres; and the coal seams within the 136 acre Farm tract remaining after the sale of the Pittsburgh coal to Phillips.

A. GEORGE D. TENNANT'S ACQUISITION OF THE 2/8 UNDIVIDED INTEREST IN 118 ACRES OIL AND GAS

Martha Tennant died intestate on December 22, 1925 and was survived by her eight children including George D. Tennant. The appraisement concerning Martha Tennant's estate identified "Farm Surface 118A" and "Sewickley Coal 135A" [J.A. 626-27]. Per West Virginia's intestacy statute, George D. Tennant and his seven siblings each inherited a 1/8 undivided interest in the surface of the 118 acre Farm tract; a 1/8 undivided interest in the oil and gas within the 118 acre portion of the Farm tract; and a 1/8 undivided interest in the coal within the 136 acres that remained after the 1923 conveyance of the Pittsburgh coal to Phillips.

By deed dated December 29, 1925, George Tennant's brother Enrod conveyed his undivided 1/8 interest in the Farm tract to George, reserving the oil and gas from the conveyance. [J.A. 923]. After this conveyance, George D. Tennant owned:

1. A 2/8 undivided interest in the 118 acre surface of the Farm tract;
2. A 1/8 undivided interest in the 118 acre portion of the Farm tract; and,
3. A 2/8 undivided interest in the coal in the original 136 acre Farm parcel remaining after the sale of the Pittsburgh coal to Phillips.

By deed dated August 4, 1928, George Tennant's brother John J. Tennant conveyed his 1/8 interest in the Farm tract to George. [J.A. 926]. After this conveyance, George D. Tennant owned:

1. A 3/8 undivided interest in the 118 acre surface of the Farm tract;
2. A 2/8 undivided interest in the 118 acre portion of the oil and gas in the Farm tract; and,
3. A 3/8 undivided interest in the coal in the original 136 acre Farm parcel remaining after the sale of the Pittsburgh coal to Phillips.

This 2/8 undivided interest in the oil and gas acquired by George Tennant is the interest in dispute.

B. PARTITION OF THE SURFACE OF THE TENNANT FARM TRACT

By deed dated October 26, 1933, Zola Greynolds acquired a 1/16 undivided interest in the 118 acre surface of the Farm tract from Fred and Raymond Haught.[2] [J.A. 628]. In May 1936, Greynolds filed an action in the Monongalia County Chancery Court requesting partition of the surface of the Farm tract. [J.A. 918]. In addition to Greynolds, the Chancery Court order identified the following persons as owning undivided interests in the surface of the Farm tract:

	Ownership interest
George D. Tennant	3/8
Annie J. (Tennant) Pyles	1/8
Lillie C (Tennant) Sine	1/8
Louverna B. (Tennant) Shanes	1/8
Emma R. (Tennant) Hummel	1/8
Clara O. Berry (daughter of Sarah Tennant Haught)	1/32
David Arlie Tennant (son of Sarah Tennant Haught)	1/32

[J.A. 919-20]. Albert Shuman, an attorney practicing in Monongalia County, represented George Tennant in the partition proceeding. [J.A. 918]. The Court appointed commissioners to inspect the

[2]. Fred and Raymond Haught were two of the four children of Sarah Tennant Haught, the daughter of Marion and Martha Tennant. Clara O. Berry David Arley Tennant were the other children of Sarah Tennant Haught. March 17, 2023 order, ¶17, [J.A. 6].

property and report whether it was possible to partition the Farm tract in kind between the co-owners. [J.A. 635].

Zola Greynolds was apparently not a member of the Tennant family. Evidently in response to Greynolds acquisition of a fractional interest in the surface of the farm tract and her commencement of a partition proceeding, the Monongalia County Assessor changed the assessments of the Farm tract. Handwritten notations in the 1938 Clay District Land Book[3] indicate the assessments were changed "according to an abstract made by Albert Shuman". [*See e.g.* J.A. 641]. The notations in the 1938 Land Book correctly identify George D. Tennant as owning "2/8 118 Sur O&G Days Run". [J.A. 656-66]. Similar handwritten assessments were also made in the names of the other co-owners of the 118 acres. [J.A. 639-60]. The assessments in the names of George D. Tennant and the other owners of the Farm tract continued in this fashion in the 1939, 1940 and 1941 Land Books.

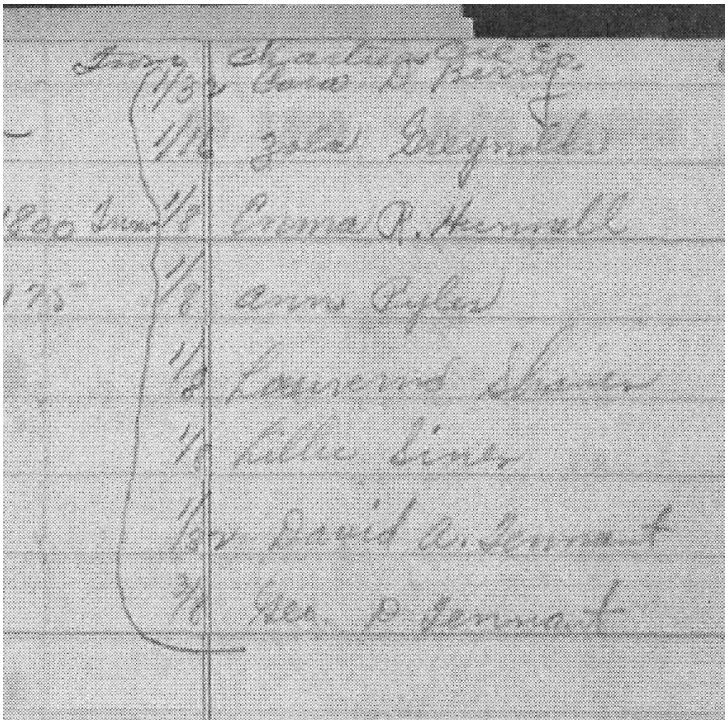
On April 26, 1940, the commissioners appointed in the Greynolds' partition action reported that the surface of Farm tract could not be partitioned in kind. The Court therefore ordered that the Farm tract be partitioned by sale, excepting and reserving from the sale the Pittsburgh and Sewickley coal seams and all oil and gas. The Court appointed Albert Shuman as special commissioner to conduct the sale. [J.A. 661-62].

On May 15, 1940, the Court approved the sale of the surface of the Farm tract to Velva Jewel Chisler. [J.A. 663-65]. By deed dated May 18, 1940, Shuman conveyed the 118 acre surface of the Farm tract to Chisler, excepting and reserving from the conveyance the already conveyed Pittsburgh coal, the Sewickley coal, and the oil and gas within the 118 acres. [J.A. 666-69]. Thus, George Tennant and the other heirs of Marion and Martha Tennant retained their respective

[3]. All subsequent references to land book entries in this brief refer to land books maintained by the Assessor for Clay District.

ownership interests in the oil and gas within the 118 acre portion of the Farm tract and the coal in the 136.72 acre Farm tract that remained after the sale of the Pittsburg coal to Phillips.

Handwritten notations made in the 1941 Land Book reflect the conveyance of the surface of the Farm tract to Chisler. The assessment of the undivided interest in the 118 acres "Sur. O & G Days Run" in the name George D. Tennant and the other co-owners of the 118 acres were struck through with the notation "to Velva Jewel Chisler". [J.A. 678, 682]. A handwritten entry was made adding Velva Chisler and was accompanied by the notation "Chisler, Velma Jewel 119.171 Sur. Days Run Class 2 1300-500-1800". Next to this entry appeared the handwritten entry "From Chartiers Oil Co" that identifying each of the persons from whom Chisler had acquired the surface tract and their respective ownership interests:



[J.A. 939-40]. While George D. Tennant continued to be assessed as owning fractional interests in numerous other mineral tracts parcels located in Clay District, after 1941 George D. Tennant was never assessed as owning a 2/8 undivided interest in the oil and gas in the118 acres. The parties

agree and the Circuit Court found that 1941 was the last year the disputed 2/8 undivided interest in 118 acres oil and gas was assessed for taxes. [J.A. 9].

C. DISPOSITION OF GEORGE D. TENNANT'S REALTY

George D. Tennant died intestate on May 16, 1938 and was survived by his wife Hazel and their sons Charles Edwin Tennant and Carl (or Karl) Edward Tennant. In 1939, Hazel Tennant filed suit in the Chancery Court of Monongalia County styled *George D. Tennant's Administratrix v. M. C. Spragg, et al*. The purpose of the suit was to sell real estate owned by George Tennant sufficient to pay his creditors.[4] A report dated May 1, 1940 filed in the chancery proceeding identified 21 parcels owned by George Tennant at the time of his death. [J.A. 696-704]. Tract G is described as:

> An undivided 3/8 interest in and to the oil and gas and Sewickley seam of coal, acquired by purchase and by inheritance, in an underlying the following described tract or parcel of real estate, situate, lying and being in Clay District, Monongalia County, West Virginia, calling for 136.92 acres…

Albert Shuman was again appointed special commissioner and was ordered to sell so much of George D. Tennant's real estate as was necessary to pay George's creditors.

George Tennant's widow Hazel Tennant purchased George D. Tennant's real estate from special commissioner Shuman. By deed dated May 4, 1942, Shuman conveyed George's 18 tracts of realty to Hazel. Tract Six in said deed is described as a 2/8 undivided interest in the oil and gas and a 3/8 undivided interest in the Sewickley coal in 136.92 acres. [J.A. 483-94]. The effect of said deed was to convey George Tennant's 2/8 undivided interest in the oil and gas in the 118 acre portion of the 136.92 Farm tract to Hazel Tennant.

In recognition of the May 4, 1942 conveyance of George Tennant's realty to Hazel Tennant, handwritten notations were made in the 1943 Land Book changing the assessments in

[4]. This case proceeded contemporaneously with the Greynolds partition proceeding discussed *supra*.

the name of George D. Tennant to Hazel P. Tennant. However, the 1943 Land Book erroneously assessed Hazel Tennant as owning only "2/8 136.192 Sew. C. Days Run". Despite the deed to Hazel conveying a 2/8 undivided interest in 118 acres oil and gas, Hazel was not assessed as owning said oil and gas. [J.A. 945-48]. Assessments in the name of Hazel Tennant concerning the 136.192 acres Sewickley coal and omitting the 2/8 undivided interest in the 118 acres oil and gas continued in this fashion until 1974. [J.A. 10]. The Circuit Court held, as a matter of law, that as a result of its non-entry on the county tax rolls for five years beginning in 1942, the 2/8 interest in the 118 acres oil and gas owned George D. Tennant's was forfeited to the state for non-entry in 1947. March 17, 2023 order, ¶10, [J. A. 17].

By deed dated August 22, 1974, Hazel (Tennant) Gawthorp conveyed her interest in the 18 tracts she received via the May 4, 1942 deed to her son Karl Tennant or his wife, Carolyn Tennant. [J.A. 499-507]. As a result, the 1976 Land Book assessed Karl or Carolyn Tennant as owning the 18 tracts previously assessed in the name of Hazel Tennant Gawthorp. The 1976 assessments include an interest described as "2/8 136.192 Sew. C. Days Run". [J.A. 508-511]. Neither Karl Tennant nor Carolyn Tennant was ever assessed as owning a 2/8 interest in the oil and gas in the 118 acres. [J. A. 11].

D. ISSUANCE OF TAX DEED TO SHUMAN, INC.

Karl and Carolyn Tennant did not pay the 1989 *ad valorem* taxes assessed on their realty. As a result, tax liens concerning these properties were offered for sale at the annual tax lien sale conducted by the Monongalia County Sheriff in November 1990. An interest assessed in the name of Karl or Carolyn Tennant and described as "2/8 136.192 Sew. C. Days Run" was not purchased at the tax lien sale. Under West Virginia law then in effect, said interest was therefore deemed sold to the State of West Virginia. [J.A. 529].

On September 14, 1992, pursuant to West Virginia Code §11A-4-1, *et seq*. governing the sale of delinquent properties deemed "sold to the state" then in effect, Darrell W. Ringer, as Deputy Commissioner for Delinquent Lands in Monongalia County, filed suit in the Circuit Court of Monongalia County and styled *State of West Virginia v. Henry Oscar Wyer, et al.* [J.A. 512-522]. Under then existing law, the suit sought authorization to sale of properties sold to the state for nonpayment of property taxes or forfeited to the state for nonentry on the county tax rolls. Karl and Carolyn Tennant were named as defendants. The complaint identified a delinquent property owned by Karl or Carolyn Tennant as:

Certification No.:	3580
Year sold:	1989
Name in which sold:	Tennant, Karl B. or Carolyn B.
Location and description:	2/8 136.192 Sew. C. Days Run Clay District

[J.A. 516].

On November 23, 1992, the Circuit Court of Monongalia County authorized Deputy Commissioner Ringer to sell the delinquent interests identified in the action at an auction to be held on December 15, 1992. [J.A. 538-540]. Shuman, Inc. purchased the interest described in Certification 3580. Shuman, Inc. received a tax deed dated December 28, 1992 from Deputy Commissioner Ringer for Certification No. 3580. [J.A. 545]. The Circuit Court found that per West Virginia Code §11A-4-33 then in effect, in addition to the 2/8 interest in the coal in the 136.192 acres, this deed conveyed the disputed 2/8 undivided interest acres oil and gas to Shuman, Inc. March 17, 2023 order ¶24 [J. A. 22].

F. ISSUANCE OF TAX DEED TO ELEMENTAL RESOURCES, LLC

Shuman, Inc. did not pay property taxes assessed on the interest it acquired via the December 1992 tax deed. As a result, this interest was the subject of a tax lien sale conducted by the Monongalia County Sheriff in November 1995. Since no one purchased the tax lien on

Shuman's interest, said interest was deemed sold to the state on November 13, 1995. [J.A. 524]. The State Auditor's Office designated Shuman's delinquent "2/8 136.192 Sew C Days Run" as Certificate Number 304198. Pursuant to West Virginia Code §11A-3-44, the State Auditor authorized the Deputy Commissioner of Delinquent and Non-Entered Lands for Monongalia County to offer said Certificate for sale.

On September 10, 2009, Elemental Resources, LLC purchased Certificate 304198. On November 4, 2010, Elemental Resources, LLC received a deed from the Deputy Commissioner of Delinquent and Non-Entered Lands conveying the realty subject to said Certificate 304198 and, Clay District". [J.A. 525-26]. The Circuit Court found that this deed conveyed the disputed 2/8 undivided interest in the 118 acres oil and gas to Elemental along with the coal interest assessed in the name of Shuman, Inc. March 31, 2023 order, ¶32 [J.A. 24].

Respondent received a deed from Elemental dated April 30, 2015. [J.A. 450-51]. The Circuit Court found that the deed conveyed all interests Elemental owned in the subject property, including the 2/8 undivided interest in the oil and gas in the 118 acres at issue. March 31, 2023 order, ¶38, [J. A. 26].

Petitioners claim that the disputed 2/8 interest oil and gas passed via intestate succession upon the death of George D. Tennant's son, Karl Tennant. Petitioners claim that upon Karl's death in 2005, Karl's widow, Wilma Tennant, inherited 1/8 of the oil and gas and Karl Tennant's sons, Trey David Tennant, Petitioner David Karl Tennant, and Petitioner Yuri Dmitri Popov each inherited 1/24 of the oil and gas in question. [J.A. 880, 982]. Petitioners NNE and Pachira Energy claim to have acquired Trey David Tennant's 1/24 interest via deed dated May 25, 2015 [J.A. 994] and Wilma Tennant's 1/8 interest via deed dated May 29, 2015. [J.A. 989]. Taken together,

Petitioners NNE and Pachira Energy claim to own 1/6 of the oil and gas in question. Petitioners' Brief. pp. 6-7.

Petitioners NNE Properties and Pachira Energy Holdings claim to own a royalty interest in the disputed oil and gas via a Deed of Royalty Interest dated June 1, 2015 from Defendants Northeast Natural Energy, LLC and Pachira Energy, LLC. Petitioners' Brief. p. 7. [J.A. 999].

IV. STATEMENT REGARDING ORAL ARGUMENT

Respondent believes this case concerns issues of important public policy regarding land titles deriving from tax deeds. Therefore, Respondent requests oral argument in accordance with Rule 20 of the West Virginia Rules of Appellate Procedure.

V. ARGUMENT

A. STANDARD OF REVIEW

Petitioners' appeal seeks review and reversal of the Circuit Court's order granting partial summary judgment in Respondent's favor and the Circuit Court's denial of Petitioners' cross-motions for summary judgment. On appeal, a circuit court's grant of summary judgment is subject to *de novo* review. *Painter v. Peavy*, 192 W.Va. 189, 451 S.E. 2d 755 (1994), syl. pt. 1. In *Blake v. Charleston Area Medical Center*, 201 W.Va. 469, 498 S.E.2d 41 (1997) this Court stated "[w]hen employing the *de novo* standard of review, we review anew the findings and conclusions of the circuit court, affording no deference to the lower court's rulings." 201 W.Va. at _____, 498 S.E.2d at 47. In *Gastar Exploration Inc. v. Rine,* ____ W.Va. _____, 806 S.E.2d 448 (2017) the West Virginia Supreme Court of Appeals elaborated on the nature of its de novo review of a circuit court's grant of summary judgment, stating:

> The term *"de novo"* means "Anew; afresh; a second time." "We have often used the term *'de novo'* in connection with the term 'plenary.'... Perhaps more instructive for our present purposes is the definition of the term 'plenary,' which means '[f]ull, entire, complete, absolute, perfect, unqualified.' " "We therefore give a new, complete and unqualified review to the parties' arguments and the record before the circuit court." (Internal citations omitted)

806 S.E.2d at 454.

Therefore, on appeal, this Court applies the oft stated and well known standards applicable to consideration of motion for summary judgment.

> Summary judgment is appropriate where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, such as where the nonmoving party has failed to make a sufficient showing on an essential element of the case that it has the burden to prove.

Id., syl.pt. 4.

The Circuit Court granted partial summary judgment in the form of a declaration of the parties' respective rights in the disputed realty. "A circuit court's entry of a declaratory judgment is also reviewed *de novo,* since the principal purpose of a declaratory judgment action is to resolve legal questions." *Cox v. Amick*, 195 W.Va. 608, 466 S.E.2d 459 (1995) *syl. pt 3.*

B. THE CIRCUIT COURT CORRECTLY RULED THAT THE 2/8 UNDIVIDED INTEREST IN OIL AND GAS WAS FORFEITED TO THE STATE FOR NONENTRY

Petitioners first assignment of error argues that beginning in 1941, the oil and gas within the 118 tract was "presumptively' assessed in the name of Velma Chisler. Petitioners argue that the Circuit Court erred in finding that the disputed 2/8 interest in oil and gas was forfeited to the state for nonentry on the county tax rolls. Absent such forfeiture, Petitioners assert that the 1992 tax deed received by Shuman, Inc. did not convey the disputed 2/8 interest in oil and gas. Respondent asserts that the Circuit Court correctly concluded that the disputed 2/8 interest in 118 acres oil and gas was forfeited to the state in 1947 for nonentry per the law then in effect.

An owner of land must ensure the land is assessed for taxes and entered in the county land books. Article XIII, §6 of the West Virginia Constitution, in force until July 1993, provided:

> Land Books — Taxes
>
> It shall be the duty of every owner of land, or of an undivided interest therein, to have such land, or such undivided interest therein, entered on the land books of the county in which it, or a part of it, is situated, and to cause himself to be charged with

> taxes legally levied thereon and pay the same. **When, for any five successive years, the owner of any tract of land, or undivided interest therein, shall not have been charged on such land books with state, county and district taxes thereon, then, by operation hereof, the land, or undivided interest therein, shall be forfeited, and title vested in the State**…(emphasis added)

West Virginia Code §11A-4-2 promulgated pursuant to Article XIII, §6 and in effect until July 1, 1994 provided:

> It is the duty of each owner of land to have his land entered for taxation on the land book of the appropriate county, and to have himself charged with the taxes due thereon. Land which for any five successive years shall not have been so entered and charged, shall by operation of law, without any proceedings therefor, **be forfeited to the state as provided in section six, article thirteen of the Constitution.** (emphasis added)

Thus, before July 1, 1994, West Virginia law provided that a landowner who failed to have their land entered on county tax rolls for five consecutive years forfeited title to that land to the state by operation of law.

Under West Virginia law, separate assessment of the surface and subjacent minerals is not permissible unless there has been a severance of ownership of the surface and mineral estates. *Orville Young, LLC v. Bonacci*, ____ W.Va. _____, 866 S.E.2d 91 (2021). Severance of ownership of the surface and the subjacent mineral estates alone is not sufficient to cause forfeiture of subjacent minerals for nonentry. In *Sult v. Hochstetter Oil Co.,* 63 W.Va. 317, 61 S.E. 307 (1908) cited by Petitioners, the West Virginia Supreme Court of Appeals stated:

> Forfeiture of the title to minerals in a tract of land for nonentry on the land books cannot be predicated on mere severance in title of the minerals from the surface and lapse of time, since presumptively the land was taxed as a whole when the severance occurred, and has since been carried on the land book in the same manner and the taxes paid.

63 W.Va. at 317, 61 S.E. at 307. Where ownership of the surface and subjacent minerals is severed and where there is no separate assessment of the severed minerals, there is a presumption that an assessment in the name of the surface owner includes the value of the surface and the severed

subjacent minerals. *See, e.g., State v. Guffey*, 82 W.Va. 462, 95 S.E. 1048 (1918). Like all legal presumptions, this presumption is rebuttable.

The Circuit Court made extensive findings regarding the changing tax assessments made in light of Greynolds' acquisition of an interest in the Farm tract and subsequent partition of the surface estate. Handwritten notations added to in the 1938 Land Book identify George D. Tennant as owning "3/8 118 Sur O&G Days Run". March 17, 2023 order, ¶22 [J.A. 7].[5] The Circuit Court found that as a result of Greynolds' partition action, Velma Jewell Chisler acquired the surface of the 118 tract. March 17, 2023 order, ¶¶26-8, [J.A. 8]. As a result of this conveyance, ownership of the surface of the 118 acres and the subjacent oil and gas was severed. Additional revisions to the Land Books were made to reflect this change in ownership. The Circuit Court found:

> 29. In 1939 and 1940 there were two pertinent entries in the name of George D. Tennant on the Clay District land books: 3/8 118 SUR O & G. DAYS RUN land $525, Buildings $225, Total Value $750; and 3/8 136.192 SEW C. DAYS RUN $50.
>
> 30. The 1941 Clay District Land Book was adjusted by hand-written notation to reflect the conveyance of the 119.171 acres surface of the Home Farm tract to Chisler. The assessment "3/8 118 acres Sur. O. & G. Days Run" in the name George D. Tennant was struck through with the notation "to Velva Jewel Chisler." A handwritten entry in the 1941 Clay District Land Book was made in the name of "Chisler, Velma Jewel" assessing her as owning "119.171 Sur. Days Run."
>
> 31. Importantly, George D. Tennant's 2/8 interest in 119.171 acres of the oil and gas was not entered on the Land Book for 1941 or for any year subsequent.

March 17, 2023 order, [J.A. 9]. Based on these findings of fact, the Circuit Court concluded as a matter of law that the 2/8 undivided interest in the 118 acres oil and gas assessed in the name of George D. Tennant was forfeited to the state for nonentry effective 1947. March 17, 2023 order, ¶10 J.A. 17].

[5]. The interests of the other owners of the surface and oil and gas in the 118 acres were also added and contained identical descriptions of the interest being assessed; that is "118 Sur O&G Days Run". [J.A. 639-60].

The Circuit Court noted Petitioners' contention that beginning in 1941, the disputed 2/8 interest in oil and gas was included in assessment of the surface to Velva Chisler and that the oil and gas interest was therefore not forfeited to the state for nonentry. March 17, 2023 order, ¶¶33, 35. [J.A. 24-5]. On appeal, Petitioners argue that the Circuit Court did not address the substance of this contention. Petitioners' brief, pp. 18-21.[6] Petitioners further argue that the Circuit Court ignored Petitioner's argument that the assessed value of the land described as "118 SUR O&G Days Run" assessed in the name of George D. Tennant and the co-owners of that interest equaled the value of the land assessed in the name of Velva Chisler as "119 Sur Days Run". Petitioners therefore claim that the assessment of the surface in the name of Chisler included the value of the subjacent oil and gas owned by the Tennant heirs.

Analysis of the 1941 Land Book entries demonstrates a lack of consistency in how mineral interests were assessed. Forms used by the assessor to create the land books contained numerous columns arranged under various headings and subheadings. Columns F through K were grouped under the heading "Values As Fixed by Assessor." *See, e.g.* 1938 Land Book [J.A. 641]. Columns F, G and H were grouped under the subheading:

> All Property Occupied by the Owner Exclusively for Residential Purposes and all Farms Occupied and Cultivated by Their Owners or Bona Fide Tenants. Class No. 2.

Column F is labeled "Value of Land"; Column G is labeled "Value of Buildings" and Column H is labeled "Total Value of Land and Buildings". Columns I, J and K are grouped under the

[6]. Petitioners do not ask that this matter be remanded with directions that the Circuit Court make findings regarding Petitioners' contention that the assessment of the 119.171 acres in the name of Velva Chisler included the value of the subjacent oil and gas. While West Virginia law generally requires that a circuit court's grant of summary judgment include detailed findings of fact and conclusions of law, the West Virginia Supreme Court has held remand with directions to make additional fact findings may not be ordered where the issue presented on appeal can be resolved without a detailed order from the circuit court. *See, e.g., Fayette County National Bank v. Lilly,* 199 W.Va. 349, 484 S.E.2d 232 (1997); *Toth v. Board of Parks and Recreation,* 215 W.Va. 51, 593 S.E.2d 576 (2003).

subheading “All Other Real Property Situated outside Municipalities. Class No. 3”. Column I is labeled “Value of Land”; Column J is labeled “Value of Buildings” and Column K is labeled “Total Value of Land and Buildings. [J.A. 641].

Regarding the “3/8 118 Sur O & G Days Run” assessed in the name of George D. Tennant, the 1941 Land Book lists the value of the land as $525.00 in Column F and the value of buildings of $225.00 is listed in Column G. The assessor thus characterized this interest as “Class 2” property. However, the interest described as “3/8 136.192 SEW. C. DAYS RUN” assessed in the name of George D. Tennent is valued at $50 and listed in column I, thereby identifying the interest as “Class 3” property. [J.A. 691]. The record establishes that the 118 acres surface and oil and gas is located within the boundaries of the 136.192 acres of the Farm tract. These assessments concern different ownership interests **in the same piece of land**. However, the assessments simultaneously characterize the land as being both Class 2 and Class 3 realty. In another example of the inconsistencies in the 1941 Land Book, the 1/32 ownership interest of co-owner David Tennant in the “118 SUR O. G. Days Run” is assessed at a value of $25.00 but listed in Column I, thereby characterizing this property as “Class 3” property. As indicated above, the interest of George D. Tennant in the same 118 acres surface oil and gas is characterized as “Class 2” property. [J.A. 688]. In some instances, George Tennent is assessed as owning fractional interests in mineral tracts with no corresponding surface rights. In those instances, the value for the mineral interest is listed in Column I and is thereby classified as “Class 3” property. In other instances, owners of oil and gas rights without corresponding surface rights have the value of those interests listed in Column F which constitutes “Class 2” property. See, for example the assessment of “9.1/2 O & G DAYS RUN” assessed in the name of Fleming Tennent. [J.A. 691]. Taken together, these inconsistencies call into question whether and to what extent the property described in the 1941 Land Book as

"118 SUR O. G. Days Run" assessed in the names of George Tennent and the other co-owners included a value attributed to the oil and gas in that parcel.

Other information in the 1941 Land Book undermines the presumption that in assessing Chisler as owning as "119 Sur Days Run", the assessor either wittingly or unwittingly included the value of the subjacent oil and gas in the 118 tract owned by George Tennent and the other the heirs of Marion and Martha Tennant. The handwritten entry adding Velva Chisler to the 1941 Land Bood states: "Chisler, Velma Jewel 119.171 Sur. Days Run Class 2 1300-500-1800". This entry was accompanied by a handwritten notation identifying the owners from whom Chisler had acquired the tract and their respective ownership percentages, noting that this information was "From Chartiers Oil Co." When these notations were made, the heirs of Marion and Martha Tennant were parties to oil and gas leases and other agreements with Chartiers Oil Company. An August 5, 1931 royalty reduction agreement between Chartiers and the Marion Tennant heirs is part of the below. [J.A. 1228].

The following conclusions are drawn from these undisputed facts. First, assessment of the Tennant heirs as owning fractional interests in a tract described as "118 SUR O&G DAYS RUN" establishes that the assessor was aware that the George Tennent and the other Tennant heirs owned the oil and gas in that tract. In evident recognition of this fact, there is no Land Book entry assessing Velma Chisler was assessed as owning the oil and gas within the 118 acres. Rather, the undisputed evidence is that the assessor consistently assessed Chisler as owning only the surface of a tract described as consisting of 119.171 acres. Second, in adding Chisler to the 1941 Land Book, the assessor apparently relied on information provided by Chartiers Oil Company to identify the persons whose interests Chisler had acquired. The heirs of Marion and Martha Tennant were parties to oil and gas leases and other agreements with Chartiers. Otherwise, Chartiers would have

had no reason to know the identity of the owners of the 118 acres and their respective ownership interests. It must be assumed that the assessor contacted Chartiers and requested this information, suggesting that the assessor knew George Tennent and the other heirs of Marion and Martha Tennant heirs owned the oil and gas in the tract acquired by Chisler. Possessing such information, it strains credulity to believe that the assessor, despite explicitly assessing Chisler as owning only the surface, intended include in Chisler's assessment the value of the oil and gas in the subjacent 118 acres owned by George Tennent and the other Tennant heirs.

Since George Tennent's 2/8's undivided interest in the one 118 acres oil and gas oil was not entered on the land books after 1941 the Circuit Court correctly concluded that interest was forfeited to the state in 1947.

C. THE CIRCUIT COURT CORRECTLY FOUND THAT THE DECEMBER 28, 1992 TAX DEED TO SHUMAN, INC. CONVEYED THE 2/8 INTEREST IN 118 ACRES OIL AND GAS

Petitioners' second assignment of error asserts that the Circuit Court erred as a matter of law in finding that the 1992 tax deed to Shuman, Inc. conveyed title to the disputed 2/8 interest in oil and gas.

In 1941, the West Virginia Legislature enacted wholesale changes to the law applicable to the disposition of lands for which property taxes were not paid or assessed. Clyde Colson, *The New Delinquent Lands Statute*, 47 W.Va. Law Q. 282 (1941). That legislation remained in force and largely unchanged until 1994. That statutory scheme described both "delinquent" and "forfeited" lands. Both types of land are involved in this case. In *Pearson v. Dodd*, 221 S.E. 2d 171 (W. Va. 1975), the West Virginia Supreme Court defined delinquent and forfeited lands as follows:

> 2. Delinquent lands are those upon which the owners have failed to pay property taxes and which have been listed by the sheriff as delinquent and, at public sale, sold by him to individuals or purchased by him for the State.

3. Forfeited lands are those which the owners have failed to enter for assessment on the land books and for which no property taxes have been paid for five consecutive years; when both events occur, the State's title arises and perfects by operation of law.

Id, syl. pt. 2,3.

In addition to finding George Tennent's 2/8 interest in 118 acres oil was forfeited for non-entry as defined by *Pearson, supra*, the Circuit Court found that Karl or Carolyn Tennant failed to pay the taxes assessed in 1989 on the interest described as "2/8 136.192 Sew. C. Days Run". As a result, that interest became delinquent as defined in *Pearson, supra*. March 17, 2023 order, ¶12 [J.A. 18]. The Tennants' failure to pay the taxes assessed on said interest eventually resulted in Shuman, Inc. receiving a tax deed on December 28, 1992. The Circuit Court found, as a matter of law, that the tax deed received by Shuman conveyed the delinquent interest in the 2/8 136.192 Sew. C. Days Run and George Tennent's 2/8 interest in 118 acres oil and gas forfeited 1947. March 17, 2023 order, ¶24 [J.A. 22]. Petitioners assert that this conclusion by the Circuit Court constitutes an error of law requiring reversal.

Respondent asserts the Circuit Court correctly applied West Virginia law then in force that defined the extent of title received by the grantee of a tax deed such as Shuman, Inc. The pertinent events and the law applicable thereto are as follows. In 1989, Karl and Carolyn Tennant failed to pay taxes assessed on the land they received from Karl's mother Hazel in 1974. As a result, pursuant to West Virginia Code §11A-3-4 then in effect, tax liens on the delinquent lands were offered for sale by the Monongalia County Sheriff in November 1990. West Virginia Code §11A-3-6 provided that if a tax lien offered for sale by the sheriff was not purchased by the public, the sheriff purchased the interest on behalf of the state.[7] Per West Virginia Code §11A-4-3 then in

[7]. West Virginia Code §11A-3-6 then in effect provided:

> If no person present bids the amount of taxes, interest and charges due on any real estate offered for sale, the sheriff shall purchase it on behalf of the state for the amount so due.

effect, delinquent lands purchased for the state then fell within control of the State Auditor. West Virginia Code §11A-3-8 then in effect gave delinquent landowners 18 months from the date the land was purchased by the state to pay the delinquent taxes and redeem the property. If a landowner failed to redeem the property within 18 months, title to the delinquent land vested in the state by operation of law.[8] Neither Karl or Carolyn Tennant exercised their right to redeem and therefore title to the interest on land assessed as 2/8 136.192 Sew. C. Days Run vested in the state in July 1992.

West Virginia Code §11A-4- *et seq.* then in effect authorized the sale of both forfeited and delinquent lands under a system overseen by the State Auditor.[9] After following the requisite statutory procedure then in effect, Shuman, Inc. acquired a tax deed for the interest described as 2/8 136.192 Sew. C. Days Run that had been assessed in the name of Karl or Carolyn Tennant. The tax deed to Shuman dated December 28, 1992 described the property conveyed as follows:

> Grantor, in and for consideration of the premises aforesaid, and in pursuance of the statutes, does GRANT and CONVEY unto SHUMAN INC., Grantee, and heirs and assigns forever, the real estate so purchased, situate in CLAY DISTRICT, Monongalia County, and being bounded and described in Certification No. 3580 as follows:

---

[8]. West Virginia Code §11A-3-8 then in effect provided, in relevant part:

> The former owner of any real estate so purchased by the State, or any other person who was entitled to pay the taxes thereon, may redeem such real estate from the auditor at any time within eighteen months after the date of such purchase. Thereafter such real estate shall be irredeemable and subject to transfer or sale under the provisions of sections three and four, article thirteen of the constitution….

[9]. West Virginia Code §11A-4-10 then in effect provided, in relevant part:

> As soon as possible after receipt of the certified list the deputy commissioner, shall institute in the circuit court of his county a suit or suits in chancery in the name of the State of West Virginia, for the sale for benefit of the school fund of all the lands included in the list. Except as hereinafter provided, not more than twenty-five items as certified by the auditor shall be included in one suit, and whenever the deputy commissioner deems it advisable a suit may be instituted in respect to any number less than twenty five. In the case of forfeited or delinquent undivided interests in a single tract or lot, one suit may be brought for the sale of all such interests regardless of the number involved…

[J.A. 100].

Plainly, neither Certification No.: 3580 purchased by Shuman Inc. nor the tax deed it received mention oil and gas. Respondent argued and the Circuit Court found that West Virginia Code §11A-4-33 in effect at the time of the issuance of the tax deed to Shuman defined the extent of title acquired by Shuman. March 17, 2023 order, ¶24, [J.A. 22]. Section 11A-4-33 stated, in relevant part:

> Title Acquired; Effect of Irregularity. —
>
> Whenever, under the provisions of this article, a purchaser, his heirs or assigns, shall have obtained a deed for any real estate from the deputy commissioner, **he or they shall thereby acquire all such right, title and interest in and to the real estate as was, at the time of the execution and delivery of the deed, vested in or held by the state or by any person who was entitled to redeem,** unless such person is one who, being required by law to have his interest separately assessed and taxed, has done so and has paid all the taxes due thereon, or unless the rights of such person are expressly saved by the provisions of sections twenty-seven or thirty-four of this article. The deed shall be conclusive evidence of the acquisition of such title. The title so acquired shall relate back to the date of the sale. (emphasis added)

Section 11A-4-33 unambiguously states that title acquired by Shuman was coextensive with "**all such right, title and interest in and to the real estate**…" **vested in or held by** the either **the state** or by any person who was entitled to redeem **when the tax deed was issued**.

When the state issued the tax deed to Shuman, the state was vested with title to **two interests** within the same tract of realty. The first was 2/8 undivided interest in 118 acres oil and gas assessed in the name of George Tennent. This interest was **forfeited** to the state in 1947 for non-entry on the land books. The second was a 2/8 undivided interest in the coal within the 136.171 acre Farm tract assessed in the name of Karl and Carolyn Tennant purchased on behalf of the state at the November 1990 Sheriff's tax sale.[10] This interest constituted **delinquent land**, title to which

[10]. Again, the 118 acres oil and gas is located within the 136.192 acre Farm tract.

was forfeited to the state when the interest became irredeemable in July 1992. Respondent asserted and the Circuit Court found that per West Virginia Code §11A-4-33, the December 28, 1992 tax deed conveyed the **forfeited** 2/8 interest in 118 acres oil and gas previously owned by George D. Tennant and the **delinquent** interest described as 2/8 136.192 Sew. C. Days Run assessed in the name of Karl and Carolyn Tennant to Shuman, Inc. March 17, 2023 order, ¶24 [J.A. 22].

Petitioners assert that in reaching this conclusion, the Circuit Court ignored provisions of West Virginia Code §11-4-9 which provide, in pertinent part:

> In any tax sale by a sheriff, school commissioner or commissioner of forfeited lands, only the tract, lot, estate, interest or undivided interest proceeded against in that particular instance shall pass to the purchaser, so far as the State is concerned, so that any other estate, interest or undivided interest in the same tract not embraced in such sale shall not be affected by such sale, nor shall the title, or rights of the owners or claimants of such other estate, interest, or undivided interest in land be affected thereby.

The Circuit Court rejected this argument. March 17, 2023 order, ¶37 [J.A. 25-6].

In addressing Petitioners' argument before the Circuit Court, Respondent argued that §11-4-9 was enacted in 1935 in response to the West Virginia Supreme Court's decision in *LaFollett v. Nelson*, 113 W.Va. 906, 170 S.E. 168 (1933). *LaFollett* held that statutes then in force authorizing assessors to assess undivided interests in realty were unconstitutional. In response, the Legislature undertook the process of amending the West Virginia Constitution to expressly provide for the assessment of undivided interests in realty. As a result, Article XIII, §6 of the West Virginia Constitution was ratified on November 6, 1934.[11] West Virginia Code §11-4-9 was enacted in 1935

[11]. Article XIII, §6 of the West Virginia Constitution provided, in relevant part:

> It shall be the duty of every owner of land, or of an undivided interest therein, to have such land, or such undivided interest therein, entered on the land books of the county in which it, or a part of it, is situated, and to cause himself to be charged with taxes legally levied thereon and pay the same. When, for any five successive years, the owner of any tract of land, or undivided interest therein, shall not have been charged on such land books with state, county and district taxes thereon, then, by operation hereof, the land, or undivided interest therein, shall be forfeited, and title vested in the State…

pursuant to authority granted by Article 13, §6 of the Constitution, Section 11-4-9 provides for the separate assessment of surface and mineral estates when different persons own the surface and minerals. Section 11-4-9 also provides for the assessment of undivided interests in surface or mineral estates.

Petitioners' argument ignores the unambiguous language in West Virginia Code §11A-4-33 in effect when Shuman, Inc received its tax deed in December 1992. Chapter 11A, Article 4 established the procedures for the sale of real estate forfeited to the state for nonentry and or the delinquent properties purchased by the state at a sheriff's tax lien sale. §11A-4-33 then in effect defined the scope of title conveyed to Shuman via a tax deed. Section 11A-4-33 **does not state** that a tax deed conveys only the interest in realty described in the forfeited tax certificate offered for sale. Rather, §11A-4-33 unambiguously states that a tax deed conveys "all such right, title and interest in and to the real estate as was, at the time of the execution and delivery of the deed, vested in or held by the state…". Giving the language in §11A-4-33 its plain meaning, the extent of title conveyed by a tax deed is coextensive with the right, title and interest owned either by the state of West Virginia at the time of the issuance of the tax deed.

Petitioners again argue for the adoption of an interpretation of §11-4-9 that would render §11A-4-33 superfluous. In *Barber v. Camden Clark Memorial Hospital Corp.,* 815 S.E. 2d 474 (W.Va. 2018), the West Virginia Supreme Court summarized the rules to be applied by courts when called on to interpret apparently conflicting statutory provisions. *Barber* stated:

> 9. "[W]here two statutes are in apparent conflict, the Court must, if reasonably possible, construe such statutes so as to give effect to each." …
>
> 10. "The general rule of statutory construction requires that a specific statute be given precedence over a general statute relating to the same subject matter where the two cannot be reconciled." …
> (internal citations omitted)

Id. syl. pts. 9-10. Applying these rules, the portion of §11-4-9 relied on by Petitioners and §11A-4-33 are not in conflict. Section 11-4-9 is contained in the portion of the Code controlling assessment of real estate for purposes of taxation. The majority of §11-4-9 is taken up describing when and how an assessor may assess separate estates as well as undivided interests in the same tract of realty. The portion of §11-4-9 cited by Petitioners was intended to make clear that where such separate assessments were made, the sale of a separately assessed interest for nonpayment of taxes would not convey title to the other separately assessed interests in the same realty on which property taxes had been paid. The Circuit Court agreed with this analysis. March 17, 2023 order, ¶37 [J.A. 25]. Section 11A-4-33 is contained in the portion of the Code authorizing the sale of interests in realty forfeited to the State. Section 11A-4-33 defines the scope of title conveyed by a tax deed for property forfeited to the state. Therefore, even if §11-4-9 and §11A-4-33 were seen as being in conflict, as a matter of general statutory construction, the specific statutory provision contained in §11A-4-33 takes precedence over the general provision contained in §11-4-9 when deciding the extent of title conveyed via a tax deed.

Decisions of the West Virginia Supreme Court interpreting what appear to be predecessors to §11A-4-33 support the Circuit Court's conclusion regarding the extent of title conveyed to Shuman, Inc. via the December 1992 tax deed. In *State v. Jackson,* 56 W.Va. 558, 49 S.E. 465 (1904), Supreme Court held:

> In 1884, in a proceeding by a commissioner of school lands to sell forfeited land, a decree allowed the owner to redeem, and declared the land redeemed and released from forfeiture, and decreed that the owner should also occupy the attitude of a purchaser from the commissioner; such owner took, not only the title redeemed, but also any other title vested in the state at the time of the redemption.

Id. syl. pt. 3. Citing *State v. Jackson,* in *State v. King,* 64 W. Va. 546, 63 S.E. 468 (1908), the West Virginia Supreme Court of Appeals held:

> A sale of land as forfeited under decree passes to the purchaser, when conveyed, all right, title and interest vested in the state at the time by forfeiture, whether derived

> by forfeiture of one or more titles; but only so far as title remained in the state at the date of sale, and not transferred to another by the constitution or before sold as forfeited.

Id., Syl. Pt. 21. The Circuit Court cited *State v. King* as authority for the proposition that the tax deed to Shuman conveyed title to all interests the state possessed in the tract purchased by Shuman. Those interests included the interest described as 2/8 136.192 SEW. C. DAYS RUN purchased by Shuman from the Deputy Commissioner of Delinquent Lands and the 2/8 interest in 118 acres oil and gas once owned by George Tennant and forfeited to the state for nonentry of taxes. Respondent asserts that this conclusion by the Circuit Court is correct and justified the grant of partial summary judgment in favor of Respondent regarding ownership of the disputed 2/8 interest in oil and gas.

Petitioners place great reliance on *State v. Black Band Consolidated Coal Company,* 113 W.Va. 614, 169 S.E. 614 (1933) to support their argument that the Circuit Court erred in concluding that the tax deed to Shuman more than the 2/8 136.192 SEW. C. DAYS RUN that had gone delinquent in the name of Karl Tennant. In fact, *Black Band* supports the Circuit Court's findings regarding the extent of title conveyed to Shuman Inc.

Black Bend involved a sale of delinquent real estate owned and assessed in the name of Pickens. Pickens' delinquent interest was purchased on behalf of the state at a Sheriff's tax lien sale. The tract was subject to existing oil and gas leases owned by Cambridge Gas Company. The Pickens tract and numerous other delinquent or forfeited tracts were the subject of a case brought by a commissioner for the benefit of the then existing public school fund. In that litigation, the State claimed that it had the right to sell the Pickens tract free and clear of Cambridge's leases. Cambridge had caused the oil and gas leases to be assessed as personal property on the county tax rolls and paid the assessed taxes. 113 W.Va. at 873.

Cambridge filed an answer in the school fund litigation to which the State demurred. The trial court sustained the demurrer, concluding that Cambridge had no legal basis to claim that its

oil and gas leases would survive the State's sale of the delinquent Pickens tract. *Id.* On appeal, the Supreme Court, characterized the issue before it as follows:

> The precise question is this: Is an oil and gas lease extinguished when the land to which it pertains is sold by the state as forfeited, after having become delinquent for nonpayment of taxes and purchased by the state at a sheriff's sale, though the lease was separately assessed to the owner thereof as personalty and taxes thereon paid for the year of the delinquency of the land?

113 W.Va. at 874. The Court characterized an oil and gas lease as "chattel real". The Court held that since the Cambridge leases were separately assessed as chattel real and the taxes assessed thereon paid, sale of the delinquent Pickens tract by the State would not convey the Pickens tract free of Cambridge's leases. *Id.* at 878.

In this context, the Court discussed title conveyed by a deed under the then existing statutory scheme when delinquent real estate was not purchased at a sheriff's tax sale and was deemed purchased by the state. Upon becoming unredeemable, title to delinquent land passes to the state by operation of law. That interest could then be offered for sale by the state and the funds used for public school funding. These aspects of the statutory scheme discussed in *Black Band* are consistent with the statutory scheme in effect at the time Shuman, Inc received its tax deed.

In describing the title conveyed to the grantee upon such a sale under the then existing statute, the Court stated:

> If such property is not redeemed, becomes irredeemable (expiration of one year after sheriff's sale), and is sold by the State for the benefit of the school fund, the purchaser, when he shall have paid the purchase money, is entitled to receive from the commissioner of school lands, or other commissioner making sale, **a deed conveying to him "all the right, title and interest of the State of West Virginia, in and to the real estate thereby conveyed, which passed to and vested in the State, under the Constitution and laws thereof, by reason of the forfeiture of such real estate, or otherwise, which remained in the State at the time of the decree for the sale** thereof * * *." Code 1931, 37-3-27. (emphasis added)

113 W. Va. at 876. Petitioners do not cite this statement in their brief. Rather, they reference a portion of a sentence that follows this passage:

> But this rule which makes a new and hostile title of that [which conveys from the State under a sale based on forfeiture must be considered in the light of the above statutory provisions which limit such title to that against which the assessment was made and the taxes laid.] (bracketed portions included in Petitioners' brief)

113 W.Va. at 877. Petitioners then omit language two sentences later which qualifies the language on which Petitioners rely:

> These postulates are, of course, based on the assumption that the State **had no other title than that which it acquired under the forfeiture. All the State's title, whatever it may be, passed to its grantee**. (emphasis added)

Id.

Thus, a fair reading *Black Bend* supports the Circuit Court's finding that the December 1992 tax deed received by Shuman Inc. conveyed the delinquent interest of Karl and Carolyn Tennant described as"2/8 136.192 Sew. C. Days Run" and sold to the state in 1990 and the 2/8 undivided interest in 118 acres oil and gas previously owned by George Tennant which was forfeited to the state for nonentry in 1947.

D. PUBLIC POLICY CONCERNS DO NOT OVERRIDE UNAMBIGUOUS LEGISLATIVE PRONOUNCEMENTS

Petitioners' third assignment of error argues that if the Circuit Court's grant of partial summary judgment in Respondent's favor is not reversed, confusion would result regarding the extent of title conveyed by tax deeds. This confusion will, in Petitioner's telling, lead to uncertainty regarding ownership of real estate deriving title from tax deeds. Petitioners' brief, pp. 26-30.

Public policy concerns do not trump legislative enactments. Presumably, legislation addressing a particular subject defines public policy on that subject. If this Court finds that the Circuit Court correctly analyzed and applied West Virginia statutory and case law addressing the sale of delinquent and forfeited lands and as a result of the application of that law, Respondent owns the 2/8 undivided interest in 118 acres oil and gas at issue, Petitioners cannot be heard to

complain that that outcome is somehow at odds with public policy that favors settled titles to land. In fact, the opposite is true.

Finally, even if this Court could somehow subvert the will of the Legislature by an invocation of public policy concerns, this Court must consider the fact that the statutory scheme that resulted in Shuman, Inc. receiving the 2/8 interest 118 acres oil and gas at issue was repealed and replaced in 1994. Under the current statutory scheme, the state never acquires title to delinquent land or lands deemed forfeited for nonentry. Moreover, the current statute specifically addresses the status of delinquent and forfeited lands deemed owned by the estate at the time of the enactment of the 1994 legislation. West Virginia Code §11A-3-68 now provides, in relevant part:

> **Disposition of lands heretofore purchased by or forfeited to state**
>
> > All lands which have been heretofore purchased by the state at a tax sale pursuant to the provisions of the former article three of this chapter and which have not been redeemed from the auditor or certified to the circuit court for sale as provided in the former article four of this chapter shall be reported by the auditor to the sheriff of the county in which the lands are situated for reentry on the land books. Such lands shall be reentered on the land books in the name of the person charged with taxes on the land at the time of purchase by the state, and charged with all unpaid taxes thereon, including those taxes which have accrued since such purchase by the state, and all costs charged to such lands arising from the tax sale and purchase by the state. Such lands shall then be subject to disposition pursuant to this article.
> >
> > All lands which have heretofore been forfeited to the state pursuant to the provisions of former article four of this chapter, and which have not been certified to the circuit court for sale pursuant to such article, shall be deemed nonentered pursuant to section thirty-seven of this article, and shall be subject to redemption and sale as provided herein.

The effect of §11A-3-68 is to take delinquent and forfeited properties that the State owned by operation of law prior to July 1994 and which had not yet been sold pursuant to the pre-1994 statutory scheme and return those properties to the tax rolls for disposition under the current statutory scheme. Thus, persons who, but for the pre-1994 legislative scheme, could have claimed

ownership of delinquent or forfeited properties can attempt to redeem those properties under the current statutory scheme so long as those delinquent and forfeited interests were not sold and tax deeds issued under the pre-1994 statutory scheme.

Thus, the universe of situations like the one presented in this case is presumably small and continues to decrease with the passage of time. Petitioners' public policy argument as a basis to reverse the Circuit Court purchased grant of partial summary judgment must therefore be rejected.

E. THE CIRCUIT COURT CORRECTLY CONCLUDED THAT THE APRIL 30, 2015 DEED FROM ELEMENTAL TO RESPONDENT CONVEYED THE 2/8 INTEREST IN OIL AND GAS AT ISSUE

Elemental received a tax deed concerning subject realty dated November 4, 2010. [J.A. 102]. Elemental received this tax deed because Shuman, Inc. failed to pay taxes assessed on the land it acquired via the December 28, 1992 tax deed. The Circuit Court concluded that the tax deed to Elemental conveyed the 2/8 136.192 SEW. C. DAYS RUN assessed in the name of Shuman Inc. and the disputed 2/8 interest in 118 acres oil and gas. March 17, 2023 order, ¶32, [J.A. 24].

Petitioners do not argue that the Circuit Court erred in its analysis of West Virginia's current statutory scheme defining the extent of title conveyed by the tax deed to Elemental. Rather, Petitioners first argue that Respondent lacks standing to seek a declaration of its rights under the April 30, 2015 deed from Elemental. This argument must be rejected out of hand.

Petitioners raise their standing argument for the first time on appeal. The West Virginia Supreme Court of Appeals generally rule that nonjurisdictional questions have not been decided at the trial court level may not be raised for the first time on appeal. *See, e.g. Whitlow v. Board of Educ. of Kanawha County*, 438 S.E.2d 15, 190 W.Va. 223 (W. Va. 1993) Respondent therefore asserts that Petitioners have waived their standing argument.

Moreover, Petitioners' argument is an exercise in circular logic. Petitioners assert "Respondent was required to establish that it was conveyed the Subject Oil and Gas in the special

warranty deed from which it claims title to that oil and gas." Petitioners' brief, p. 31. In Petitioners' telling, Respondent can only establish standing to litigate disputes regarding its ownership of an interest in realty if it first acquires that interest in a form Petitioners find acceptable. Of course, in that event, there would be no need for a quiet title action. The purpose of this litigation is to establish between and among over a half dozen in question. All parties claim under color of title. All have standing to ask a court of competent jurisdiction to determine their respective rights and obligations vis-à-vis the disputed interest. Petitioners' standing argument must therefore be rejected.

Petitioners next make an "even if" argument: Even if Elemental owned the disputed 2/8 interest in oil and gas, the granting clause contained in the April 30, 2015 deed from Elemental to Respondent conveyed only the interest described as 2/8 136.192 SEW. C. DAYS RUN. The Circuit Court addressed and rejected this argument by Petitioners. The Circuit Court found, as a matter of law:

> Finally, some of the Defendants argue that the April 30, 2015, deed from Elemental Resources, LLC to Plaintiff makes no reference to oil or gas and therefore did not convey to Plaintiff Elemental's right, title and interest in oil and gas Elemental may have acquired by the November 4, 2010, tax deed. The granting clause contained in the deed from Elemental to Plaintiff states, in relevant part:
>
> > [Elemental], does hereby grant, bargain, sell and convey unto the said party of the second part, [LT Realty], with covenant of Special Warranty all of the [Elemental's] right, title, and interest, together with all improvements thereon and appurtenances thereunto belonging, in and to that certain parcel of land located in Monongalia County, West Virginia, more particularly described as follows:
> >
> > > All that certain parcel of land, situate in the Clay District, of Monongalia County, State of West Virginia described as follows- 2/8 136.192 Sew C Days Run, and being parcel 0400-0731-0000 as shown on tax map 9999, which said map is filed in the office of the Clerk of the County Commission of Monongalia County, West Virginia.
> >
> > Being the same property conveyed to Elemental Resources LLC from G. Russell Rollyson Jr., Deputy Commissioner Delinquent and Nonentered Lands of Monongalia County, West Virginia, bearing the date of November 4, 2010 and of record in the Office of the Clerk of the

> County Commission of Monongalia County, West Virginia in Deed Book 1423 at page 854.
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> West Virginia law provides that a deed conveys all interests of the grantor in a tract of realty absent an exception or reservation of an interest in that realty by grantor. *Freundenberger Oil Co. v. Gardner.* 79 W.Va. 46, 90 S.E.815 (1916). The deed from Elemental to Plaintiff contains no such exception or reservation. Rather, the deed unequivocally conveys to Plaintiff whatever interest in the subject realty Elemental acquired via the November 4, 2010, tax deed received by Elemental. For the reasons stated herein, the Court finds that such interest included a 2/8 undivided interest in the 119 acre oil and gas interest.

March 17, 2023 order, ¶38 [J.A. 26].

The unambiguous language in the habendum or granting clause in the Elemental deed expresses Elemental's intent to convey all its interest in the realty Elemental acquired via the November 4, 2010 deed from the Deputy Commissioner. Lack of language in the deed explicitly indicating Elemental's intent to convey the oil and gas does not affect the nature and extent of the interest conveyed by Elemental. *Freundenberger Oil Co. v. Gardner,* 79 W.Va. 46, 90 S.E.815 (1916) cited by the Circuit Court remains good authority.

> A deed conveying lands, unless an exception is made therein, conveys all the estate, right, title and interest whatever, both at law and in equity, of the grantor in and to such lands

Id. Syl. pt. 1. *See, e.g. G & W Auto Center, Inc. v. Yoursco*, 280 S.E.2d 327, 167 W.Va. 648 (W. Va. 1981).

There is no language in the deed from Elemental to Respondent reserving any interest owned by Elemental from the conveyance to Respondent. The Circuit Court was correct in its findings regarding the scope of rights conveyed by the deed from Elemental to Respondent.

F. COURTS MAY NOT CONSIDER EXTRINSIC EVIDENCE TO "INTERPRET" UNAMBIGUOUS DEED

Finally, Petitioners argue, in the alternative, that the April 30, 2015 deed from Elemental to Respondent was ambiguous regarding the extent of the rights being conveyed. As a result,

Petitioners say the Circuit Court erred in failing to consider extrinsic evidence to determine the intent of Elemental and Respondent in entering into the April 30, 2015 deed. Petitioners assert that extrinsic evidence will establish that Respondent intended only to acquire coal rights from Elemental.

It is black letter law that when asked to interpret a contract or deed, a court need not look further than outside the four corners of the document to determine the parties' intent. If the language in that document is susceptible of only one meaning, the document is enforced as written. In that event, the court need not and indeed may not consider extrinsic evidence to determine the parties' intent.

Here, the parties' intention as expressed in the April 30, 2015 deed from Elemental to Respondent was to convey to Respondent all interests Elemental acquired via the November 4, 2010 tax deed Elemental received from Deputy Commissioner Ringer. That conclusion puts an end to the analysis of the question of the intent of Elemental and Respondent. Petitioners' assignment of error arguing that the Circuit Court committed reversible error by failing to consider extrinsic evidence to interpret the 2015 deed from Elemental to Respondent must be denied.

VI. CONCLUSION AND PRAYER FOR RELIEF

Respondent requests that Petitioners' petition for appeal be denied; that the order of the Circuit Court of Monongalia County granting Respondent partial summary judgment entered March 17, 2023 be affirmed; that this matter be remanded the Circuit Court of Monongalia County for consideration of Respondent's damages claims; and for such other and further relief as the Court deems appropriate.

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CERTIFICATE OF SERVICE

I certify that I served the attached Brief of Respondent LT Realty, LLC upon counsel for Petitioners listed below via File & Serve this 31st of August 2023.

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