IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
DOCKET NO. 22-0470

POLLY FAYE GRIFFIN,	:	
Petitioner,	:	
v.	:	CIVIL ACTION NO. 18-C-138
	:	On Appeal from the
CHEVRON U.S.A., INC., ET AL.,	:	Marshall County Circuit Court
	:	Hon. David W. Hummel, Jr.
Respondents.	:	

RESPONDENT CHARLOTTE WHITE'S BRIEF

Erik A. Schramm, Jr. (#12223), and
Kyle W. Bickford (#11506), of the firm
HANLON, MCCORMICK, SCHRAMM,
BICKFORD & SCHRAMM CO., LPA
46457 National Road West
St. Clairsville, Ohio 43950
Telephone: (740) 695-1444
Fax: (740) 695-1563
E-mail: info@ohiovalleylaw.com
ATTORNEYS FOR RESPONDENT
CHARLOTTE WHITE

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ASSIGNMENT OF ERROR

I. THE CIRCUIT COURT ERRED IN DENYING RESPONDENT CHARLOTTE WHITE'S MOTION FOR SUMMARY JUDGMENT AND IN GRANTING THE MOTION FOR SUMMARY JUDGMENT OF RESPONDENTS WILLIAM E. TOLAND AND AMANDA N. WHITE-TOLAND.

As indicated in the Statement of the Case, the Circuit Court erred in concluding that in the deed to Timmie and Vickie McMillan in 1976, Hazel White did not intend to except and reserve her one-half (1/2) interest in the Minerals (oil and gas interests).

The parties do not dispute that Fred and Hazel White acquired a one-half (1/2) interest in the oil and gas pursuant to the deed conveyed to them from Elmer and Elsie Ressenger in 1943, wherein the Ressengers "excepted and reserved the one-half of the oil and gas within and underlying said tract of land." The other half interest was conveyed to Fred and Hazel White by that deed. After Fred White's death, Hazel White solely owned that one-half interest. When Hazel White conveyed the surface estate to Timmie and Vickie McMillan in 1976, the deed included language clearly indicating that she "excepted and reserved the one-half (1/2) of the oil gas within and underlying said tract of land." Not only is the language of that deed clear and unambiguous, it's consistent with what she actually owned at the time - a one-half (1/2) interest in the oil and gas. Clearly, she intended to reserve her one-half (1/2) interest in the oil and gas rights because she leased those oil and gas rights six (6) years later pursuant to an Oil and Gas Lease dated August 30, 1982. When she died in 1986, her one-half interest in the oil and gas rights was included in the Appraisement of her Estate.

Moreover, the deed from Hazel White expressly provides a reference to the prior deed from the Resseger's and states: "This conveyance, is, however, **subject to** the exceptions, reservations, covenants, conditions, restrictions, and easements, if any, granted by or acquired from the party of the first party and her predecessors in title to said land." Given the fact the

prior deed which initially reserved one-half (1/2) of the oil and gas was specifically referenced, a reservation of the remaining one-half (1/2) of the oil and gas is explicitly stated in the White-McMillan deed, **and all prior exceptions and reservations are excepted from the Warranty**; the clear intent of the White Deed is to except the remaining one-half (1/2) of the oil and gas from the conveyance.

When a deed expresses the intent of the parties in clear and unambiguous language, a court must apply that language without resort to rules of interpretation or extrinsic evidence. *Gastar Exploration, Inc, v. Rine*, 239 W.Va. 792, 806 S.E.2d 448 (2017).

After erroneously finding that the language in the deed was ambiguous, the Circuit Court considered irrelevant extrinsic evidence, including language that was included in at least six deeds conveyed subsequent to the White-McMillan deed which contained similar language. The language utilized by scriveners of deeds prepared after Hazel White conveyed the property in 1976, including deeds prepared after her death, could not possibly be relevant to whether she intended to except and reserve her one-half interest in the oil and gas when she conveyed the surface estate to the McMillans. Neither Hazel White, nor any of her heirs in this case, had any control over the preparation of those subsequent deeds. Their rights should not be affected by the inartful drafting of subsequent deeds.

The Circuit Court also considered irrelevant extrinsic evidence regarding language in the deeds regarding coal and mining rights. The Court indicated that Hazel White never owned any interest in coal and mining rights and that the language in the deeds regarding coal have no force and effect. That point is conceded, but the difference is that Hazel White did in fact own a one-half (1/2) interest in the oil and gas that she could have, and did in fact, except and reserve in the deed to the McMillans.

Respondent, the Petitioner, and the other Respondents, other than the Tolands, are the rightful owners of the one-half (1/2) interest in the oil and gas rights underlying and within the 82.3 acres on Bowmans Ridge. The Circuit Court erred in denying and not granting Respondent's Motion for Summary Judgment and erred in granting the Motion for Summary Judgment of Respondents Toland.

STATEMENT OF THE CASE

The matter before the Court is the determination of the ownership of an undivided one-half (1/2) interest in the oil and gas rights underlying and within 82.3 acres located on Bowman's Ridge in Marshall County, West Virginia.

Respondent Charlotte White, Petitioner, and all other named Respondents, except Respondents, William E. Toland and Amanda N. White-Toland, entered into Lease Agreements with Respondent, Chevron U.S.A., Inc. in 2014 to lease the undivided one-half (1/2) interest in the oil and gas rights. Chevron paid Respondent, Petitioner, and all other Respondents, except Respondents Toland, a total of $150,880 for entering into those leases, and agreed to pay them an 18% royalty on all oil and gas production. Shortly before production was to begin and royalties would thereafter be paid, Chevron indicated that, even though it had obtained leases and paid bonus money to Respondent, it was uncertain whether they, or the Respondents William E. Toland and Amanda N. White-Toland, who now own surface of the property, were the owners of the oil and gas rights. Chevron refused to pay any royalties on production until ownership was resolved by the Court.

The Petitioner, Polly Faye Griffin filed a Petition to Remove Cloud on Title to Oil and Gas Rights naming Chevron, the Tolands and the others claiming ownership in the oil and gas rights as Respondents. Respondent Tolands filed a Counterclaim and Crossclaim for Declaratory Judgment. The only other Respondent appearing in this matter is Respondent Charlotte White.

Over Chevron's objection, by Order entered on January 19, 2019, the Circuit Court ordered Chevron to pay all royalties to the Circuit Clerk pending the resolution of this matter.

Respondent Charlotte White and Petitioner both filed Motions for Summary Judgment seeking identical relief - a determination that they and the other named Respondents, except Respondent Tolands, were the owners of the interest in the oil and gas rights. Respondent Tolands also filed a Motion for Summary Judgment seeking a determination that they were the owners of the interest in the oil and gas rights.

The interests in the oil and gas rights of the Petitioner, Respondent Charlotte White, and the other Respondents are derived from the Estate of Hazel White. The property was conveyed to Fred White and Hazel White by deed dated November 18, 1943 from Elmer and Elsie Ressenger. That deed contained the following language indicating that the Ressengers "excepted and reserved the one half of the oil and gas within and underlying said tract of land..." The parties do not dispute that Fred and Hazel White acquired the other one-half (1/2) interest in the oil and gas pursuant to that deed.

Fred White subsequently died and his interest in the property transferred to his wife. Hazel White sold the property by deed dated June 29, 1976 to Timmie and Vickie McMillan. That deed contained the following language indicating that Hazel White "excepted and reserved the one-half (1/2) of the oil and gas within and underlying said tract of land...." The language of the deed is clear and unambiguous.

Hazel White leased her one-half interest in oil and gas subsequent to her conveyance of the property to McMillans by an Oil and Gas Lease dated August 30, 1982, which appears of record with the Marshall County Clerk.

Hazel White died in 1986. The Appraisement of her Estate filed with the Marshall County Clerk on March 13, 1987 includes the following in the real estate section: "Ing 82 A Bowman O & G Roy." By Order entered on May 23, 2022, the Circuit Court denied the Motions for Summary Judgment of the Petitioner and Respondent Charlotte White, and granted the Motion for Summary Judgment of the Respondent Tolands. In doing so, the Circuit Court improperly concluded that the exception and reservation of one-half (1/2) of the oil and gas in the deed conveyed by Hazel White to the McMillans was ambiguous. The Circuit Court proceeded to consider extrinsic evidence, including language used in at least six deeds prepared after the Hazel White deed to the McMillans, the preparation and execution of which the Hazel White heirs had no control, and improperly concluded that "Hazel White did not intend to except and reserve the Minerals In the White-McMillan Deed." (See Conclusions of Law, paragraph 50).

SUMMARY OF ARGUMENT

The Circuit Court erred in denying the Respondent Charlotte White's Motion for Summary Judgment and erred in granting the Motion for Summary Judgment of Respondents Toland.

The Court must reverse the Order of the Circuit Court and grant the Respondent Charlotte White's Motion for Summary Judgment and deny the Motion for Summary Judgement of the Respondents Toland. Respondent Charlotte White, Petitioner, and the other Respondents, other than the Tolands, are the lawful owners of the one-half (1/2) interest in the oil and gas rights within the 82.3 acres because that one-half (1/2) interest was clearly and unambiguously expected and reserved by Hazel White in her deed to McMillan in 1976.

Respondent Charlotte White is an owner of an interest in the oil and gas interests as an heir of Hazel White.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

The facts of the case are established by numerous documents included in the Appendix, but lend themselves to a narrow issue, that is, based upon those documents, who are the lawful owners of these oil and gas rights.

Cases involving the ownership of oil and gas rights have become of critical importance to owners of interests in real property in West Virginia.

Therefore, Respondent Charlotte White contends that this appeal should be scheduled for oral argument pursuant to Rule 20 of the West Virginia Rules of Appellate Procedure.

ARGUMENT

A motion for summary judgment should be granted only when it is clear that there is no genuine issue of fact to be tried and inquiry concerning the facts is not desirable to clarify the application of the law. Syllabus Point 3, *Aetna Casualty & Surety Co. v. Federal Insurance Co. of New York*, 148 W. Va. 160, 133 S.E.2d 770 (1963); *see also Williams v. Precision Coil*, 194 W. Va. 52, 459 S.E. 2d 329 (1995); *quoting* Syllabus Point 1, *Andrick v. Town of Buckhannon*, 187 W. Va. 706, 421 S.E.2d 247 (1992).

Summary judgment is appropriate if, from the totality of the evidence presented, the record 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." *See id.* "If the moving party makes a properly supported motion for summary judgment and can show by affirmative evidence that there is no genuine issue of a material fact, the burden of production shifts to the nonmoving party who must either (1) rehabilitate the evidence attacked by the moving party, (2) produce additional evidence showing the existence of a genuine issue for trial, or (3) submit an affidavit explaining why further discovery is necessary as provided in Rule 56(f) of the W.Va. Rules of Civil Procedure. *See id.*

This Court reviews de novo the granting or denial of a Motion for Summary Judgment and applies the same standards upon which the Circuit Court relied. *Maston vs. Wagner*, 236 W.Va. 488, 787 S.E. 2d 936 (2015).

It is undisputed Hazel White owned a one-half (1/2) interest in the oil and gas mineral estate when she was conveyed the property. As explained above, Hazel L. White subsequently

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conveyed the property to Timmie John McMillan and Vickie Lynn McMillan, his wife, by virtue of the Deed dated June 29, 1976 and filed for record in the Office of the Clerk of the County Commission of Marshall County, West Virginia in Deed Book 459, Page 415 (hereinafter the "White Deed") and said Deed provides as follows: "There is also excepted and reserved the one half (1/2) of the oil and gas within and underlying the said tract of land, together with the right to lease, drill for, operate and produce the same and such other rights as may be necessary and incidental to the production and marketing of said oil and gas." *See id.*

Said Deed also provides: "This conveyance, is, however, subject to the exceptions, reservations, covenants, conditions, restrictions, and easements, if any, granted by or acquired from the party of the first party and her predecessors in title to said land." *See id.*

For more than 100 years, this Court has recognized, "The legitimate purpose of all construction of instruments in writing is to ascertain the intention of the party or parties making the same, and, when this is determined, effect will be given thereto, unless to do so will violate some established rule of property." *Gibney, et al. v. Fitzsimmons, et al.*, 45 W. Va. 334, 342, 32 S.E. 189 (1898). Later this Honorable Court held:

> "Under our law, '[a] valid written instrument which expresses the intent of the parties in plain and unambiguous language is not subject to judicial construction or interpretation but will be applied and enforced according to such intent.'" Syl. Pt. 1, *Cotiga Dev. Co. v. United Fuel Gas Co.*, 147 W. Va. 484, 128 S.E.2d 626 (1962).

In this case, the Court should look no further than the four corners of the White Deed itself. "The polar star which should guide courts in the construction of deeds is the intention of the parties making the instrument." *Belcher v. Powers*, 212 W. Va. 418, 573 S.E. 2d 12 (2002), *quoting Totten v. Pocahontas Coal & Coke Co.*, 67 W. Va. 639, 642, 68 S.E. 373 (1910). "In the construction of a deed or other legal instrument, the function of the court is to ascertain the intent

of the parties as expressed in the language used by them." *Davis v. Hardman*, 148 W. Va. 82, 89 133 S.E. 2d 77 (1963). "In construing a deed, will or other written instrument, it is the duty of the court to construe it as a whole, taking and considering all the parts together, and giving effect to the intention of the parties wherever that is reasonably clear and free from doubt, unless to do so will violate some principal of law inconsistent therewith." Syl. Pt. 1, *Maddy v. Maddy*, 87 W. Va. 581, 105 S.E. 803 (1921).

By including the exception and reservation of one-half (1/2) of the oil and gas mineral estate, Hazel White intended to except and reserve for herself the remaining one-half (1/2) of the oil and gas mineral estate not excepted and reserved by the Resseger's in the prior conveyance. Further, the White Deed provides a reference to the prior deed from the Resseger's being Deed Book 228, Page 190, an explicit reservation of one-half (1/2) of the oil and gas within and underlying said tract of land, and most importantly states, "This conveyance, is, however, subject to the exceptions, reservations, covenants, conditions, restrictions, and easements, if any, granted by or acquired from the party of the first part and her predecessors in title to said lands."

As indicated by this Honorable Court in Wellman v. Tomblin, 140 W. Va. 342, 845 S.E. 2d 617 (1954), the Grantor's intentions are as expressed by the deed. Given the fact the prior deed which initially reserved one-half (1/2) of the oil and gas was specifically referenced, a reservation of the remaining one-half (1/2) of the oil and gas is explicitly stated in the White Deed, **and all prior exceptions and reservations are excepted from the Warranty**; the clear intent of the White Deed is to except the remaining one-half (1/2) of the oil and gas from the conveyance. At the time of the conveyance to the McMillans, one-half (1/2) of the oil and gas had been excepted by the prior grantors and one-half (1/2) of the oil and gas was owned by Hazel White.

Wellman also provides, "If a conveyance is of land conveyed by prior deed to which reference is made, the Grantee cannot contend that more passed than was intended in the recited deed." Thus, neither the McMillians, Respondents Toland's predecessors-in-title, nor Respondents Toland as the current surface owners of the Property can contend they received one-half (1/2) of the oil and gas when the White Deed contained and explicit reservation of one-half (1/2) of the oil and gas which remained after the initial reservation.

Most importantly, even though the White Deed provided General Warranty covenants, a blanket exception is made from said warranties by the recitation of: "This conveyance, is, however, subject to the exceptions, reservations, covenants, conditions, restrictions, and easements, if any, granted by or acquired from the party of the first part and her predecessors in title to said lands." Therefore, the prior one-half (1/2) reservation of the oil and gas was excepted from the conveyance and Hazel White intended to except and reserve the remaining one-half (1/2) of the oil and gas which she owned at the time of the conveyance.

Further evidencing that Hazel White intended to except and reserve the White Interest in the White Deed is the fact she **leased** the White Interest to John Richmond for development in 1982, only six (6) years after she excepted and reserved the one-half (1/2) of the oil and gas mineral estate. In addition, Hazel White entered into said Oil and Gas Lease **after** the property had been conveyed from the Grantee of the White Deed. Said Oil and Gas Lease is dated August 30, 1982 and the Deed from Timmie John McMillan and Vickie Lynn McMillan, the Grantees of the White Deed, to Harry E. Morgan, Jr. and Virginia M. Morgan, is dated January 20, 1982.

Again, upon Hazel White's death, her one-half (1/2) interest in the oil and gas mineral estate is listed in the Appraisement of her Estate as "1/2 Ing 82 A Bowman O & G Roy."

Moreover, Chevron U.S.A., Inc. paid the Petitioner and Respondent Charlotte White a bonus payment of $27,432.00 for their interests in the White Interest, pursuant to said Paid-Up Oil and Gas Lease. The White Interest has been assessed for real estate taxes in Marshall County, West Virginia as follows: "White Fred & Hazel Est – ½ INT 82 A BOWMAN O & G ROY." (Map 9999 Parcel 5810-0900)." The Petitioner's and Respondent Charlotte White's interest in the White Interest, as well as the interest in the White Interest owned by the other heirs and assigns of Hazel L. White, have also been assessed for real estate taxes in Marshall County, West Virginia as follows: "INT IN 82.3 A O&G LEASED." The Petitioner and Respondent Charlotte White have paid said real estate taxes on that interest.

Although the Petitioner and Respondent Charlotte White maintain the White Deed is unambiguous, if the Court were to determine the White Deed is ambiguous as to the intent of the parties, it would be permitted to consider extrinsic evidence, including the documents identified above. "For the ascertainment of the intent of the parties to a deed, in which the description of the subject matter is inconsistent, contradictory, and ambiguous, extrinsic evidence is admissible." Syl. Pt. 6, *Zimmer v. Romano*, 223 W. Va. 769 679 S.E. 2d 601 (2009), *quoting* Syl. Pt. 1, *State v. Herold*, 76 W. Va. 537 85 S.E. 733 (1915).

Therefore, Respondent White's predecessor-in-title, Hazel White, excepted and reserved the one-half (1/2) oil and gas mineral estate by virtue of the White Deed. It is undisputed Hazel White owned one-half (1/2) oil and gas mineral estate prior to conveying the Property; the White Deed contains an explicit oil and gas exception and reservation; and the language of the White Deed contains an exception of the prior one-half (1/2) reservation of the oil and gas that was excepted from the conveyance to Hazel White. Hazel White subsequently leased the White Interest, and the White Interest was listed in the Appraisement of her Estate. Clearly Hazel

White intended to except and reserve the remaining one-half (1/2) of the oil and gas mineral estate. As a result, Chevron U.S.A., Inc. leased and paid Hazel White's heirs for their respective interests in the White Interest.

Not only did the Circuit Court err in concluding that the White-McMillan deed was ambiguous, the Court made irrelevant findings of fact regarding language in the deed regarding coal and mining rights. The issue in this case has nothing to do with coal and mining rights. The Circuit Court also made irrelevant findings of fact regarding the language contained in deeds conveyed subsequent to the White-McMillan deed which contained closely identical language.

Hazel White or her heirs in this case had no control over the preparation of those subsequent deeds. Their rights should not be affected by the inartful drafting of subsequent deeds. These deeds have no relevance to the issue of whether Hazel White intended to reserve that one-half (1/2) interest in the oil and gas rights in the 1976 deed to the McMillans.

CONCLUSION

The Circuit Court erred in denying the Respondent Charlotte White's Motion for Summary Judgment and erred in granting the Motion for Summary Judgment of the Respondents Toland. This Court should find that the Circuit Court erred in concluding that the 1976 deed from Hazel White to the McMillans was ambiguous, when in fact, the deed clearly indicates that she reserved her one-half (1/2) interest in the oil and gas rights that she and her husband obtained by deed from the Ressengers in 1943.

Hazel White leased her one-half interest in the oil and gas in 1982 – six years after she conveyed the deed to the McMillans. The Appraisement of her Estate included her oil and gas rights when she died in 1986.

This Court must reverse and grant the Respondent Charlotte White's Motion for Summary Judgment and deny the Motion for Summary Judgement of Respondents Toland.

Respectfully submitted,

Erik A. Schramm, Jr. (#12223)
Kyle W. Bickford (#11506)
HANLON, MCCORMICK, SCHRAMM,
BICKFORD AND SCHRAMM, CO., LPA
46457 National Road West
St. Clairsville, Ohio 43950
Telephone: (740) 695-1444
Telefax: (740) 695-1563
Email: info@ohiovalleylaw.com
Attorneys for Respondent Charlotte White

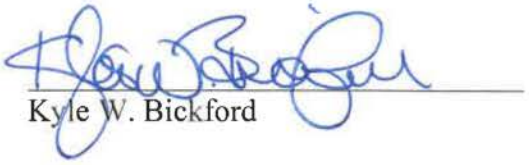
CERTIFICATE OF SERVICE

Service of the foregoing Respondent Charlotte White's Brief was made upon the following as indicated below by mailing a true copy thereof by US Mail postage prepaid them this 21st day of September, 2022.

Gregory A. Gaudino, Esq.
Petropolus & Gaudino
69 15th St.
Wheeling, WV 26003

Emily C. Weiss, Esq.
K&L Gates LLP
K&L Gates Center
210 Sixty Avenue
Pittsburgh, PA 15222

Christian E. Turak, Esq.
GOLD, KHOUREY & TURAK, L.C.
510 Tomlinson Avenue
Moundsville, West Virginia 26041



Kyle W. Bickford