IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

CASE NO. 25-ICA-100

ICA EFiled: May 27 2025
06:28PM EDT
Transaction ID 76347700

WINGED FOOT MINERALS, LLC,
an Oklahoma Limited liability company, et al.,
PETITIONERS,

v.

SWN PRODUCTION COMPANY, LLC,
a Texas Limited liability company, et al.,
RESPONDENTS

PETITIONER'S JOINT BRIEF

On Appeal from the Circuit Court of Marshall County, West Virginia
Civil Action No. 22-C-83
(Honorable Jason A. Cuomo)

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TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

RULES OF CIVIL PROCEDURE

RULES OF EVIDENCE

STATUTES AND RULES

CASES

I. ASSIGNMENTS OF ERROR

The Circuit Court erred in granting the Respondents' motion for summary judgment and in denying the Petitioners' motion for partial summary judgment on the same claim. Both rulings stem from the Circuit Court's erroneous determination that the oil and gas tax assessment purchased by Petitioners' predecessor was void as a duplicate assessment.

II. STATEMENT OF THE CASE

A. Facts of the Case

The Petitioners brought this action in the Circuit Court of Marshall County seeking a declaration as to the ownership of three-fourths ($3/4^{th}$) of the oil and gas underlying approximately 227.48 acres in Meade District, Marshall County, West Virginia (the "Subject Lands" and the three-fourths interest in issue, the "Subject Interest"). PA14-48. The Subject Interest was severed from the surface in 1920. PA68-74. The Respondents, other than SWN Production Company, LLC ("SWN") and Equinor USA Onshore Properties, Inc ("Equinor" and collectively with SWN, the "Producer Respondents"), are the successors, largely by devise and intestacy, to the Subject Interest. The Respondents other than the Producer Respondents are referred to herein as the "Individual Respondents." Between 1972 and 2009, none of the Individual Respondents, or their Predecessors, paid taxes of any nature on any of their interests in the Subject Lands or had their respective individual and fractional interests in the Subject Interest separately assessed. The Petitioners' predecessor purchased the only mineral assessment ever created on the Individual Respondents' interest, at any time between 1920 and 2009, at a 1991 tax sale for delinquent 1990 taxes covering the Subject Interest (April 5, 1993, Deed Book 571, Page 118). PA81-91. In this case, the Court must decide who, as between the delinquent taxpayers (*i.e.* the Individual Respondents) and the tax sale purchaser (*i.e.* the Petitioners) owns the Subject Interest.

i. Death of Joseph Nolte, Sr. and Mineral Severance

The seeds of this dispute go back to the late 19th and early 20th century. In his lifetime, Joseph Nolte, Sr. acquired the surface and 100% of the oil and gas underlying the Subject Lands, and other lands, comprising approximately 363 acres in total. PA68-74. Prior to his death, his interest was assessed on the land books of Marshall County as "Nolte Joseph Fee 363 81 Lynn Camp." PA192. This 363-acre tract was the only real estate that Joseph Nolte, Sr. owned in Meade District. PA192, PA68-74.

Joseph Nolte, Sr. died in 1920, and in his will, recorded at Will Book 6, Page 346, devised the surface of said land as follows: lot no. 1 measuring 134.68 acres to his son Joseph Nolte, Jr.; lot no. 2 measuring 136.40 acres to his daughter Theresa Wiegand; and lot no. 3 measuring 92.80 acres to his granddaughters Mary Nolte and Christina Nolte. PA68-74. His will further directed that the oil and gas underlying the entire tract, including the Subject Lands, would be held in common by Theresa Wiegand, Joseph Nolte, Jr., and Nolte, Sr.'s grandson Joseph Wiegand, Jr., with one-fourt-heach (*i.e.* 3/4th total), and Mary Nolte and Christina Nolte collectively receiving one-fourth. *Id.*

On March 21, 1921, Mary Miller (f/k/a Mary Nolte) and Christina Baker (f/k/a Christina Nolte) conveyed the surface of lot 3 described in the Joseph Nolte, Sr. will to Joseph Nolte, Jr. (Deed Book 165, Page 200). PA55._Consequently, Joseph Nolte Jr. owned the surface of the Subject Lands and one-fourth of the oil and gas underlying the Subject Lands. Theresa Weigand, Joseph Wiegand, Jr., Mary Miller and Christina Baker continued to own the other three-fourths)3/4th) interest in the oil and gas, being the Subject Interest.

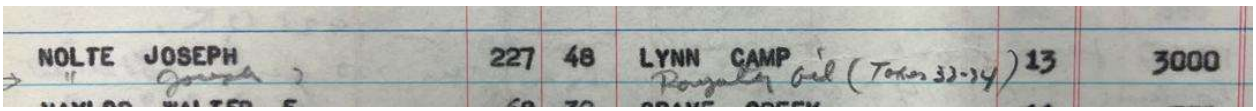
ii. Land Book Assessments and Deeds to Subject Lands and Subject Interests

In 1920, the Land Books were amended to reflect Nolte Sr.'s will and the conveyance of the surface interest from Mary Miller and Christina Baker to Joseph Nolte, Jr. PA192-193. The "Nolte Joseph Fee 363 81" assessment, with an assessed land value of $9,150, was changed to "Nolte Joseph Jr. 227 48" and an assessment was created for 136.40 acres in the name of Theresa Weigand[1]. *Id.* Nolte, Jr.'s interest was assessed with a land value of $5,800 and Theresa Weigand's at $3,400. *Id.*

In 1923, Theresa Weigand's surface assessment was increased to a land value of $4,800, and Joeseph Nolte, Jr.'s surface assessment retained a value of $5,800. PA200-201. In 1930, for unknown reasons, the Joseph Nolte, Jr. assessment was reduced to $5,000, and Theresa Weigand's assessment was reduced to $3,500. PA214-215. In 1932, the Nolte Jr. and Theresa Weigand surface assessments were reduced twice, with ultimate values of $3,000 and $1,550, respectively. PA218-219.

In 1933, the year after these significant reductions in value, two changes occur on the Meade District Land Books. First, the word "Fee" is no longer present alongside the Nolte Jr. and Theresa Weigand assessments. PA220, PA222. The word "Fee" was not included in any of Nolte, Jr.'s subsequent surface assessments. PA 225-277. Second, a separate "Royalty Oil" assessment was created in the name of "Nolte Joseph" with an assessed value of $200, which is depicted below. PA220.

1933 Land Book



[1] The Petitioners have not claimed an interest in the oil and gas underlying Theresa Wiegand's surface parcel in the underlying dispute. However, since the Circuit Court considered its early tax history in its decision, it is therefore discussed herein.

For reasons unknown, the "Royalty Oil" assessment was crossed off in the 1937 Land Book, but then a mineral assessment reappeared on the Land Books in 1946 (depicted below) in the name of "Nolte Joseph Heirs" with a total assessed value of $50. PA229, 248. This assessment, the "Nolte Heirs Assessment", which is depicted below, is the one on which this entire case turns. Though they owned three-fourths of the oil and gas, *i.e.*, the Subject Interest, no separate assessment was ever created in the names of Theresa Weigand, Joseph Wiegand, Jr., Christina Baker or Mary Miller names for their respective interests in the oil and gas under the Subject Lands. The Nolte Heirs Assessment was, therefore, the only assessment ever created which covered their severed interest in the oil and gas for tax purposes.

1946 Land Book

NOLTE JOSEPH	227	48	LYNN CAMP	13	3000	750	3750 ✓	
" JOSEPH HEIRS			ROY					50

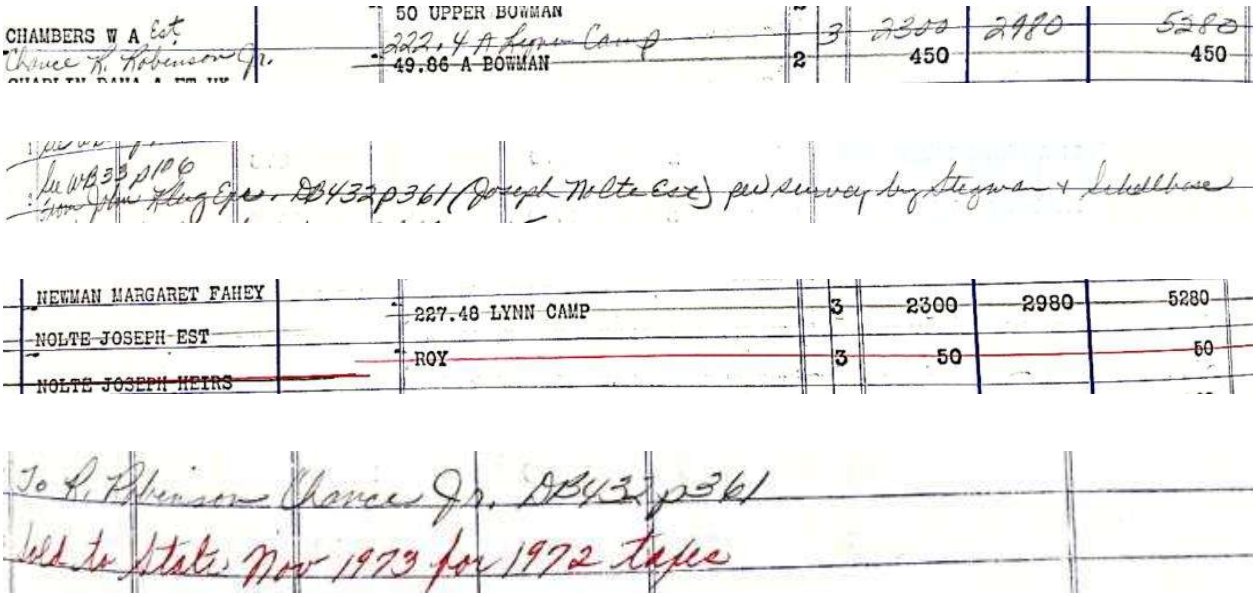
The Nolte Heirs Assessment remained on the Meade District Land Books, largely unchanged, until the 1973 Land Book. PA250, 277. Throughout this 25-year period, one or more of the Nolte Heirs continued to pay the taxes on this assessment, as evidenced by these Land Book entries.

Joseph Nolte, Jr. died, testate, on or about January 19, 1971. PA79. His Executor, John J. Klug, conveyed the Subject Lands, now described as 222.40 acres per survey, to R. Robinson Chance, Jr. by a deed, dated October 10, 1972 (Deed Book 432, Page 361). PA76-80. There was no mineral reservation in the deed and thus R. Robinson Chance, Jr. acquired all of the interest once owned by Joseph Nolte, Jr., being 100% of the surface and one-fourth (1/4th) of the oil and gas underlying the Subject Lands. *Id.* Theresa Weigand, Joseph Wiegand, Jr., Mary Miller

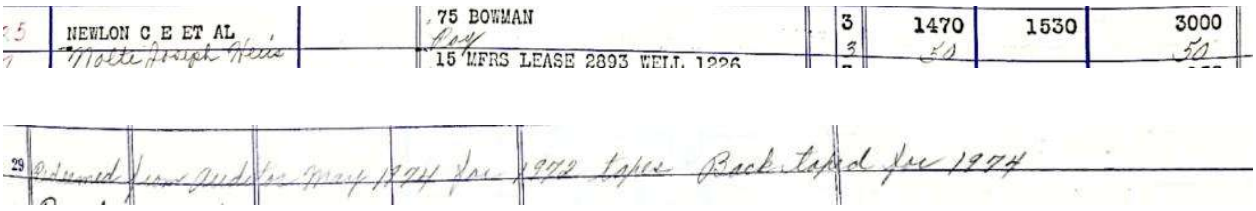
and Christina Baker, or their successors, remained vested with ownership of the remaining three-fourths (3/4th) interest in the oil and gas, being the Subject Interest.

In 1973, the Nolte Heirs Assessment was sold to the state for non-payment of 1972 taxes. That same year though, the Nolte Jr. Assessment was transferred to R. Robinson Chance, Jr., who again, now owned the surface of the Subject Lands and one-fourth (1/4) of the oil and gas thereunder. The 1974 Land Book notes that the Nolte Heirs Assessment was redeemed, presumably by Mr. Chance. In the 1975 Land Book, the Nolte Heirs Assessment is transferred to R. Robinson Chance, Jr.'s attention, "per Mr. Chance." PA283. The 1973, 1974 and 1975 Land Book entries appear below.

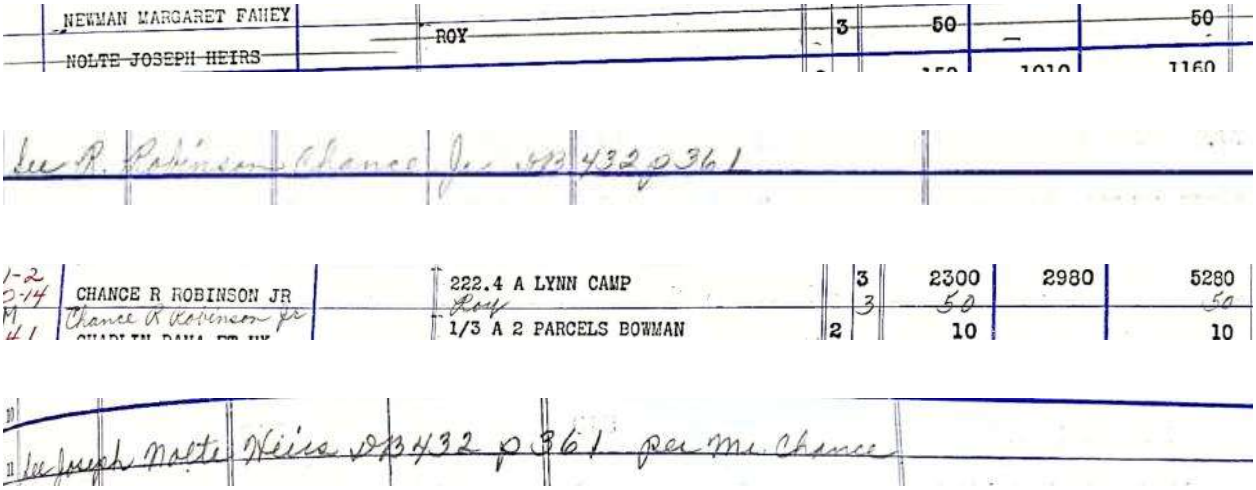
1973 Land Book



1974 Land Book



1975 Land Book



When the Nolte Heirs Assessment first went delinquent in 1972, two of the five original devisees were still living: Joseph Wiegand, Jr. and Mary Miller. Theresa Weigand died on September 1, 2019 (Will Book 10, Page 205). PA442-443. Christina Baker died, testate, on April 26, 1959, vesting her interest in her five children, all of whom were alive at the time of the delinquency. (Will Book, 22 Page 142). PA459. In total, sixteen (16) separate individuals owned a portion of the Subject Interest at the time of this delinquency.[2] PA458-459. There were no tax assessments in *any* of these individuals' names in the Subject Lands, and none paid taxes on their respective portions of the Subject Interest.

In 1982, R. Robinson Chance, Jr. sold his interest in the Subject Lands to Daniel R. Watkins and John L. Turcato (Deed Book 502, Page 160), and the surface assessment was transferred to their names. PA291. There was no mineral reservation in this deed. Hence, as of December 14, 1982, Watkins and Turcato owned one-fourth ($1/4^{th}$) of the oil and gas underlying the Subject Lands. Joseph Wiegand, Jr., and 25 different heirs, devisees or successors, including

[2] Elizabeth Wiegand, Frank Wiegand, Christina Blatt, Anna Yeager, Rose Miller, Mary Ann Goddard, David Paul Wiegand, John G. Wiegand, Clara Wiegand, Irene Wiegand, Margaret Wiegand Hall, Catherine L. Baker, Mary C. Young, Leonard V. Baker, Mildred A. Baker, Agnes Baker Pucarich, Mary Miller and Joseph Wiegand, Jr.

some of the Individual Respondents, continued to own the remaining three-fourths (3/4th) of the oil and gas (*i.e.* the Subject Interest). PA458-459. *None* of these 26 individuals had their interests separately assessed or paid any property taxes on their interests. Despite having sold his interest in 1982, R. Robinson Chance, Jr. continued paying the Nolte Heirs Assessment through 1990. PA310.

In 1990, the Nolte Heirs Assessment went delinquent and was sold at a 1991 tax sale to Petitioners' predecessor, James Prendergast, who received his deed for the Subject Interest on April 5, 1993 (Deed Book 571, Page 118). PA81-91. In 1990, over 20 individuals, including some of the Individual Respondents, and predecessors of the other Individual Respondents, owned a portion of the Subject Interest. PA458-459. *None* had their interests separately assessed or paid any taxes in 1990, and none redeemed the Subject Interest.

The Petitioners, with the exception of Winged Foot Minerals, LLC ("Winged Foot"), are the children, grandchildren, and great-grandchildren of James Prendergast, who died intestate on January 5, 2005 (Misc. Book 46, Page 185). PA92-100. The Petitioner Winged Foot is a successor to James Prendergast by virtue of a 2021 deed conveying a portion of the James Prendergast heirs' interest (Deed Book 1117, Page 315). PA27. The Petitioners, or their predecessor, James Prendergast, have continually paid taxes on the Subject Interest since 1993.

Between 2009 and 2018, Respondents SWN and Equinor, or their predecessors, leased the Individual Respondents', or their predecessors', interests to develop the Marcellus Shale. PA351-355. Only after obtaining these leases, and presumably bonuses, did *any* of the Individual Respondents have their alleged interests in the Subject Lands separately assessed and pay taxes thereon.

iii. Case Procedural History

The Petitioners filed their complaint on August 26, 2022. They alleged essentially two causes of action. Against all Respondents, they sought a declaration of their rights pursuant to the 1993 tax deed to James Prendergast. PA27-29. Against the Producer Respondents, they sought damages for the value of the gas taken without their consent in tort (*i.e.* trespass). PA29-31. Because the James Prendergast tax deed was limited to the 222.44/227.4 acres previously owned by James Prendergast, Jr., the Petitioners limited their claims to this parcel, the Subject Lands. PA24.

Petitioners filed a Motion for Partial Summary Judgment on the declaratory judgment claims on June 10, 2024. PA49. Petitioners argued that the Nolte Heirs Assessment was the only assessment covering the Subject Interest and that when sold for delinquency, James Prendergast acquired all interest covered thereby. PA63. Respondents filed two separate responses to Petitioners' Motion, and Petitioners filed a reply thereto. PA102-134.

Notably, two groups of the Respondents filed their own Motions for Summary Judgment. Mary Alexander, *et al.*, filed their motion (the "Alexander Respondents"), arguing that the Nolte Heirs Assessment constituted a duplicate assessment and therefore was void. PA 135-312. Essentially, the Alexander Respondents make the nuanced argument that because the Nolte Jr. Assessment and Wiegand Assessments did not undergo a dollar-for-dollar reduction in assessed value when the Nolte Heirs Assessment was entered, the Nolte Heirs Assessment was duplicative and void. *Id.* According to the Alexander Respondents, they did not lose their interests in the 1991 tax sale, because those interests were always paid by R. Robinson Chance, Jr., and later Turcato and Watkins, as part of the surface assessment.

SWN, *et al.*, (the "SWN Respondents") filed a separate motion for summary judgment. PA313-438. The SWN Respondents did not argue that the Nolte Heirs Assessment was duplicative. Instead, they took the opposite tack from the Alexander Defendants. They argued that the Nolte Heirs Assessment, when sold, was invalid as too vague and because "Chance never owned an interest in the Subject [Interest]." PA325. The SWN Respondents' argument squarely conflicts with the Alexander Respondents' argument. According to the SWN Respondents, they must win this title dispute because Chance *was not permitted* to pay the Individual Respondents' taxes. According to the Alexander Respondents, they must prevail in this title dispute because Chance *did* pay the Individual Respondents' taxes.

The Circuit Court granted the Alexander Respondents' motion for summary judgment and denied the Petitioners' motion for partial summary judgment. PA485. It made no mention of the disposition of the SWN Respondents' Motion, thus the Circuit Court presumably found its motion moot. PA484-496. This appeal and brief therefore focus on the issues raised by the Alexander Respondents and endorsed by the Circuit Court's Order.

III. SUMMARY OF ARGUMENT

The statutory real estate taxation scheme in West Virginia is simple and clear. The State relies on property taxes to fund government. The owners of real estate are obligated to have their property assessed and pay the taxes on that assessment. They are authorized to assess their interests collectively in group assessments, but this does not alter the obligation to pay the assessment. When an owner, or group of owners, fails to pay their taxes, the State is authorized to sell that interest. This is precisely what happened here. None of the Individual Respondents, or their predecessors, paid the taxes on their interest in 1990, and the interests, which were undeniably covered by the Nolte Heirs Assessment, were appropriately sold to James Prendergast.

The Circuit Court's conclusion—that the Nolte Heirs Assessment constituted a duplicate assessment and was therefore void—was based entirely on the assessed values denoted in the land books and the fact that when the Nolte Heirs Assessment was created, there was no apples-to-apples reduction in the surface assessments. Thus, the real issue before the Court is simple: in order for a tax sale to be valid, must the purchaser affirmatively prove that the Assessor did their job and appropriately valued property decades before according to law? Phrased alternatively: can individuals who admittedly did not pay their taxes for decades escape the consequences because the original assessor is no longer in office and often not alive to prove otherwise? These questions must be answered in the negative.

IV. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

This case should be set for a Rule 20 oral argument, as the disposition of this case involves significant issues of public importance. Specifically, the requirement of an identical reduction in assessed value at the time that a mineral assessment was created has the potential to upend decades of settled title vital the continued development of oil, gas, and coal in this State.

V. STANDARD OF REVIEW

"A circuit court's entry of summary judgment is reviewed *de novo*." Syl. pt. 1, *State Farm Fire & Cas. Co. v. Nathaniel Realty*, 246 W. Va. 676, 874 S.E.2d 788 (2022) (citations omitted). The denial of a summary judgment motion is reviewed under the same *de novo* standard. Syl. pt. 1, *Smith v. Chestnut Ridge Storage, LLC*, 244 W. Va. 541, 855 S.E.2d 332 (2021) (citations omitted).

VI. ARGUMENT

A. The Nolte Heirs Assessment Was Valid Under West Virginia Law When Created and When Transferred to R. Robinson Chance, Jr.

West Virginia law authorizes the creation of group assessments and the payment of taxes by anyone with an interest in the property. The Nolte Heirs Assessment was therefore valid when created and valid when transferred to R. Robinson Chance, Jr.. The Circuit Court's Order confuses evidence of title with the requirements for taxation. The Petitioners are not arguing, and have never argued, that R. Robinson Chance, Jr. owned the Subject Interest when it was assessed in his name. That does not mean he was not entitled to pay those taxes and the fact that he did, does not render this tax sale void.

"The law requires the separate assessment of any mineral in land . . . when the ownership of such mineral or timber is vested in a person other than the owner of the surface." *State v. Black Bank Consol. Coal Co.*, 113 W. Va. 872, 874, 169 S.E. 614, 615 (1933). When oil and gas are severed and separately owned, the Assessor "shall assess such respective estates" separately. W. Va. Code § 11-4-9 (1935).[3] West Virginia law expressly authorizes the cotenant interests to be assessed as a group. *Id.*, W. Va. Code § 11A-1-9 (1941).

In West Virginia, "it is the duty of the owner of real estate to return it for assessment, and to pay the taxes assessed thereon." *State v. Farmers Coal Co.*, 130 W. Va. 1, 15, 43 S.E.2d 625, 632 (1947). Furthermore, "every citizen is presumed to have known that his land was taxable . . . that it was his duty to timely pay his taxes [and] that if he failed to do so his land would be offered for sale and resale at a time and place specified in the statutes." *Shaffer v. Mareve Oil Corp.*, 157 W. Va. 816, 827, 204 S.E. 2d 404, 411 (1974) (citations omitted). It is true that an assessment in the name of another can render the assessment void, but that does not invalidate group assessments. Moreover, that exception applies only where the error occurs "without the

[3] A prior version of this statute dates to 1863. Unless otherwise noted, the statutes cited herein are those in existence at the relevant time frame for the assessments in issue, 1946 to 1993. The West Virginia tax statutes have been amended since in many respects.

knowledge or fault of the real interest owner. . . ." *Cunningham v. Brown*, 39 W. Va. 588, 598-599, 20 S.E. 615, 619 (1894).

In West Virginia, any "person having an interest in the land, or in an undivided interest therein, which he desires to protect, shall be allowed to pay the whole, but not a part of the taxes assessed thereon." W. Va. Code § 11A-1-9 (1941). Furthermore, a co-owner "shall be entitled to redeem his and/or any or all of his co-owners' interest from the State." W. Va. Code § 11-4-9 (1935).

When the oil and gas was severed from the surface, Joseph Nolte, Sr.'s devisees had an obligation to see that their respective interests were assessed and that those taxes were paid. None of those devisees, or their successors, including the Individual Respondents, were assessed in their own names prior to the 1991 tax sale in issue. Rather, they chose to utilize the group assessment procedure authorized by West Virginia law. The Nolte Heirs Assessment was authorized by West Virginia law and was appropriate when created.

When the Nolte Heirs Assessment *first* went delinquent in 1972, R. Robinson Chance, Jr. owned one-fourth ($1/4^{th}$) of the oil and gas under the Subject Lands. He was therefore entitled to redeem the Nolte Heirs Assessment and pay the taxes thereon pursuant to W. Va. Code § 11-4-9 and W. Va. Code § 11A-1-9. The fact that the Nolte Heirs Assessment was placed in his name per his request by the Assessor does not render the assessment invalid or erroneous. This was a group assessment in the name of the Nolte Joseph Heirs, and the taxes were paid on said group assessment for nearly 25 years prior to the 1972 delinquency. This situation is not unusual in West Virginia and is acknowledged in West Virginia law.

As set forth in the Petitioners' reply brief filed below, the land books are filled with group assessments in the names of long deceased individuals or "heir" and "estate" misnomers.

For example, the 1985 Tyler County McElroy Land Book contains an entry for "Stewart Lucy Est. Roy 82A." PA125. The Tyler County public records reveal that Lucy Stewart died in 1954, that no estate was ever opened for Lucy Stewart, and that the assessment remains on the books as of today. *Id.* Is this an invalid assessment? Is the taxpayer currently paying taxes on this assessment wasting their money and subject to lose it elsewhere, at the whim of the Assessor? Of course not.

The reported case law of this State reflects the same. In the *Bonacci* case, which *did* involve a duplicate assessment, there was an assessment of the oil and gas in place in the name of a long-deceased *prior* owner and "production" or "leased" assessments in the names of various current or past fractional owners of the oil and gas. *Orville Young, LLC v. Bonacci*, 246 W. Va. 26, 30–31, 866 S.E.2d 91, 95–96 (2021). The "production" tickets were delinquent but the assessment, in the name of the individual who was deceased and obviously owned no interest in the property, was not. *Id.* The Court voided the sale of the "production" interests because they were duplicates of the assessment in the name of an individual who had died long ago. *Id.* at Syl. pts. 1 and 2.

The *L & D* case also has similarities to the instant matter. In that case, Mary Andrews died in 1920 and left the oil and gas to numerous children and grandchildren. *L&D Invs. Inc. v. Mike Ross, Inc.*, 241 W. Va. 46, 49, 818 S.E.2d 872, 875 (2018). All of the oil and gas in place had been assessed in the name of a single cotenant, who had died in 1946. *Id.* at 50, 818 S.E.2d at 876. That assessment, in the name of only one of many cotenants, long since deceased, went delinquent in 2001. The issue in that case was not whether the assessment of many interest the name of someone who did not own *any* interest at the time was valid—it obviously was. The issue was whether the particular petitioners' taxes had been paid elsewhere. *Id.* Because they had

been paid, in the form of "leased" assessments in the names of specific cotenants, those specific cotenants could not lose their interests. *Id.* at Syl. pt. 3.

The Respondents' arguments about the name on the tax ticket are red herrings. If R. Robinson Chance, Jr. had not redeemed the Nolte Heirs Assessment in 1973, we would not be here. There would be no argument that they did not lose their interest due to non-payment of taxes. The fact that Chance paid those back taxes, and thereafter assumed responsibility for their payment moving forward, does not change the equation. The assessment that he took responsibility for—the Nolte Heirs Assessment—was the only assessment covering the Subject Interest, and it always covered the Subject Interest. Every one of the myriad cotenants in the Subject Interest over the years was required by law to have their interest assessed. At any point between 1920 and 1993, including at any point after R. Robinson Chance, Jr. redeemed the Subject Interest, any one of the Individual Respondents or their predecessors could have had their interests separately assessed as the prevailing parties in *L & D* did. They chose not to do so but rather relied on the payment of taxes by someone else. The State and its tax sale purchasers should not bear the consequences of their failure. The Nolte Heirs Assessment was valid when created and transferred to Chance.

B. The Nolte Heirs Assessment Was Not a Duplicate Assessment.

The sale of the Nolte Heirs Assessment was valid on its face and presumptively establishes the Petitioners' title. *See* W. Va. Code § 11A-3-28 (1963)("The tax deed shall be conclusive evidence of the acquisition of such title."). The only way the Respondents can invalidate the 1993 Tax Deed to James Prendergast is to demonstrate that the underlying assessment was void on its face. To mee that goal, the Respondents argue that the Nolte Heirs Assessment constitutes a duplicate assessment. According to Respondents, they were not required

to pay taxes at any time on their severed oil and gas interests, because the surface owner paid their taxes for them.

What this case is *not* about is almost as important to reaching the correct conclusion as what it *is* about. The Petitioners *do not* claim to have acquired the oil and gas belonging to Joseph Nolte, Jr. and subsequently R. Robinson Chance, Jr., James Watkins and Daniel Turcato. If they did, *that* would be a duplicate assessment under the holdings of *Bonacci* and *L& D Invs., Inc.*. That is not the situation before the Court. Indeed, the Petitioners acknowledge that Joseph Nolte, Jr., then R. Robinson Chance, Jr., James Watkins and Daniel Turcato paid *their* assessments in the Subject Lands. The Petitioners only claim to have acquired the title of those owners whose only assessment, *at any time*, was the Nolte Heirs Assessment. Those owners, the Individual Respondents and their predecessors, never owned any interest in the Subject Lands other than that covered by the Nolte Heirs Assessment which was properly sold. This is, therefore, not a duplicate assessment case, and the Petitioners have good title to the Subject Interest.

i. The Court May Not Assume the Assessor Failed to Assess Accurately

The State can only demand one payment of taxes on any particular interest. Syl. pt. 3, *L&D Invs., Inc.*, 241 W. Va. at 47, 818 S.E.2d at 873. This does not mean, however, that the payment of taxes on *any* interest in the particular piece of real estate inures to the benefit of *all* interests, particularly when a separate estate in the minerals was created, that separate estate was entered on the land books, and taxes thereon paid by the prior owner. Here, the Individual Respondents', or their predecessors', interests in the severed oil and gas were appropriately assessed in a group assessment, the taxes on that assessment were not paid, their interests were not taxed elsewhere, and the interests were properly sold. The Respondents attempt to avoid these inconvenient truths by assuming, without any positive evidence, that the Assessor was derelict in

his or her duty and that the Assessor failed to account for the severed minerals. Based upon such flawed assumptions, the Individual Respondents inaccurately argue that they are absolved of their admitted failings. The Respondents misstate the facts, misapply the law, and attempt to create an untenable burden on the State and tax sale purchasers to ascertain and prove value of lands assessed decades before and the validity of decisions by long-retired or deceased civil servants in order to secure valid title. The law does not presently impose such an unrealistic burden, and this Court should not endorse it, as the Circuit Court did below.

The Legislature has expressly declared that "providing regular tax income for the state, county, and municipal governments" is of "paramount necessity" and that delinquent taxes "represent[] a failure on the part of delinquent private owners to bear a fair share of the costs of government. . . ." W. Va. Code § 11A-3-1(1994). As such, "there is a presumption that valuations for taxation purposes fixed by an assessor are correct." Syl. pt. 2, *Western Pocahontas Properties v. Wetzel County Comm'n*, 189 W. Va. 322, 431 S.E.2d 661 (1993). Likewise, a tax sale is presumed to have been carried out in accordance with the applicable law. *Friedman v. Craig*, 77 W. Va. 223, 229, 87 S.E. 361, 364 (1915). The Supreme Court of Appeals has recognized "the importance of [a tax sale's] finality: "confidence in one's title to land is of paramount importance." *Collingwood Appalachian Minerals III, LLC v. Erlewine*, 248 W. Va. 615, 622, 889 S.E.2d 697, 704 (2023) (internal quotation omitted). "[C]ertainty above all else is the preeminent compelling public policy to be served West Virginia's statutory taxation scheme exists to ensure the payment of taxes, not to protect owners who fail to do so." *Id.* (internal quotation omitted).

The Fourth Circuit accurately and thoughtfully addressed the applicable law:

> When one person is the owner of the surface and another of the minerals under it, the Code of West Virginia 1913, c. 29, § 39 (sec. 923) makes it the duty of the assessor to divide the value of the land between the different owners and to list each separately. It is true

> that when it affirmatively appeared that all the value was assessed to the owner of the surface and no assessment was made against the owner of the minerals, a sale for the failure of the owner of the surface to pay his taxes will carry the mineral rights with it. *Peterson v. Hall et al*., 57 W. Va. 535, 50 S.E. 603 (1905). In this case there is no evidence as to whether the mineral rights were or were not separately valued and listed, and we have been referred to no case to support the contention of defendants that there is any presumption that the taxing authorities did not do what the law said they should. In this state of the proof the learned judge below was clearly right in directing a verdict for the plaintiff on this issue.

Dingess v. Huntington Dev. & Gas Co., 271 F. 864, 868 (4th Cir. 1921) (applying West Virginia law to an appeal out of the Southern District of West Virginia).

The Respondents argue that the surface assessments included their mineral interests because, according to the Respondents, the surface assessments did not change value to reflect the mineral severance. First and foremost, and contrary to the Respondents' contentions, those assessments did change. In 1920, the Nolte Sr. 363.81-acre assessment had a land value of $30 per acre and a total value of $9,150. That same year, the new Nolte Jr. 227.48-acre surface assessment retained a $30 per acre value ($5,800 total), and the Theresa Weigand assessment was entered at $25 per acre ($3,400 total), thereby resulting in a total net change of $50 ($9,200 total vs. $9,150).

In 1930, the Nolte Jr. surface assessment was reduced from $5,800 to $5,000. In 1932, it was reduced twice, ultimately to $3,000. Thus, by the time the Nolte Heirs Assessment appeared on the land books at a value of $200 in 1933, the Nolte Jr. surface assessment was valued at significantly less than at the time of the oil and gas severance. Did the assessor account for the mineral severance in valuing the Nolte Jr. surface assessment so much lower? Maybe, maybe not, but no one could ever know that answer given that the valuation occurred almost a century ago.

The Nolte Heirs Assessment value likewise was not static once entered. In 1935, the Nolte Jr. surface assessment remained at $3,000, but the Nolte Heirs Assessment was reduced in half to $100. In 1946, when the Nolte Heirs Assessment reappeared, it was assessed a value of $50. At that point, the Nolte Jr. assessment retained a land value of $3,000.

Setting aside the fact that the values in fact *did* change, the assertion that the Assessor did not take the mineral severance into account when creating the Nolte Heirs Assessment, or when adjusting these assessments in 1920, 1930, 1932, 1933, 1935, or 1946, is pure conjecture and guesswork. We cannot state why the various Assessors changed the relevant values at various times. We can guess, but that is not helpful. What we can say, with certainty, is that the values did change over time and that when the Nolte Heirs Assessment was first entered, as was required by statute, the value of the surface was considerably less than it was prior to the oil and gas severance.

ii. This Case Is Clearly Distinguishable from the Other "Duplicate Assessment" Cases.

The preceding section is used to illustrate that, factually, it is impossible to determine why a value was placed on the assessments at issue here and whether one assessment accounted for a separate mineral assessment or not. However, this appeal can be decided based on the plain application of the statutes and tax sale precedent to these facts.

As set forth above, there was only one assessment of the severed mineral interest, and it was properly sold. The Respondents' only potential saving grace is the claim that this is a "duplicate assessment" case. In comparing this case to actual "duplicate assessment" cases, the distinctions and their inapplicability are abundantly clear.

This case does not involve *two* mineral assessments of the same mineral interest. In the *L&D* case, Mary Andrews died in 1920 with 100% of the oil and gas; the severed oil and

gas in place was assessed in a group assessment in the name of one of her heirs who had died in 1946; and numerous "leased" assessments had subsequently been created covering more remote successors' individual interests. *L&D Invs. Inc.*, 241 W. Va. at 49-50, 818 S.E.2d at 875-876. The respondent in that case had purchased the delinquent group assessment at a tax sale. *Id.* at 50, 818 S.E.2d at 876. The petitioners, or their predecessors, in that case had always paid their individual "leased" assessments, however. The Court held that because those particular leased assessments had always been paid, they could not be lost—payment of one of the assessments for *their* interest was sufficient. *Id.* at Syl. pt. 3. The *Bonacci* case dealt with the opposite fact pattern from *L&D*—the in-place assessment was paid, but the leased assessments were not. *Bonacci*, 246 W. Va. at 30, 866 S.E.2d at 95.

The instant case does not involve a situation where the Individual Respondents, or their predecessors, paid the taxes on one of two assessments of the same underlying interest. This is the reason that the *Bonacci* and *L&D Invs., Inc*. cases do not support the Individual Respondents' position. They are trying to merge a surface assessment with a valid assessment of a severed interest into one payment of taxes. None of the case law in this State has ever done so. On the contrary, the duplicate assessment cases above only apply to sales of the same estate covered. For example, and as stated, *Bonacci* and *L&D Invs., Inc*. both addressed whether a tax sale of one *mineral* assessment was void if there was another *mineral* assessment covering the same interest. Here, the Individual Respondents admittedly had *no mineral* assessment covering their interest besides the Nolte Heirs Assessment.

More analogous, but again clearly distinguishable, is the *Allen* case, in which Buffington owned 9-5/8 acres and conveyed a small portion in 1891. *State v. Allen*, 65 W. Va. 335, 336, 64 S.E. 140, 140 (1909). A separate tax ticket was created on the smaller tract, but the

larger assessment continued to be assessed as the whole 9-5/8 acres, and taxes on it remained paid. *Id.* Taxes on the smaller tract were not paid. And in 1896, five years after the sale of the smaller tract, that assessment was sold. *Id.* The Court concluded that there was no delinquency, because taxes remained paid on the whole 9-5/8 acre assessment. *Id.* at 339, 64 S.E. at 142. The instant case is unlike *Allen* in two respects. One, the 9-5/8 acre assessment remained identical, in name, estate, and acreage, and thus facially included the smaller tract. Two, in *Allen*, the taxes on the second assessment were never acknowledged as valid by payment. Here, taxes were paid on the Nolte Heirs Assessment for decades.

The *Low* case is similar to *Allen*. *State v. Low*, 46 W. Va. 451, 452, 33 S.E. 271, 272 (1899). Low purchased *conditional* grants of oil and gas under several parcels from various owners. *Id.* at 452, 33 S.E. at 272. Only three of those options were executed, one in November 1892 and two in 1894. *Id.* The vested options were never separately assessed from 1892-1896 (for the one) or 1894-1896 (for the others), and the State claimed that they had been forfeited for non-payment of 1892 through 1896 taxes. *Id.* The assessments on the "fee" interests, however, were never altered to reflect the conveyance of the oil and gas and remained paid. *Id.* at 453, 33 S.E. at 272. The Court declared the sale void, because the taxes on the fee assessments remained paid and did not reflect the subsequent conveyances. *Id.* at 458, 33 S.E. at 274. Again, *Low* is distinguishable from the instant case for two reasons. In *Low,* the original assessments were never amended to reflect the subsequent division of the property. Here, the 1920 assessments reflect the consequences of Joseph Nolte, Sr.'s will in the creation of the two separate Nolte, Jr. and Theresa Wiegand assessments, as well as an adjustment of the value. Furthermore, unlike in *Low*, a separate assessment for the oil and gas was both created *and* paid on the Subject Interest in the present case.

iii. The Duplicate Assessment Rule Argued by Respondents and Adopted by The Circuit Court is Unworkable

The rule proposed by the Alexander Respondents and adopted by the Circuit Court is simply untenable. Requiring a tax sale purchaser to demonstrate a dollar-for-dollar equivalency between a prior assessment on an interest, and a separate assessment carved out of it, would create a hornet's nest of unending issues for the oil and gas producers who have invested millions based on the presumptive validity of tax deeds. The tax valuation scheme and land books of this state are replete with potential land mines, if a producer is obligated to compare values dollar for dollar.

As one example, what should a producer relying on tax deeds make of farm property? Pursuant to W. Va. C.S.R. § 110-1A-2, farm property in West Virginia is valued based on its "use", not the simple sum of its buildings, land, minerals, etc. W. Va. C.S.R. § 110-1J-4 specifically requires oil and gas owned with a farm, to be assessed as part of the "use" value for farmland. If a farmer grants half of his minerals to his son, his assessment will, by definition, not be reduced. If fifty years on, the son's heirs fail to pay taxes on the separate assessment and it is sold, does the tax sale purchaser acquire good title? Does this exempt the mineral buyer from paying taxes?

What about minimum assessments? A quick perusal of 2024 Marshall County tax records reveals the following, all assessed at $225: Int in 7.26 A O & G Leased, Account No. 00031022; Int in 3 AC O & G Leased, Account No. 00029028; Int in 258.61 A O & G Leased, Account No 00055902; Int in 505 A O & G Leased, Account No 00032943. There are hundreds, if not thousands, of these "minimum" assessments on the land books of this state. These reflect three facts: (1) non-producing oil and gas has limited value; (2) non-producing oil and gas is difficult to value; and (3) there must necessarily be a floor value. Some of these assessments are worth more than the minimum value, some less. Is it reasonable to require the Assessor, as the

Respondents argue, to ensure that the deduction of little or no present value be reflected in the surface assessment? Of course not.

These are not merely abstract issues. Real examples exist. In McElroy District, Tyler County, Noah and Barney Woodburn were assessed, together, for 1958 with "Roy 60A" at a value of $50. Both Noah and Barney had died in 1939 (Will Book 41, Page 206; Deed book 450, Page 449). In 1962, their assessments were split into "Woodburn Barney Est" and "Woodburn Noah Est.", each for "1/2 Roy 60A" and each retained an assessed value of $50. Incidentally, $50 was the lowest assessed value on *any* property in McElroy District for 1962 and thus, assumedly, the minimum possible assessment. Both "Estate" assessments were eventually sold for taxes, the "Noah Est" in 1979 and the "Barney Est" in 2003 (Deed Book 23, Page 83, Deed Book 346, Page 366). Did either tax sale purchaser acquire title if both were void as duplicate on their face? Are the mineral producers, who have incorporated these into drilling units, now subject to trespass claims from the actual heirs of Barney and Noah?

Simply stated, the rule advocated by the Respondents and adopted by the Circuit Court is unworkable in a field that requires some measure of certainty. Tax sale purchasers, and those who take from them, should be able to assume that an assessor properly did their job and that the assessment purchased covers what it says it does, in the absence of evidence to contrary.

VII. CONCLUSION

This is a zero-sum game. This Court must decide who, between the Petitioners and the Respondents, owns three-fourths of the oil and gas underlying 227 acres. The Petitioners take title through a tax sale of *the only* tax assessment ever created covering the interests of the Respondents (or their predecessors) in the Subject Property. The Individual Respondents indisputably: (1) paid taxes on that assessment and treated it as valid for almost thirty years

between 1935 and 1937 and again from 1946 to 1971; (2) did not pay taxes on the Subject Lands for almost fifty years between 1972 and various times after 2009; (3) did not ensure that their individual, fractional interests were separately assessed at any time between 1920 and various times after 2009; and (4) twice allowed their interests (*i.e.* the Subject Interest) to go delinquent, with second time resulting in their complete loss of title James Prendergast.

If this Court affirms the Circuit Court's decision, it will be upending 100 years of statutory and judicial precedent favoring certainty of title, and it will be creating a new duty on the part of tax sale purchasers—to ascertain and be ready to defend the Assessor's decision. Such a requirement would be unwise and unwieldy. Conversely, this Court can, and should, reverse the Circuit Court's decision granting summary judgment for the Respondents, reverse the Circuit Court's decision denying the Petitioners' motion for partial summary judgment, and direct entry of partial summary judgment in favor of the Petitioners. In doing so, this Court would reach a decision that is both consistent with prior law and consistent with the aims of the tax system.

Submitted this 27th Day of May 2025.

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CERTIFICATE OF SERVICE

I certify that, on May 27, 2025, the foregoing "Petitioners' Brief" was filed with the File and Servexpress system and served upon the Respondents' counsel of record via email and upon the *pro se* Respondents by placing a true and correct copy in the United States Mail, addressed as follows:

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