INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

ICA EFiled: Jun 26 2025
03:27PM EDT
Transaction ID 76539677

Winged Foot Minerals, LLC,
Corita Prendergast, Mary Lou Buckman,
Grace Hoyt, Connie Sue Gandee,
Eugene Prendergast, Frank Prendergast,
Melissa Ulik, Lori Gulling, Elizabeth Prendergast,
Julya Prendergast, Dawn Miruka, and Paul Prendergast,
Plaintiffs Below, Petitioners

v.) 25-ICA-100

SWN Production Company, LLC,
Equinor USA Onshore Properties, Inc.,
Mary Elizabeth Alexander, Mary A. Barkley,
Kevin Blatt, Individually and as Trustee of
the Blatt Family Irrevocable Trust Dated
April 1, 2011, Thomas Blatt, Paul E. Blatt,
Lawrence E. Blatt, Jr., Joseph J. Blatt, William J. Blatt, Jr.,
Richard P. Blatt, Michael J. Blatt, Steven Blatt,
Teresa Church, Laura M. Dolan, Patrick A.
Frohnapfel, Lisa Frohnapfel, David P. Frohnapfel,
Lynn Frohnapfel, Christina M. Frohnapfel, Mary Ann
Goddard, Joseph A. Hohman & Mary L. Hohman,
Trustees of the Hohman Revocable Living Trust Dated
August 8, 2014, Bertha Klug, Nancy Koontz, Lisa M. Lantz,
Edna McCombs, Constance S. Miller, Mark H.J. Miller,
Matthew Louis Nicholas Miller, Margaret Julia Agnes Miller,
Kevin Mysliwiec, Mary Josephine Nice, Barbara Pancake,
Linda Ruckman, Mary Stine, Robert Francis Villers,
Kenneth A. Wiegand, Leonard L. Wiegand,
Jean Ann Wiegand as Executor of the Estate of Robert L. Wiegand,
Charles A. Wiegand, David Paul Wiegand, John G. Wiegand,
Margaret Wilson, David L. Wilson, Mary Catherine Miller Wright,
Robert F. Yeager, Michael Young, Mineral Acquisition Company I, L.P.,
MAC I(YC) L.P., Lynn E. Cook, Mary K. McKeets,
Frances J. Pucharich, Amy C. Murray, Suzanne Thompson,
Sue E. Johnson, Marshall County Sheriff, as Conservator for Brenda Garcia,
Defendants Below, Respondents

RESPONDENTS'[1] RESPONSE BRIEF

Dated: Moundsville, West Virginia
June 26, 2025

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Counsel for Respondents Mary Elizabeth Alexander, Mary A. Barkley, Kevin Blatt, Individually and as Trustee of the Blatt Family Irrevocable Trust, Dated April 1, 2011, Thomas Blatt, Paul E. Blatt, Lawrence E. Blatt, Jr., Joseph J. Blatt, William J. Blatt, Jr., Richard P. Blatt, Michael J. Blatt, Steven Blatt, Teresa Church, Laura M. Dolan, Patrick A. Frohnapfel, David P. Frohnapfel, Lynn Frohnapfel, Christina M. Frohnapfel, Mary Ann Goddard, Joseph A. Hohman and Mary L. Hohman, Trustees of the Hohman Revocable Living Trust Dated August 8, 2014, Bertha Klug, Nancy Koontz, Lisa M. Lantz, Edna McCombs, Constance S. Miller, Mark H.J. Miller, Matthew Louis Nicholas Miller, Margaret Julia Agnes Miller, Kevin Mysliwiec, Mary Josephine Nice, Barbara Pancake, Linda Ruckman, Mary Stine, Robert Francis Villers, Kenneth A. Wiegand, Leonard L. Wiegand, Jean Ann Wiegand as Executrix for the Estate of Robert L. Wiegand, Charles A. Wiegand, David Paul Wiegand, John G. Wiegand, Margaret Wilson, David L. Wilson, Mary Catherine Miller Wright, Robert F. Yeager, Michael P. Yeager, and Michael Young

[1] This Response Brief is submitted on behalf of the respondents represented by undersigned counsel ("Respondents").

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SUMMARY OF ARGUMENT

"Forfeiture of lands is a harsh, even dreadful remedy, and courts lean from it and never apply it except where the law clearly warrants." *L&D Invs., Inc. v. Mike Ross, Inc.*, 241 W. Va. 46, 55, 818 S.E.2d 872, 881 (2018) (quoting *State v. Cheney*, 45 W. Va. 478, 480, 31 S.E. 920, 290 (1898)). The law does not clearly warrant such a harsh and dreadful remedy in this case.

A duplicative and/or double assessment of a real property interest is void and cannot be the basis of a valid tax deed. Such tax deeds are void ab initio. "In case of two assessments of the same land under the same claim of title for any year, one payment of taxes under either assessment is all the state can require." Syl. Pt. 3, *L&D Invs., Inc. v. Mike Ross, Inc.*, 241 W. Va. 46, 818 S.E.2d 872 (2018) (quoting Syl. Pt. 2, *State v. Allen*, 65 W. Va. 335, 64 S.E. 140 (1909)).

Where oil and gas is severed from the surface and the assessor enters a separate oil and gas assessment, the West Virginia Supreme Court of Appeals has held that the oil and gas assessment is a duplicative and/or double assessment unless there is a corresponding reduction in value of the prior fee assessment. *Snodgrass v. Jolliff*, 59 W. Va. 292, 53 S.E. 151 (1906); *see Northeast Nat. Energy, LLC v. LT Realty Unlimited, LLC*, 250 W. Va. 500, 507, 905 S.E.2d 179, 186 (W. Va. Ct. App. July 12, 2024).

To the extent that the "ROY" assessment is an assessment of the oil and gas underlying the Property,[2] there can be no serious doubt that it is a duplicative and/or double assessment of the "227.48 LYNN CAMP"[3] assessment. Since 1920, the "227.48 LYNN CAMP" assessment was an

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[2] As used herein, "Property" means the surface of the 227.48 acres.

[3] Beginning in 1974, the "227.48 LYNN CAMP" assessment is described as "222.4 A LYNN CAMP." For the purposes of avoiding confusion, the interest and assessment is described herein as "227.48 LYNN CAMP."

assessment of the Property and all underlying oil and gas. If the "227.48 LYNN CAMP" assessment was not an assessment of the oil and gas underlying the Property, the oil and gas would have to have been assessed under a separate assessment *accompanied by a corresponding reduction in value*. "There is a presumption of entry of lands for taxation and payment of the taxes thereon, in favor of the owner and persons claiming under him, which stands until overthrown by proof to the contrary." Syl. Pt. 7, *White Flame Coal Co. v. Burgess*, 86 W. Va. 16, 102 S.E. 690 (1920).

Only two separate assessments, to the extent they are relevant assessments,[4] of the oil and gas underlying the Property were entered into the Marshall County landbooks. When the "ROYALTY OIL" assessment was first entered in 1933 with a value of $200, there was no corresponding reduction in the assessed land value for the "227.48 LYNN CAMP" interest. P.A. 220-221, 225, 227. When the "ROY" assessment was first entered in 1946 with a value of $50, there was no corresponding reduction in the assessed land value for the "227.48 LYNN CAMP" interest. P.A. 246, 248. Thus, at all times, the "227.48 LYNN CAMP" assessment was an assessment of the Property and all underlying oil and gas, and the "ROY" assessment was a duplicative and/or double assessment.

While Petitioners reference various changes in the assessed value of the "227.48 LYNN CAMP" interest, Petitioners cannot point to the creation of any contemporaneous oil and gas assessments, or any other evidence, to indicate that these reductions or increases in value are attributable in any way to the oil and gas. Petitioners' speculation is just that—speculation.

[4] It is not clear whether the "ROYALTY OIL" and/or the "ROY" assessments relate to the Property, and Respondents do not concede that they necessarily do.

Moreover, Petitioners fail to appeal the circuit court's ruling that the "ROY" assessment is void for an unrelated and independent basis. That is, the circuit court ruled that the "ROY" assessment is void, because it continued to be entered in the name of R. Robinson Chance, Jr. *after* he conveyed the Property and all right, title, and interest in the oil and gas thereunder in 1982. P.A. 494. Petitioners' lone assignment of error challenges the circuit court's ruling that the "ROY" assessment was "void as a duplicate assessment." Petitioners' Joint Brief at 1.

The failure to raise an issue in an assignment of error generally precludes review of the same. *Hamon v. Morris*, No. 20-0841, 2021 W. Va. LEXIS 551, at *27 (W. Va. Oct. 29, 2021) (memorandum decision) (citing *Wilson v. Kerr*, No. 19-0933, 2020 W. Va. LEXIS 945, 2020 WL 7391150, at *3 (W. Va. Dec. 16, 2020) (memorandum decision)). Because this ruling of the circuit court was not raised in an assignment of error—and not addressed elsewhere in Petitioners' Joint Brief—the circuit court's order should be affirmed regardless of whether this Court determines that the "ROY" assessment is a duplicative and/or double assessment. *Albert v. City of Wheeling*, 238 W. Va. 129, 792 S.E.2d 628 (2016) ("However, being an independent basis of the circuit court's decision below, the failure to appeal the common law immunity portion of the circuit court's order requires affirmation of the dismissal of the matter below.") (Benjamin, J., concurring).

II.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Respondents submit that oral argument is not necessary because, pursuant to Rule 18(a)(4) of the West Virginia Rules of Appellate Procedure, the facts and legal arguments are adequately

presented in the briefs and record on appeal, and the decisional process would not be significantly aided by oral argument.

III.

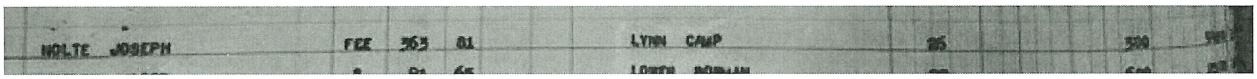
ARGUMENT

a. STANDARD OF REVIEW

"A circuit court's entry of summary judgment is reviewed *de novo*." Syl. Pt. 1, *Painter v. Peavy*, 192 W. Va. 189, 451 S.E.2d 755 (1994).

b. BECAUSE THE "227.48 LYNN CAMP" ASSESSMENT WAS AN ASSESSMENT OF THE PROPERTY AND ALL UNDERLYING OIL AND GAS AT ALL TIMES, THE "ROY" ASSESSMENT IS A DUPLICATIVE AND/OR DOUBLE ASSESSMENT THAT IS VOID, AND THUS THE TAX SALE DEED IS VOID

The parties do not dispute that at the time of his death in 1920, Joseph Nolte, Sr. owned 363.81 acres and 100% of the oil and gas underlying it. Petitioners' Joint Brief at 2. Joseph Nolte Sr.'s 1919 tax assessment for the 363.81 acres, including all of the oil and gas underlying it, is as follows:



P.A. 191. The assessment is a "FEE" assessment, and there is no separate oil and gas assessment of any kind in the 1919 landbooks. *Id.* "[W]hen a mineral estate has never been separately assessed, it is assumed to be assessed with the surface, even when the surface owner and mineral owner are different." *LT Realty*, 250 W. Va. at 507, 905 S.E.2d at 186.

As a result of the death of Joseph Nolte, Sr. and a conveyance of 92.8 acres from his sister, Joseph Nolte, Jr. became the owner of the Property and one-fourth (1/4) of the oil and gas underlying the same. Petitioners' Joint Brief at 2. Thereafter, the 1920 landbooks show that

Joseph Nolte, Sr.'s assessment for 363.81 acres is crossed out and replaced with the "227.48 LYNN CAMP" assessment. This new assessment is entered in the name of Joseph Nolte, Jr. To wit:

P.A. 192. The assessment is a "FEE" assessment, and there is no separate oil and gas assessment of any kind related to the Property in the 1920 landbooks. *Id.*

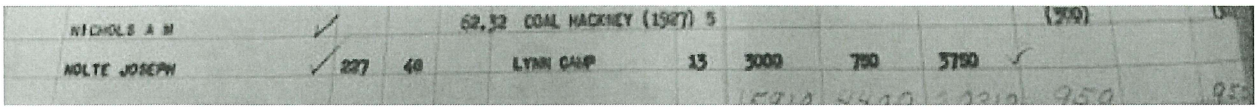
Petitioners suggest that various changes to the assessed land value for the "227.48 LYNN CAMP" interest in the 1920s and 1930s may account for separate taxation of the oil and gas. Petitioners' Joint Brief at 3, 17. However, "speculat[ion] about what the assessor(s) knew and/or intended" is of limited, if any, relevance. *LT Realty*, 250 W. Va. at 508-509, 905 S.E.2d at 187-188. In addition, if the assessor reduced the assessed value to account for an interest in the oil and gas, the record shows that the assessor never entered a separate oil and gas assessment to account for such reduction. Thus, if Petitioners' speculation is to be believed, the assessor would be removing real property interests from the landbooks. Regardless, any such speculation is not supported by the actual landbook records.

To that end, Petitioners reference that, in 1920, the 363.81 acres—as split between Joseph Nolte, Jr.'s ownership of 227.48 acres and Theresa Wiegand's ownership of 136.4 acres—was assessed a higher value than the previous year. *Id.* However, Petitioners do not cite to any corresponding, separate oil and gas assessment that would support a finding that the change in value reflects that the "227.48 LYNN CAMP" assessment was no longer an assessment of the oil and gas. *Id.*

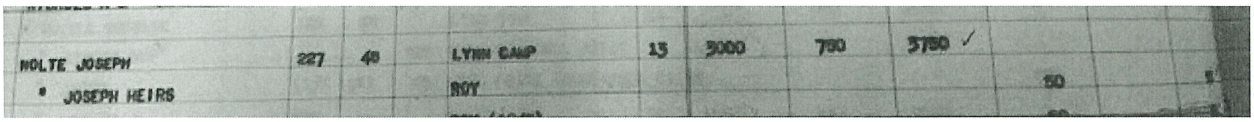
Petitioners also reference a reduction in the assessed value of the "227.48 LYNN CAMP" interest in 1930. *Id.* However, Petitioners do not cite to any corresponding, separate oil and gas assessment that would support a finding that the reduction in value reflects that the "227.48 LYNN CAMP" assessment was no longer an assessment of the oil and gas. *Id.*

Petitioners also reference a reduction in the assessed value of the "227.48 LYNN CAMP" interest in 1932. *Id.* The reduction was a total of $2,000. *Id.* Petitioners do not cite to any corresponding, separate oil and gas assessment contained in the 1932 landbooks that would support a finding that the reduction in value reflects that the "227.48 LYNN CAMP" assessment was no longer an assessment of the oil and gas. *Id.* Petitioners imply that it is possible that this reduction may, in part, be linked to the creation of the "ROYALTY OIL" assessment in 1933. *Id.* This implication is not supported by the record. First, it is clear that the reductions in value referenced in the 1932 landbooks were not isolated to the "227.48 LYNN CAMP" assessment—all assessments listed on the pages were reduced in value. P.A. 218-219. Second, the reduction in value to the "227.48 LYNN CAMP" assessment in 1932 could not have been related to the creation of the "ROYALTY OIL" assessment, because the "ROYALTY OIL" assessment does not appear until 1933. P.A. 218, 220-221. When the "ROYALTY OIL" assessment was entered (in handwriting) in 1933, there is no corresponding reduction to the assessed value of the "227.48 LYNN CAMP" interest. P.A. 220-221. The "ROYALTY OIL" assessment was removed from the landbooks in 1937. P.A. 229. The "227.48 LYNN CAMP" assessment continued to be an assessment of the Property and all underlying oil and gas.

In 1945, the "227.48 LYNN CAMP" interest was assessed a land value of $3,000. To wit:



P.A. 246. In the 1946 landbooks, the "ROY" assessment is entered with a value of $50:



P.A. 248. To the extent that the "ROY" assessment is an assessment of the oil and gas underlying the Property (or the original 363.81 acres), there is no corresponding reduction in the assessed land value for the "227.48 LYNN CAMP" interest. *Id.* The "227.48 LYNN CAMP" interest's assessed land value remained $3,000. *Id.* If the oil and gas, or some portion thereof, was being carved out of the "227.48 LYNN CAMP" assessment, one would expect a reduction in the assessed value of $50—*i.e.* the assessed value of the "ROY" interest.[5]

Similar circumstances were considered by the West Virginia Supreme Court of Appeals in *Snodgrass*, *supra*. In *Snodgrass*, Price conveyed a 53-acre parcel of real property to Higgins but reserved one-half (1/2) of the oil and gas. Price had his one-half (1/2) oil and gas interest separately assessed. Sometime later, Price conveyed one-half (1/2) of his one-half (1/2) (being a one-quarter (1/4) interest) oil and gas interest to Jolliff, McNeeley, and Ice. Jolliff, McNeeley, and Ice were separately assessed taxes for their collective one-quarter (1/4) interest in the oil and gas,[6] and such assessment became delinquent in 1901. When Higgins had the property entered into the land books, "it was charged to him for the years 1900 and 1901 at the same valuation at which it was

[5] Alternatively, if the "ROY" assessment was intended to be an assessment of the oil and gas underlying the original 363.81 acres owned by Joseph Nolte, Sr., the $50 assessment should have been proportionately reduced from the "227.48 LYNN CAMP" assessment and the successor assessments to Theresa Wiegand's original "136.4 LYNN CAMP" assessment. P.A. 247, 249. Regardless, there are no such reductions in the landbooks.

[6] It should be noted that they should have only been assessed for one-quarter (1/4) of the oil and gas rather than one-half (1/2).

assessed in 1897, 1898 and 1899, without any reduction of value on account of the exception of the fraction of oil and gas excepted by Price, and Higgins paid the taxes on the tract for the years 1900 and 1901." *Snodgrass*, 59 W. Va. at 293, 53 S.E. at 151. By tax deed, Snodgrass obtained the property subject to Jolliff, McNeeley, and Ice's separate tax assessment. Thereafter, Snodgrass sought to quiet title to the one-quarter (1/4) interest in the oil and gas he purportedly obtained through the delinquent tax assessment in the names of Jolliff, McNeeley, and Ice.

The *Snodgrass* Court held that "the charge of the whole tract to Higgins at the unchanged surface value, without diminution by reason of subtraction of the value of the [one-half] of the oil and gas retained by Price, would pay taxes on the whole, that is, the surface and all the oil and gas under it." *Snodgrass*, *supra.* 59 W. Va. at 295, 53 S.E. at 152. Before dismissing Snodgrass' complaint, the Court then further asked, rhetorically, "[w]ere not taxes paid by both Higgins and Price—double taxes on the contested share?" *Id.*

This Court recently considered similar facts in *LT Realty*, *supra.* In that case, George Tennant owned 118 acres and an interest in the underlying oil and gas. Mr. Tennant died in 1938, and as a result of a partition action, his 118 acres were sold to Velma Jewel Chisler in 1940, with the oil and gas being excepted and reserved. Thereafter, in 1941, an assessment for "119.171 SUR DAYS RUN" in the name of Velma Chisler was entered in the landbooks. Because there was no corresponding reduction in value from the relevant 1940 assessment, the petitioners argued that the oil and gas continued to be taxed under Velma Chisler's "119.171 SUR DAYS RUN" assessment rather than being non-entered. On this point, this Court remarked as follows:

> The total "Land Value" of the 1940 assessments that were transferred to Velma Chisler in 1941 (minus buildings) totaled $1,300. Critically, the "Land Value" of the 1941 assessment for "119.171 SUR DAYS RUN" in the name of Velma Chisler also

> equaled $1,300.00. Therefore, Petitioners argue that all real property interests encompassed in the individual assessments from 1940, which included the subject oil and gas previously assessed in the name of George Tennant, were transferred Velma Jewel Chisler in 1941 in an assessment described as "119.171 SUR DAYS RUN." The fact that the value of those real property interests did not change from 1940 to 1941 allegedly establishes that the subject oil and gas continued to be assessed in the "119.171 SUR DAYS RUN" assessment in 1941. The parties agree that if Velma Chisler was assessed as owning the subject oil and gas interest, and paid the taxes thereon, that LT Realty cannot establish its claimed title.

LT Realty, 250 W. Va. at 508, 905 S.E.2d at 187. This Court ultimately ruled in favor of the *LT Realty* petitioners.

As in *Snodgrass* and *LT Realty*, there was no corresponding reduction in the "227.48 LYNN CAMP" assessment to account for the "ROY" assessment. There is no evidence in the record to suggest that the "227.48 LYNN CAMP" assessment was ever reduced in value to account for the "ROY" assessment or any other oil and gas assessment. The "227.48 LYNN CAMP" assessment was, at all times, an assessment of the Property and all underlying oil and gas, and there is no evidence in the record that indicates it ever became delinquent and not redeemed and/or subject to a tax sale. The taxes for the "227.48 LYNN CAMP" assessment were always paid.

The West Virginia Supreme Court of Appeals has repeatedly held that "[i]n case of two assessments of the same land under the same claim of title for any year, one payment of taxes under either assessment is all the state can require." Syl. Pt. 3, *L&D Invs., Inc. v. Mike Ross, Inc.*, 241 W. Va. 46, 818 S.E.2d 872 (2018) (quoting Syl. Pt. 2, *State v. Allen*, 65 W. Va. 335, 64 S.E. 140 (1909)).

In *L&D Invs., Inc.*, the West Virginia Supreme Court of Appeals extensively discussed issues related to duplicative and/or double tax assessments. In that case, the Court held that the

assessments that were the basis for a tax sale were "double assessments." In doing so, the Court further held that "[b]ecause the double assessments and the payment of taxes by the petitioners, we find that the mineral interests were never delinquent. Therefore, the sale of the subject mineral interests for delinquent taxes was void as a matter of law." *L&D Invs., Inc.*, 241 W. Va. at 55, 818 S.E.2d at 881.

Accordingly, to the extent that the "ROY" assessment is an assessment of the oil and gas underlying the Property, it is a duplicative and/or double assessment and void. "A deed made pursuant to a tax sale under a void assessment is void." Syl. Pt. 3, *Orville Young, LLC v. Bonacci*, 246 W. Va. 26, 866 S.E.2d 91 (2021) (citing Syl. Pt. 4, *Blair v. Freeburn Coal Corp.*, 163 W. Va. 23, 253 S.E.2d 547 (1979)). The "ROY" assessment and the tax sale deed are thus void.

i. Whether the "ROY" assessment is valid or invalid, it remains a duplicative and/or double assessment that is void

Petitioners' argument that the "ROY" assessment was valid under West Virginia law when created and later transferred to R. Robinson Chance, Jr. is misplaced. Respondents do not argue that minerals may not be separately taxed after severance or that a group assessment is not valid under West Virginia law. Respondents simply argue that the "ROY" assessment was void because: (1) it was a duplicative and/or double assessment of the oil and gas at issue; *and* (2) it was entered in the name of R. Robinson Chance, Jr. for years after he conveyed all right, title, and interest in the Property and underlying oil and gas. Neither of those arguments are premised upon the argument that the "ROY" assessment was invalid at the time of creation or when it was entered in the name of R. Robinson Chance, Jr.

ii. The Court should not assume the assessor failed to assess accurately—the record conclusively demonstrates that he did

W. Va. Code § 11-4-9 (1905)[7] states that "[w]henever any person becomes the owner of the surface, and another or others become the owner of the coal, oil, gas…or other minerals or mineral substances in and under the same…the assessor shall assess such respective estates to the respective owners thereof at their true and actual value, according to the rule prescribed in this chapter."

In this case, severance of the oil and gas from the surface occurred upon the death of Joseph Nolte, Sr. in 1920. The assessor did not enter a separate oil and gas assessment until 1933 (*i.e.* the "ROYALTY OIL" assessment), which was removed from the landbooks in 1937. P.A. 220-221, 229. The "ROY" assessment did not appear in the landbooks until 1946. P.A. 248. As detailed above, when the assessor entered the "ROYALTY OIL" and "ROY" assessments, he did not reduce the value of the "227.48 LYNN CAMP" assessment to account for separate taxation of the oil and gas. Because the "227.48 LYNN CAMP" assessment was an assessment of the Property and all underlying oil and gas, the assessor improperly entered a duplicative and/or double assessment in the form of the "ROYALTY OIL" and "ROY" assessments.

iii. The factual differences between this case and *Bonacci* and *L&D Invs.* are immaterial

Petitioners emphasize the nature of the specific assessments in *Bonacci*, *supra.*, and *L&D Invs.*, *supra.*, in an attempt to distinguish the facts of this case. According to Petitioners, "[t]he instant case does not involve a situation where the Individual Respondents, or their predecessors,

[7] The 1905 version of the statute was in effect in 1920, when the oil and gas was partially severed from the surface. The current version of the statute is materially the same.

paid the taxes on one of two assessments of the same underlying interest." Petitioners Joint Brief at 19. However, Petitioners cite no language in *Bonacci*, *L&D Invs.*, or any other authority to support their argument that such a distinction should or must lead to a different result. That is because even a cursory review of the relevant authority reveals that the nature of the assessments are immaterial and the ultimate question is whether a real property interest has been assessed twice.

As the *Bonacci* Court stated, "our precedent clearly establishes that property may be assessed but once for taxes and that one full satisfaction of such taxes is all the State may require. In this regard, we succinctly have held that '[t]he State is not entitled to double taxes on the same land under the same title.'" *Bonacci*, 246 W. Va. at 33, 866 S.E.2d at 98 (quoting Syl. Pt. 1, *State v. Allen*, 65 W. Va. 335, 64 S.E. 140 (1909)).

Dispelling any doubt on this issue is the West Virginia Supreme Court of Appeals' holding in *Snodgrass*, *supra.* Just as in this case, the issue in *Snodgrass* is whether the oil and gas continued to be assessed under a "surface" assessment after severance of the oil and gas. In *Snodgrass*, Price conveyed a 53-acre parcel of real property to Higgins but reserved one-half (1/2) of the oil and gas. Because the assessed value of 53 acres remained unchanged after severance of one-half (1/2) of the oil and gas, the *Snodgrass* Court held that the Higgins assessment continued to be an assessment of the surface and all of the oil and gas and not only the one-half (1/2) interest obtained from Price. Thus, when Snodgrass, the tax sale purchaser, purchased a separate oil and gas assessment, the *Snodgrass* Court held that such separate assessment was a duplicative and/or double assessment and thus void.

Accordingly, the operative question is whether the oil and gas underlying the Property was doubly assessed. In 1945, the Property and all underlying oil and gas was assessed under the

"227.48 LYNN CAMP" with a land value of $3,000. P.A. 246. When the "ROY" assessment was entered in 1946 with a value of $50, the "227.48 LYNN CAMP" assessment was not proportionately reduced. P.A. 248. Because the "227.48 LYNN CAMP" assessment was not proportionately reduced, said assessment continued to include the oil and gas underlying the Property. Contrary to Petitioners' arguments, the nature of the assessments is immaterial—the oil and gas was doubly assessed.

Even more, if Petitioners' argument is to be given credence, it would lead to illogical results that are plainly contrary to existing West Virginia law. Again, Petitioners argue that this case is distinguishable because "the duplicate assessment cases...only apply to sales of the *same estate covered.*" Petitioners' Joint Brief at 19 (emphasis supplied). If Petitioners are to be believed, the same real property interests could be freely assessed multiple times as long as the assessments do not cover the exact "same estate[s]." *Id.* For example, assume a person owning a fee interest conveys his property and reserves all the minerals of every kind whatsoever. The assessor then enters separate assessments for "ALL MINERALS" for $100, "COAL" for $50, "OIL AND GAS" for $30, "SAND" for $10, and "GRAVEL" for $10. Under Petitioners' argument, the estates are not the same, and the individual mineral assessments are not duplicative of the "ALL MINERALS" assessment. Even simpler, assume a person owning a fee interest conveys his property and reserves one-half of the oil and gas. The assessor then enters assessments in the name of the grantee for "SURFACE AND 1/2 O&G" and "1/2 O&G." Again, under Petitioners' argument, because the assessments do not cover the "same estate[s]," the "1/2 O&G" assessment is not duplicative. Such illogical results are not in accord with longstanding West Virginia jurisprudence.

iv. Petitioners' policy arguments are unfounded and out of sync with West Virginia law

Petitioners attempt to couch Respondents' arguments as a newly "proposed" rule that would upend West Virginia's forfeiture scheme and oil and gas industry. Petitioners' Joint Brief at 21. Respondents do not propose any new rule but simply argue that long-standing West Virginia law be applied to the undisputed facts in this case. That is, "property may be assessed but once for taxes and that one full satisfaction of such taxes is all the State may require. In this regard, we succinctly have held that '[t]he State is not entitled to double taxes on the same land under the same title.'" *Bonacci*, 246 W. Va. at 33, 866 S.E.2d at 98 (quoting Syl. Pt. 1, *State v. Allen*, 65 W. Va. 335, 64 S.E. 140 (1909)).

Again, the *Snodgrass* Court held *in 1906* that where there is no corresponding reduction in value to a "surface" assessment to account for a separately assessed oil and gas interest, the "surface" assessment continues to be an assessment of the oil and gas. As a result, the separate oil and gas assessment is a duplicative and/or double tax assessment that is void. This Court considered similar arguments in *LT Realty*, *supra.* Respondents simply request that this Court apply long-standing precedent, including *Snodgrass*—which has been good law for almost 120 years.

The West Virginia Supreme Court of Appeals has recognized that it is incumbent upon the tax sale purchaser to assure him or herself that the delinquent assessment is a valid one. As it explained in 1884, "[a] tax sale is the culmination of proceedings which are matters of record; and it is a reasonable presumption of law, where one acquires rights which depend upon matters of record, he first makes search of the record in order to ascertain whether anything shown thereby would diminish the value of such rights, or tend in any contingency to defeat them." *Simpson v.*

Edminston, 23 W. Va. 675, 680 (1884). Moreover, "[t]he rule *caveat emptor* applies strictly to such purchaser. He takes all the risks of his purchase, and if he finds in any case that he has secured neither the title he bid for nor any equitable claim against the owner he must submit to the loss as any other purchaser does who takes questionable title without warranty." *Simpson*, 23 W. Va. at 680-681.

Petitioners' reference to the valuation of farm property under the West Virginia Code of State Rules does not complicate this state's century-old jurisprudence. Pursuant to W. Va. C.S.R. § 110-1A-2.6.6.c.1 and 2, natural resources, such as oil and gas, will only be valued under farmland if there is income derived therefrom. Thus, if property is assessed as farmland, all we need to know is whether there is income for oil and gas. If there is no income for oil and gas, we know that the oil and gas is not valued in the assessment, and we should see no reduction in value to account for a separate oil and gas assessment. Conversely, if there is income for oil and gas, we know that the oil and gas is valued in the assessment, and we should see a reduction in value to account for a separate oil and gas assessment.

Petitioners' arguments relating to "minimum assessments" is equally unavailing. Putting aside the fact that W. Va. Code § 11-4-9 requires that the "assessor shall assess [surface and mineral estates]...at their true and actual value," whatever valuation an assessor assigns to a separate oil and gas assessment, the assessor should commensurately reduce the corresponding "surface" assessment. Otherwise, West Virginia law holds that the separate oil and gas assessment is duplicative and/or double and thus void. Further Petitioners' reference to "2024 Marshall County tax records" (Petitioners' Joint Brief at 21) and "McElroy District, Tyler County tax records" (Petitioners' Joint Brief at 22) are not in the record, are not relevant to the facts of this

case, and should not be considered in this appeal. Appellate courts "will not consider upon writ of error or appeal papers not made a part of the record in the trial court, and therefore not considered by the trial court." *State v. Franklin*, 139 W. Va. 43, 79 S.E.2d 692 (1953) (citing 1 M.J., Appeal and Error, Section 183).

c. BECAUSE PETITIONERS' LONE ASSIGNMENT OF ERROR DOES NOT CHALLENGE THE CIRCUIT COURT'S RULING THAT THE "ROY" ASSESSMENT IS ILLEGAL AND VOID BECAUSE IT WAS ENTERED IN THE NAME OF A NON-OWNER, THE CIRCUIT COURT'S ORDER SHOULD BE AFFIRMED

In its order, the circuit court ruled that:

> as R. Robinson Chance, Jr. was the person being assessed for the ROY assessment and did not own any interest in the Property of any kind whatsoever, including, without limitation, any interest in the oil and gas underlying the Property when the ROY assessment became delinquent, the ROY assessment was illegal and void. Because the ROY assessment is illegal and void, the Tax Sale Deed is illegal and void.

P.A. 494. This ruling is independent of the circuit court's ruling that the "ROY" assessment was void as a result of it being a duplicative and/or double assessment. *C.f.*, P.A. 493-494.

Notwithstanding the foregoing, Petitioners' lone assignment of error focuses only on the circuit court's ruling that the "ROY" assessment was void on the basis that it was a duplicative and/or double assessment. Petitioners' Joint Brief at 1. Petitioners do not address this ruling elsewhere in their brief.[8]

The failure to raise an issue in an assignment of error generally precludes review of the same. *Hamon v. Morris*, No. 20-0841, 2021 W. Va. LEXIS 551, at *27 (W. Va. Oct. 29, 2021)

[8] Petitioners did not address this issue in their response to Respondents' motion for summary judgment before the circuit court. P.A. 476-478.

(memorandum decision) (citing *Wilson v. Kerr*, No. 19-0933, 2020 W. Va. LEXIS 945, 2020 WL 7391150, at *3 (W. Va. Dec. 16, 2020) (memorandum decision)). Because this ruling of the circuit court was not raised in an assignment of error—and not addressed elsewhere in Petitioners' Joint Brief—the circuit court's order should be affirmed regardless of whether this Court determines that the "ROY" assessment is a duplicative and/or double assessment. *Albert v. City of Wheeling*, 238 W. Va. 129, 792 S.E.2d 628 (2016) ("However, being an independent basis of the circuit court's decision below, the failure to appeal the common law immunity portion of the circuit court's order requires affirmation of the dismissal of the matter below.") (Benjamin, J., concurring).

i. Even if Petitioners had appealed the circuit court's order on this independent basis, the undisputed facts reveal that the "ROY" assessment entered in the name of R. Robinson Chance, Jr. after 1982 was illegal and void

In 1982, R. Robinson Chance, Jr. conveyed all right, title, and interest he owned in the Property, including the oil and gas, to Daniel R. Watkins and John L. Turcato. P.A. 176-179. Notwithstanding the foregoing, the "ROY" assessment continued to be entered in the name of R. Robinson Chance, Jr. when it became delinquent in 1990 and through 1993, when it was removed due to the tax sale deed at issue in this case. P.A. 291-311. In sum, the "ROY" assessment was entered in the name of a person who did not own any interest in the Property whatsoever for a period of 10 years. P.A. 176-179, 291-311.

The West Virginia Supreme Court of Appeals reviewed similar facts in *Cunningham v. Brown*, 39 W. Va. 588, 20 S.E. 615 (1894). In *Cunningham*, John Cunningham conveyed a parcel of real property to Elizabeth Cunningham by deed in 1881. The property was entered in the landbooks in the name of Elizabeth Cunningham in 1882. However, in that same year, when the

commissioner "re-assessed the lands of his district, he by mistake or oversight reported the tract for taxation as it originally was in the name of John Cunningham." *Cunningham*, *supra.*, 39 W. Va. at 590, 20 S.E. at 616. The parcel was entered into the 1883 land book under the name of John Cunningham, "and the tax not being paid by him, the land was returned delinquent for the non-payment of taxes in his name, as a tract containing sixty five acres, for the year 1883." *Id.*

After discussion of constitutional due process and notice issues, the *Cunningham* Court held that:

> [i]f the land was put on the books in the name of John Cunningham as in privity with or in any way representing the ownership of Elizabeth Cunningham, the vendee, then it was illegally and improperly entered and assessed as to her in that name and in that form without her knowledge or fault in any way....an illegality worse than a mere irregularity.... Therefore, I do not regard this as the irregularity mentioned in the statute, but as an illegal assessment made without her knowledge or consent in another name and with a different description.....

Cunningham, *supra.*, 39 W. Va. at 598-599, 20 S.E. at 619; *see Hardman v. Ward*, 136 W. Va. 370, 67 S.E.2d 537 (1951) ("the property was wrongfully and improperly entered upon the land books...in the name of the remainderman,...the name of the life tenant Casto not being entered for taxation purposes that year.").

Here, the "ROY" assessment became delinquent in 1990—8 years after R. Robinson Chance, Jr. conveyed all his right, title, and interest in the Property. P.A. 176-179, 291-311. Under these circumstances, the "ROY" assessment in the name of R. Robinson Chance, Jr. in 1990 was illegal and void. As a result, the tax sale deed is also illegal and void.

Pursuant to W. Va. Code § 11-4-5, it is the duty of the assessor to ensure that assessments are properly made and entered in the name of an owner. Indeed, the assessor "shall also inquire

of such owners or agents whether the entries charged against them in the landbooks of the previous year are correct, whether any part thereof ought to be transferred to any other person, and if so to whom...." *Id.* "It shall be the duty of the of such owners and agents to answer all of such inquires under oath." *Id.* Further, pursuant to W. Va. Code § 11-4-4, the assessor "shall correct errors and mistakes which he may have made in any such land books as to the names of persons properly chargeable with taxes on any tract of lot of land therewith, and enter and charge the same with taxes thereon to the person or persons properly chargeable therewith."

Had the assessor made such statutorily-mandated inquiries of R. Robinson Chance, Jr. at any time after 1982, the assessor would very likely have discovered that R. Robinson Chance, Jr. was not an owner of any real property interest subject to the "ROY" assessment and/or that any such interest he had owned would have been conveyed. Presumably, the "ROY" assessment would have been transferred to Daniel B. Watkins and John L. Turcato.

Instead, it appears that the assessor continued to incorrectly enter the "ROY" assessment in the name R. Robinson Chance, Jr., because he mistakenly believed that R. Robinson Chance, Jr. reserved an interest in the oil and gas. To wit, the tax sale deed describes the property conveyed as "[b]eing the same oil and gas reserved unto R. Robinson Chance, Jr., by deed dated December 14, 1982, and recorded in Deed Book 502 at page 160, Marshall County records." P.A. 182. However, R. Robinson Chance, Jr. did not reserve any interest in the oil and gas—the referenced deed merely stated that he was "[e]xcepting, however all of the coal, oil and gas and other minerals *heretofore* conveyed or reserved, and is further subject to the mining rights *heretofore* granted or conveyed by the said Joseph T. Nolte, deceased." P.A. 178 (emphasis supplied).

As a final consideration, under the theory Petitioners presented to the circuit court, R. Robinson Chance, Jr. *never* owned any right, title and/or interest in any real property related to the "ROY" assessment. Petitioners asserted that the "227.48 LYNN CAMP" assessment was an assessment of the Property and only one-fourth (1/4) of the oil and gas underlying it. P.A. 445-446. Petitioners further asserted that the "ROY" assessment was an assessment of the remaining three-fourths (3/4) oil and gas interest. P.A. 446. All that R. Robinson Chance, Jr. ever owned was the Property and one-fourth (1/4) of the oil and gas underlying it.[9] It follows that R. Robinson Chance, Jr. *never* owned any interest in the three-fourths (3/4) oil and gas interest or any real estate that was the subject of the "ROY" assessment. Under Petitioners' theory, not only was R. Robinson Chance, Jr. not an owner of any real estate subject to the "ROY" assessment in 1990, he was not an owner at any time.

Accordingly, even if the "ROY" assessment was not a duplicative and/or double assessment, it was an illegal assessment that is void. The tax sale deed is thus also illegal and void.

IV.

CONCLUSION

For the foregoing reasons, the "ROY" assessment is void because it is a duplicative and/or double assessment and because it was entered in the name of a non-owner. Notwithstanding the foregoing, Petitioners failed to appeal the circuit court's ruling that the "ROY" assessment was void because it was entered in the name of a non-owner, which is a basis independent of any ruling

[9] As a result of the death of Joseph Nolte, Sr. and a conveyance of 92.8 acres from his sister, Joseph Nolte, Jr. became the owner of the Property and one-fourth (1/4) of the oil and gas underlying the same. Petitioners' Joint Brief at 2. All right, title, and interest owned by Joseph Nolte, Jr. was conveyed to R. Robinson Chance, Jr. P.A.171-175.

that the "ROY" assessment was a duplicative and/or double assessment. Respondents respectfully request that this Court affirm the circuit court's order.

Respectfully submitted,

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INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

Winged Foot Minerals, LLC,
Corita Prendergast, Mary Lou Buckman,
Grace Hoyt, Connie Sue Gandee,
Eugene Prendergast, Frank Prendergast,
Melissa Ulik, Lori Gulling, Elizabeth Prendergast,
Julya Prendergast, Dawn Miruka, and Paul Prendergast,
Plaintiffs Below, Petitioners

v.) 25-ICA-100

SWN Production Company, LLC,
Equinor USA Onshore Properties, Inc.,
Mary Elizabeth Alexander, Mary A. Barkley,
Kevin Blatt, Individually and as Trustee of
the Blatt Family Irrevocable Trust Dated
April 1, 2011, Thomas Blatt, Paul E. Blatt,
Lawrence E. Blatt, Jr., Joseph J. Blatt, William J. Blatt, Jr.,
Richard P. Blatt, Michael J. Blatt, Steven Blatt,
Teresa Church, Laura M. Dolan, Patrick A.
Frohnapfel, Lisa Frohnapfel, David P. Frohnapfel,
Lynn Frohnapfel, Christina M. Frohnapfel, Mary Ann
Goddard, Joseph A. Hohman & Mary L. Hohman,
Trustees of the Hohman Revocable Living Trust Dated
August 8, 2014, Bertha Klug, Nancy Koontz, Lisa M. Lantz,
Edna McCombs, Constance S. Miller, Mark H.J. Miller,
Matthew Louis Nicholas Miller, Margaret Julia Agnes Miller,
Kevin Mysliwiec, Mary Josephine Nice, Barbara Pancake,
Linda Ruckman, Mary Stine, Robert Francis Villers,
Kenneth A. Wiegand, Leonard L. Wiegand,
Jean Ann Wiegand as Executor of the Estate of Robert L. Wiegand,
Charles A. Wiegand, David Paul Wiegand, John G. Wiegand,
Margaret Wilson, David L. Wilson, Mary Catherine Miller Wright,
Robert F. Yeager, Michael Young, Mineral Acquisition Company I, L.P.,
MAC I(YC) L.P., Lynn E. Cook, Mary K. McKeets,
Frances J. Pucharich, Amy C. Murray, Suzanne Thompson,
Sue E. Johnson, Marshall County Sheriff, as Conservator for Brenda Garcia,
Defendants Below, Respondents

CERTIFICATE OF SERVICE

Service of the foregoing **RESPONDENTS' RESPONSE BRIEF** was electronically filed with the Clerk of the Court using the File & ServeXpress system which will provide copies this the 26th day of June, 2025, to:

*/s/*Christian E. Turak
Christian E. Turak
Counsel for Respondents