IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

DOCKET NO. 25-ICA-144

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Heritage Resources-Marcellus Minerals, LLC,

Petitioner,

v.

JB Exploration I, LLC,

Plaintiff Below/Respondent,

and

Lewis C. Wilson, Henry Alfred Thomas, Maude D. Thomas, Thelma W. Thomas Hitchcock, Calvin W. Thomas, James C. Thomas, Mary E. Thomas, Ruth E. Thomas, Henry A. Thomas, Safrona C. Thomas, Bertha E. Thomas, Sophrona Thomas, Tobias Wesley Thomas, James E. Thomas, Absalom M. Thomas, and the remaining unknown heirs, devisees, successors, assigns and/or creditors of any of the above and all other unknown persons or defendants who own or claim to own an unleased interest (unleased to JB Exploration I, LLC) in and to the oil and gas within and underlying that certain tract or parcel of real estate situate on the waters of Indian Creek, McElroy District, Tyler County, West Virginia, said to contain 28.25 acres, more or less,

Defendants Below/Respondents.

Appeal from Order Entered March 7, 2025, in Civil Action No. 14-P-3, in the Circuit Court of Tyler County, WV

PETITIONER'S BRIEF

Counsel for Petitioner
Heritage Resources—Marcellus Minerals, LLC

mcardi@bowlesrice.com
tfrankovitch@bowlesrice.com
adolly@bowlesrice.com

Michael C. Cardi [WVSB # 12228]
W. Taylor Frankovitch [WVSB # 11804]
Ashlyn M. Dolly [WVSB # 14287]
BOWLES RICE LLP
125 Granville Square, Suite 400
Morgantown, WV 26501
P: (304)285-2500
F: (304)284-2575

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1. The Circuit Court erred in relying on W. Va. Code §§ 55-12A-6(g) and 55-12A-9 when it denied Petitioner's motion to reopen and consolidate an unknown heir adjudication because Petitioner's ownership was known or reasonably knowable and, as a known interested party, the provisions of Sections 6(g) and 9 do not apply to Petitioner

2. The Circuit Court erred in concluding published notice of the unknown heir adjudication was sufficient when denying Petitioner's motion to reopen and consolidate the unknown heir adjudication because Petitioner was statutorily entitled to actual notice where Petitioner's ownership was known or reasonably knowable, and Petitioner was nevertheless not named in the litigation and did not receive actual notice thereof.

3. The Circuit Court erred in concluding published notice of the unknown heir adjudication was sufficient when denying Petitioner's motion to reopen and consolidate where Petitioner's ownership was known or reasonably knowable and was nevertheless not named in the litigation and did not receive actual notice thereof because, as a known owner, constitutional due process required actual notice to Petitioner.

IV. STATEMENT OF CASE

This appeal asks whether a known or ascertainable owner in a mineral estate is barred from asserting an ownership interest in said mineral estate when a prior civil action purported to adjudicate such owner's interest, despite the fact that such owners was not put on notice of, and therefore did not participate in, said prior civil action. This appeal also asks whether Chapter 55, Article 12a ("Lease and Conveyance of Mineral Interests Owned by Missing or Unknown Owners or Abandoning Owners") only prohibits an owner from seeking to recover proceeds from the authorized lease, or whether it also prohibits owners from seeking declaratory relief as to the owner's interest in a mineral estate subject to the lease.

The dispute in this case centers around the oil and gas within and underlying a tract or parcel of land containing 28.25 acres, located on the waters of Indian Creek, in McElroy District, Tyler County, West Virginia, and identified for tax assessment purposes as being located on Tax Map 10, Parcel 12.1 (hereinafter referred to as the "Subject Tract"). Petitioner's interest in the Subject Tract directly stems from a conveyance to its predecessor-in-interest, American Energy – Marcellus Minerals, LLC, which is of record in the Office of the Clerk of the County Commission of Tyler County, West Virginia ("Tyler County Clerk's Office") in Deed Book 467, page 660.

In its *Complaint to Quiet Title* (the "Complaint"), filed in the Circuit Court of Tyler County, West Virginia (the "Circuit Court"), at Civil Action 24-C-17, Petitioner asserts its 50% ownership interest in and to the oil and gas underlying the Subject Tract (hereinafter referred to as the "Current Civil Action").[1] Respondent filed its answer to the Complaint and refused to recognize Petitioner's ownership interest in the Subject Tract, claiming that ownership was adjudicated by a prior civil

[1] The Current Civil Action also concerns the ownership in and to the oil and gas underlying a tract or parcel of land containing 35 acres, more or less, that was historically combined with the Subject Tract and assessed together as a 63 1/4 acre mineral tract.

action, Civil Action 14-P-3, filed in Tyler County, West Virginia (the "Prior Civil Action"). Petitioner was not aware of the Prior Civil Action until 2024.

The Prior Civil Action was instituted on February 4, 2014, in Tyler County, West Virginia, by the *Petition for Appointment of Special Commissioner for Sale, Execution and Delivery of Lease for Oil and Gas* (the "Petition"). The Petition was filed pursuant to West Virginia Code Section 55-12A-1, *et seq.* (hereinafter, the "Unknown Heirs Statute"), and relief was not sought under the Uniform Declaratory Judgments Act, West Virginia Code Section 55-13-1, *et seq.* The Prior Civil Action concerned the oil and gas interests owned by the unknown heirs of Lewis C. Wilson and Henry A. Thomas in the Subject Tract. Through the Prior Civil Action, Respondents sought to lease the interests of the unknown heirs of Lewis C. Wilson and Henry A. Thomas and, according to the Respondent, these unknown heirs owned 75% of the oil and gas underlying the Subject Tract. Respondents specifically named the following individuals as being potential heirs of Lewis C. Wilson and Henry A. Thomas: Maud D. Thomas, Thelma W. Thomas Hitchcock, Calvin W. Thomas, James C. Thomas, Mary E. Thomas, Ruth E. Thomas, Henry A. Thomas, Safrona C. Thomas, Bertha E. Thomas, Sophrona Thomas, Tobias Wesley Thomas, James E. Thomas, and Absalom M. Thomas.

The Circuit Court appointed Frederick M. Dean Rohrig[2] to serve as Guardian ad Litem (hereinafter referred to as the "GAL") in the Prior Civil Action "for the [d]efendants including any and all unknown, missing, infant or incompetent owners of the oil and gas interests described in the Petition and their unknown, heirs, successors and assigns not known to be alive." *See Order Appointing Guardian Ad Litem*, APP 048. An *Order of Publication* for the Prior Civil Action was filed and published in the Tyler Star News on February 12, 2024, February 19, 2014, and February

[2] Frederick M. Dean Rohrig was also appointed to serve as Guardian ad Litem in the Current Civil Action.

26, 2014. APP 052. Said *Order of Publication* identified the unknown heirs of Lewis C. Wilson and Henry A. Thomas, as well as "ALL OTHER UNKNOWN PERSONS OR DEFENDANTS, who own or claim to own an un-leased interest in and to the oil and gas within and underlying" the Subject Tract as parties to the Prior Civil Action. Neither Petitioner nor its predecessor-in-interest are an heir, successors, or assign of Lewis C. Wilson or Henry A. Thomas.

Subsequently, the Circuit Court entered an *Order Appointing Special Commissioner for Sale, Execution and Delivery of Lease for Oil and Gas* in which the Circuit Court declared the ownership in the Subject Tract to be as follows: 50% vested in the Heirs of Lewis C. Wilson; 25% vested in the Heirs of Henry A. Thomas; and 25% vested in Joseph Boyd. APP 054. Thereafter, the Circuit Court entered an *Order Authorizing Special Commissioner to Sell, Execute and Deliver Oil and Gas Lease Upon Private Sale*, which authorized Special Commissioner William Crichton to execute and deliver an oil and gas lease covering a 75% interest in the Subject Tract purportedly owned by the heirs of Lewis C. Wilson and Henry A. Thomas. APP 061. A memorandum of said oil and gas lease (hereinafter, the "Unknown Heirs Lease") is found of record in the Tyler County Clerk's Office in Deed Book 513, page 277.

Despite a dispute among the parties regarding Petitioner's ownership interest in the Subject Tract, which can and should be addressed and determined in the Current Civil Action, this appeal concerns the fact that Petitioner, whose interest in the Subject Tract was known to the Respondent at the time of filing the Prior Civil Action, was not put on notice of the same and was not afforded the opportunity to come forth and state its ownership in the Subject Tract.

Respondent seems to concede that Petitioner was not a named party in the Prior Civil Action, but Respondent nevertheless asserts that Petitioner was otherwise sufficiently notified for due proceed purposes because the *Order of Publication* in the Prior Civil Action identified "ALL

OTHER UNKNOWN PERSONS OR DEFENDANTS, who own or claim to own an un-leased interest in and to the oil and gas within and underlying" the Subject Tract. However, Respondent ignores the fact they it had *actual* knowledge of Petitioner's interest in the Subject Tract prior to initiating the Prior Civil Action. Petitioner's interest stems from a tax sale deed of record in the Tyler County Clerk's Office in Deed Book 156, page 29 ("Tax Sale Deed");[3] and said Tax Sale Deed was clearly noted on an oil and gas lease agreement dated March 1, 2012, of record in the Tyler County Clerk's Office in Deed Book 398, page 354 (the "Predecessor Lease"), between Petitioner's predecessor-in-interest and the Respondent, covering several tracts of land including the Subject Tract. *See* APP 098.

Not only did Respondent know about Petitioner's interest in the Subject Tract, but Respondent had also leased Petitioner's interest in the Subject Tract by the Predecessor Lease before the Prior Civil Action was filed. The Tax Sale Deed was clearly labeled on Exhibit A of the Predecessor Lease as being the origin of the interest of Petitioner's predecessor-in-interest. Furthermore, the Predecessor Lease was dated March 1, 2012, two years prior to the filing of the Prior Civil Action. APP 101.

Thus, due to Respondent's failure to comply with the requirements of the Unknown Heirs Statute and constitutional due process, no order entered in the Prior Civil Action is binding upon Petitioner.

Accordingly, Petitioner sought to properly adjudicate the ownership in and to the oil and gas underlying the Subject Tract by filing in the Prior Civil Action, a *Motion to Reopen Civil Action and Consolidate With Civil Action No. 24-C-17* (hereinafter referred to as "Petitioner's Motion").

[3] As stated above, the Subject Tract was historically assessed together with another tract and described as "1/2 ROY 63.5A BIG SANCHO RUN (397) TCT 4 OF 10" in the landbooks of Tyler County. Said interest was sold for non-payment of taxes and was conveyed to N. M. Welch by the Tax Sale Deed, N. M. Welch being a predecessor-in-interest to the Petitioner.

In Petitioner's Motion, Petitioner requested that the Circuit Court reopen the Prior Civil Action and consolidate it with the Current Civil Action to the extent the declaratory relief sought in the Current Civil Action, in light of new information regarding Petitioner's ownership, necessitated a modification of the final order entered in the Prior Civil Action.

Thereafter, on February 12, 2025, the Respondent filed its *Response to Motion to Reopen Civil Action and Consolidate With Civil Action No. 24-C-17*, arguing that the Motion should be denied because Petitioner's request was time-barred under West Virginia Code § 55-12A-6(g). Thereafter, on February 19, 2025, Petitioner filed its *Reply In Support of Motion to Reopen Civil Action and Consolidate with Civil Action No. 24-C-17.*

On March 7, 2025, the Circuit Court entered its *Order Denying Motion to Reopen Civil Action and Consolidate with Civil Action No. 24-C-17* (the "Final Order"), ruling that Heritage was time-barred in filing its Motion pursuant to West Virginia Code Sections 55-12A-6(g) and 55-12A-9.

The Circuit Court erred in ruling that Petitioner was time-barred from asserting its interest in the Subject Tract. To the extent the Circuit Court did not err in finding that Petitioner is time-barred from recovering proceeds from Unknown Heirs Lease, the Circuit Court erred in finding that the Prior Civil Action prohibits Petitioner from seeking a declaration of ownership in the Subject Tract. Accordingly, Petitioner brings the instant appeal and respectfully requests that the Final Order be vacated, that Petitioner's Motion be granted, and Petitioner be permitted to seek a declaration of its ownership in the Subject Tract.

V. SUMMARY OF THE ARGUMENT

The Circuit Court erred in denying Petitioner's Motion to reopen and consolidate the Prior Civil Action. The Circuit Court's denial was made in error in three respects: First, the Circuit Court relied on the provisions of West Virginia Code Sections 55-12A-6(g) and 55-12A-9 in concluding that Petitioner's Motion was time-barred by the Unknown Heirs Statute. Second, the Circuit Court concluded Respondent properly provided notice of the Prior Civil Action by way of the *Order of Publication* and its multiple postings in the *Tyler Star News*. Third, the Circuit Court reaffirmed ownership of the Subject Tract without permitting Petitioner to develop evidence as to its ownership. All three conclusions are wrong because Petitioner was a known or reasonably knowable owner of mineral interests.

With respect to the provisions of West Virginia Code Sections 55-12A-6(g) and 55-12A-9, all are drafted specifically with regard to unknown, missing, or abandoning owners. These are defined terms under the Unknown Heirs Statute, and Petitioner does not fit within such definitions because Petitioner was a reasonably knowable owner of mineral interests. Therefore, such provisions do not apply to Petitioner, and accordingly, the Circuit Court erred in applying them when denying Petitioner's Motion.

With respect to the notice of the Prior Civil Action given by Respondent, the Circuit Court erred in concluding published notice was sufficient. The Unknown Heirs Statute itself requires due diligence and naming and noticing parties in accordance with the West Virginia Rules of Civil Procedure, which rules are not satisfied by constructive, published notice for parties whose interest in the subject of the action is known. Thus, Respondent's required due diligence should have and would have led it to Petitioner, and from there, Petitioner should have been named and provided actual notice pursuant to the Unknown Heirs Statute and the West Virginia Rules of Civil

Procedure as incorporated therein by reference. Alternatively, to the extent the Circuit Court concluded that the Unknown Heirs Statute did not require actual notice to reasonably knowable interested parties, such as Petitioner, prior to the adjudication of such reasonably knowable parties' interest, then the Unknown Heirs Statute unconstitutionally violates due process requirements.

With respect to ownership of the Subject Tract, the Circuit Court erred in finding that the Prior Civil Action forecloses the declaratory relief sought by the Petitioner. The Circuit Court in the Prior Civil Action did not grant relief under the Uniform Declaratory Judgments Act and the provisions of West Virginia Code Sections 55-12A-6(g) and 55-12A-9 only prohibit, after the expiration of seven years, claims to the proceeds accrued from the Unknown Heirs Lease.

In any case, the Circuit Court erred in denying Petitioner's Motion.

VI. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Oral argument is not necessary but is appropriate to the extent desired under Rule 18(a) of the West Virginia Rules of Appellate Procedure because: 1) all parties have not waived oral argument; 2) this appeal is not frivolous; and 3) the dispositive issues have not been authoritatively decided. W. Va. R. App. P. 18(a).

This matter is appropriate for a Rule 20 argument because the matter concerns an issue of first impression for this Court and presents a constitutional question regarding the validity of West Virginia Code Section 55-12A-1, *et seq.*, to the extent said statute purports to adjudicate the known or knowable interests of owners and does not require those owners to be provided with actual notice of actions filed in accordance therewith. Moreover, the matter presents an issue of fundamental public importance because the decision of the Circuit Court below would raise concerns as to all other missing heirs' actions pursuant to West Virginia Code Section 55-12A-1,

et seq., that occurred prior to/concurrent with this matter, as other known or knowable owners may not have been afforded the requisite knowledge and due process of said actions.

VII. ARGUMENT

I. THE SEVEN YEAR WINDOW FOR CHALLENGING UNKNOWN HEIR ADJUDICATIONS APPLIES SPECIFICALLY ONLY TO UNKNOWN OR MISSING OWNERS OR ABANDONING OWNERS OF A MINERAL INTEREST, AND NOT TO PETITIONER AS A KNOWN OR REASONABLY KNOWABLE OWNER.

The Circuit Court relied on W. Va. Code §§ 55-12A-6(g) and 55-12A-9 in denying Petitioner's Motion below.

W. Va. Code § 55-12A-6(g) provides: "Within seven years after the date of the special commissioner's lease, ***any unknown or missing owner or abandoning owner of a mineral interest*** leased hereunder may file a motion with the court to re-open the action . . . ." (emphasis added). Likewise, W. Va. Code § 55-12A-9 provides:

> After the expiration of seven years from the date of the special commissioner's lease, ***no action may be brought by any unknown or missing owner or abandoning owner or any heir, successor or assign thereof*** either to recover any past or future proceeds accrued or to be accrued from the lease herein authorized, or to recover any right, title or interest in and to the mineral interest subject to the lease.

Thus, under the express terms of W. Va. Code §§ 55-12A-6(g) and 55-12A-9, unknown, missing, and abandoning owners are all prohibited from bringing actions that challenge adjudications made pursuant to the Unknown Heirs Statute more than seven years from the date of the special commissioner's lease. But this indicates nothing with respect to parties like Petitioner, whose mineral interests where known or reasonably knowable at the outset of the case yet never received actual notice of the litigation or service of process to participate therein.

Under the Unknown Heirs Statute, an "abandoning owner" is any "person, vested with title to any interest in minerals, who is proved to have abandoned the interest, that is, to have relinquished any right to possess or enjoy the interest with the expressed intention of terminating ownership of the interest, but without vesting the ownership in any other person." W. Va. Code § 55-12A-2(1). Further, an "unknown or missing owner" is:

> any person, vested with title to any interest in minerals, whose present identity or location cannot be determined from the records of the clerk of the county commission, the sheriff, the assessor and the clerk of the circuit court in the county in which the interest is located or by diligent inquiry in the vicinity of the owner's last known place of residence, and shall include such owner's heirs, successors and assigns not known to be alive.

W. Va. Code § 55-12A-2(5).

As established by the Tax Sale Deed and the Predecessor Lease, Petitioner is not and was not an abandoning owner or an unknown or missing owner. Accordingly, the Circuit Court erred in applying the seven-year limitation to Petitioner when denying Petitioner's Motion because the express terms of W. Va. Code §§ 55-12A-6(g) and 55-12A-9 apply only to abandoning or unknown or missing owners. Thus, in the absence of provisions of the Unknown Heirs Statute stating otherwise, the Circuit Court should have granted Petitioner's Motion, particularly in light of the fact that *Petitioner did not receive any actual notice* as discussed below.

II. THE UNKNOWN HEIRS STATUTE REQUIRES THAT OWNERS THAT ARE OR CAN BE KNOWN THROUGH REASONABLE DUE DILIGENCE BE NAMED PARTIES IN ACTIONS PURSUANT THERETO AND PROVIDED ACTUAL NOTICE THEREOF.

The Circuit Court concluded that Respondent properly provided notice of the Prior Civil Action to "the defendants named in the [Prior] Civil Action and all other unknown persons," including Petitioner, "[b]y way of the *Order of Publication* and . . . multiple postings in the *Tyler Star News*." APP 107. While these general forms of notice may have been sufficient for unknown

persons, they were insufficient with respect to Petitioner as a known or reasonably knowable owner of mineral interests pursuant to the terms of the Unknown Heirs Statute.

A. The Unknown Heirs Statute expressly requires that personal service and service of process "shall be made as provided by the West Virginia rules of civil procedure."

With respect to the focus of the Unknown Heirs statute, unknown, missing, and abandoning owners, the Unknown Heirs Statue is clear in the manner in which such individuals should be named and provided notice—unknown owners are to be simply named as a defendant with notice published by a Class III legal advertisement.

While the Unknown Heirs Statute is admittedly not so express in what it provides for with respect to naming known owners, it nevertheless clearly requires that personal service of process "shall be made as provided by the West Virginia rules of civil procedure" to the extent possible. W. Va. Code § 55-12A-5(c). "In addition, the petitioner shall send notice by certified mail, return receipt requested, to the last known address, if there be such, of all named defendants." *Id.* Furthermore, the class III legal advertisement and lis pendens required by the Unknown Heirs Statute to include "the names of the petitioner **and the defendants, as they are known to be by the exercise of reasonable diligence by the petitioner**." *Id.* Accordingly, the Unknown Heirs Statute requires that petitioners undertake reasonably diligent inquiries to determine the identities of owners of mineral interests and name them in the petition accordingly.

This interpretation is consistent with Rule 19 of the West Virginia Rules of Civil Procedure, the requirements of which are incorporated by reference into the Unknown Heirs Statute pursuant to the foregoing, and which requires the joinder of a "person [who] claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may: (i) as a practical matter impair or impede the person's ability to protect the interest." Rule 19 further provides, "if a person who is required to be joined if feasible cannot be joined, the court

shall determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed." In interpreting Rule 19, the West Virginia Supreme Court of Appeals has observed that "a party becomes an indispensable party if he has an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may as a practical matter impair or impede his ability to protect that interest." *State ex rel. One-Gateway v. Johnson*, 208 W. Va. 731, 735 (2000) (quoting Syl. Pt. 1, *Pauley v. Gainer*, 177 W. Va. 464 (1986)). Respondent's failure to join Petitioner to the Prior Civil Action and the resulting Circuit Court order denying Petitioner's Motion perfectly encapsulates the Court's Rule 19 indispensable party test by directly impeding Petitioner's ability to protect its interest. Indeed, in the context of quiet title actions, the West Virginia Supreme Court of Appeals has held "**when a court proceeding directly affects or determines the scope of rights or interests in real property, any persons who claim an interest in the real property at issue are indispensable parties to the proceeding**. Any order or decree issued in the absence of those parties is null and void." *O'Daniels v. City of Charleston*, 200 W. Va. 711, 716 (1997) (emphasis added).

Accordingly, Petitioner should have been named in and joined to the Prior Civil Action pursuant to Rule 19 and the Unknown Heirs Statute's express incorporation of Rule 19. Respondent's failure to do so was a fatal flaw in the Prior Civil Action, at least with respect to Petitioner's interest. Therefore, the Circuit Court erred in concluding that the general notices published by Respondent satisfied the requirements of the Unknown Heirs Statute.

There are additional indicators of the Unknown Heirs Statue's protection for known or reasonably knowable mineral interest owners beyond the provisions of W. Va. Code § 55-12A-5 and their express incorporation of the West Virginia Rules of Civil Procedure. For example, the Unknown Heirs Statute further provides:

> The court shall not authorize a special commissioner's lease of the mineral interest of any owner whose identity and whereabouts is known, or can be ascertained by diligent inquiry, or is discovered as a result of the action brought hereunder, unless such owner is proved to be an abandoning owner who fails to answer the subject petition, notice having been given as provided in section five of this article.

W. Va. Code § 55-12A-6(d). Moreover, the Unknown Heirs Statute's definition of surface owners observes that while a "surface owner's rights under [the Unknown Heirs Statute] shall be subject to any deed of trust or other security instrument . . . in the surface owned by any other person . . . such persons other than the surface owner shall have no right to notice and no standing to appear and be heard hereunder." W. Va. Code § 55-12A-2(4). Both of the foregoing provisions indicate the legislature's recognition that known mineral interest owners must be afforded additional protections beyond those afforded to unknown owners in the form of actual notice and a meaningful opportunity to participate in the action. As evidenced by the principles analyzed in similar circumstances below, such recognition is an elementary foundation to our system of justice.

B. Analogous actions require joinder of and actual notice to known real property or mineral interest owners.

As noted above, in the context of quiet title actions, the West Virginia Supreme Court of Appeals has held "when a court proceeding directly affects or determines the scope of rights or interests in real property, any persons who claim an interest in the real property at issue are indispensable parties to the proceeding. Any order or decree issued in the absence of those parties is null and void." *O'Daniels v. City of Charleston*, 200 W. Va. 711, 716 (1997); *accord* Syl. *Mfrs.' Light & Heat Co. v. Lemasters*, 91 W. Va. 1 (1922) ("Generally, all persons who are materially interested in the subject matter involved in a suit, and who will be affected by the result of the proceedings, should be made parties thereto, and when the attention of the court is called to the absence of any of such interested persons, it should see that they are made parties before entering

a decree affecting their interests."). The underlying declaration statute further provides: "When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the right of persons not parties to the proceeding." W. Va. Code §55-13-11.

A federal district court has interpreted the foregoing as the "Supreme Court of Appeals of West Virginia [holding] that purported mineral owners are necessary indispensable parties to actions determining the scope of rights or interest in the mineral rights." *Curd Minerals, LLC v. Diversified Production, LLC*, Civil Action No. 1:22-00113, 2024 WL 4363254, *4-5 (S.D. W. Va. Sept. 30, 2024) ("Under West Virginia law, all persons with an interest in real property must be made defendants to an action to quiet title."). The foregoing principles should inform this Court's interpretation of the Unknown Heirs Statute because although the Unknown Heirs Statute is aimed at unknown heirs, it purports to adjudicate interests much more broadly, therefore requiring actual notice and joinder of known or reasonably knowable mineral interest owners. This is especially true in light of the constitutional due process requirements analyzed below.

To the extent the Unknown Heirs Statute does not broadly adjudicate interests similar to the Uniform Declaratory Judgments Act, the Circuit Court erred in ruling that the Prior Civil Action prevents Petitioner from seeking to declare its ownership interest in the Subject Tract.

III. TO THE EXTENT THE UNKNOWN HEIRS STATUTE PURPORTS TO ADJUDICATE THE INTERESTS OF KNOWN OR REASONABLY KNOWABLE MINERAL INTEREST OWNERS WITHOUT REQUIRING ACTUAL NOTICE THERETO, SUCH OPERATION IS AN UNCONSTITUTIONAL VIOLATION OF DUE PROCESS.

The Unknown Heirs Statute provides that decisions made pursuant thereto "shall . . . fully b[ind]" "*all persons* whether in being or not in being, *having any interest*, *present*, *future or contingent*, in the mineral interests sought to be leased." W. Va. Code § 55-12A-5(a) (emphasis added). Thus, the Unknown Heirs Statute binds more than just the abandoning, unknown, or

missing mineral interest owners towards whom the statute is aimed—it binds **all** owners, whether known or unknown. To the extent that it purports to do so without requiring actual notice to known or knowable mineral interest owners, the Unknown Heirs Statute violates constitutional due process requirements.

In *Lily v. Duke*, the West Virginia Supreme Court of Appeals "overrule[d] the holding of Syllabus Point 9 of *Pearson* insofar as it preclude[d] a landowner or other party having an interest in real property from bringing suit to set aside the sale of the property based on a constitutionally defective notice at the sheriff's sale for delinquent taxes." 180 W. Va. 228, 233 (1988) (citing Syl. Pt. 9, *Pearson v. Dodd*, 159 W. Va. 254 (1975) (concluding that once the eighteen-month tax redemption period expired, as provided by statute, the delinquent owner had no property interest)). In *Lily*, the West Virginia Supreme Court ultimately concluded that constitutional due process requires a party having an interest in real property to be sold at a tax sale "that can reasonably be identified from public records or otherwise, be provided notice by mail or other means as certain to ensure **actual** notice." *Id.* at 231. Thus, the Court concluded that the statutory tax sale scheme was "constitutionally invalid insofar as it permitted the sale of real property without **personal notice to affected owners** and others having an interest in the property." *Id.* (emphasis added).

The West Virginia Supreme Court explained that it reached its initial conclusion in *Pearson* because that case was decided without the benefit of *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791 (1983). *See id.* at 232. In *Mennonite*, the United States Supreme Court held "[n]otice by mail or other means as certain to ensure actual notice is a minimum constitutional precondition to a proceeding which will adversely affect the liberty or property interests of *any* party, whether unlettered or well versed in commercial practice, if its name and address are reasonably ascertainable." *Mennonite*, 462 U.S. at 800. Similarly to the holding in *Lily*, *Mennonite* held an

Indiana tax statute constitutionally invalid because of its failure to require actual notice of known or reasonably ascertainable interested parties. *Id.* More specifically, *Mennonite* held that constructive notice to a mortgagee given pursuant to the Indiana tax statute violated due process where the mortgagee could reasonably be identified from public records. *Id.* at 798. In concluding that constructive notice, such as the publication provided for by the Unknown Heirs Statute, is insufficient for known or reasonably knowable parties, the U.S. Supreme Court relied heavily on *Mullane v. Central Hanover Bank & Trust Co.,* 339 U.S. 306 (1950).

In *Mullane*, the U.S. Supreme Court analyzed a circumstance where "Central Hanover Bank and Trust Company established a common trust fund in accordance with [New York law permitting pooling small trust estates into one fund for investment administration], and [the Bank and Trust Company] petitioned the Surrogate's Court for settlement of its first account as common trustee." *Mullane,* 339 U.S. at 309. "The decree in each such judicial settlement of accounts is made binding and conclusive as to any matter set forth in the account upon everyone having any interest in the common fund or in any participating estate, trust or fund." *Id.* "The only notice given beneficiaries of this specific application was by publication in a local newspaper in strict compliance with the minimum requirements of" the underlying New York law. *Id.* at 309. The Court observed that settlement of the common fund resulted in "every right which beneficiaries would otherwise have against the trust company, either as trustee of the common fund or as trustee of any individual trust, for improper management of the common trust fund during the period covered by the accounting is sealed and wholly terminated by the decree." *Id.* at 311. Thus, the Court observed further:

> In two ways this proceeding does or may deprive beneficiaries of property. It may cut off their rights to have the trustee answer for negligent or illegal impairments of their interests. Also, their interests are presumably subject to diminution in the proceeding by

> allowance of fees and expenses to one who, in their names but without their knowledge, may conduct a fruitless or uncompensatory contest. Certainly the proceeding is one in which they may be deprived of property rights and hence notice and hearing must measure up to the standards of due process.

Id. at 313.

Upon balancing the interest of the State of New York in seeking final trust account settlements against the individual's property interest sought to be protected by the Fourteenth Amendment, the *Mullane* Court held that notice published in the newspaper was constitutionally sufficient for beneficiaries whose interest or whereabouts could not be ascertained with due diligence, **but that constitutional due process requires that known beneficiaries receive actual notice**. *Id.* at 318. The *Mennonite* Court interpreted the *Mullane* holding as recognizing

> that prior to an action which will affect an interest in life, liberty, or property protected by the Due Process Clause of the Fourteenth Amendment, a State must provide "notice reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Invoking this "elementary and fundamental requirement of due process," *ibid,* the [*Mullane*] Court held that published notice of an action to settle the accounts of a common trust fund was not sufficient to inform beneficiaries of the trust whose names and addresses were known. The [*Mullane*] Court explained that notice by publication was not reasonably calculated to provide actual notice of the pending proceeding and was therefore inadequate to inform those who could be notified by more effective means such as personal service or mailed notice.

Mennonite, 462 U.S. at 795.[4]

[4] The *Mennonite* Court noted further:

> In subsequent cases, this Court has adhered unwaveringly to the principle announced in *Mullane.* In *Walker v. City of Hutchinson,* 352 U.S. 112 (1956), for example, the Court held that notice of condemnation proceedings published in a local newspaper was an inadequate means of informing a landowner whose name was known to the city and was on the official records. Similarly, in *Schroeder v. City of New York,* 371 U.S. 208 (1962), the Court concluded that publication in a newspaper and posted notices were inadequate to apprise a property owner of condemnation proceedings when his name and address were readily ascertainable from both deed records and tax rolls. Most recently, in *Greene v. Lindsey,* 456 U.S.

Therefore, pursuant to *Mullane*, *Mennonite*, and *Lily*, the Unknown Heirs Statute must either be interpreted to require actual notice to known or knowable mineral interest owners, or held to be unconstitutional to the extent it operates to deprive such owners of their real property interest without providing actual notice. If the Unknown Heirs Statute is interpreted such that published notice is all that is required, at the expense of actual notice to known parties, then it is directly analogous to the New York law permitting the settlement of common funds following published notice that was held unconstitutional in *Mullane*.

The *Mullane* Court observed the following with respect to published notice:

> Chance alone brings to the attention of even a local resident an advertisement in small type inserted in the back pages of a newspaper, and if he makes his home outside the area of the newspaper's normal circulation the odds that the information will never reach him are large indeed. The chance of actual notice is further reduced when as here the notice required does not even name those whose attention it is supposed to attract, and does not inform acquaintances who might call it to attention. In weighing its sufficiency on the basis of equivalence with actual notice we are unable to regard this as more than a feint.

Mullane, 339 U.S. at 309. Such observation is critically important with respect to the Unknown Heirs Statute because it highlights the potential for known mineral interests to be eroded by actions brought under the Unknown Heirs Statute. As is the case here, when known mineral interest owners are not named in or provided actual notice of actions filed pursuant to the Unknown Heirs Statute,

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> 444 (1982), we held that posting a summons on the door of a tenant's apartment was an inadequate means of providing notice of forcible entry and detainer actions. See also *Memphis Light, Gas & Water Div. v. Craft,* 436 U.S. 1, 13–15 (1978); *Eisen v. Carlisle & Jacquelin,* 417 U.S. 156 (1974); *Bank of Marin v. England,* 385 U.S. 99, 102 (1966); *Covey v. Somers,* 351 U.S. 141, 146–147 (1956); *City of New York v. New York, N.H. & H.R. Co.,* 344 U.S. 293, 296–297 (1953).

Mennonite, 462 U.S. at 797.

such parties are unlikely to appear and advocate for their interests.[5] This is especially true in the present case where Respondent's general published notice did not name Petitioner, and worse, specifically put only owners whose interest was unleased on notice as Respondent's general notice did not include mention of owners, such as Petitioner, whose interest was leased. Such circumstances are precisely why courts have consistently held that "[n]otice by mail or other means as certain to ensure actual notice is a minimum constitutional precondition to a proceeding which will adversely affect the liberty or property interests of *any* party, whether unlettered or well versed in commercial practice, if its name and address are reasonably ascertainable." *Mennonite*, 462 U.S. at 800 (emphasis in original). The failure of a statute to provide such notice results in the deprivation of property without due process in violation of the Fourteenth Amendment of the United States Constitution, as well as the Article III Section 10 of the West Virginia Constitution. Therefore, the Circuit Court erred in concluding the published notice was sufficient with respect to Petitioner as a known mineral interest owner and erred in denying Petitioner's Motion based on such conclusion.

[5] Indeed, without alleging that Respondents have done so, it is easy to speculate that crafty litigants could intentionally seek to erode the rights of known mineral interest owners by initiating action under the Unknown Heirs Statute without providing actual notice to such owners.

VIII. CONCLUSION

As discussed herein, the Circuit Court's denial of Petitioner's Motion was in error. Because Petitioner was a reasonably knowable mineral interest owner, the Circuit Court misapplied the provisions of W. Va. Code §§ 55-12A-6(g) and 55-12A-9. Further, the Petitioner was entitled to actual notice of the Prior Civil Action, whether pursuant to the Unknown Heirs Statute or constitutional due process. Because Petitioner did not receive such notice, the Circuit Court should have granted Petitioner's Motion regardless of the amount of time that elapsed following the Prior Civil Action.

WHEREFORE Petitioner respectfully requests that this Honorable Court reverse that Order entered March 7, 2025, by the Circuit Court of Tyler County, West Virginia.

DATED the 9th day of June 2025.

PETITIONER

HERITAGE RESOURCES – MARCELLUS MINERALS, LLC, an Oklahoma limited liability company

By Counsel:

/s/ Michael C. Cardi

Michael C. Cardi (WVSB # 12228)
W. Taylor Frankovitch (WVSB # 11804)
Ashlyn M. Dolly (WVSB # 14287)
BOWLES RICE LLP
125 Granville Square, Suite 400
Morgantown, West Virginia 26501
Phone: (304) 285-2500
mcardi@bowlesrice.com
tfrankovitch@bowlesrice.com
adolly@bowlesrice.com

IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

DOCKET NO. 25-ICA-144

Heritage Resources-Marcellus Minerals, LLC,

Petitioner,

v.

JB Exploration I, LLC,

Plaintiff Below/Respondent,

and

Lewis C. Wilson, et al.,

Defendants Below/Respondents.

Appeal from a final order of the Circuit Court of Tyler County
Civil Action No. 14-P-3

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 9, 2025, the foregoing *Petitioner's Brief* was electronically filed with the Clerk of Court using the File & ServeXpress System which will send notification of such filing to counsel of record:

Joseph G. Nogay, Esq.
Sellitti, Nogay & Nogay, PLLC
3125 Pennsylvania Avenue
Weirton, WV 26062
joseph.nogay@gmail.com
Counsel for JB Exploration I, LLC

Frederick M. Dean Rohrig, Esq.
P.O. Box 128
Middlebourne, WV 26149
dean@rohriglaw.com
Guardian ad Litem

Mike Seely, Esq.
Shane McDonald, Esq.
Foley & Lardner, LLP
1000 Louisiana, Suite 2000
Houston, TX 77002
mseely@foley.com
smcdonald@foley.com
Counsel for JB Exploration I, LLC

/s/ Michael C. Cardi
Michael C. Cardi [WVSB # 12228]