

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

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Docket No. 23-752

Severin POA Group LLC,

Defendant Below, Petitioner,

v.

**Earl J. Nicholson and
Joyce A. Nicholson**

Plaintiffs Below, Respondents.

On Appeal from the Intermediate Court of Appeals
Case No. 22-ICA-207

RESPONDENTS' BRIEF

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I. ASSIGNMENTS OF ERROR

The West Virginia Rules of Appellate Procedure require that, “[t]he argument section of the respondent's brief must specifically respond to each assignment of error, to the fullest extent possible. If the respondent's brief fails to respond to an assignment of error, the Intermediate Court or the Supreme Court will assume that the respondent agrees with the petitioner's view of the issue.”¹ Petitioner listed four Assignments of Error. However, Petitioner noted that “no separate argument section is directly tethered to” the second Assignment of Error. Therefore, the Nicholsons, while addressing all contentions in Petitioner’s brief, will likewise respond only to the three Assignments of Error delineated in the Petitioner’s Brief.

II. STATEMENT OF THE CASE

a. Introduction and Relevant Facts.

In its appeal, Petitioner, The Severin POA Group, LLC (“Severin Group” or “Petitioner”), asks this Court, as it asked the Intermediate Court of Appeals (“ICA”), to ignore the plain and unambiguous language of a deed reserving only “one-sixteenth of all the oil and gas under said land,” and replace the well-settled law of West Virginia to create a rebuttable presumption that “one-sixteenth” really means “one-half” of the oil and gas estate. Petitioner also asks this Court to consider irrelevant and disputed extrinsic evidence and upend the public policy favoring certainty of land titles simply because it suits their purpose in this specific instance. Conversely, the undisputed evidence supporting the Nicholsons’ position is so clear that the ICA concisely and authoritatively dismissed Petitioner’s arguments and stated:

...F.W. Severin, meant what he wrote, in that he reserved only one-sixteenth of all the oil and gas in and under the subject property and not one-half. If we were to adopt the logic espoused by Severin herein that “one-sixteenth” was “one-half,” then it would have been

¹ W.Va. Rules of App. Procedure, Rule 10(d).

impossible for F.W. Severin to have reserved only one-sixteenth of his mineral interest in any way. Such an argument is nonsensical, and we reject the same.²

The relevant chain of title for the property at issue begins with F.W. Severin. By deed dated April 1, 1902,³ F.W. Severin conveyed a 117.55-acre tract in New Milton District, Doddridge County, West Virginia (“Subject Property”) to L.D. Nicholson. The deed (hereinafter referred to as the “Severin Deed”), expressly reserved “**one-sixteenth of all the oil and gas under said land . . .**” (emphasis added). There is no other clause or modifying terms to this reservation. Simply, F.W. Severin meant what he wrote and reserved for himself one-sixteenth of all the oil and gas in and under the Subject Property.

By deed dated November 4, 1999,⁴ title to L.D. Nicholson’s interest was conveyed to the Respondents, Earl J. Nicholson and Joyce A. Nicholson (“Nicholsons” or “Respondents”) by Betty L. Nicholson, Earl’s mother.⁵ Petitioner is a successor in interest to a portion of the one-sixteenth interest reserved by F.W. Severin in the Severin Deed.⁶

In 2017, Antero Resources Corporation began to produce and sell a portion of the oil and gas underlying the Subject Property.⁷ A dispute arose regarding the amount of the oil and gas mineral interest held by the Nicholsons resulting in the Nicholsons filing an action in the Circuit Court of Doddridge County, West Virginia.⁸ The Nicholsons sought a declaration from the Circuit

² APP. 670; ICA Order Pg. 6.

³ The deed is of record in the Clerk’s Office in Deed Book 34, at Pg. 335. (APP. 228).

⁴ The deed is of record in the Clerk’s Office in Deed Book 244, at Pg. 28. (APP. 022).

⁵ Earl J. Nicholson’s family has owned the Subject Property for approximately seventy years.

⁶ APP. 121.

⁷ APP. 024.

⁸ APP. 01

Court that F.W. Severin reserved only one-sixteenth of all the oil and gas in and under the Subject Property under the unambiguous terms of the Severin Deed, relying on well-settled West Virginia law for deed interpretation.⁹

The Petitioner agreed that the Severin Deed was unambiguous, but inexplicably claimed that the term one-sixteenth, without any other clause or modifying terms, somehow plainly meant one-half of the mineral estate.¹⁰ On September 28, 2022, the Circuit Court agreed that the Severin Deed was unambiguous, but nevertheless judicially constructed the Severin Deed and held that “one-sixteenth” meant “one-half” of the mineral estate.¹¹ The Nicholsons appealed the decision to the ICA.

On September 21, 2023, the ICA held a Rule 20 oral argument (“Oral Argument”).¹² The Nicholsons maintained that F.W. Severin meant what he wrote: the term one-sixteenth, without any other clause or modifying terms, means one-sixteenth. Conversely, Petitioner argued that *Harris v. Cobb*, 49 W. Va. 350, 38 S.E. 559 (1901) was controlling and supported that one-sixteenth was unambiguous and meant one-half. In support of this construction, Petitioner also asked the ICA to disregard West Virginia law for deed interpretation and adopt new law to interpret such “archaic West Virginia oil and gas transactions.”¹³

⁹ APP. 209. The Nicholsons cited *Faith United Methodist Church & Cemetery of Terr Alta v. Morgan*, 231 W. Va. 423, 745 S.E.2d 461 (2013), *Gastar Exploration Inc. and Rona Lee McCardle v. Gary Rine, as the Administrator of the Estate of Okey Franklin Yoho, et al.*, 239 W. Va. 792, 806 S.E.2d 448 (2017), and others.

¹⁰ APP. 458.

¹¹ APP. 586.

¹² There is no transcript available for the Oral Argument, however it is available to viewed at https://www.youtube.com/watch?v=u2Rs2xOl_Bw&list=LL&index=7&t=8467s.

¹³ APP. 614.

On November 13, 2023, the ICA entered its decision, reversing the decision of the Circuit Court (“ICA Order”).¹⁴ The ICA, like the Circuit Court and the parties, agreed that the Severin Deed is unambiguous.¹⁵ Therefore, the ICA properly refused to consider the extrinsic evidence proffered by Petitioner.¹⁶

Likewise, the ICA correctly determined that existing West Virginia law answered the question before it: What interest did F. W. Severin reserve in the Severin Deed? Because existing West Virginia law answers the question presented in this litigation, the ICA correctly found it unnecessary to rely on foreign authority.

Relying on established West Virginia law, the ICA held that F.W. Severin “meant what he wrote, in that he reserved only one-sixteenth of all the oil and gas in and under the subject property and not one-half.”¹⁷ The ICA thoroughly considered all arguments espoused by Petitioner and rejected each, finding that, unlike every case relied on by Petitioner to support its contention,¹⁸ the

¹⁴ APP. 683.

¹⁵ APP. 669; ICA Order Pg. 5.

¹⁶ “Extrinsic evidence will not be admitted to explain or alter the terms of a written contract which is clear and unambiguous.” Syllabus Point 4, *Faith United Methodist Church & Cemetery of Terr Alta v. Morgan*, 231 W. Va. 423, 745 S.E.2d 461 (2013).

¹⁷ APP. 670; ICA Order Pg. 6.

¹⁸ APP. 672; ICA Order Pg. 8:

In their appeal herein, Severin cites a number of cases for the proposition that in the early 1900s that the term “one-sixteenth” was often used synonymously with and was equal to “one-half,” including *McCoy v. Ash*; *Kilcoyne v. Southern Oil Co.*, et al., 61 W. Va. 538, 56 S.E. 88 (1907); *Horner v. Philadelphia Co. of West Virginia et al.*, 71 W. Va. 345, 76 S.E. 662 (1912); *Paxton v. Benedum-Trees Oil. Co.*, 80 W. Va. 187, 94 S.E. 472 (1917); and *United Carbon Co. v. Presley*, 126 W. Va. 636, 29 S.E.2d 466 (1944). However, there are critical factual differences in each of the cases cited by Severin and the instant case, which we find render the logic therein inapplicable to the specific facts and circumstances present in the underlying case.

Severin Deed contained **only** a single faction and “[a]ny additional language indicating that a one-half royalty interest was contemplated, or other inconsistent language arguably creating ambiguity, **is absent**” (emphasis added).¹⁹ Accordingly, the ICA held that F.W. Severin reserved one-sixteenth of all the oil and gas in and under the subject property and remanded the case to the Circuit Court for further proceedings consistent with the opinion.²⁰ This appeal followed.

Despite (initially) agreeing with the two courts that held the Severin Deed is unambiguous, the majority of Petitioner’s argument requests that this Court base its decision on irrelevant and inaccurate extrinsic evidence. (Pet. Br. at 2-5). The Nicholsons maintain that extrinsic evidence is irrelevant to the Court’s determination of this matter. Nevertheless, the Nicholsons believe it appropriate to correct several inaccuracies set forth by Petitioner.

First, Petitioner states that there was “substantial oil and gas activities/operations” occurring on the Subject Property prior to the 1902 Severin Deed. (Pet. Br. at 2-3). While this allegation is irrelevant, it must be noted that there is no evidence of an oil and gas lease being active on the Subject Property at the time the Severin Deed was executed. In fact, the records confirm that F.W. Severin obtained a release from The South Penn Oil Company in 1897 and from Carter Oil and Gas Company in 1901, both of the leases referenced by the Petitioner.²¹ The Petitioner’s Brief does not disclose that these two leases were both released.

Next, Petitioner alleged that Richard Starkey, Esq., offered an “opinion” regarding the status of title after the execution of the Severin Deed. (Pet. Br. at 3). On January 14, 2022, Antero filed an “Expert Witness Disclosure” with the Circuit Court in the underlying matter, naming Mr.

¹⁹ APP. 675; ICA Order Pg. 11 (emphasis added).

²⁰ APP. 675; ICA Order Pg. 11.

²¹ APP. 531-532

Starkey as a possible expert expected to testify.²² No discovery whatsoever was conducted by any party with respect to Mr. Starkey's potential opinions, as Antero withdrew him as an expert.²³ As such, any reference to the expert disclosure is irrelevant, unfounded, and should be disregarded.

Petitioner further alleges that Antero "paid an up-front bonus payment on a ½ oil and gas estate ownership basis [in the Subject Property]" to the Petitioner, and referenced APP. 384 as its evidence. (Pet. Br. at 5). However, this document does not confirm that the Petitioner owns a one-half interest in the Subject Property, or even that the Petitioner was actually paid money as alleged in the Petitioner's Brief; APP. 384 appears to merely be a cover page to a proposed lease packet. This allegation is irrelevant to the interpretation of the Severin Deed.

As detailed below, the arguments the Petitioner advances before this Court are invalid as a matter of law and fail to show any flaw in the ICA's analysis and ruling. Accordingly, this Court should deny the Petition, affirm the ICA's ruling, and remand this matter to the Circuit Court of Doddridge County for further proceedings consistent with the ICA's Opinion.

b. The *Amici* Brief.

On Monday, April 15, 2024, Country Roads Minerals, LLC, Morris Mountaineer Oil and Gas LLC, LaCore Agriculture, LLC, WV Minerals, Inc., Hundred Resources, Inc., Bounty Minerals, LLC, and DAC Energy, LLC (the "Mineral Owners") filed their Motion for Leave to File *Amici* Brief ("Motion for Leave") with a proposed *amici* brief attached ("*Amici* Brief"). On April 25, 2024, this Court granted the Motion for Leave and accepted the *Amici* Brief.

The *Amici* Brief reveals that the Mineral Owners are adversaries to the Nicholsons and others, not friends of the Court. The *Amici* Brief argues that the Court should ignore binding

²² APP. 186.

²³ APP. 206.

precedent for deed interpretation and create an ambiguity when a mineral deed uses **only** a single fraction — one-sixteenth — to describe the interest reserved (or granted). The motives behind why the Mineral Owners seek more ambiguity in mineral ownership is unclear, as not being explained in the *Amici* Brief.

Notwithstanding this, the *Amici* Brief does not present a unique perspective for the Court. In fact, it presents a mirror image of Petitioner’s Brief, often using near identical language and citations. The Mineral Owners also failed to cite the binding precedent set forth in *Faith United* and *Gastar* for how to interpret a deed. Due to this, the Nicholsons will properly respond to *Amici* Brief as set forth herein.

III. SUMMARY OF THE ARGUMENT

The ICA correctly applied West Virginia law to hold that the Severin Deed was plain, clear, unambiguous, and reserved “one-sixteenth” of the oil and gas under the Subject Property. Accordingly, the narrow issue before this Court is simple: do grantors mean what they say? F.W. Severin expressly reserved “one-sixteenth of all the oil and gas under said land...,” nothing more, nothing less. There is no additional or modifying language in the Severin Deed. The Severin Deed does not contain double fractional interests. In fact, there is no other portion of the Severin Deed that references the term “one-half,” or equates “one-sixteenth” to mean “one-half.” Accordingly, the Nicholsons requests that this Court apply the law dictating deed interpretation in West Virginia and hold that F.W. Severin meant what he wrote and reserved one-sixteenth of the oil and gas in and under the Subject Property.

The Petitioner raises four assignments of error, the first three of which are identical; specifically, that the ICA should have ruled that one-sixteenth plainly means one-half. Regardless, all the assignments of error referenced by Petitioner are defeated by the record and proper

application of the law by the ICA. With respect to the first assignment of error, Petitioner argues that the ICA erred in disregarding West Virginia law by rejecting Petitioner's unsupported theory that one-sixteenth means one-half of the oil and gas estate. Remarkably, and as thoroughly discussed by the ICA, Petitioner has yet to cite a single case to support this theory. Conversely, the Nicholsons cited binding West Virginia law on how to interpret any deed, as well as several West Virginia cases holding that one-sixteenth, without any additional modifying language, means one-sixteenth. The ICA correctly relied on established West Virginia law to analyze and confirm that the single fraction one-sixteenth in the Severin Deed is unambiguous and means one-sixteenth.

Petitioner's second assignment of error is merely the first assignment of error, just rephrased. Here, Petitioner again alleges that the ICA erred in failing to acknowledge that one-sixteenth means one-half of the oil and gas estate. The ICA thoughtfully considered Petitioner's argument and rejected its unsupported theory that "one sixteenth" reservation in the Severin Deed means one-half.

Petitioner's third assignment of error is again a restatement of its first assignment of error in that Petitioner contends that the ICA failed to consider persuasive authority and find that one-sixteenth means one-half of the oil and gas estate. Petitioner asks this Court to adopt a brand-new rule of law—a rebuttable presumption for all fractional mineral estate litigation—based on misconstrued, persuasive authority from Texas. This is unnecessary as West Virginia law is dispositive on the narrow issue presented in this matter—does one-sixteenth, without any modifying or ambiguous language, or double fractions, mean one-sixteenth. In any event, Petitioner misconstrues the Texas authority, failing to inform the Court that the "estate misconception theory" and the cited case law from Texas deal exclusively with ambiguous deeds that include double fractions. To the extent that this Court seeks persuasive guidance on how Texas

deals with the use of the single term one-sixteenth in a mineral deed, Texas interprets the single fraction one-sixteenth in the same manner as the ICA; it means one-sixteenth, not one-half. Again, Petitioner fails to cite to any authority, binding or persuasive, to support its request to this Court.

Finally, even though the Petitioner has consistently agreed that the Severin Deed is unambiguous, it now alternatively suggests in the fourth assignment of error that this Court could find that the Severin Deed is ambiguous and, thus, look to extrinsic evidence and judicially construe the reservation to mean one-half. This request is unfounded and unsupported by any authority; one-sixteenth, on its own without anything more, is plain, clear, and unambiguous. This Court should disregard Petitioner's suggestion that the Severin Deed *may* be ambiguous, as well as all references to extrinsic evidence.

For all these reasons, the Nicholsons request that this Court affirm the ICA ruling, which found the Severin Deed unambiguous and reserved only one-sixteenth of the oil and gas.

IV. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Pursuant to W. Va. R. App. P. 18(a)(3) and (4), the Nicholsons maintain that oral argument is unnecessary because the dispositive issues have been authoritatively decided, the facts and legal arguments are adequately presented in the briefs and record on appeal, and the decisional process would be not significantly aided by oral argument. In addition, the ICA granted a W. Va. R. App. P. 20 argument for this matter. All parties have already had a full opportunity to argue the legal matters.

If the Court determines that oral argument is necessary, the Nicholsons recommend that argument under W. Va. R. App. P. 19 is appropriate because the appeal involves assignments of error in the application of settled law, and the parties already argued the issues to the ICA. This appeal is appropriate for disposition by memorandum decision under W. Va. R. App. 21.

V. ARGUMENT

a. Standard of Review

“It is well established that ‘[a] circuit court's entry of summary judgment is reviewed de novo.’” *Reynolds v. Hoke*, 226 W. Va. 497, 500, 702 S.E.2d 629, 632 (2010); *Mason v. Smith*, 233 W. Va. 673, 760 S.E.2d 487 (2014). This Court has held that the standard of review concerning summary judgment has been well settled: “[a] motion for summary judgment should be granted only when it is clear that there is no genuine issue of fact to be tried and inquiry concerning the facts is not desirable to clarify the application of the law.” *Mason*, 233 W. Va. at 678, 760 S.E. 2d at 492.

b. The ICA Correctly Applied West Virginia Law to the Severin Deed, Holding that F.W. Severin Reserved One-Sixteenth of All Oil and Gas in and under the Subject Property.

Petitioner’s first assignment of error argues that the ICA Order was “contrary to long-standing West Virginia case law.” (Pet. Br. at 14). This contention is simply untrue. Since at least 1905, the Court announced clear principles for interpreting deeds and other written contracts.²⁴ “Deeds are subject to the principles of interpretation and construction that govern contracts generally.” Syllabus Point 3, *Faith United Methodist Church v. Morgan*, 231 W.Va. 423, 745 S.E.2d 461 (2013). “When the language used is plain and unambiguous, courts are required to

²⁴ In *Griffin v. Fairmont Coal Co.*, 59 W.Va. 480 (1905), the Court was charged with construing an 1889 mineral deed and stated at syllabus point 4 that “[i]t is the duty of the court to construe [deeds] as they are made by the parties there, and to give full force and effect to the language used, when it is clear, plain, simple, and unambiguous.” *Griffin* was later cited by *Bruen v. Thaxton*, 126 W. Va. 330, 339, 28 S.E.2d 59, 65, (1943) for the proposition that “where no ambiguity exists, a deed or other contract will be construed from the language used therein.”

These principles laid the foundation for *Cotiga Development Co. v. United Fuel Gas Co.*, 128 S.E.2d 626, 148 W.Va. 484 (W.Va. 1963), and its progeny, *Faith United* and *Gastar Exploration Inc. and Rona Lee McCardle v. Gary Rine, as the Administrator of the Estate of Okey Franklin Yoho, et al*, 239 W. Va. 792, 806 S.E.2d 448 (2017).

apply, not construe, the contract.” *Id.* at 482. “A valid written instrument which expresses the intent of the parties in plain and unambiguous language is not subject to judicial construction or interpretation but will be applied and enforced according to such intent.” Syllabus Point 4, *Id.* Further, “[i]t is not the right or province of the Court to alter, pervert or destroy the clear meaning and intent of the parties as expressed in unambiguous language in their written contract or to make a new or different contract for them.” Syllabus Point 7, *Id.* As a result, “[e]xtrinsic evidence will not be admitted to explain or alter the terms of a written contract which is clear and unambiguous.” Syllabus Point 4, *Id.*²⁵

Additionally, “parties are bound by general and ordinary meanings of words used in deeds.” Syllabus Point 1, *McDonough Co. v. E.I. Dupont DeNemours & Co., Inc.*, 167 W.Va. 611, 280 S.E.2d 246 (1981).²⁶ The *McDonough* Court wisely noted that “a clear definition [of words] shields the courts from unnecessary litigation.” *Id.* In *W. Va. Dep’t of Transp. V. Veach*, 799 S.E.2d 78 (W.Va. 2017), the Court explained that “clear and broad definition[s]...encourages stability and certainty of land titles....” *Id.*

As to ambiguity, the Court has held that:

[t]he mere fact that parties do not agree to the construction of a deed does not alone render it ambiguous. The term ambiguity is defined as language reasonably susceptible of two different meanings or language of such doubtful meaning that reasonable minds might be uncertain or disagree as to its meaning. Whether a deed is ambiguous is a question of law to be determined by the court. Where

²⁵ See also, *Hansen-Geir Family Trust v. R. Michael Haywood and Joann T. Haywood*, No. 22-0422, (W. Va. May 23, 2024), *Gastar* 806 S.E.2d. at 455 (“When a deed expresses the intent of the parties in clear and unambiguous language, a court will apply that language without resort to rules of interpretation or extrinsic evidence.”), and *Poulos v. LBR Holdings, LLC*, 238 W.Va. 89 (W.Va. 2016) (a recent decision that was also cited in the ICA Order).

²⁶ In *Williams v. South Penn Oil Co.*, 52 W.Va. 181 (1902), decided around the same time as the execution of the Severin Deed, the Court stated that “the safest and best mode of construction to give words, free from ambiguity, their plain and ordinary meaning.”

there is ambiguity in a deed, or where it admits of two constructions, the one will be adopted which is most favorable to the grantee.

Gastar, 239 W. Va. 792, 800-801 (internal citations and quotations omitted).

The ICA correctly applied applicable West Virginia law to the Severin Deed. The ICA found that the Severin Deed was “not ambiguous.”²⁷ Thus, pursuant to the binding precedent of *Faith United* and *Gastar*, the ICA applied the words of the deed and declared the deed reserved only “one-sixteenth interest in the oil and gas in place.”²⁸ This conclusion is correct because the words of the deed were plain and clear, and there was no “additional language indicating that one-half royalty interest was contemplated....”²⁹ In fact, there is no other portion of the deed that references the term “one-half” or equates “one-sixteenth” to mean “one-half.”

The ICA’s decision is supported by West Virginia cases in which the term “one-sixteenth,” standing alone, has been interpreted. The cases are clear: when one-sixteenth is present in a deed without anything more, it means one-sixteenth. First, in *Lockhart v. United Fuel Gas Co.*, 105 W.Va. 69, 141 S.E. 521 (1928), the Court was asked to interpret a specific grant from a 1901 deed (executed one year prior to the Severin Deed). The granting language provided:

“The said party of the first part grants unto the said party of the second part a one undivided sixteenth interest in and to all the oil in and under that certain tract of land hereinafter described, as well as the one undivided half interest in and to the royalty reserved, or to be reserved, in any gas well that may be drilled on said tract of land. It being the true intention of the grantor herein to convey to the said party of the second part the one-half of the one-eighth of the oil reserved, or to be reserved, in any oil or gas lease that has been executed, and which may be executed on said tract of land, as well as the undivided half interest into the royalty reserved, or to be reserved in any such lease, for each and every gas well to be drilled on said tract. (emphasis added).

²⁷ APP. 669; ICA Order Pg. 5.

²⁸ APP. 669; ICA Order Pg. 11.

²⁹ *Id.*

Id. 521-522. *Lockhart* affirmed that the words “one undivided sixteenth in and to all the oil” **standing alone**, would convey only one-sixteenth of the oil in place:

In this clause there is expressly granted ‘one undivided sixteenth interest in and to all the oil in and under’ said tract of land. **Standing alone it seems plain that the grantors conveyed one-sixteenth of the oil in place.** Not content, however, the grantors explained the grant as follows: ‘It being the true intention of the grantor herein to convey to the said party of the second part the one-half of the one-eighth of the oil reserved’

Id. at 522 (emphasis added).

The grantor in *Lockhart*, unlike in the Severin Deed, explained an intent beyond the grant of an undivided interest of one sixteenth in the oil and gas in place, which is why the Court ruled the conveyance to be for one-half. *Id.* There are no such words in the Severin Deed. Petitioner ignores *Lockhart* in its briefing as the clear holding does not fit its purpose here.

At issue in *Manufacturers’ Light & Heat Co. v. Knapp*, 102 W. Va. 308, 135 S.E. 1 (1926), was whether a conveyance of “one sixteenth” interest of the oil in place granted a “one-half interest” in the oil royalty from production on a well. *Id.* at 2. In ruling the grant was for a “one sixteenth” interest in the oil in place, the Court stated: “The language of the [deed], transferring one-sixteenth of the oil in place . . . does not require interpretation. **How can one-sixteenth equal one-half?**” *Id.* (emphasis added).

Finally, in *Toothman v. Courtney*, 62 W.Va. 167, 183, 58 S.E. 915 (1907), by deed dated May 1, 1894, J. Daniel Toothman conveyed to Joseph McDermott “1-16 one sixteenth part of all the oil and gas in and under” a 143-acre tract of land. *Id.* at 916. The Court held “[w]e agree that Toothman had title to at least one-sixteenth of the oil in place and that he did not have title to the whole of it, for he had, by his deed, conveyed one-sixteenth to McDermott.” *Id.* at 918. F.W. Severin, the grantor of the Severin Deed, used near identical language reserving his interest from

L.D. Nicholson, the grantee of the Severin Deed, that Toothman used to convey to McDermott in 1894.

The ICA correctly applied *Faith United* and *Gastar* to the Severin Deed. However, Petitioner fails to even reference these binding West Virginia cases in its Brief to the Court. Instead, Petitioner relies on five, distinguishable West Virginia cases to contend that “the term ‘one-sixteenth’ was plainly used to refer to ‘one-half’ of a mineral estate in archaic West Virginia oil and gas transactions.” (Pet. Br. at 15).³⁰ Importantly, none of cases cited by Petitioner stand for the proposition that one-sixteenth plainly means one-half.

Petitioner first cites *Kilcoyne*. However, rather than discuss the facts from *Kilcoyne*, Petitioner simply cites to *Paxton* for the purported proposition that the *Kilcoyne* Court “held that the purchaser of the one-sixteenth of the oil in place was entitled to receive one-half of the royalties or one-sixteenth of the oil delivered to him in the pipe line.” (Pet. Br. at 9). This contention is incorrect. In *Kilcoyne*, “in 1899, McDougal sold and conveyed to Conaway one-sixteenth of the oil and gas underlying a parcel of land in Wetzel County. Subsequently, McDougal leased the land for oil and gas purposes, the royalty to be one-eighth of the production.” *Kilcoyne v. Southern Oil Co.*, 56 S.E. at 888. In 1904, McDougal granted and conveyed to H.M. Sartelle “one-sixteenth of all the oil within and underlying said tract of land, and one-half of all gas royalties that might be paid thereon or arise therefrom, and thereafter, [in 1905] McDougal granted to the plaintiff, Kilcoyne, all his remaining right, title and interest in the subject property.” *Id.* Thus, the issue presented to the *Kilcoyne* Court was to declare the respective rights owned by Sartelle and Kilcoyne and payments due from the lessee, Southern Oil Company, out of the fifteen-sixteenth

³⁰ *Kilcoyne v. Southern Oil Co.*, 56 S.E. 888, 61 W.Va. 538 (1907), *Paxton v. Benedum-Trees Oil Co.*, 80 W. Va. 187, 94 S.E. 472 (1917), *McCoy v. Ash*, 64 W. Va. 655, 63 S.E. 361 (1908), *Horner v. Gas Co.*, 76 S.E. 662, 71 W.Va. 345 (1912), and *United Carbon Co. v. Presley*, 126 W. Va. 636 (1944).

(15/16th) that remained after the deed to Conaway.

Relevant to the present matter, *Kilcoyne* made clear that Conaway was vested with only one-sixteenth of the oil and gas in place by the grant from McDougal, not one-half.³¹ *Paxton*'s citation to *Kilcoyne* was discussing the final holding of the case, which was not directly related or relevant to the 1899 deed for "one-sixteenth of all the oil and gas within and underlying" the property. Not only does *Kilcoyne* confirm the holding of the ICA that one-sixteenth, on its own, means one-sixteenth, but neither *Kilcoyne* nor *Paxton* support Petitioner's argument.³²

Next, the Petitioner cites *McCoy* to argue that "in the early 1900s in West Virginia, a statement in a deed of a conveyance of 1/16th was a plain declaration that the parties were facilitating the sale of half of the underlying mineral asset." (Pet. Br. at 10). But *McCoy* does not support this argument. At issue in *McCoy* was whether the subject deed conveyed a property interest in an adjacent tract. *McCoy v. Ash*, 64 W. Va. 655, 63 S.E. 361 (1908). The *McCoy* Court was **not** asked to interpret a reservation provision to determine whether it was for one-half or one-sixteenth, and it certainly did not state that one-sixteenth plainly means one-half.

The Petitioner then cites *Horner*, where the deed at issue granted "all of the **one half** of the **royalty**, being **one sixteenth**, of all the oil and one half of the gas within...." (emphasis added). *Horner v. Gas Co.*, 71 W.Va. at 346 (1912). The *Horner* Court was asked to interpret the meaning

³¹ By dated August 24, 1899, and recorded in the Doddridge County Clerk's Office in Deed Book 61, at page 188, S.B. McDougal granted "one-sixteenth (1/16) of all the oil and gas within and underlying" the subject property to T.J. Conaway. The granting language used by S.B. McDougal to describe the mineral rights granted to T.J. Conaway was near identical to that used by W.F. Severin in the Severin Deed.

³² Although Petitioner does not discuss the deed language from *Paxton*, the *Paxton* Court was asked to analyze and interpret a deed that granted "1/16th of all the oil and ½ of all the gas . . . including in this conveyance the ½ of all the royalties. . . ." *Paxton v. Benedum-Trees Oil Co.*, 80 W. Va. 187, 94 S.E. 472 (1917). Due to the deed including multiple fractions, as well as the word "royalty," the Court determined this deed to be ambiguous, and thus had to judicially construct it. Clearly, the deed at issue in *Paxton* is not similar to the language used in the Severin Deed. The ICA discussed the difference between the two deeds in the ICA Order. APP. 674; ICA Order Pg. 10-11. *Paxton*'s holding has no relevance to analyzing the Severin Deed.

of the word “royalty” in the context of the granting language in the deed and the existence of an oil and gas lease on the property granted. *Id.* The Court noted the word “royalty” was ambiguous, and therefore, used extrinsic evidence (being the existence of an oil and gas lease) in constructing the deed to ascertain the intent of the parties. *Id.* at 348. Unlike the deed in *Horner*, the Severin Deed does not contain multiple fractions, or the word royalty. *Horner* certainly did not state that one-sixteenth plainly means one-half.

Finally, Petitioner cites *United Carbon* for the proposition that “the reservation of 1/16th of the oil and gas operates to reserve 1/2 of the oil and gas estate under West Virginia law in 1902 and the early 1900s.” (Pet. Br. at 12-13). But *United Carbon* does not support this contention. In *United Carbon*, the dispute involved the following oil and gas reservation:

It is expressly understood that there is excepted and reserved from the operation of this conveyance and the same does not convey the **one half of the oil and gas royalty** upon and as to said two tracts of land, containing 20 acres, more or less, and 38 acres more or less, that is to say the said Shatto reserves **the undivided one sixteenth of the oil and gas** underlaying said two small parcels of land;

United Carbon Co. v. Presley, 126 W. Va. at 638 (1944) (emphasis added). Given the ambiguity created by the word “royalty” used in conjunction with the word “one-sixteenth”, as well as the “repugnancy” between the two clauses of the reservation, the Court cited *Paxton*, and restated long-held rules of construction for oil and gas reservations containing the ambiguous word “royalty.” *Id.* Unlike the reservation at issue in *United Carbon*, the Severin Deed does not use multiple fractions or the word royalty to describe the interest reserved. *United Carbon* certainly did not state that one-sixteenth plainly means one-half.

The ICA did not perform a “fleeting” examination of West Virginia law as baselessly asserted by Petitioner. (Pet. Br. at 13). Instead, the ICA specifically referenced and discussed the five cases cited by Petitioner, and explained why “there are critical factual differences in each of

the cases cited by [Petitioner] and the instant case, which we find render the logic therein inapplicable to the specific facts and circumstances present in the underlying case.”³³ The “factual differences” between the deeds in *Kilcoyne*, *Paxton*, *McCoy*, *Horner*, *United Carbon*, and the Severin Deed is best explained by reference to the ICA’s analysis in its Order:

Applying these principles to the present case, at the time of the creation of the deed in question, the language utilized by the grantor was clear and unambiguous, and reserved only the one-sixteenth interest in the oil and gas in place. Any additional language indicating that a one-half royalty interest was contemplated, or other inconsistent language arguably creating ambiguity, **is absent**.

App. 663; ICA Order Pg. 11 (emphasis added).

The ICA correctly declared the phrase “one-sixteenth” in the Severin Deed is plain, clear, and unambiguous; one-sixteenth means one-sixteenth. Had F.W. Severin intended to reserve one-half of the oil and gas as alleged by the Petitioner, he would have used the language “one [half] of all the oil and gas in and under said land,” or used additional language indicating an intent to equate one-sixteenth with one-half (as did the parties in *United Carbon*, *McCoy*, and *Horner*). He did not. Instead, he reserved “one sixteenth of all the oil and gas in and under said land.” Application of *Faith United* and *Gastar* to the plain language of the Severin Deed has only one result: the Severin Deed reserved one-sixteenth of the oil and gas in place to F.W. Severin, not one-half. This Court should disregard the Petitioner’s first assignment of error.

c. The ICA Correctly Relied on the Relevant and Binding Precedent and Properly Disregarded Unpersuasive Authority from Kansas and Texas.

In Petitioner’s third assignment of error, Petitioner spends eight pages of its brief discussing treatises and cases from other jurisdictions addressing other issues decided under

³³ App. 663; ICA Order Pg. 8.

different standards . (Pet. Br. at 15-22). First, Petitioner did not adequately address this issue as required by the West Virginia Rules of Appellant Procedure.

Second, and most importantly, as demonstrated *supra*, there is simply no need to look beyond governing West Virginia law to appreciate that, when examined through existing West Virginia jurisprudence, the Severin Deed unambiguously reserved one-sixteenth of all oil and gas in and under the Subject Property. Even if the Court needed to look to other states, the cases that Petitioner relies on would not support the finding that the Severin Deed's reservation for "one-sixteenth" was for "one-half" the oil and gas estate. Accordingly, the Nicholsons request that the Court disregard Petitioner's third assignment of error in totality.

i. Petitioner did not Adequately Brief this Issue to the ICA.

The Petitioner fails to provide a citation to when and how the third assignment of error was presented to the ICA, or what legal authority supports that the ICA erred by ignoring persuasive foreign authority in favor of binding West Virginia precedent. As such, Petitioner did not adequately brief this argument as required by the West Virginia Rules of Appellant Procedure³⁴ and Administrative Order entered December 10, 2012, Re: Filings That Do Not Comply With the Rules of Appellate Procedure ("Administrative Order").³⁵ This Court should decline to address the

³⁴ Rule 10(c)(7) of the West Virginia Rules of Appellant Procedure provides

The brief must contain an argument clearly exhibiting the points of fact and law presented, the standard of review applicable, and citing the authorities relied on, under headings that correspond with the assignments of error. The argument must contain appropriate and specific citations to the record on appeal, including citations that pinpoint when and how the issues in the assignments of error were presented to the lower tribunal.

³⁵ The Administrative Order addressed non-compliant filings that occurred after a substantial revision to the Rules of Appellate Procedure promulgated on December 1, 2010 and provides at paragraph 7,

Briefs with arguments that do not contain a citation to legal authority to support the argument presented and do not "contain appropriate and specific citations to the record on appeal, including citations that pinpoint

merits of the Petitioner’s third assignment of error, contending that the ICA ignored persuasive foreign authority.

This identical issue was addressed recently by this Court in *T & C Constr. Servs. v. City of St. Albans*, 22-0503 (W. Va. Apr 25, 2024). In *T & C*, petitioner T & C “[assigned] as error the circuit court’s decision to grant the City a money judgment but [offered] no argument to support that assertion.” *Id.* at 17. The Court observed that that T & C “[failed] to cite any points of fact or law backing its contention . . . and T & C’s failure to cite to *any* legal authority in support of this argument further contravenes Rule 10(c)(7) of the West Virginia Rules of Appellate Procedure.” *Id.* at 18.

Similarly, in *Haught Family Tr. v. Williamson*, No. 19-0368 (W. Va. Apr 20, 2020), the petitioner assigned error to the circuit court’s failure to address the doctrine of laches, alleging that petitioner had briefed “equitable considerations” in the circuit court. After citing Rule 10(c)(7) and the Administrative Order, the Court observed that the petitioner “[had] failed to point this Court to the alleged briefing below wherein the issue was allegedly raised, respondents assert that it was not raised below, and petitioner did not dispute that contention in a reply before this Court, we decline to address the merits of this issue.” *Id.* at 6.

Finally, in *Birchfield v. Zen's Dev., LLC*, 857 S.E.2d 422 (W. Va. 2021), the petitioner’s brief raised eleven assignments of error. However, the Court “[declined] to address the majority of these assignments of error individually because they [did] not comply with our rules of appellate procedure. Specifically, the majority of the assignments of error [did] not include any citation to legal authority or pinpoint citation to the appendix record.” *Id.* at 429. In support, the Court cited

when and how the issues in the assignments of error were presented to the lower tribunal" as required by rule 10(c)(7).

Rule 10(c)(7) and the Administrative Order. Citing the extensive history of inadequately briefing on appeal,³⁶ the Court stated “that issues that are not supported with pertinent authority will not be considered on appeal.” *Id.*

As in *T & C*, *Haught*, and *Birchfield*, Petitioner’s third assignment of error does not comply with Rule 10(c)(7) or the Administrative Order. Petitioner fails to provide a citation to when and how this issue was presented to the ICA, or what legal authority supports that the ICA erred by ignoring persuasive foreign authority in favor of binding West Virginia precedent. In fact, Petitioner failed to cite any West Virginia case law in this section other than passing references in footnotes 14 and 16. Most notably, Petitioner simply fails to explain what “error [the ICA has] committed” or the “reasonable basis for the . . . reversal of existing law.”³⁷

ii. The ICA Correctly Applied the Relevant and Binding Precedent.

Notwithstanding the inadequate briefing, the ICA properly applied the relevant and binding precedent. In addition, Petitioner fails to cite a single West Virginia case that supports that the ICA

³⁶ *Birchfield*, 857 S.E.2d 422, note 10.

This Court has ruled that “[i]n the absence of supporting authority, we decline further to review [these] alleged error[s] because [they] have not been adequately briefed.” *State v. Allen*, 208 W. Va. 144, 162, 539 S.E.2d 87, 105 (1999). Additionally, in *State, Department of Health v. Robert Morris N.*, 195 W. Va. 759, 765, 466 S.E.2d 827, 833 (1995), we stated “ ‘[a] skeletal “argument,” really nothing more than an assertion, does not preserve a claim.... Judges are not like pigs, hunting for truffles buried in briefs.’ ” (quoting *United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991)). Moreover, this Court has determined that “[a]lthough we liberally construe briefs in determining issues presented for review, issues ... mentioned only in passing but are not supported with pertinent authority, are not considered on appeal.”

³⁷ Administrative Order at 5 (citing Syl. Pt. 3, in part, *State v. McGill*, 2012 WL 5834573 (W. Va Sup. Ct. No. 11-0261, November 15, 2012).

should have disregarded binding West Virginia precedent in favor of persuasive authority from Kansas and Texas.

iii. The Foreign Authority Cited by Petitioner does not Support that the Term One-Sixteenth Means One-Half in the Severin Deed.

The foreign cases cited by Petitioner do not support that one-sixteenth equals one-half in the Severin Deed. Simply stated, the issue in all of the foreign cases cited by Petitioner is how each court judicially constructed an **ambiguous** deed that contained **multiple fractions** to describe the interest being reserved or granted.

In *Heyen v. Hartnett*, 235 Kan. 117, 679 P.2d 1152 (Kan. 1984), the court was charged with interpreting an ambiguous deed that used two different fractions - one-sixteenth and one-half - to describe the interest granted.³⁸ The issue presented in *Heyen* was whether a provision³⁹ dealing with an oil and gas lease on the property was construed to mean a present lease or a future lease. The court held that the provision was ambiguous, and then judicially constructed it to find the grantee was vested with one-half of the royalties. *Id.* at 1159. Clearly, *Heyen* does not support Petitioner's argument because the deed in *Heyen* included multiple fractions and was ambiguous, unlike the Severin Deed. This case is unpersuasive and should be disregarded.

Petitioner then briefly mentions the "estate misconception theory" and the "legacy of the 1/8th royalty" as a foundation for discussing three Texas cases.⁴⁰ Petitioner alleges that these cases

³⁸ *Id.* at 1154 ("... an undivided **1/16** interest in and to all of the oil, gas, and other minerals If such land is covered by a valid oil and gas lease or other mineral lease, the party of the second party . . . shall have an undivided **1/2** interest in the Royalties, Rentals, and Proceeds therefrom, or whatsoever nature.") (emphasis added).

³⁹ *Id.* ("If such land is covered by a valid oil and gas lease . . .").

⁴⁰ *Hysaw v. Dawkins*, 483 S.W. 3d 1 (Sup. Ct. Tex. 2016), *Van Dyke v. Navigator Group*, 2023 Tex. Lexis 144, 66 Tex Supp. J. 333 (Texas, February 17, 2023), and *Johnson v. Clifton*, 08-22-00132-CV (Tex. App. July 10, 2023)

purportedly stand for the proposition that the “fractional references, such as a 1/16th reservation, indicate an intent to reserve ½ of the mineral estate....” (Pet. Br. at 17). But Petitioner misunderstands the applicability of the “estate misconception theory”⁴¹ and “the legacy of the 1/8th royalty”⁴² to the Severin Deed.⁴³ These terms were, by definition, coined to describe the problems that derive from multiple fraction deeds, not deeds using a single fraction as in the Severin Deed, and certainly not a mechanism for one-sixteenth to plainly mean one-half. Each of the Texas cases cited by Petitioner involve a will or deed that used multiple fractions to describe the interest devised, reserved, or granted.

First, in *Hysaw*, the court was charged with interpreting an ambiguous will that used two different fractions – one-third and one-eighth – to describe the interest devised to three children.⁴⁴

⁴¹ The term “estate misconception” was first coined by Laura H. Burney, in the 1993 law review cited by the Petitioner, wherein she provided an exhaustive analysis of the “two-grant doctrine” in Texas deed construction cases and its progeny, the “estate misconception.” As Burney explained, “[t]he estate misconception leads to the use of conflicting fractions in a multiclaused deed.” Each case cited by Burney had a common fact pattern; a deed granted (or reserved) a mineral interest that was **subject to an existing lease and used multiple fractions** to describe the interest granted (or reserved).” (emphasis added). Laura H. Burney, *The Regrettable Rebirth of the Two-Grant Doctrine in Texas Deed Construction*, 34 S. Tex. L. Rev. 73 (1993).

⁴² The term “legacy of the one-eighth (1/8) royalty” was also first coined by Ms. Burney in her 2001 law review titled “Interpreting Mineral and Royalty Deeds: The Legacy of the One-Eighth Royalty and Other Stories,” wherein she further analyzed the problems arising from “the ‘**double fraction**’ and ‘restated fraction’ problems” that occur when a grantor grants, or reserves, a mineral interest under an existing lease that provides for “the usual 1/8 royalty.” Laura H. Burney, *Interpreting Mineral and Royalty Deeds: The Legacy of the One-Eighth Royalty and Other Stories*, 33 St. Mary’s L.J. 1 (2001).

In 2016, Burney authored a third law review addressing both the theory of estate misconception and the legacy of the one-eighth (1/8) royalty, titled *The Legacy of the 1/8th Landowner’s Royalty and the Texas Supreme Court: Has Hysaw v. Dawkins Resolved the Double Fraction Dilemma*, 58 S. Tex. L. Rev. 115 (2016). Notably, Burney provided a succinct definition of what constitutes estate misconception, stating “[t]he estate misconception—a legacy of the ‘usual 1/8th landowner’s royalty’—describes the confusion regarding estate ownership after leasing property.”

⁴³ The *Amici* Brief presented the same misunderstanding.

⁴⁴ In *Hysaw*, the Court was charged with construing the a deed that used meaning of “an undivided **one-third (1/3)** of an undivided **one-eighth (1/8)** of all oil, gas, or other minerals . . . [and each child] shall receive one-third of one-eighth **royalty**.” *Id.* at 4. (emphasis added).

The issue presented in *Hysaw* was whether the will devised a 1/3 fractional royalty, or a 1/24 fractional royalty.⁴⁵ The court declared the will ambiguous, and then judicially constructed it be for a 1/3 royalty to each of the three children. *Id.* at 8. Notably, Petitioner does not explain how *Hysaw* supports its argument; they merely cite the case without any explanation how it relates to analyzing the Severin Deed. Notwithstanding this, *Hysaw* does not support Petitioner’s argument because the subject will included an ambiguous provision with two fractions, unlike the Severin Deed.

Next, in *Van Dyke*, the court was confronted with an ambiguous deed that used “a double fraction involving 1/8 to describe the interest reserved.”⁴⁶ The issue presented in *Van Dyke* was whether the use of the fraction one-eighth in a double fraction deed was intended to mean either the entire mineral estate or one-eighth of the mineral estate. The court held that the use of the fraction one-eighth in a double fraction deed was ambiguous, and thus needed to be judicially constructed. *Id.* at 362. In making its ruling, the court created a rebuttable presumption that when one-eighth was used with multiple fractions in an ambiguous deed being judicially constructed, the court would presume the parties intended one-eighth to mean the entire mineral estate. *Id.* at 364. Clearly, *Van Dyke* does not support Petitioner’s argument because the *Van Dyke* deed included double fractions that were declared ambiguous, unlike the Severin Deed that used only a single fraction to describe the interest reserved.

⁴⁵ *Id.* (If such land is covered by a valid oil and gas lease . . .).

⁴⁶ *Van Dyke*, at 357 (It is understood and agreed that **one-half of one-eighth** of all minerals and mineral rights in said land are reserved in grantors, Geo. H. Mulkey and Frances E. Mulkey, and are not conveyed herein. (emphasis added)).

Finally, Petitioner cites *Johnson* as “the most on point foreign decision,”⁴⁷ even though *Johnson* is the most distinguishable case cited by Petitioner to the present matter. In *Johnson*, the subject deed contained multiple fractions and multiple clauses. One clause defined the grant⁴⁸ and another clause granted rights to existing and future leases.⁴⁹ The court was asked to reconcile the conflicting fractions and conflicting clauses to determine whether the deed conveyed a fixed 1/128th royalty interest or a floating 1/16th royalty interest. *Id.* at 15. The court first discussed the various interpretations possible and posed the question: “How then can we reconcile these conflicting fractions?” *Id.* Given the extensive use of multiple fractions, the court declared the deed ambiguous, and then judicially constructed it by “applying two doctrines applicable to deeds of this era: the estate-misconception doctrine and the legacy of the 1/8th royalty.” *Id.* The court ultimately constructed the conflicting fractions to mean the grantee received a “floating 1/16th royalty interest.” *Id.* at 20. *Johnson* does not support Petitioner’s argument because the deed in *Johnson* including multiple fractions and conflicting provisions, unlike the Severin Deed that used only a single fraction to describe the interest reserved.

The foreign authority cited by Petitioner should be disregarded. Due to West Virginia having clear binding law on how to interpret a deed, as well as all of the foreign cases involving a

⁴⁷ Pet. Br. footnote 2.

⁴⁸ “[Grantors] Grant, Sell and Convey, unto [Grantees], an undivided **one-one hundred and twenty-eighth (1/128)** interest in and to all of the oil, gas and other minerals . . .” *Johnson* at 2.

⁴⁹ “It is understood and herein stipulated that said land is under oil and gas leases providing for a royalty of **1/8** of the oil and certain royalties or rentals for gas and other minerals and that Grantees herein shall receive one-sixteenth (**1/16**) of the royalties provided for in said lease. . . that Grantees shall only receive under such subsequent lease or leases a **1/128 (1/16 of the usual 1/8 royalty)** part of all of the oil, gas, and other minerals....” (emphasis added). *Id.*

deed that used multiple fractions or additional language to describe the interest granted or reserved, the ICA correctly disregarded this argument.

However, to the extent that this Court seeks persuasive guidance on how Texas deals with the use of the single term one-sixteenth in a mineral deed, this Court can look to *Devon Energy Prod. Co. v. EnPlat II, LLC*, 08-21-00217-CV (Tex. App. Jul 10, 2023). In *Devon*, the court was asked to determine the state of title after a 1940 deed reserved “**one-sixteenth (1/16) of any and all oil, gas or other mineral produced on or from under...**” the subject property land. *Id.* at 2 (emphasis added). As did the Severin Deed, the 1940 deed used only a single fraction, being one-sixteenth, to describe the interest reserved. The *Devon* Court did not find it necessary to construe the term one-sixteenth. The only issue addressed was whether the one-sixteenth reservation resulted in a cost-bearing one-sixteenth interest in the oil and gas or a cost-free one-sixteenth royalty.

Devon was not the first case in Texas addressing this same issue. *Devon* cited *Watkins v. Slaughter*, 189 S.W.2d 699, 144 Tex. 179 (Tex. 1945), for the same proposition. In *Watkins*, the court was asked to determine the state of title after a 1932 deed wherein the grantor reserved a “**1/16th interest in all oil, gas and other minerals produced therefrom.**” *Id.* at 699 (emphasis added). As in *Devon*, *Watkins* found the term one-sixteenth unambiguous, meaning one-sixteenth.

Clearly, Texas does not find the single term one-sixteenth ambiguous in the absence of other language or fractions that create an ambiguity. Texas, like West Virginia, only finds ambiguity with the term one-sixteenth when it is used with other language or fractions that cause more than one reasonable interpretation as to the parties’ intent.⁵⁰

⁵⁰ See also, *Swearingen v. Oldham*, 159 P.2d 247, 195 Okla. 532 (Okla. 1945), where the court was asked to interpret a reservation of “one-sixteenth (1/16) of all oil, gas, or other minerals in or under this land.” Syl. Pt. 1. *Id.* As in *Devon* and *Watkins*, *Swearingen* found the use of the term one-sixteenth to describe the interest reserved was “free from ambiguity.” *Id.* at 250.

For all the foregoing reasons, the Court should disregard the Petitioner’s third assignment of error.⁵¹

d. The ICA Properly Disregarded All Extrinsic Evidence because the Severin Deed is Unambiguous.

As to Petitioner’s fourth assignment of error, because the Severin Deed is plain, clear, and unambiguous, the ICA correctly disregarded any reference or discussion on extrinsic evidence. However, even as Petitioner has consistently argued that the Severin Deed is unambiguous, they also pose a suggestion to this Court, being that the term “one sixteenth” **could be** interpreted to be latently ambiguous.⁵² Petitioner also posed the identical suggestion to the ICA.⁵³ This Court should disregard the fourth assignment of error because the Petition again failed to adequately present this issue below, and most importantly, because the term “one-sixteenth” as used in the Severin Deed is unambiguous.

i. Petitioner Did Not Adequately Brief This Issue.

As with Petitioner’s third assignment of error, the Petitioner did not adequately brief the fourth assignment of error.⁵⁴ In fact, it is devoid of any argument structure.⁵⁵ Instead, it simply cited self-evident law associated with ambiguity in deeds, and then, without explanation, suggested

⁵¹ This same reasoning supports this Court disregarding the *Amici* Brief’s arguments regarding the estate misconception theory.

⁵² “[T]his Court may determine that reasonable minds can interpret the reservation of [the Severin Deed]...in diametrically opposed ways.” Pet. Br. Pg. 25.

⁵³ “[T]his Court may determine that reasonable minds can interpret the reservation of [the Severin Deed]...in diametrically opposed ways.” APP. 641.

⁵⁴ Respondents hereby incorporate the citation to and discussion of Rule 10(c)(7), the Administrative Order, *T & C*, *Haught*, and *Birchfield* by this reference.

⁵⁵ Administrative Order at 1, paragraph 2.

that “this Court may determine that reasonable minds can interpret the reservation [in the Severin Deed] in diametrically opposed ways.” (Pet. Br. Pg. 25).

Petitioner also offers unsupported⁵⁶ criticism of the ICA that it performed an “abbreviated analysis.” (Pet. Br. Pg. 25). But the ICA’s analysis was spot on, applying the undisputed facts to the relevant binding precedent, which noted that pursuant to *Gastar*, if the Severin Deed was unambiguous, then the “court will apply that language without resort to rules of interpretation or extrinsic evidence.” *Gastar* 806 S.E.2d. at 455. This Court should disregard the fourth assignment of error because it is non-compliant with Rule 10(c)(7) and the Administrative Order.

ii. The Term “one sixteenth” is Not Ambiguous.

Notwithstanding that Petitioner failed to adequately brief the fourth assignment of error, Petitioner failed to cite to any authority which confirmed that one-sixteenth, on its own, is ambiguous. Petitioner wants one-sixteenth to mean one-half when the term is used to describe the interest reserved or granted in deed. But the term one-sixteenth is unambiguous in the absence of other fractions or language indicating a contrary intent. As fully set forth above this matter is governed by the binding precedent of *Faith United* and *Gastar*.⁵⁷ All relevant West Virginia law confirms that one-sixteenth is unambiguous, and means one-sixteenth.

iii. The One Piece of Extrinsic Evidence Cited by Petitioner Does Not Confirm “one sixteenth” Should Be Judicially Constructed to Mean One-Half in the Severin Deed.

Petitioner references only twenty-two pages from land book records (for a select eleven years between 1912 and 1925) to argue that the Severin Deed could be construed to mean one-

⁵⁶ Petitioner failed to cite to the appellant record. See Administrative Order, page 2, paragraph 7.

⁵⁷ Respondents hereby incorporate their response to the first assignment of error herein by this reference.

half.⁵⁸ However, this statement lacks any foundation, is not correct, and should be disregarded.

As a threshold issue, the twenty-two pages cited were only demonstrative aids attached to a lower court brief without proper evidentiary foundation, presenting only a carefully selected and narrow view through over a hundred years of records. But even a cursory review of these twenty-two pages presents more issues than answers: 1) the twenty-two pages are not from the real property assessments records, instead being copied from the personal property royalty assessments related to coal, oil, and gas, 2) the acreage referenced is for 224 acres, not 117.55 acres, 3) the property descriptions as to the coal, oil, and gas for the royalty assessments often changed from year to year, 4) there is no mention of the Severin Deed contained anywhere in the cited records, and 5) L.D. Nicholson's real property assessments were not included to give a more complete view. Clearly, the twenty-two pages do not present unequivocal evidence that F.W. Severin and L.D. Nicholson intended a one-half reservation.

In the event this Court needs assurances from extrinsic evidence, it need look no further than the actions of the heirs of F.W. Severin over the past forty years. By lease dated October 14, 1977, recorded in Lease Book No. 103, Page 47, Everett and Betty Nicholson (mother and father of Earl J. Nicholson) leased the oil and gas underlying the 117.55 acres to Rockwell.⁵⁹ In anticipation of drilling the 117.55-acre lease, Rockwell engaged J.W. Perrill, attorney at law, to certify the title to oil and gas underlying the 117.55 acres. On February 6, 1978, Mr. Perrill certified that, in his opinion, the oil and gas underlying the subject property was owned 15/16th by Everett and Betty Nicholson, and 1/16th by the F.W. Severin heirs or assigns.⁶⁰ The 117.55-acre lease was

⁵⁸ Pet. Br. Pg. 25 ("the post-1902 transaction land book/tax records bear heavily as to ownership, as they unequivocally demonstrate that the parties placed a construction upon the 1902 reservation of 1/16th . . .").

⁵⁹ APP. 022.

⁶⁰ APP. 483-489.

drilled in 1979. Thereafter, the heirs of F.W. Severin were paid a royalty on a 1/16th interest, not one-half.⁶¹ Had the heirs of F.W. Severin truly believed they owned one-half of the oil and gas in and under the 117.55 acres, they would have raised this issue much earlier.⁶²

The Petitioner failed to put forth any statutory or case law to the ICA or this Court which confirmed that “one sixteenth” in the Severin Deed was ambiguous, and thus needed the assistance of extrinsic evidence. The ICA correctly determined the Severin Deed to be plain, clear, and include a reservation of “one sixteenth” as it is written. Thus, the ICA was correct in not analyzing or accepting any extrinsic evidence in its review. Any reference to extrinsic evidence made to this Court by the Petitioner should be entirely disregarded.

e. Public Policy Requires This Court to Affirm the ICA Order to Maintain Confidence in and Certainty of Land Titles.

West Virginia favors land title certainty.⁶³ Reversing the ICA would create the “interminable confusion of land titles” discussed in *Faith United*.⁶⁴ Petitioner has made conflicting

⁶¹ APP. 479–481.

⁶² Clearly, the doctrine of laches applies to this matter. But the Nicholsons and other parties did not have the opportunity to raise this defense with the circuit court. See *Haught Family Trust* at 5, (citing *State ex rel. W. Va. Dep't of Health and Human Res. v. Carl Lee H.*, 196 W. Va. 369, 374, 472 S.E.2d 815, 820 (1996)).

⁶³ *Bailey v. Baker*, 137 W.Va. 85, 70 S.E.2d 645 (1952); *Shaffer v. Mareve*, 157 W.Va. 816, 204 S.E.2d 404 (1974); *Hock v. City of Morgantown*, 162 W.Va. 853, 253 S.E.2d 386 (1979); *Geibel v. Clark*, 185 W.Va. 505, 408 S.E.2d 84 (1991); *Mingo County Redevelopment Auth. v. Green*, 207 W.Va. 486, 534 S.E.2d 40 (2000); *Lexington Land Co., LLC v. Howell*, 211 W. Va. 644, 567 S.E.2d 654 (2002); *Faith United Methodist Church v. Morgan*, 231 W.Va. 423, 745 S.E.2d 461 (2013); *Poulos v. LBR Holdings, LLC*, 238 W. Va. 89, 792 S.E.2d 588 (2016); *W.Va. Dept of Transp. v. Veach*, 799 S.E.2d 78 (2017) (concurring opinion of Justice Ketchum).

⁶⁴ “This Court's goal in the area of land ownership is to avoid bringing ‘upon the people interminable confusion of land titles[.]’ instead, the Court must ‘endeavor to prevent and eradicate uncertainty of such titles.’” *Faith United Methodist Church v. Morgan*, 231 W.Va. 423, 745 S.E.2d 461 (2013) (citing *Toothman v. Courtney*, 62 W.Va. 167, 183, 58 S.E. 915, 921 (1907)).

arguments to this Court that the Severin Deed is both unambiguous and ambiguous and should be construed to mean that F.W. Severin reserved one-half of the oil and gas. The only thing that is clear is that adoption of either argument by this Court would undermine West Virginia's public policy of providing certainty of title for landowners, create mass confusion for the ownership of real property, and hinder current and future oil and gas development in West Virginia.

If this Court finds that one-sixteenth plainly means one-half, then the ability to grant or reserve a true one-sixteenth interest in real property interest would be impossible. The ICA understood this exact risk. In its Order, the ICA stated that if one-sixteenth plainly means one-half, then "it would have been impossible for Mr. Severin to have reserved only one-sixteenth of his mineral interest in any way."⁶⁵ It cannot be overstated; how much plainer and clearer could the words of a deed be in reserving a one-sixteenth interest other than the words used by F.W. Severin in the Severin Deed?

If this Court finds that one-sixteenth, as used in the Severin Deed, is ambiguous and requires judicial construction, then any party to a deed where an undivided mineral interest has been granted or reserved would immediately have a cloud on their title.⁶⁶ Untold numbers of West Virginia mineral titles would be suddenly uncertain, opening the door to litigate **any** chain of title containing a grant or reservation defined by the single term one-sixteenth or any denomination of an undivided interest that is a multiple of one-eighth.⁶⁷

Declaring that one-sixteenth plainly means one-half or is ambiguous also has unforeseen consequences for oil and gas exploration and production in West Virginia. *Faith United* and

⁶⁵ App. 663; ICA Order Pg. 6.

⁶⁶ See Pet. Br. Pg. 25, "the ambiguity arises from the very use of the 1/16th fraction."

⁶⁷ The *Amici* Brief presents the same issue.

Gastar have given oil and gas producers clear guidance for identifying mineral owners, obtaining leases, and issuing royalty payments for decades. If the ICA's decision is overruled, then oil and gas developers in West Virginia would immediately be faced with the prospect that they may be trespassing on developed acreage or have improperly issued royalty payments to royalty owners. Future development of any mineral tract that has the single term one-sixteenth in its chain of title will be, at a minimum, delayed due to the time-consuming and expensive litigation required to resolve ownership.

Adherence to *Faith United*, *Gastar*, and the decades of jurisprudence holding that single fractional interests reserve only the interest specifically set forth in the deed avoids the potential for opening the floodgates of litigation related to oil and gas deeds. This Court should affirm the ICA's opinion, which confirmed the Severin Deed reserved one-sixteenth interest of the oil and gas underlying the Subject Property; nothing more, nothing less.

VI. CONCLUSION

Petitioner's four assignments of error are without merit. The Petitioner has not provided the Court with any valid reason to disturb the ICA's judgment and holding, which was imposed after all the legal issues were fully briefed and an Oral Argument occurred. Accordingly, this Court should affirm the ICA's opinion, which confirmed the Severin Deed reserved a one-sixteenth interest in the oil and gas.

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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Docket No. 23-752

Severin POA Group LLC,

Defendant Below, Petitioner,

v.

Earl J. Nicholson and
Joyce A. Nicholson

Plaintiffs Below, Respondents.

CERTIFICATE OF SERVICE

I certify that on May 28, 2024, I have served a true and exact copy of the foregoing **RESPONDENTS' BRIEF** by U.S. Mail, fax, E-file, and/or electronic mail to the following counsel and individuals served by Petitioner:

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