IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

September 2026 Term

No. 23-752

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C. CASEY FORBES, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

SEVERIN POA GROUP, LLC,
Petitioner,

v.

EARL J. NICHOLSON and JOYCE A. NICHOLSON,
Respondents.

Appeal from the Intermediate Court of Appeals of West Virginia
No. 22-ICA-207
(Circuit Court of Doddridge County, Civil Action No. CC-09-2020-C-25)

AFFIRMED

Submitted: September 10, 2026
Filed: November 12, 2026

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JUSTICE FLANIGAN delivered the Opinion of the Court.

JUSTICE KIRKPATRICK dissents and reserves the right to write separately.

SYLLABUS OF THE COURT

1. "A circuit court's entry of a declaratory judgment is reviewed *de novo*." Syl. Pt. 3, *Cox v. Amic*k, 195 W. Va. 608, 466 S.E.2d 459 (1995).

2. This Court applies a de novo standard of review to an appeal from an Intermediate Court of Appeals' decision on a circuit court's declaratory judgment order.

3. "Deeds are subject to the principles of interpretation and construction that govern contracts generally." Syl. Pt. 3, *Faith United Methodist Church & Cemetery of Terra Alta v. Morgan*, 231 W. Va. 423, 745 S.E.2d 461 (2013).

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

5. "It is not the right or province of a 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." Syl. Pt. 3, *Cotiga Dev. Co. v. United Fuel Gas Co.*, 147 W. Va. 484, 128 S.E.2d 626 (1962).

6. "Parties are bound by general and ordinary meanings of words used in deeds." Syl. Pt. 1, *McDonough Co. v. E.I. DuPont DeNemours & Co., Inc.*, 167 W. Va. 611, 280 S.E.2d 246 (1981).

7. "Extrinsic evidence will not be admitted to explain or alter the terms of a written contract which is clear and unambiguous." Syl. Pt. 9, *Paxton v. Bendem-Trees Oil Co.*, 80 W. Va. 187, 94 S.E. 472 (1917).

8. "The mere fact that parties do not agree to the construction of a contract does not render it ambiguous. The question as to whether a contract is ambiguous is a question of law to be determined by the court." Syl. Pt. 1, *Berkeley Cnty. Pub. Serv. Dist. v. Vitro Corp. of Am.*, 152 W. Va. 252, 162 S.E.2d 189 (1968).

9. "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." Syl. Pt. 4, *Est. of Tawney v. Columbia Nat. Res., LLC*, 219 W. Va. 266, 633 S.E.2d 22 (2006).

10. "Proper parol evidence is admissible to explain a latent ambiguity in a written contract, and a latent ambiguity is one which arises not upon the words of the instrument, as looked at in themselves, but upon those words when applied to the object

sought to be accomplished by the contract or the subject which they describe." Syl. Pt. 10, *Paxton v. Bendem-Trees Oil Co.*, 80 W. Va. 187, 94 S.E. 472 (1917).

11. "'A deed will be interpreted and construed as of the date of its execution.' Syl. pt. 2, *Oresta v. Romano Bros.*, 137 W. Va. 633, 73 S.E.2d 622 (1952)." Syl. Pt. 4, *Energy Dev. Corp. v. Moss*, 214 W. Va. 577, 591 S.E.2d 135 (2003).

12. "To enable the court to construe a deed or other writing, ambiguous on its face, it is always permissible to prove the situation of the parties, the circumstances surrounding them when the contract was entered into and their subsequent conduct giving it a practical construction, but not their verbal declarations. But, if a latent ambiguity is disclosed by such evidence, such for instance as that the terms of the writing are equally applicable to two or more objects, when only a certain one of them was meant, then prior and contemporaneous transactions and collocutions[sic] of the parties are admissible, for the purpose of identifying the particular object intended." Syl. Pt. 2, *Snider v. Robinett*, 78 W. Va. 88, 88 S.E. 599 (1916).

FLANIGAN, Justice:

This appeal arises from a dispute regarding a deed, handwritten in 1902 by F.W. Severin (the "1902 Deed"), conveying certain lands to L.D. Nicholson and reserving "the one sixteenth of all the oil and gas in and under" the land for Mr. Severin. In its September 28, 2022, Declaratory Judgment Order, the Circuit Court of Doddridge County found the 1902 Deed was unambiguous and reserved a one-half interest in the oil and gas mineral estate. The Intermediate Court of Appeals of West Virginia ("ICA") reversed the circuit court's order on November 13, 2023, finding that the 1902 Deed was unambiguous and reserved a one-sixteenth interest in the oil and gas minerals under the land.[1]

Petitioner Severin POA Group, LLC ("Severin Group"), representing the successors of F.W. Severin, appeals the ICA's decision, arguing that, in the context of historical oil and gas customs and century-old West Virginia jurisprudence, Mr. Severin intended to reserve a one-half interest, not a one-sixteenth interest, in the oil and gas under the land. Respondents Earl J. Nicholson and Joyce A. Nicholson (the "Nicholsons"), successors to L.D. Nicholson, argue the 1902 Deed is unambiguous and plainly reserves a one-sixteenth interest in the oil and gas under the land.

[1] *Nicholson v. Severin POA Group, LLC*, 249 W. Va. 458, 895 S.E.2d 927 (Ct. App. 2023).

After considering the arguments, parties' briefs, the record, and the Amici Curiae briefs,[2] we find the 1902 Deed is unambiguous and reserves one-sixteenth of the oil and gas under the land. Therefore, we affirm the ICA's decision.

I. FACTS AND PROCEDURAL BACKGROUND

As of January 1902, Mr. Severin held the entirety of the surface, oil, gas, and mineral interests in 224 acres of land in Doddridge County, West Virginia. On April 1, 1902, in the handwritten 1902 Deed, Mr. Severin conveyed 117.55 acres (the "Property") of the 224-acre estate to L.D. Nicholson, reserving for himself "the one sixteenth of all the oil and gas in and under said land."

L.D. Nicholson's successors leased their interest in the oil and gas on the Property to Rockwell Petroleum Company in 1977, which later assigned the lease to Antero Resources Corporation ("Antero"). On November 4, 1999, L.D. Nicholson's successors deeded the Property to the Nicholsons. In 2017, Antero began producing and selling a portion of the oil and gas underlying the Property and began sending monthly royalty payments to the Nicholsons. A dispute arose between the Nicholsons and Antero regarding

[2] Two Amicus Curiae briefs were filed in this matter: one in favor of Severin Group jointly by Country Roads Minerals, LLC, Morris Mountaineer Oil & Gas LLC, Lacore Agriculture, LLC, WV Minerals, Inc., Hundred Resources, Inc., Bounty Minerals, LLC, and DAC Energy, LLC; and one in favor of the Nicholsons by Shiben Estates, Inc. We express our appreciation for the participation of these various Amici Curiae, and, as noted above, we have considered their briefs in conjunction with the parties' arguments in determining the outcome of this case.

the amount of royalties Antero owed to the Nicholsons and Mr. Severin's descendants. The Nicholsons brought suit in the Circuit Court of Doddridge County.

In their amended complaint, the Nicholsons sought, among other things, a declaratory judgment that Mr. Severin reserved in himself only a one-sixteenth interest in the oil and gas mineral estate on the Property. On September 28, 2022, the circuit court entered a declaratory judgment order in favor of Severin Group, finding that Mr. Severin reserved in himself a one-half interest in the oil and gas mineral estate in the Property. The circuit court reasoned that the 1902 Deed was unambiguous and that construction of the deed in the context of West Virginia oil and gas law in 1902 "supports the conclusion that the reservation of 1/16th of the oil and gas operates to reserve 1/2 of the oil and gas estate."

The Nicholsons appealed the circuit court's declaratory judgment order to the ICA. On November 13, 2023, the ICA reversed the circuit court's order, reasoning that the 1902 Deed was unambiguous and that Mr. Severin reserved a one-sixteenth interest in the oil and gas under the deed's plain language. Severin Group appeals the ICA's decision.

II. STANDARD OF REVIEW

Severin Group asks the Court to reverse the ICA's decision and adopt the reasoning set forth in the circuit court's declaratory judgment order. We have previously explained that because declaratory judgment actions resolve questions of law, "[a] circuit court's entry of a declaratory judgment is reviewed *de novo*." Syl. Pt. 3, *Cox v. Amic*k, 195

W. Va. 608, 466 S.E.2d 459 (1995). Similarly, we review ICA decisions involving questions of law de novo. *See, e.g.*, Syl. Pt. 1, *Folse v. Rollyson*, 251 W. Va. 566, 915 S.E.2d 344 (2025) ("In reviewing an Intermediate Court of Appeals' decision from a circuit court's grant of a motion to dismiss, this Court applies a de novo standard of review."); Syl. Pt. 1, *Moorhead v. W. Va. Army Nat'l Guard*, 251 W. Va. 600, 915 S.E.2d 378 (2025) ("On appeal of a decision from the Intermediate Court of Appeals of West Virginia, the Supreme Court of Appeals of West Virginia applies a de novo standard of appellate review to a circuit court's entry of summary judgment."). We now hold that this Court applies a de novo standard of review to an appeal from an Intermediate Court of Appeals' decision on a circuit court's declaratory judgment order.

III. DISCUSSION

The parties agree that Mr. Severin granted L.D. Nicholson the Property in the 1902 Deed. The parties' arguments center around the meaning of Mr. Severin's reservation of "the one sixteenth of all the oil and gas in and under said land." The question before the Court is what fraction of the oil and gas mineral estate did Mr. Severin reserve in the 1902 Deed.

Severin Group first argues that the 1902 Deed is unambiguous, but Mr. Severin intended his reservation of "the one sixteenth of all the oil and gas in and under said land" to reserve one-half of the oil and gas under the Property. As part of that argument, Severin Group contends that, in the context of oil and gas industry practice and

West Virginia jurisprudence in the early 1900s, a one-eighth reservation or conveyance referred to the entire mineral estate. To that point, Severin Group urges the Court to adopt a rebuttable presumption that any antiquated deed or lease including a one-eighth fraction, a double fraction including one-eighth, or a fraction that is a multiple of one-eighth, such as one-sixteenth, intended the use of one-eighth as a term of art, referring to the entire mineral estate. In the alternative, Severin Group argues that the 1902 Deed is latently ambiguous, and parol evidence should be admitted to prove that Mr. Severin intended to reserve a one-half interest in the oil and gas mineral estate on the Property.

By contrast, the Nicholsons argue the 1902 Deed is unambiguous, and Mr. Severin plainly reserved only one-sixteenth of the oil and gas mineral estate. We agree. Because it is dispositive, we first consider the parties' arguments about the 1902 Deed's ambiguity.

A. The 1902 Deed is Unambiguous.

We recognize the 1902 Deed is a contract that is subject to the same "principles of interpretation and construction that govern contracts generally." Syl. Pt. 3, in part, *Faith United Methodist Church & Cemetery of Terra Alta v. Morgan*, 231 W. Va. 423, 745 S.E.2d 461 (2013). Our guiding principle, in construing any deed or contract, is to determine the intent of the parties in creating the instrument, and to apply that intent whenever possible. *See Gastar Exp. Inc. v. Rine*, 239 W. Va. 792, 798, 806 S.E.2d 448, 454 (2017); *Totten v. Pocahontas Coal & Coke Co.*, 67 W. Va. 639, 642, 68 S.E. 373, 374

(1910). This Court has long held that "[a] valid written instrument which expresses the intent of the parties in plain and unambiguous language is not subject to judicial construction or interpretation but will be applied and enforced according to such intent." Syl. Pt. 1, *Cotiga Dev. Co. v. United Fuel Gas Co.*, 147 W. Va. 484, 128 S.E.2d 626 (1962); *see also Gibney v. Fitzsimmons*, 45 W. Va. 334, 341–42, 32 S.E. 189, 192 (1898) ("It is a fundamental rule in the construction of deeds that effect must be given to the intent of the parties when it is plainly and clearly expressed, or can be collected or ascertained from the instrument, and is not repugnant to any rule of law." (citation omitted)). This Court will not "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." *Cotiga*, 147 W. Va. at 484, 128 S.E.2d at 628, Syl. Pt. 3, in part.

The 1902 Deed is a contractual agreement reflecting the parties' intent. Severin Group and the Nicholsons are bound by the "general and ordinary meanings" of the words used in the 1902 Deed. Syl. Pt. 1, in part, *McDonough Co. v. E.I. DuPont DeNemours & Co., Inc.*, 167 W. Va. 611, 280 S.E.2d 246 (1981). Courts will not consider extrinsic evidence "to explain or alter the terms of a written contract which is clear and unambiguous." Syl. Pt. 9, in part, *Paxton v. Bendem-Trees Oil Co.*, 80 W. Va. 187, 94 S.E. 472 (1917).

The fact that Severin Group and the Nicholsons disagree on the plain meaning of the reservation language in the 1902 Deed does not render it ambiguous. *See*

Syl. Pt. 1, in part, *Berkeley Cnty. Pub. Serv. Dist. v. Vitro Corp. of Am.*, 152 W. Va. 252, 162 S.E.2d 189 (1968) ("The mere fact that parties do not agree to the construction of a contract does not render it ambiguous."). Whether the deed is ambiguous "is a question of law to be determined by the court." *Id.* The reservation language in the 1902 Deed is ambiguous if it is "reasonably susceptible of two different meanings or language of such doubtful meaning that reasonable minds might be uncertain or disagree as to its meaning." Syl. Pt. 4, in part, *Est. of Tawney v. Columbia Nat. Res., LLC*, 219 W. Va. 266, 633 S.E.2d 22 (2006). The 1902 Deed is latently ambiguous if ambiguity arises from its application. For example, if a deed were to describe a property and two properties fit that description, the deed may be latently ambiguous. *See Farmers & Merchants Bank of Keyser v. Farmers & Merchants Bank of Kyser*, 158 W. Va. 1012, 1017, 216 S.E.2d 769, 772 (1975) ("A latent ambiguity is one that is not apparent upon the face of the instrument alone and that is discovered when it is sought to identify the property, the beneficiaries, etc." (citation omitted)). A latent ambiguity "arises not upon the words of the instrument, as looked at in themselves, but upon those words when applied to the object sought to be accomplished by the contract or the subject which they describe." *Paxton*, 80 W. Va. at 188, 94 S.E. at 473, Syl. Pt. 10, in part.

If a court determines a deed is ambiguous on its face, the "'deed will be interpreted and construed as of the date of its execution.' Syl. pt. 2, *Oresta v. Romano Bros.*, 137 W. Va. 633, 73 S.E.2d 622 (1952)." Syl. Pt. 4, in part, *Energy Dev. Corp. v. Moss*, 214 W. Va. 577, 591 S.E.2d 135 (2003). A court may permit the parties "to prove

the situation of the parties, the circumstances surrounding them when the contract was entered into and their subsequent conduct giving it a practical construction, but not their verbal declarations." Syl. Pt. 2, in part, *Snider v. Robinett*, 78 W. Va. 88, 88 S.E. 599 (1916). However, "if a latent ambiguity is disclosed by such evidence, . . . then prior and contemporaneous transactions and collocutions[sic] of the parties are admissible, for the purpose of identifying the particular object intended." *Id.* Indeed, "[p]arol evidence is admissible to explain a latent ambiguity." *Paxton*, 80 W. Va. at 187, 94 S.E. at 472, Syl. Pt. 10, in part.

As noted above, Severin Group first argues the 1902 Deed is unambiguous. In the alternative, it argues that the 1902 Deed is latently ambiguous because it uses the one-sixteenth fraction. Severin Group first contends that, in 1902, parties to deeds and leases believed one-eighth of the oil and gas under the land to be the entire mineral estate. Therefore, Severin Group asserts that Mr. Severin's reservation of one-sixteenth of oil and gas under the land was intended to be one-half of the entire oil and gas mineral estate. Second, Severin Group argues that the 1902 Deed is ambiguous or latently ambiguous because the county land book and tax records show that Mr. Severin intended to reserve one-half of the oil and gas mineral estate.

The Nicholsons argue the 1902 Deed is unambiguous. We agree. Mr. Severin, having handwritten the 1902 Deed, had the ultimate power to convey his intent therein. Mr. Severin chose to reserve for himself "the one sixteenth of all the oil and gas

in and under said land." Looking at the four corners of the 1902 Deed, Mr. Severin included no additional language to explain his reservation, and the parties have not pointed to any language in the deed that would make the reservation unclear or uncertain. As discussed in full below, Severin Group's argument that, in 1902, parties to deeds and leases believed one-eighth of the oil and gas under the land to be the entire mineral estate is unsupported, and in fact, rebutted, by this Court's case law around the time the 1902 Deed was drafted. Therefore, the one-sixteenth fraction was not "reasonably susceptible to two different meanings" when it was drafted. *Est. of Tawney*, 219 W. Va. at 267, 633 S.E.2d at 23, Syl. Pt. 4, in part.

Additionally, Severin Group may not point to extrinsic evidence to create ambiguity in the 1902 Deed. Only once a court has determined that a deed is ambiguous may it search for the intent of the parties outside of the four corners of the document. A court considers extrinsic evidence, such as the land book and tax records, after determining that a document is ambiguous. *See Paxton*, 80 W. Va. at 188, 94 S.E. at 473, Syl. Pt. 9. Further, Severin Group has not pointed to any evidence that a latent ambiguity exists in applying the one-sixteenth reservation. We, therefore, find no ambiguity or latent ambiguity in the one-sixteenth reservation.

This Court must follow the parties' intent in the 1902 Deed as expressed in its plain language. *See Cotiga*, 147 W. Va. at 484, 128 S.E.2d at 628, Syl. Pt. 1. We find that the 1902 Deed is unambiguous and not subject to judicial interpretation or

construction. Under the plain language of the 1902 Deed, Mr. Severin reserved one-sixteenth of the oil and gas under the Property.

B. Historical Context Supports a Plain Reading of the 1902 Deed.

Severin Group argues that, if interpreted in the context of the oil and gas industry at the time of drafting, the 1902 Deed reserves one-half of the mineral estate, not one-sixteenth. As previously stated, the 1902 Deed is unambiguous. An unambiguous deed need not be interpreted or construed in historical context. *See Cotiga*, 147 W. Va. at 484, 128 S.E.2d at 628, Syl. Pt. 1. When a deed is ambiguous, then the courts will interpret and construe it as of the date of its execution. *Moss*, 214 W. Va. at 577, 591 S.E.2d at 135, Syl. Pt. 4. Even if the Court were to find the 1902 Deed ambiguous, historical context does not support Severin Group's position that a reservation of one-sixteenth of the oil and gas under the land reserves one-half of the oil and gas mineral estate.

This Court has recognized the historical practice of oil and gas mineral estate owners receiving one-eighth of the oil or gas in the pipeline as a royalty under oil and gas leases. *See, e.g.*, *Toothman v. Courtney*, 62 W. Va. 167, 174, 58 S.E. 915, 918 (1907) (recognizing the "the usual terms of the one-eighth of the oil to the lessor as royalty"). Severin Group asserts that, in early oil and gas leases, a reservation or grant of one-eighth of the oil and gas under the land was believed to be the entire mineral estate. Severin Group argues that Mr. Severin understood one-eighth to be the entire mineral estate and intended to reserve one-half of the oil and gas mineral estate by reserving one-half of one-eighth,

simplifying the fraction to one-sixteenth. In support, Severin Group cites several cases,[3] discussed below, involving one-eighth royalties and other fractional interests in mineral estates. However, Severin Group's arguments conflate ownership of the mineral estate with royalties. The question before the Court is not what amount of royalties Severin Group is owed, but rather, what amount of the oil and gas under the Property Severin Group owns by virtue of the 1902 Deed.

None of the cases Severin Group relies upon support the proposition that parties to deeds and leases thought that a conveyance or reservation of one-eighth was the entire mineral estate. The cases also do not support the argument that a reservation of one-sixteenth of the oil and gas under the land equals one-half of the oil and gas mineral estate. In fact, several cases from the early 1900s support a plain reading of one-sixteenth. In *Manufacturers' Light & Heat Co. v. Knapp*, 102 W. Va. 308, 135 S.E. 1 (1926), this Court found that a deed granting "the undivided one-sixteenth in all the oil underlying a tract of land, and an undivided one-half of all the gas therein (subject to lease previously made), including the undivided one-sixteenth of the oil royalty and one-half of the gas well rentals" conveyed "one-sixteenth of the oil and one-half of the gas in place." *Id.* at 308, 135 S.E.

[3] *See Harris v. Cobb*, 49 W. Va. 350, 38 S.E. 559 (1901), *overruled by*, *Paxton v. Benedum-Trees Oil Co.*, 80 W. Va. 187, 94 S.E. 472 (1917); *Kilcoyne v. Southern Oil Co.*, 61 W. Va. 538, 56 S.E. 888 (1907); *McCoy v. Ash*, 64 W. Va. 655, 63 S.E. 361 (1908); *Horner v. Phila. Co. of W. Va.*, 71 W. Va. 345, 76 S.E. 662 (1912); *Paxton v. Benedum-Trees Oil Co.*, 80 W. Va. 187, 94 S.E. 472 (1917); *Mfrs.' Light & Heat Co. v. Knapp*, 102 W. Va. 308, 135 S.E. 1 (1926); *Lockhart v. United Fuel Gas Co.*, 105 W. Va. 69, 141 S.E. 521 (1928); *United Carbon Co. v. Presley*, 126 W. Va. 636, 29 S.E.2d 466 (1944).

at 1, Syl. Pt. 1, in part. Again, in *Harris v. Cobb*, 49 W. Va. 350, 38 S.E. 559 (1901), *overruled by*, *Paxton v. Benedum-Trees Oil Co.*, 80 W. Va. 187, 94 S.E. 472 (1917), the Court found that a deed reserving "the equal one-half part of the usual royalty of one-eighth of all the petroleum or oil in and underlying the tract of land hereby conveyed" reserved one-sixteenth of the oil in place. *Id.* at 350, 38 S.E. at 559, Syl. Pt. 1. However, the Court explicitly overruled this Syllabus Point in *Paxton v. Benedum-Trees Oil Co.*, 80 W. Va. 187, 94 S.E. 472 (1917). *Id.* at 187, 94 S.E. at 472, Syl. Pt. 2 ("Point 1 of the syllabus of the case of *Harris v. Cobb*, 49 W. Va. 350, 38 S. E. 559, is overruled in so far as it holds that the reservation in a deed of one-half of the royalties derived from the oil underlying the land conveyed is a reservation of only one-sixteenth of the oil in place."). Similarly, in *Kilcoyne v. Southern Oil Co.*, 61 W. Va. 538, 56 S.E. 888 (1907), the Court determined that an owner of one-sixteenth of the oil and gas under the land was entitled to one-sixteenth of the oil and gas in the pipeline, which, under a subsequent lease, was one-half of the one-eighth royalty. This case is distinguishable because it involves language regarding both the mineral interest and the royalties. Furthermore, the ultimate holding in *Kilcoyne* was also criticized by the Court in *Paxton*. *Paxton*, 80 W. Va. at 193, 94 S.E. at 474–75.

Several cases Severin Group cites analyze deeds and leases that contain conflicting fractions, creating ambiguity. In *Horner v. Philadelphia Co. of West Virginia*, 71 W. Va. 345, 76 S.E. 662 (1912), the Court found that "[a] deed granting 'all of the one-half of the royalty, being the one-sixteenth, of all the oil and one-half of all the gas within' a tract of land" was ambiguous. *Id.* at 345, 76 S.E. 662, Syl. Pt. 1. At the time of that deed,

a lease existed on the land, with the grantors/lessors receiving a royalty "of one-eighth of the oil to be produced and for payment to lessors of $300 per year for each gas well used." *Id.* The Court found that the deed conveyed to the grantee the right to one-half of the royalty, that is, "one-half of one-eighth of oil produced, and one-half the $300 rental for a gas well." *Id.*

Likewise, in *Paxton*, the Court found that a deed granting "one-sixteenth of all the oil and one-half of all of the gas within and underlying the several and respective tracts of land . . . including in this conveyance the one-half of all the royalties, incomes and rentals that may hereafter arise therefrom," was ambiguous. *Paxton*, 80 W. Va. at 189, 94 S.E. at 473. In interpreting the deed, the Court explained it must adopt the construction most favorable to the grantee. *Id*. at 195–96, 94 S.E. at 475–76. In doing so, the Court found that the deed conveyed one-half of the oil and gas in place. *Id.* at 196, 94 S.E. at 476.

The Court also found the deed in *Lockhart v. United Fuel Gas Co.*, 105 W. Va. 69, 141 S.E. 521 (1928), to be ambiguous. In *Lockhart*, the deed granted:

> 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 . . . 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 in to the royalty reserved, or to be reserved in any such lease, for each and every gas well to be drilled on said tract.

Id. at 69, 141 S.E. at 521, Syl. Pt. 1, in part. The Court explained that when a deed presents two possible constructions, courts will construe the deed against the grantor and adopt the construction in favor of the grantee. *Id.* at 74, 141 S.E. at 523. Additionally, an explanatory clause cannot destroy a plain grant in the mineral rights, but it can enlarge it. *Id.* The Court held that the deed conveyed "one-half of the one-eighth of the oil reserved as royalty, and one-half of the gas rentals, under the then existing lease or any thereafter executed on said land, which, in effect, conveys a one-half undivided interest in the oil and gas in place." *Id.* at 69–70, 141 S.E. at 521, Syl. Pt. 1, in part.

Finally, in *United Carbon Co. v. Presley*, 126 W. Va. 636, 29 S.E.2d 466 (1944), the Court found that a deed reserving "one half of the oil and gas royalty upon and as to said two tracts of land . . . that is to say that the [grantor] reserves the undivided one sixteenth of the oil and gas underlaying said" land reserved a one-half *royalty* interest. *Id.* at 636, 29 S.E.2d at 466, Syl. Pt. 1, in part.[4]

None of these historical cases support Severin Group's position that one-eighth represented the entire mineral estate in early oil and gas transactions. These cases also rebut Severin Group's argument that a reservation of "one sixteenth of all the oil and

[4] Severin Group also cites *McCoy v. Ash*, 64 W. Va. 655, 63 S.E. 361 (1908). Although the Court in *McCoy* considered a deed granting "one-sixteenth of all the oil and gas underlying all of a certain tract or parcel of land," the Court did not analyze the one-sixteenth language because the question before the Court was whether that deed included royalties from an oil well on a smaller tract of land. *Id.*

gas under the land," without any additional language expanding upon that reservation or additional or conflicting fractions creating ambiguity, plainly reserves one-half of the oil and gas mineral estate. To the contrary, these cases suggest the Court read one-sixteenth according to its plain meaning. *See Knapp*, 102 W. Va. at 308, 135 S.E. at 1, Syl. Pt. 1 (holding that a deed granting "the undivided one-sixteenth in all the oil underlying a tract of land," conveys "one-sixteenth of the oil in place").[5] Even so, the 1902 Deed does not require this historical interpretation or construction because it is unambiguous.

C. West Virginia Does Not Follow the "Estate Misconception Theory."

Severin Group also urges this Court to adopt the "estate misconception theory," which refers to "the prevalent (but, as it turns out, mistaken) belief that, in entering into an oil-and-gas lease, a lessor retained only a 1/8 interest in the minerals rather than the entire mineral estate[.]" *Van Dyke v. Navigator Grp.*, 668 S.W.3d 353, 363 (Tex. 2023) (emphasis omitted). Texas follows the estate misconception theory and has adopted a rebuttable presumption that if an antiquated instrument uses a one-eighth fraction or a double fraction including one-eighth, the parties intended the one-eighth fraction as a term of art relating to the entire mineral estate. *Id.* at 359. Severin Group requests this Court

[5] Even if the Court were to find the 1902 Deed ambiguous, the cases Severin Group cites instruct the Court to construe the 1902 Deed against the grantor, Mr. Severin, and in favor of the grantee, L.D. Nicholson. *See McDonough Co.*, 167 W. Va. at 611, 280 S.E.2d at 246, Syl. Pt. 2 ("Deed reservations are strictly construed against a grantor and in favor of a grantee."); *see also Paxton*, at 195–96, 94 S.E. at 475–76; *Lockhart*, at 74, 141 S.E. at 523. Construing the 1902 Deed in such a way would find that Mr. Severin reserved one-sixteenth of the oil and gas under the Property.

follow the estate misconception theory and adopt the rebuttable presumption that the parties to any antiquated instrument involving mineral rights and using one-eighth fractions, double fractions including one-eighth, or fractions that are multiples of one-eighth intended the fraction as a term of art. We decline to do so.

As an example of the proposed rebuttable presumption in action, in *Van Dyke v. Navigator Group*, 668 S.W.3d 353 (Tex. 2023), the Supreme Court of Texas found that a deed from 1924 reserving "one-half of one-eighth" of the mineral estate operated to reserve one-half of the mineral estate. *Id.* at 368. The court applied the Texas presumed-grant doctrine and estate misconception theory, explaining that "[a]ntiquated instruments that use 1/8 within a double fraction raise a presumption that 1/8 was used as a term of art to refer to the 'mineral estate.'" *Id.* at 359. The Texas court reasoned that "[w]ords must be given the meaning they had when the text was adopted." *Id.* at 360 (quoting *Hysaw v. Dawkins*, 483 S.W.3d 1, 13 (Tex. 2016)). With that rule of construction, the court noted that "'1/8' was widely used as a term of art to refer to the total mineral estate" in Texas under the estate misconception theory. *Id.* at 362.

We decline to adopt the estate misconception theory or the proposed rebuttable presumption. As explained above, courts in West Virginia first look to the language of the instrument—the contract, deed, lease, etc.—to determine the intent of the parties. *See Cotiga*, 147 W. Va. at 484, 128 S.E.2d at 628, Syl. Pt. 1. Although our case law shows that one-eighth was the usual royalty under mineral leases in West Virginia,

nothing in our case law indicates that one-eighth was considered the entire mineral estate at the time the 1902 Deed was drafted. Instead, our case law supports the idea that deeds or leases containing fractions that are multiples of one-eighth, without more, convey or reserve only that fraction. As an example, this Court found that when a deed, like the 1902 Deed, grants "the undivided one-sixteenth in all the oil underlying a tract of land," the deed conveys "one-sixteenth of the oil in place[.]" *Knapp*, 102 W. Va. at 308, 135 S.E. at 1, Syl. Pt. 1, in part.

The estate misconception theory and proposed rebuttable presumption that Severin Group suggests this Court adopt would render any historical instrument involving mineral rights and one-eighth fractions, double fractions including one-eighth, and fractions that are multiples of one-eighth presumptively ambiguous. Such a presumption would undermine the parties' intent, create confusion about previously unambiguous instruments, and create title instability. We decline to adopt Severin Group's proposed presumption, as our precedent calls for a plain reading of the 1902 Deed. When a deed is unambiguous on its face, our plain-reading approach promotes the overarching goal of ascertaining the parties' intent. This approach also promotes another important goal: title stability. *See Morgan*, 231 W. Va. at 431, 745 S.E.2d at 469 ("This Court's goal in the area of land ownership is to avoid bringing 'upon the people interminable confusion of land titles[;]' instead, we must 'endeavor[] to prevent and eradicate uncertainty of such titles.'" (quoting *Toothman*, 62 W. Va. at 183, 58 S.E.2d at 921)).

We therefore conclude that the 1902 Deed reserves "the one sixteenth of all the oil and gas in and under said land." The parties to the 1902 Deed plainly and clearly stated their intent therein: that Mr. Severin retain one-sixteenth ownership in the oil and gas under the Property.

IV. CONCLUSION

For the foregoing reasons, we affirm the ICA's decision.

Affirmed.