

BEFORE THE WEST VIRGINIA SUPREME COURT OF APPEALS

NO. 35508

**CABOT OIL & GAS CORP., and
LAWSON HEIRS, INC.,**

Petitioners Below, Appellees,

v.

**RANDY C. HUFFMAN, Cabinet Secretary,
West Virginia Department of Environmental Protection,**

Respondent Below, Appellant,

and

**SIERRA CLUB, INC., WEST VIRGINIA HIGHLANDS CONSERVANCY,
FRIENDS OF BLACKWATER, CORDIE HUDKINS, and WEST VIRGINIA
DIVISION OF NATURAL RESOURCES,**

Intervenors Below, Appellants.

**BRIEF OF AMICUS CURIAE,
WEST VIRGINIA FARM BUREAU IN SUPPORT OF
APPELLEES CABOT OIL & GAS CORP. AND LAWSON HEIRS, INC.**

June 16, 2010

**Prepared on behalf of the Amicus Curiae
by:**

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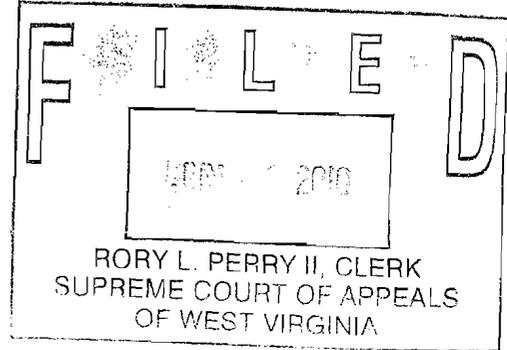


TABLE OF CONTENTS

I. THE WEST VIRGINIA FARM BUREAU'S INTEREST IN THE CASE1

II. BACKGROUND.....2

III. ARGUMENT.....2

A. THIS CASE IMPLICATES PRIVATE PROPERTY RIGHTS, WHICH ARE AFFORDED THE HIGHEST PROTECTION BY LAW. THE DEED CLEARLY, UNAMBIGUOUSLY, AND EXPRESSLY RESERVES FROM CONVEYANCE THE MINERAL RIGHTS OWNED BY THE LAWSON HEIRS2

B. COURT SHOULD CONSTRUE A CONVEYANCE OF PROPERTY CONSISTENT WITH THE CLEAR LANGUAGE OF THE CONVEYANCE DEED. IN THIS CASE, THE LAWSON HEIRS CLEARLY, EXPRESSLY, AND UNAMBIGUOUSLY RESERVED PRIVATE OWNERSHIP RIGHTS OF THE MINERALS IN THE 1960 DEED.....4

IV. CONCLUSION.....6

I. THE WEST VIRGINIA FARM BUREAU'S INTEREST IN THE CASE

The West Virginia Farm Bureau ("WVFB"), formed in 1919, is a grassroots organization that provides training, education, information, and economic services to its members. WVFB's membership is comprised of more than 23,000 families and land owners. The WVFB seeks to protect the interests of its members; which includes monitoring legislation and lawsuits which might affect the interests and rights of farmers and landowners in West Virginia. In its effort to preserve and maintain the rights and interests of landowners, the WVFB works with legislative and government leaders at the county, state, and national levels.

In this case, Appellants have implicated the rights and interests of every landowner in West Virginia regarding the sanctity and integrity of real property deeds and the conveyance thereof. Appellants contend that the Lawson Heirs, Inc. ("Lawson Heirs") and their mineral lessee, Cabot Oil & Gas Corporation ("Cabot") should be effectively stripped of their property rights to the minerals underlying the surface of Chief Logan State Park based on the West Virginia Department of Environmental Protection's ("DEP") interpretation of a statute applicable to the powers granted to the Director of the West Virginia Department of Natural Resources ("DNR"). Pursuant to the clear language in the applicable deed, however, the mineral rights and the right to use the surface of the land to extract the minerals were clearly reserved and were not conveyed; only the surface land was actually conveyed, subject to Lawson Heirs rights to use the surface as fairly necessary to produce the oil and gas. By virtue of Appellants' contention that this Court should essentially ignore the clear language in the 1960 conveyance deed, the WVFB has filed this brief in *amicus curiae* in support of the Appellees and landowners across West Virginia.

II. BACKGROUND

This appeal arises from five well work permit applications submitted by Cabot, which were wrongfully denied by the Cabinet Secretary for the DEP.

Appellants (Respondent and Intervenors Below) argue that Lawson Heirs and Cabot are “prohibited by law” from exploiting the minerals – which are owned by the Lawson Heirs – underlying Chief Logan State Park. Appellants have interpreted W. Va. Code § 20-5-2(b)(8) (“DNR statute”) as the legislature’s effort to effectively condemn private property rights without just compensation. This does not even remotely appear from Chapter 20, Article 5 of the Code to have been the intent of the legislature, and would require this court to effectively ignore the express reservation of mineral rights when the surface is used for public use. These arguments, if accepted by this Court, could adversely affect the rights of landowners across West Virginia inasmuch as it would give the State unfettered power to encumber private property rights in a manner not envisioned by the legislature and contrary to longstanding precedent and our state Constitution.

For the following reasons, WVFB joins with Appellees Cabot and Lawson Heirs, Inc., and ask this Court to affirm the lower court’s order reversing the DEP’s wrongful denial of Cabot’s five well work permit applications.

III. ARGUMENT

A. THIS CASE IMPLICATES PRIVATE PROPERTY RIGHTS, WHICH ARE AFFORDED THE HIGHEST PROTECTION BY LAW. THE DEED CLEARLY, UNAMBIGUOUSLY, AND EXPRESSLY RESERVES FROM CONVEYANCE THE MINERAL RIGHTS OWNED BY THE LAWSON HEIRS.

The protection of private property rights are secured by our state and federal constitutions. *Handley v. Cook*, 162 W.Va. 629, 252 S.E.2d 147 (1979); *see*: U.S. Const. amend. XIV, § 1; W.Va. Const. art. III, §§ 9, 10. It is therefore a fundamental concept of the law that

such rights are afforded great protection. In this case, the Lawson Heirs clearly, expressly, and unambiguously retained private ownership rights of the mineral underlying the surface of what is now Chief Logan State park. As the Appellees have contended in their response to Appellants' briefs in this appeal, this case is about private property ownership rights and the States' taking of private property.

The arguments of the DNR are particularly troubling since they have accepted all the benefits of the deed—the surface of almost 4,000 acres of land used to create Chief Logan State Park; yet, they wish to ignore the limits placed on those rights by express agreement of the parties to the deed. If the DNR wishes to renege on the agreement it made (by its predecessor, the Conservation Commission) with the Lawson Heirs, then they must initiate condemnation proceedings to pay for the those rights they were not granted by deed. They cannot accept and retain the benefits of the deed, and then place all the burdens on Lawson Heirs without paying just compensation.

It would also be bad public policy to allow the State, via an agency's interpretation of a statute, to renege on the deal they made with the Lawson Heirs. Many government entities, communities, conservation and environmental groups obtain conservation easements and other property rights by deeds and other recorded instruments through the generosity of landowners and donors of land. If any rights to use the property reserved by deed can be taken away by administrative agency fiat, then landowners will be reluctant to donate or deed property to the State, local communities or other public land use organizations, for fear they too will be deprived of their private property rights without just compensation.

It is in the interest of all property owners that their private property ownership rights be afforded protection by the courts with which jurisdiction over their property rests. If this Court

were to reverse the circuit court's proper reversal of the DEP's denial of Cabot's five permit applications, it would subsequently send the message to all private property owners that their private property interests and deeds are not as sacred as perhaps they thought.

B. COURT SHOULD CONSTRUE A CONVEYANCE OF PROPERTY CONSISTENT WITH THE CLEAR LANGUAGE OF THE CONVEYANCE DEED. IN THIS CASE, THE LAWSON HEIRS CLEARLY, EXPRESSLY, AND UNAMBIGUOUSLY RESERVED PRIVATE OWNERSHIP RIGHTS OF THE MINERALS IN THE 1960 DEED.

It is an axiom of general rules of construction that, in the construction of a deed, the function of a court is to ascertain the intent of the parties as expressed in the language used by them. *Arnold v. Palmer*, 224 W.Va. 495, 686 S.E.2d 725 (2009); *Carpenter v. Luke*, 225 W.Va. 35, 689 S.E.2d 247 (2009); *Zimmerer v. Romano*, 223 W.Va. 769, 679 S.E.2d 601 (2009). In construing a deed, it is incumbent upon a court to place itself in the situation of the parties to determine the meaning and intent of the language employed in the deed. *Smith v. Smith*, 219 W.Va. 619, 639 S.E.2d 711 (2006). In construction of a deed, a court shall hold parties thereto bound by general and ordinary meanings of words used in the deed. *Meadows v. Belknap*, 199 W.Va. 243, 483 S.E.2d 826 (1997).

In this case, the Lawson Heirs, by clear, ordinary, and unambiguous language, expressly reserved ownership rights in the minerals underlying the surface land conveyed in the 1960 deed. The deed clearly states, "There is excepted and reserved from this conveyance all oil and gas, or either, within and underlying the lands hereby conveyed, with the right to search for, explore, operate for, drill, produce and market oil, gas and gasoline..." Appendix, Exhibits A and B. Therefore, consistent with the rules of construction, this Court must hold the parties to this deed, and their successors and assigns, as bound by the general and ordinary meanings of the words used in the deed. In this case, there is no ambiguity in the language cited (verbatim) from the

deed above. There is no “alternative” construction of this deed; the ordinary and unambiguous language clearly and expressly reserves and excepts from the conveyance the mineral rights owned by the Lawson Heirs. Any construction of this deed to the contrary would render all conveyance deeds subject to an interpretation by the court clearly inconsistent with the intent of the parties.

It is in the best interest of WVFB members, and landowners across West Virginia, that this Court honor a deed’s clear, unambiguous, and ordinary language. A court may resort to rules of construction to interpret a deed’s ambiguity. However, when a deed provides clear, express, and unambiguous language, a court should hold the parties are bound by the express language of the deed. In this case, the 1960 deed clearly, expressly, and unambiguously reserves the Lawson Heirs ownership rights of the minerals underlying the surface conveyed and the right to use the surface in the future. Therefore, this Court should not disturb the circuit court’s Order, which recognizes the Lawson Heirs private ownership rights in the minerals underlying what is now Chief Logan State Park.

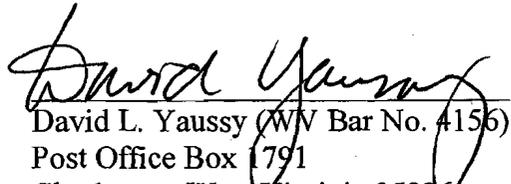
Real property rights are creatures of written instruments, preserved as public records so that all citizens know what they are buying, selling and what their respective property rights may be. This court has demonstrated over many years that these written title instruments will be afforded the highest level of protection, and that the law seeks to create certainty and consistency in the area of real property law. Appellants essentially argue that a very innocuous portion of the Code intended to curb or limit the powers of the Director of DNR can somehow be interpreted in a manner which creates uncertainty, ignores written title instruments, and is completely inconsistent with the recorded intent of the parties. WVFB does not take lightly any effort by a state agency to create real property rights greater than the rights it obtained and agreed to by

deed. WVFB respectfully requests that this court reject the effort of the Appellants in this case to ignore the plain and unambiguous provisions of the deed which forms the very foundation upon which Chief Logan State Park exists.

IV. CONCLUSION

This case is of great importance to the West Virginia Farm Bureau, its members, other similar organizations, and landowners across West Virginia. Since the 1960 deed clearly, unambiguously, and expressly reserves and excepts from conveyance the Lawson Heirs private ownership rights in the minerals underlying the surface of what is now Chief Logan State Park and the right to use the surface to produce the minerals, this Court should affirm the lower court's order reversing the DEP's wrongful denial of Cabot's five well work permit applications.

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By Counsel,


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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that service of the foregoing **WEST VIRGINIA FARM BUREAU MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*** and **BRIEF OF AMICUS CURIAE, WEST VIRGINIA FARM BUREAU IN SUPPORT OF APPELLEES CABOT OIL & GAS CORP. AND LAWSON HEIRS, INC.** has been made this 16th day of June, 2010, by depositing a true and exact copy thereof in the U.S. mail, postage prepaid, addressed as follows:

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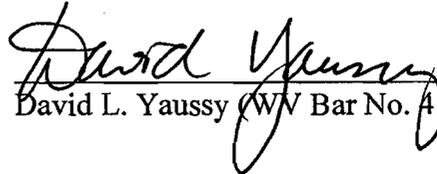
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