

IN THE CIRCUIT COURT OF MARSHALL COUNTY, WEST VIRGINIA

DWG OIL & GAS ACQUISITIONS, LLC,

Plaintiff,

v.

CIVIL ACTION NO. 14-C-22H

SOUTHERN COUNTRY FARMS, INC., et al.,

Defendants.

ORDER

DAVID R. ELLIOTT
2015 DEC 28 AM 10:13

Came the plaintiffs, DWG Oil & Gas Acquisitions, LLC (hereafter "DWG"), by counsel, Bradley W. Stephens and Kelly Mayhew, and also came the defendant, Southern Country Farms, Inc.(hereafter "Southern Country") by Thomas E. White.

The plaintiff filed its COMPLAINT FOR DECLARATORY JUDGMENT on or about February 21, 2014, pursuant to the West Virginia Uniform Declaratory Judgments Act, *W.Va.Code §§55-13-1 et seq.*, seeking to construe the language of certain real estate instruments of conveyance. The plaintiff's prayer requested the Court to declare that the proper construction of certain "Campbell Deeds" vested the title to oil and gas underlying the subject tract in one P.P. Campbell, Sr.

In its Answer filed on April 1, 2014, the defendant, Southern Country, also requested that the Court declare the title of the oil and gas interests, but disagreeing with the ownership averred by the plaintiff.

PLAINTIFF'S INITIAL BRIEF was filed on or about December 12, 2014.

DEFENDANT, SOUTHERN COUNTRY FARMS, INC.'S MEMORANDUM OF LAW was filed on or about January 9, 2015, and PLAINTIFF'S REPLY TO DEFENDANT SOUTHERN COUNTRY FARMS, INC.'S MEMORANDUM OF LAW was filed on or about January 22, 2015. Oral argument was heard on March 20, 2015.

The Court, having had an opportunity to review and consider everything of record in the above-styled civil action as well as oral arguments and applicable law and legal principles pertaining thereto, is of the reasoned opinion that the matter is appropriate for declaratory disposition.

Accordingly, after mature consideration thereof, it is the DECLARATION of the Court that the oil and gas underlying the subject real estate (as well as the surface) described and conveyed in that certain deed dated June 5, 1913, recorded in Marshall County Deed Book 138 page 582, became vested in A.B. Campbell, by virtue thereof.

The Court's decision is based on the following findings and conclusions:

FINDINGS OF FACT

1. By deed dated April 10, 1908 and recorded in Deed Book 124, page 444, P.P. Campbell [Sr.] conveyed two parcels of real estate to P.P. Campbell, Jr., comprising of 146 acres and 20 acres, but "Excepting therefrom Fifty acres on west side of the 146 acre tract also reserving therefrom all the coal oil and gas with permission sell lease release and operate the same [sic]." [This shall be referred to as Campbell Deed #1].
2. Thereafter, P.P. Campbell, Jr., conveyed the same realty back to P.P. Campbell, Sr., by

1 The Court directed counsel for Defendant in July to prepare order; same was rendered 12-16-15 to the Court. *CPA*

deed dated May 27, 1913, recorded in Deed Book 138, page 552, setting forth that the conveyance was "subject to the exceptions and reservations set forth in [the prior deed of April 10, 1908], reference being here made to said deed and record for a more particular description of said exceptions and reservations." [This shall be referred to as Campbell Deed #2].

3. Thereafter, P.P. Campbell, Sr., conveyed the same realty to A.B. Campbell by deed dated June 5, 1913 and recorded in Deed Book 138, page 582, setting forth that the conveyance was "Subject, however to all the reservations as contained in or referred to in said deed." [This shall be referred to as Campbell Deed #3].

CONCLUSIONS OF LAW

1. Construing the reservation clause in Campbell Deed #1: "Excepting therefrom Fifty acres on west side of the 146 acre tract also reserving therefrom all the coal oil and gas with permission to sell lease release and operate the same [*sic*]." It is observed that the reservation of minerals language was not connected to either the granting clause or to the description of the parcels conveyed. It was not referring to the parcels granted and conveyed. The reservation clause was instead, a part of, and set forth in the same sentence as the mention of the parcel being excepted and not conveyed. Consequently, the Court concludes that this deed was referring to reserving the coal, oil, and gas only from the 50 acre exception, and not the 20 acre and 96 acre (146-50) tracts conveyed. Structurally, the reservation language was a part of, and not separated from the exception of the 50 acre tract from the conveyance. The grantor excepted the 50 acre tract and

without a new sentence, or without even so much as comma, also reserved therefrom all the coal, oil and gas. The reservation "therefrom" necessarily refers to the 50 acres being discussed in the same sentence. It was a mere reference to the oil and gas that was reserved with respect to the 50 excepted acres.

2. Moreover, it is noted that on the same day that Campbell Deed #1 was made, April 10, 1908, P.P. Campbell [Sr.] made another deed conveying the 50 acres excepted from Campbell Deed #1, to P.P. Campbell [Sr.] and A.B. Campbell in trust for Laura C. McHenry, recorded in Deed Book 124, page 443. The following descriptive language was used in this deed: "Fifty acres of land being the South West Fifty Acres conveyed by the Deed made to P.P. Campbell, Jr this day and excepted there from, All the coal Oil and Gas with the right to sell lease release and operate. The same is reserved to the first party, and the said first party hereby covenants with the said second parties that he will warrant generally the property here by conveyed (*sic*)." The operative point being that coal, oil and gas was reserved as to the 50 acre parcel. The language in this deed conveying the 50 acres in trust, specifically indicated that as to the coal, oil and gas, "[t]he same is reserved to the first party. . ." No such language was employed in the other deed of the day reserving [minerals] to the first party, i.e. Campbell Deed #1. This seems to corroborate that there was no intention in Campbell Deed #1 to reserve anything to the first party. The language in Campbell Deed #1 was merely a reference that coal, oil, and gas had been reserved from the 50 acre exception.
3. Nor did the language in the next two deeds of the subject property (Campbell Deed #2 and Campbell Deed #3) operate to reserve any part of the oil and gas under the property

as they were simply referring to the prior reservation of Campbell Deed #1.

Consequently, the surface and minerals were conveyed to A.B. Campbell as a result of Campbell Deed #3.

4. Moreover, even if the plaintiff were correct that somehow P.P. Campbell effectively reserved the oil and gas in Campbell Deed #1, then when P.P. Campbell, Jr. conveyed back to him in Campbell Deed #2, his prior reservation would become meaningless and extinguished as he would have then owned both surface and minerals. Thereafter, he conveyed the subject property to A.B. Campbell, in Campbell Deed #3, reciting the following:

“The said tracts of land hereby conveyed being the same property conveyed to the said P.P. Campbell, Sr. By P.P. Campbell, Jr, and wife by deed dated the 27th day of May, 1913, and duly of record in Deed Book No., 138 page 552, of Marshall county Records. Subject, however to all the reservations as contained in or referred to in said deed.”

Notably, P.P. Campbell, Sr. did not specifically reserve anything in this deed, and indicated the conveyance was subject to the reservation in the immediately prior deed dated the 27th day of May, 1913 (Campbell Deed #2). Said deed could not possibly have been a deed wherein he reserved anything because he was the grantee in Campbell Deed #2.

5. P.P. Campbell, Sr. owned fee simple at the time he conveyed the subject property to A.B. Campbell. There was not at that time a severance of the surface and minerals. Consequently, any reference to “be subject to” or to honor a prior severance was a reference to “be subject to” something that did not exist. He needed to specifically and expressly indicate he was keeping the oil and gas if he so intended. He did not do so.

There was no express intention to do so; only a perfunctory reference as we often see in most deeds, to prior reservations. Under these unique circumstances, this should not be enough to discern there was an express intent to withhold the minerals. Reservations in deeds are to be strictly construed against the grantor. *Wall v. Landman*, 152 Va. 889, 148 S.E. 779; *Erwin v. Bethlehem Steel Corp.*, 134 W.Va. 900, 62 S.E.2d 337 (1950). The general rule of construction is that when it appears from the language of the deed that there is doubt as to whether the grantor intended to except or reserve to himself an interest in the land conveyed, the question of interpretation will be resolved in favor of the grantee. *G.W. Auto Center, Inc., v. Yoursco*, 167 W.Va. 648, 280 S.E.2d 327 (1981); *Collins v. Stalnaker*, 131 W.Va. 543, 48 S.E.2d 430 (1948); *Swope v. Pageton Pocahontas Coal Co.*, 129 W.Va. 813, 41 S.E.2d 691 (1947). As stated by Justice Fox in *Bruen v. Thaxton*, 28 S.E.2d 59, 126 W.Va. 330 (W.Va., 1943), "I believe also that the foregoing viewpoint expressed touches on the generally recognized principle that the law favors the vesting of estates and therefore disfavors the splitting of fee ownership and for this reason reservations are to be strictly construed." *Accord: Adkins v. Huff*, 58 W. Va. 645, 650, 52 S. E. 773, 3 L. R. A. (N. S.) 649 (1903); *Chapman v. Mill Creek Coal and Coke Co.*, 54 W. Va. 193, 196, 46 S. E. 262 (1903). If the words and provisions are doubtful in a deed, they are to be taken most strictly against the grantor. *Griffin v. Fairmont Coal Co*, 53 S.E. 24, 59 W. Va. 480 (W.Va., 1905).

6. Exceptions and objections of the plaintiff to the ruling herein are saved and reserved.
7. The Clerk shall provide copies of this Order to counsel of record and to unrepresented parties.

6 12-28-15


DWG OIL & GAS ACQUISITIONS, LL VS. SOUTHERN COUNTRY FARMS, INC.,

LINE DATE ACTION

- 1 02/21/14 COMPLAINT FOR DECLARATORY JUDGMENT.
- 2 02/21/14 SUM AND COMP TO 12 DEFS BY CERT MATT.
- 3 02/27/14 CERT MATT. ACCEPTED FOR WANDA ON 2/26/14, BY DARALD ON 2/26/14.
- 4 02/27/14 CERT MATT. REC FOR HILDA WAYT ACCEPTED ON 2-25, JAMES CHANNING
- 5 ACCEPTED ON 2-25 AND KIMBERLY WAYT ACCEPTED ON 2-25
- 6 03/03/14 CERT MAIL REC FOR H KITTLER ACCEPTED ON 2-26 ON H KITTLER ON 2-26
- 7 03/04/14 CERT MAIL REC FOR K. RASTALI AND SOUTHERN COUNTRY FARMS (C/O
- 8 ANN A. GARDNER) ACCEPTED ON 02/28
- 9 03/13/14 CERT MAIL RETURNED "UNABLE TO FORWARD" ON LORI CARPENTER.
- 10 03/20/14 CERT MAIL RETURNED "UNCLAIMED" ON WAYNE CHANNING.
- 11 03/25/14 ANSWER BY HARLAN AND BARBARA KITTLER.
- 12 03/27/14 SUM AND COMP TO LORI CARPENTER BY CERT MALL.
- 13 03/31/14 ANSWER FILED BY THE KITTLERS.
- 14 04/01/14 CERT MAIL ACCEPTED BY LORI ON 3/29.
- 15 04/02/14 ANSWER OF DRP SOUTHERN COUNTRY FARMS, INC BY THOMAS WHITE, ESQ.
- 16 04/03/14 DEF CHANNINGS ANSWER TO COMP FOR DECLARATORY JUDGMENT, CROSS
- 17 CLAIMS AND 3RD PARTY COMP AGAINST GASTARA EXPL.
- 18 04/03/14 SUM AND CHANNINGS ANSWER TO SEC OF ST FOR SERVICE ON GASTAR.
- 19 04/14/14 ACCEPTED BY SEC OF ST ON 4/8/14 FOR SERV ON GASTAR EXPL.
- 20 05/02/14 LETTER TO JUDGE FROM LORI CARPENTER.
- 21 06/16/14 CERT OF SERV (NOTICE OF STATUS CONF 06/16/14 @ 1:30)
- 22 07/17/14 ORDER: AGREED ORDER OF DISMISSAL OF CHANNING DEFENDANTS, ISSUED.
- 23 07/22/14 CERT OF SERV (DEFS/3RD PARTY PLS RULE 41(A) NOTICE OF VOLUNTARY
- 24 DISMISSAL OF 3RD PARTY COMPLAINT AGAINST GASTAR EXPLORATION, USA
- 25 INC.)
- 26 07/28/14 ORDER: SCHED ORDER: HEARING 2-9-15 @ 10:30, ISSUED.
- 27 08/28/14 DEFS 3RD PARTY PLS NOTICE OF VOLUNTARY DISMISSAL OF 3RD PARTY
- 28 COMP AGAINST GASTAR EXPL. USA.
- 29 09/11/14 ORDER: HILDA MARIE GILBERTSON WAYT DISMISSED , ISSUED.
- 30 09/11/14 ORDER: KIMBERLY ANN WAYT DISMISSED, ISSUED.
- 31 09/11/14 ORDER: KERRY DEAN WAYT DISMISSED, ISSUED.
- 32 12/12/14 CERT OF SERV (PLF'S INTTAT. BRIEF)
- 33 12/15/14 ORDER: KENNETH RASTALI DISMISSED, ISSUED.
- 34 01/02/15 ANSWER BY BARBARA AND HARLAN KITTLER.
- 35 01/12/15 DEF SOUTHERN COUNTRY FARMS MEMO OF LAW.
- 36 01/20/15 PROCEDURAL POSTURE OF CASE BY HARLAN AND BARBARA KITTLER.
- 37 01/22/15 CERT OF SERV (PLF'S REPLY TO DEF SOUTHERN COUNTRY FARM INC'S
- 38 MEMO OF LAW)
- 39 02/24/15 ORDER: VACATING HEARING & RESCHED FOR 3-20 @ 11:00, ISSUED.
- 40 07/02/15 CERT OF SERV (NOTICE OF CHANGE OF ADDRESS OF PLF'S COUNSEL)
- 41 07/20/15 LETTER TO COUNSEL FROM JUDGE
- 42 12/28/15 ORDER: COURTS RULING ADRESSING DECLARATORY JUDGMENT, ISSUED.
- 43 01/27/16 NOTICE OF APPEAL.

Certified by me this 27 day
of April 2014.
K. K. Kiser Deputy

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Docket No. 16-0069

DWG Oil & Gas Acquisitions, LLC,

Plaintiff Below, Petitioner

v.

Appeal from a final order of
the Circuit Court of Marshall County
(14-C-22)

Southern Country Farms, Inc., Harlan Kittle
and Barbara Kittle, and Lori D. Carpenter,

Defendants Below, Respondents

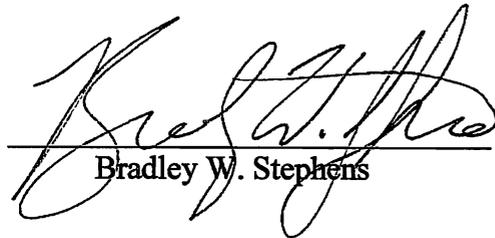
CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of April, 2016, I served the "*Petitioner's Appendix Record*" upon all parties of record by depositing a true copy thereof in the United States mail, postage prepaid, envelopes addressed as follows:

Thomas E. White, Esq.
604 Sixth Street
Moundsville, WV 26041
Counsel for Defendant Southern Country Farms, Inc.

Harlan Kittle and Barbara Kittle
58 Mary Street
New Martinsville, WV 26155

Lori D. Carpenter
322 Pine Avenue
Moundsville, WV 26041


Bradley W. Stephens