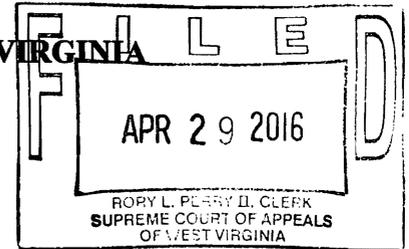


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA



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

PETITIONER'S BRIEF

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ASSIGNMENTS OF ERROR

- I. THE CIRCUIT COURT ERRED WHEN IT CONSTRUED THE GRANTING CLAUSE IN CAMPBELL DEED #1 AS EFFECTING A RESERVATION OF THE COAL, OIL, AND GAS UNDERLYING ONLY THE FIFTY-ACRE PARCEL EXCEPTED FROM THE OPERATION OF THE INSTRUMENT, THEREBY TREATING THE ADDITIONAL RESERVATION LANGUAGE AS REDUNDANT

- II. THE CIRCUIT COURT ERRED BY RELYING ON PAROL OR EXTRINSIC EVIDENCE TO CONSTRUE THE RESERVATION CLAUSE IN CAMPBELL DEED #1, WHERE THE LANGUAGE OF CAMPBELL DEED #1 WAS UNAMBIGUOUS AS TO THE GRANTOR'S INTENT

- III. THE CIRCUIT COURT ERRED BY CONCLUDING THAT THE MERGER OF TITLE TO THE SURFACE AND MINERAL ESTATES IN THE SUBJECT TRACT EXTINGUISHED OR OTHERWISE NULLIFIED THE EFFECT OF THE RESERVATION MADE IN CAMPBELL DEED #1 AND UNAMBIGUOUSLY INCORPORATED INTO CAMPBELL DEEDS #2 AND #3

- IV. THE CIRCUIT COURT ERRED IN DECLARING THAT THE PROPER CONSTRUCTION OF THE CAMPBELL DEEDS INDICATES THAT TITLE TO THE OIL AND GAS UNDERLYING THE SUBJECT TRACT BECAME VESTED IN A.B. CAMPBELL, RATHER THAN REMAINING VESTED IN P.P. CAMPBELL, SR., BY VIRTUE OF THE EXECUTION AND RECORDING OF CAMPBELL DEED #3, IN THAT THE COURT DISREGARDED THE CLEAR INCORPORATION OF A PRIOR RESERVATION

STATEMENT OF THE CASE

DWG Oil & Gas Acquisitions, LLC (“Petitioner” or “DWG”), the Petitioner and Plaintiff below, is a West Virginia limited liability company primarily engaged in the acquisition and leasing of interests in oil and gas in the State of West Virginia. Through various transactions and acquisition efforts conducted since June 2013, DWG acquired ownership of an approximately thirty-one percent (31.0 %) undivided interest in the oil and gas underlying a tract of real estate situate in Franklin District, Marshall County, West Virginia, comprising approximately 511.46 acres (the “Parent Tract”). In the course of activities associated with its acquisition efforts, DWG discovered that certain other parties have claimed adversely, or are presumed to claim adversely, title to various interests in the oil and gas underlying an approximately 142-acre tract (the “Subject Tract”) lying within the footprint of the Parent Tract. (The oil and gas underlying the Subject Tract is referred to as the “Subject Oil and Gas,” and the present extent of DWG’s ownership of the Subject Oil and Gas is referred to as “DWG’s Interest.”) (A.R. 1-3; 19).

On February 21, 2014, Plaintiff filed the underlying Complaint in this matter, seeking a declaratory judgment regarding the construction of three key instruments on record with the Clerk of the County Commission of Marshall County. Upon information and belief, each such party claiming title adversely, or presumed to claim title adversely, to the Subject Oil and Gas was named as a Defendant in the Complaint. By prosecuting this action, DWG did not challenge or dispute any claims by Defendants concerning ownership of, or possession of other rights or privileges relating solely to, the *surface* of all or portions of the Subject Tract. (A.R. 4).

Defendants Harlan Kittle and Barbara Kittle served, on or about March 27, 2014, on the undersigned counsel what purported to be an answer to the Complaint, and on April 2, 2014, counsel for Defendants Southern Country Farms, Inc. filed and served its Answer. (A.R. 69-70;

32-68). During the pendency of the underlying action, several of the Defendants named initially in the Complaint entered into agreed orders with DWG whereby they were dismissed from the case. (A.R. 84). The remaining Defendants below, Southern Country Farms, Inc., Harlan Kittle, Barbara Kittle, and Lori D. Carpenter, are the Respondents in this appeal.

To support their adverse claims of title to the Subject Oil and Gas, Defendants have relied upon an erroneous construction of three deeds in the chain of title of the Subject Oil and Gas (collectively, the “Campbell Deeds”), each of which was executed and recorded in the Office of the Clerk of the County Commission of Marshall County between April 10, 1908 and June 5, 1913. By deed dated April 10, 1908 and recorded in Deed Book 124, at page 444 (“Campbell Deed #1”), Palemon P. Campbell, Sr. (referred to as “P. P. Campbell, Sr.”) conveyed to Palemon P. Campbell, Jr. (referred to as “P. P. Campbell, Jr.”) two parcels of real estate comprising 146 acres and twenty (20) acres, respectively, in Franklin District, Marshall County, with covenants of general warranty and “[e]xcepting 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*].”¹ (A.R. 4, 20-21).

Subsequently, by deed dated May 27, 1913 and recorded in Deed Book 138, at page 552, P. P. Campbell, Jr. conveyed to P. P. Campbell, Sr., two parcels of real estate comprising 146

¹ Based upon certain recitations in three deeds with an effective date of April 30, 2013, and recorded in Deed Book 801, at pages 396, 398, and 400, respectively, the purported 50-acre parcel excepted and reserved from the operation of the conveyance memorialized in Campbell Deed #1 actually comprised at the time of that conveyance, and still comprises at present, only approximately 24 acres. Beyond serving to clarify the approximate acreage of the Subject Tract as 142 acres, rather than the 116 acres which would result from subtracting the recited 50 acres excepted in Campbell Deed #1, this apparent clarification does not otherwise inform the construction of the Campbell Deeds. Taking into account this adjustment to the acreage excepted in Campbell Deed #1, the metes and bounds description of the balance of the surface estate conveyed via Campbell Deed #1 matches, more or less, the metes and bounds of the Subject Tract. (A.R. 4-5).

acres and twenty (20) acres, respectively, in Franklin District, Marshall County (“Campbell Deed #2”). Campbell Deed #2 includes the following language:

The above described tracts or parcels of land are the same conveyed to said P. P. Campbell, Jr., by the said P. P. Campbell, Sr., by deed bearing date the 10th day of April, 1908, of record in the office of the clerk of the county court of said Marshall county in Deed Book No. 124, page 444, reference being here made to said deed and record for a more particular description of the same; And the right, title and interest of the parties of the first part in and to said lands are conveyed *subject to the exceptions and reservations set forth in said deed, reference being here made to said deed and record for a more particular description of said exceptions and reservations[.] [sic]*” (emphasis added).

Taking into account the adjustment to the acreage excepted in Campbell Deed #1, noted *supra*, the metes and bounds description of the balance of the surface estate conveyed via this instrument matches, more or less, the metes and bounds of the Subject Tract. (A.R. 5, 22-23).

Shortly following the execution of Campbell Deed #2, by deed dated June 5, 1913 and recorded in Deed Book 138, at page 582, P. P. Campbell, Sr. conveyed to A. B. Campbell two parcels of real estate comprising 146 acres and twenty (20) acres, respectively, in Franklin District, Marshall County, with covenants of general warranty (“Campbell Deed #3”). Campbell Deed #3 includes the following language:

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. [sic]* (emphasis added).

Taking into account the adjustment to the acreage excepted in Campbell Deed #1, noted *supra*, the metes and bounds description of the balance of the surface estate conveyed via this instrument matches, more or less, the metes and bounds of the Subject Tract. (A.R. 5-6, 24-25).

Under the valid chain of title to DWG’s Interest, as of the execution and recording of Campbell Deed #3, title to the oil and gas underlying the Subject Tract remained vested in P. P.

Campbell, Sr. until his death, intestate, on May 1, 1922, at which time title to the Subject Oil and Gas passed, in proportionate shares, to ten heirs. DWG's Interest has been acquired from various heirs, successors, and assigns of these heirs of P. P. Campbell, Sr. (A.R. 6). Respondents erroneously assume that, as of the execution and recording of Campbell Deed #3, title to the oil and gas underlying the Subject Tract passed to A. B. Campbell and thereafter followed an incorrect chain of title adverse to that relied upon by DWG in its acquisition efforts. (A.R. 6-17; 26-30).

Following a hearing conducted March 20, 2015, at which the Circuit Court below heard oral argument in the matter, but at which no exhibits were introduced or admitted into evidence, the parties submitted their respective briefs according to the Court's prescribed schedule. (A.R. 42-76). The Circuit Court thereafter indicated, via a July 17, 2015 letter to the parties, that judgment would be rendered in favor of the Defendants below, and further directed counsel for Defendant below Southern Country Farms, Inc. to tender a proposed order to the Court. The Circuit Court entered this order December 28, 2015, and it is from this final judgment that Petitioner now appeals. (A.R. 77-83).

SUMMARY OF ARGUMENT

The Circuit Court erred in four key respects in the matter below. First, the Court ignored one of the foundational rules of construction of legal instruments, namely 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. 4, Faith United Methodist Church v. Morgan, 231 W. Va. 423, 745 S.E.2d 461 (2013), citing Syl. Pt. 1, Cotiga Development Co. v. United Fuel Gas Co., 147 W.Va. 484, 128 S.E.2d 626 (1962). A court should "giv[e] effect to the intention of the parties wherever that

is reasonably clear and free from doubt, . . .” Faith United at Syl. Pt. 5. Instead, the Court disregarded the unambiguous reservation of the Subject Oil and Gas by P.P. Campbell in Campbell Deed #1, effectively rendering half of the reservation language of that instrument as redundant.

Second, the Circuit Court erred by finding ambiguity in the plain and unambiguous reservation clause of Campbell Deed #1, and by relying on extrinsic evidence from a deed executed contemporaneously by P.P. Campbell. “Extrinsic evidence will not be admitted to explain or alter the terms of a written contract which is clear and unambiguous.” Faith United at Syl. Pt. 6, citing Syl. Pt. 9, Paxton v. Benedum–Trees Oil Co., 80 W.Va. 187, 94 S.E. 472 (1917).

Third, the Circuit Court erred by concluding that Campbell Deeds #2 and #3 did not operate to reserve the Subject Oil and Gas, particularly where this case is readily distinguished from Bennett v. Smith, 69 S.E.2d 42, 136 W.Va. 903 (1952) and Hope Natural Gas v. Reynolds, 30 S.E.2d 336, 126 W.Va. 580 (1944). Moreover, the Circuit Court provided no justification for its implicit conclusion that the merger of the surface and mineral estates in the Subject Tract via the operation of Campbell Deed #2 somehow “extinguished” or otherwise nullified the plain incorporation of the reservation in Campbell Deed #1 into the two subsequent instruments.

Fourth, the Circuit Court erred by issuing its declaration and corresponding conclusion of law that title to the Subject Oil and Gas became vested in A.B. Campbell upon the execution and recording of Campbell Deed #3, rather than remaining vested in P.P. Campbell, Sr., because the valid initial reservation of the Subject Oil and Gas in the first deed at issue was effectively and unambiguously incorporated into the two subsequent deeds in the chain of title.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Petitioner respectfully submits that the Court's disposition of this matter may benefit from oral argument pursuant to Rule 19 of the Rules of Appellate Procedure, in that the case involves assignments of error in the application of settled law, yet Petitioner recognizes that this Court may determine, pursuant to Rule 18, that "the facts and legal arguments are adequately presented in the briefs and record on appeal, and the decisional process would not be significantly aided by oral argument." Petitioner further states that the case is appropriate for a memorandum decision.

ARGUMENT

Standard of Review

This case centers upon the Circuit Court's interpretation of three successive deeds in a chain of title. This Court has "stated that the interpretation of a deed, which is not dependent upon extrinsic evidence, is a question of law for a court and not a jury." Faith United, 231 W. Va. 423, 745 S.E.2d 461, 466 (2013), citing, e.g., Snooks v. Wingfield, 52 W.Va. 441, 444–45, 44 S.E. 277, 278 (1903) ("construction of the deed is matter of law for the court and cannot be left to the jury"). Thus, the applicable standard of review is *de novo*. Id., citing Zimmerer v. Romano, 223 W.Va. 769, 777, 679 S.E.2d 601, 609 (2009) ("The facts of this case call upon this Court to interpret a written deed. Thus, we apply a *de novo* standard of review to the circuit court's interpretation of the contract.")

- I. **THE CIRCUIT COURT ERRED WHEN IT CONSTRUED THE GRANTING CLAUSE IN CAMPBELL DEED #1 AS EFFECTING A RESERVATION OF THE COAL, OIL, AND GAS UNDERLYING ONLY THE FIFTY-ACRE PARCEL EXCEPTED FROM THE OPERATION OF THE INSTRUMENT,**

**THEREBY TREATING THE ADDITIONAL RESERVATION LANGUAGE
AS REDUNDANT**

The Circuit Court erred in concluding that the granting clause in Campbell Deed #1 effected a reservation of the coal, oil, and gas underlying only the fifty-acre parcel excepted from the operation of the instrument, rather than effecting the same reservation from the Subject Tract, the surface of which was conveyed via this instrument. (A.R. 80-81). In doing so, the Court ignored one of the foundational rules of construction of legal instruments, namely 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. 4, Faith United Methodist Church v. Morgan, 231 W. Va. 423, 745 S.E.2d 461 (2013), citing Syl. Pt. 1, Cotiga Development Co. v. United Fuel Gas Co., 147 W.Va. 484, 128 S.E.2d 626 (1962).

By Campbell Deed #1, P. P. Campbell, Sr. conveyed to P. P. Campbell, Jr. two parcels of real estate comprising 146 acres and twenty (20) acres, while “[e]xcepting 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*].”² (A.R. 4, 20-21). Petitioner respectfully submits that the above passage exhibits no ambiguity whatsoever as to the grantor’s intent. Reading Campbell Deed #1 as a whole, it is clear that P. P., Campbell Sr. intended to exclude from that conveyance (1) the 50 acres *in fee simple* conveyed in another deed; and (2) the *coal, oil, and gas in and under* the Subject Tract conveyed in Campbell Deed #1. If the elder

² The academic distinction between an “exception” and a “reservation” is discussed in *Malamphy v. Potomac Edison Co.*, 140 W.Va. 269, 83 S.E.2d 755, 758 (1954), but reference to a “reservation” may be treated as an exception “if it is necessary in order to carry out the plain purposes of the instrument,” *Id.*, citing *Beckley Natl. Exchange Bank v. Lilly*, 116 W.Va. 608, 621, 182 S.E. 767 (1935). Accordingly, even though the words “exception and reservation” are not used jointly and uniformly in the Campbell Deeds, the intent of the grantor in each instrument with respect to prior exceptions and reservations is obvious and unequivocal.

Campbell had intended only to exclude the minerals underneath the 50-acre tract, he would have stated as much instead of referring to the 50-acre tract *without reference to minerals* and then to the *coal, oil, and gas beneath* the 146-acre and 20-acre tracts. As was expressed to the Circuit Court below, there can be no other reasonable explanation as to what the respective instances of “therefrom” in this exception and reservation are referring: P. P. Campbell Sr.’s intent was that “therefrom” pertained only to the Subject Tract conveyed via Campbell Deed #1, and not to any other tract, conveyance, or instrument. (A.R. 72).

Moreover, “[i]n construing a deed, will, or other written instrument, it is the duty of the court to construe it as a whole, taking and considering all the parts together, and giving effect to the intention of the parties wherever that is reasonably clear and free from doubt, unless to do so will violate some principle of law inconsistent therewith.” Syl. Pt. 5, Faith United, citing Syl. Pt. 1, *Maddy v. Maddy*, 87 W.Va. 581, 105 S.E. 803 (1921). Instead of reading Campbell Deed #1 as a whole and giving effect to the plain intention of the parties, the Court disregarded the unambiguous reservation of the Subject Oil and Gas by P.P. Campbell in Campbell Deed #1 (this immediately following the exception of the 50 acre tract in fee simple), effectively rendering half of the reservation language of that instrument as redundant and meaningless. (A.R. 80-81).

II. THE CIRCUIT COURT ERRED BY RELYING ON PAROL OR EXTRINSIC EVIDENCE TO CONSTRUE THE RESERVATION CLAUSE IN CAMPBELL DEED #1, WHERE THE LANGUAGE OF CAMPBELL DEED #1 WAS UNAMBIGUOUS AS TO THE GRANTOR’S INTENT

As implied by the argument presented in Section I, supra, the Circuit Court erred by finding ambiguity in the reservation clause of Campbell Deed #1, and further by relying on extrinsic evidence from a deed executed contemporaneously by P.P. Campbell. (A.R. 81). “Extrinsic evidence will not be admitted to explain or alter the terms of a written contract which

is clear and unambiguous.” Syl. Pt. 6, Faith United, citing Syl. Pt. 9, Paxton v. Benedum–Trees Oil Co., 80 W.Va. 187, 94 S.E. 472 (1917). Because the reservation language of Campbell Deed #1 is “clear and unambiguous,” Id., the Circuit Court committed error specifically by looking beyond the four corners of that deed and attempting to craft some justification for its conclusion based on the language of a separate deed executed by P.P. Campbell Sr., by which a conveyance to another party in trust was made. (A.R. 67-68, 81). Even if it were the case that the reservation language of Campbell Deed #1 was unclear and ambiguous, reading the contemporaneously executed deed alongside Campbell Deed #1 does not provide any further clarity as to P.P. Campbell, Sr.’s intent. Rather, it reveals only to whom title to the surface of the purportedly 50-acre tract excepted from the operation of Campbell Deed #1 was transferred.

III. THE CIRCUIT COURT ERRED BY CONCLUDING THAT THE MERGER OF TITLE TO THE SURFACE AND MINERAL ESTATES IN THE SUBJECT TRACT EXTINGUISHED OR OTHERWISE NULLIFIED THE EFFECT OF THE RESERVATION MADE IN CAMPBELL DEED #1 AND UNAMBIGUOUSLY INCORPORATED INTO CAMPBELL DEEDS #2 AND #3

The Circuit Court erred by concluding that Campbell Deeds #2 and #3 did not operate to reserve the Subject Oil and Gas, and further by concluding additionally that the merger of title to the surface and mineral estates in the Subject Tract extinguished or otherwise nullified the effect of the reservation made initially in Campbell Deed #1 and incorporated into the subsequent two instruments. (A.R. 81-82). Campbell Deeds #2 and #3 both clearly evidence an unequivocal intent by the grantor to except and reserve the oil and gas underlying the real estate conveyed. Campbell Deed #2 refers explicitly to Campbell Deed #1 by deed book and page number reference, and plainly provides that “said lands are conveyed *subject to the exceptions and reservations set forth in said deed, reference being here made to said deed and record for a more*

particular description of said exceptions and reservations[.] [sic]” (emphasis added) (A.R. 22-23, 47). In turn, Campbell Deed #3 refers explicitly to Campbell Deed #2 by deed book and page number reference, and plainly provides that the conveyance is “[s]ubject, however, to all the reservations as contained in or referred to in said deed. [sic]” (emphasis added) (A.R. 24-25, 47). It is of no import that the actual reservation made in Campbell Deed #1 is not recited verbatim in Campbell Deed #2; the crucial point is that Campbell Deed #3 incorporated not only all reservations “contained” in Campbell Deed #2, but also those “referred to,” i.e., the initial reservation of the oil and gas by P. P. Campbell, Sr. in Campbell Deed #1.

Though the authority precisely on point with regard to this issue is sparse, several opinions from this Court are instructive, if only to provide a factual contrast with this matter. In Hope Natural Gas v. Reynolds, 30 S.E.2d 336, 126 W.Va. 580 (1944), the Court held that a reference to a prior deed recited “for more particular description and for derivation of title” was sufficient to incorporate an earlier exception and reservation of oil and gas. Id. at 589. Significantly, the Court issued this holding notwithstanding the fact that the deed reciting the back reference above made no specific mention of a prior earlier exception or reservation, whereas in the present matter, each of the subsequent deeds (Campbell Deeds #2 and #3) did include language indicating a prior exception and reservation.

Following the *Reynolds* decision, the Supreme Court of Appeals subsequently held that “[t]o except or reserve any part of or any estate in land granted by a deed, a provision in the deed for that purpose must be as certain and as definite as an effective granting clause in such deed.” Syl. Pt. 2, Bennett v. Smith, 69 S.E.2d 42, 136 W.Va. 903 (1952). DWG asserts that the incorporation of the exception and reservation from Campbell Deed #1 is “as certain and as definite as an effective granting clause,” Id., but nonetheless notes that Bennett involved a

reference to a prior deed only for the stated purpose of “further description,” much as in *Reynolds*. The Bennett Court proceeded to state, citing Thomas v. Young, 93 W.Va. 555, 117 S.E. 909 (1923):

[T]he decision in the *Thomas* case that a reference, in a subsequent deed containing only a general description, to a prior deed containing only a particular description and an exception and a reservation, incorporates in such deed both the particular description and the exception and reservation, is based primarily upon the existence of a general description, rather than a particular description, in the subsequent deed, which rendered necessary or proper the reference to the prior deed for the purpose of incorporating in the subsequent deed the description and the exceptions and reservations contained in the prior deed.”

Bennett, 69 S.E.2d at 46.

The present case can be distinguished from the above scenario in Bennett in that the subsequent deeds at issue here (Campbell Deeds #2 and #3) each contain a *particular* description of the real property conveyed (in the form of a metes-and-bounds description), yet made *explicit reference* to the prior exception and reservation in Campbell Deed #1, instead of merely referring to one or more prior instruments for “further description.” Most notably in the distinction between this case and Bennett, is that the subsequent instruments there likewise contained a particular description of the estate conveyed (expressed in metes and bounds), thereby obviating the need for the reference to a prior, particular description, but because the subsequent deeds at issue *failed to mention any prior exception or reservation*, those deeds thus failed to incorporate any prior exceptions and reservations. The Bennett Court noted in dicta that

the failure of the grantor in each deed to incorporate an exception or a reservation of the coal is significant and *indicates a lack of intention in the grantor to except or reserve the coal*. If the grantor in each deed had intended to except or reserve the coal, he or she could, and presumably would, have done so by an apt provision to that effect.

Id. at 47 (emphasis added). By stark contrast in the present case, the grantor in Campbell Deed #2 (P. P. Campbell, Jr.) and the grantor in Campbell Deed #3 (P. P. Campbell, Sr.) both clearly

indicated their intention to except and reserve the oil and gas underlying the surface estate conveyed, by making plain reference to the exception and reservation of the oil and gas in Campbell Deed #1.

Ultimately, the Circuit Court provided no justification for its implicit conclusion that the merger of the surface and mineral estates in the Subject Tract via the operation of Campbell Deed #2 somehow “extinguished” or otherwise nullified the plain incorporation of the reservation in Campbell Deed #1 into the two subsequent instruments. (A.R. 82). The Circuit Court proceeded to cite to several cases which it identified as supportive of construing deeds “against the grantor,” (A.R. 82-83) but these authorities appear to condition this principle on the existence of an ambiguity in the deed language at issue. As discussed at length in Petitioner’s Brief, no ambiguity exists as to the initial reservation or the incorporation of the same into the latter Campbell Deeds, and thus any such case law is not applicable in this scenario. Importantly, the Circuit Court did not identify any authority supporting its apparent holding that a merger of surface and mineral estates acts to nullify a prior reservation in the chain of title, and the undersigned counsel is not aware of any such authority.

IV. THE CIRCUIT COURT ERRED IN DECLARING THAT THE PROPER CONSTRUCTION OF THE CAMPBELL DEEDS INDICATES THAT TITLE TO THE OIL AND GAS UNDERLYING THE SUBJECT TRACT BECAME VESTED IN A.B. CAMPBELL, RATHER THAN REMAINING VESTED IN P.P. CAMPBELL, SR., BY VIRTUE OF THE EXECUTION AND RECORDING OF CAMPBELL DEED #3, IN THAT THE COURT DISREGARDED THE CLEAR INCORPORATION OF A PRIOR RESERVATION

The Circuit Court erred by issuing its declaration and corresponding conclusion of law that title to the Subject Oil and Gas became vested in A.B. Campbell upon the execution and recording of Campbell Deed #3, rather than remaining vested in P.P. Campbell, Sr. (A.R. 79,

81-82). Because P. P. Campbell, Sr. reserved the Subject Oil and Gas in his conveyance of the surface of the Subject Tract in Campbell Deed #1; the prior reservation was effectively incorporated by plain reference into Campbell Deed #2, which conveyed the surface of the Subject Tract from P. P. Campbell, Jr. to the elder Campbell; and the prior reservation was effectively incorporated by plain reference into Campbell Deed #3, which conveyed the surface of the Subject Tract from P. P. Campbell, Sr. to A.B. Campbell; only one further assumption is required to support the conclusion that title to the Subject Oil and Gas remained vested in P.P. Campbell, Sr. at the end of these three conveyances. Provided that P.P. Campbell, Sr. held valid title to the Subject Oil and Gas at the time of the execution and recording of Campbell Deed #1, an assumption that no party to the underlying proceeding has challenged at any time during the pendency of the proceeding, title to the Subject Oil and Gas was indeed vested in P.P. Campbell, Sr. as of the execution and recording of Campbell Deed #3.

CONCLUSION

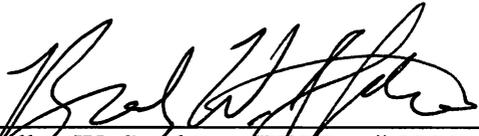
It is simply inconceivable that P.P. Campbell, Sr. made a clear reservation of the Subject Oil and Gas in the first deed at issue, yet did not intend for that reservation to be incorporated into the two subsequent deeds at issue, in which he made explicit references to the initial reservation. The controlling authority permits only one construction of the Campbell Deeds collectively, based on the assumptions that P. P. Campbell, Sr. held valid title to the Subject Oil and Gas and the surface of the Subject Tract as of the execution and recording of Campbell Deed #1, and that no intervening conveyances were made by the parties involved between the execution of Campbell Deed #1 and the recording of Campbell Deed #3. That sole permissible construction of the Campbell Deeds is as follows:

- (a) Campbell Deed #1 excepted and reserved the Subject Oil and Gas from the conveyance, thereby effecting a transfer of title from P. P. Campbell, Sr. to P. P. Campbell, Jr. to only the surface of the Subject Tract.
- (b) Campbell Deed #2 incorporated the exception and reservation of the Subject Oil and Gas from Campbell Deed #1, thereby effecting a transfer of title from P. P. Campbell, Jr. to P. P. Campbell, Sr. to the surface of the Subject Tract.
- (c) Campbell Deed #3 incorporated the exception and reservation of the Subject Oil and Gas from Campbell Deed #1, thereby effecting a transfer of title from P. P. Campbell, Sr. to A. B. Campbell to only the surface of the Subject Tract, as title to the Subject Oil and Gas remained vested in P. P. Campbell, Sr. upon the execution and recording of Campbell Deed #3.

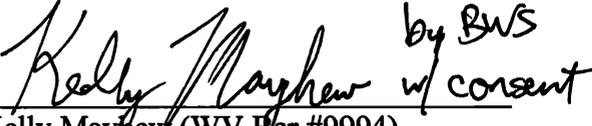
Based on the foregoing, the Petitioner respectfully requests that this Court enter judgment in its favor, reverse the decision below of the Circuit Court of Marshall County, remand the matter for issuance of an order by the Circuit Court reflecting such reversal, and award all other relief that it deems just and proper.

Respectfully submitted this 28th day of April, 2016.

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By Counsel.



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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

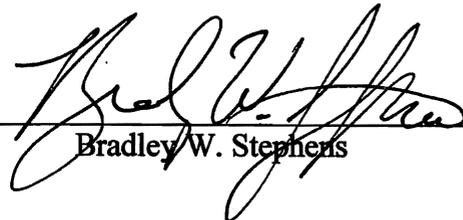
CERTIFICATE OF SERVICE

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

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