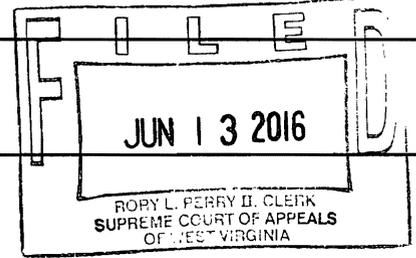


**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA**

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**Docket No. 16-0069**

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**DWG OIL & GAS ACQUISITIONS, LLC**  
**Plaintiff Below, Petitioner,**

v.

**Appeal from a final order  
of the Circuit Court of Marshall County  
(Civil Action No. 14-C-22)**

**SOUTHERN COUNTRY FARMS, INC.,  
HARLAN KITTLE AND BARBARA KITTLE, and  
LORI D. CARPENTER.**  
**Defendants Below, Respondents.**

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**BRIEF OF RESPONDENT, SOUTHERN COUNTRY FARMS, INC.**

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**TABLE OF CONTENTS**

TABLE OF CONTENTS ..... i

TABLE OF AUTHORITIES ..... ii

I. ASSIGNMENTS OF ERROR ..... 1

II. STATEMENT OF CASE ..... 1

    A. Procedural History ..... 1

    B. Facts ..... 2

III. SUMMARY OF ARGUMENT ..... 4

IV. STATEMENT REGARDING ORAL ARGUMENT AND DECISION ..... 4

V. ARGUMENT ..... 5

VI. CONCLUSION ..... 12

CERTIFICATE OF SERVICE ..... 13

## TABLE OF AUTHORITIES

<i>Adkins v. Huff</i> , 58 W. Va. 645, 650, 52 S. E. 773, 3 L. R. A. (N. S.) 649 (1903) .....	11
<i>Bruen v. Thaxton.</i> , 28 S.E.2d 59, 126 W.Va. 330 (1943) .....	11
<i>Chapman v. Mill Creek Coal and Coke Co.</i> , 54 W. Va. 193, 196, 46 S. E. 262 (1903) .....	11
<i>Collins v. Stalnaker</i> , 131 W.Va. 543, 48 S.E.2d 430 (1948) .....	11
<i>Erwin v. Bethlehem Steel Corp.</i> , 134 W.Va. 900, 62 S.E.2d 337 (1950) .....	10
<i>Faith United Methodist Church v. Morgan</i> , 231 W.Va. 423, 745 S.E.2d 461 (2013) .....	5
<i>Griffin v. Fairmont Coal Co.</i> , 59 W. Va. 480, 53 S.E. 24 (1905) .....	11
<i>G.W. Auto Center, Inc., v. Yoursco</i> , 167 W.Va. 648, 280 S.E.2d 327 (1981) .....	11
<i>Haymaker v. General Tire Inc.</i> , 187 W.Va. 532, 420 S.E.2d 292 (1992) .....	8
<i>Kanawha Banking &amp; Trust Co. v. Gilbert</i> , 131 W.Va. 88, 101, 46 S.E.2d 225 (1947) .....	8
<i>Maddy v. Maddy</i> , 87 W.Va. 581, 105 S.E. 803 (1921) .....	5
<i>Swope v. Pageton Pocahontas Coal Co.</i> , 129 W.Va. 813, 41 S.E.2d 691 (1947) .....	11
<i>Wall v. Landman</i> , 152 Va. 889, 148 S.E. 779 (1929) .....	10
<i>Yoho v. Borg-Warner Chemicals</i> , 185 W.Va. 265, 266, 406 S.E.2d 696 (1991) .....	8

**I. ASSIGNMENTS OF ERROR<sup>1</sup>**

- A. The petitioner has claimed the lower court erred by construing Campbell Deed #1 to effect a reservation of oil and gas underlying only an excepted 50 acre parcel.
- B. The petitioner has claimed the lower court relied on parol or extrinsic evidence to construe the reservation clause of Campbell Deed #1 where the language was unambiguous.
- C. The petitioner has claimed the lower court erred by concluding the surface and mineral estates merged when their titles were held by one person.
- D. The petitioner has claimed the lower court erred in its ultimate conclusion that title to the oil and gas vested in A.B. Campbell rather than in P.P. Campbell, because of its construction of the reservation clauses in the subject deeds.

**II. STATEMENT OF THE CASE**

**A. Procedural History**

On February 21, 2014, the Petitioner filed its Complaint For Declaratory Judgment seeking construction of language in three deeds recorded with the Clerk of the County Commission of Marshall County, as to their effect upon the ownership of oil and gas

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<sup>1</sup> These Assignments of Error are the undersigned's attempt to fairly paraphrase those claimed by the petitioner, and consequently to avoid any misapprehension, the Court is referred to the Petitioner's brief for the source material.

interests conveyed and/or reserved by said deeds. (A.R. 1-31).

On April 2, 2014, the Respondent herein, Southern Country Farms, Inc. filed and served its Answer. (A.R. 32-39). There were other defendants below, some of whom were voluntarily dismissed, with the remaining being Southern Country Farms, Inc., Harlan Kittle, Barbara Kittle, and Lori D. Carpenter, all named as respondents in this appeal.

The Petitioner and Respondent<sup>2</sup> filed supportive briefs below, and after oral argument on March 20, 2015, the Court ruled by letter on July 17, 2015, followed by an Order entered on December 28, 2015 granting its relief which was favorable to the Respondents herein. (A.R. 78-83).

## **B. Facts**

The facts in this matter are not in dispute. Their legal significance is. The Petitioner asserts to own certain oil and gas interests underlying the subject tract in Marshall County, West Virginia, as does the Respondent. The Petitioner's interest comes via mesne inheritances and conveyances from one P.P. Campbell. The Respondent's interest comes via mesne inheritances and conveyances from one A.B. Campbell. The question to be resolved is which of the two Campbell gentlemen owned the oil and gas interests under the subject tract given the language employed in the various deeds to the subject property.

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<sup>2</sup> Unless otherwise designated, the term "Respondent" in this brief refers only to the Respondent, Southern Country Farms, Inc.

By deed dated April 10, 1908, 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 to sell lease release and operate the same [*sic*].” (Hereafter referred to as Campbell Deed #1). (A.R. 20-21; 61-62).

Thereafter, P.P. Campbell, Jr., conveyed the same realty back to P.P. Campbell, Sr., by 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.” (Hereafter referred to as Campbell Deed #2). (A.R. 22-23; 63-64).

Thereafter, P.P. Campbell, Sr., conveyed the same realty to A.B. Campbell by deed dated June 5, 1913, 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.” (Hereafter referred to as Campbell Deed #3). (A.R. 24-25; 65-66).

On the same day as Campbell Deed #1, April 10, 1908, and recorded in Deed Book 124, page 443, P.P. Campbell [Sr.] conveyed the 50 acres excepted in Campbell Deed #1 to himself and A.B. Campbell, in trust for the benefit of Laura McHenry, with the following language: “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 with (*sic*) 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.” (A.R. 67-68).

### **III. SUMMARY OF ARGUMENT**

The lower court did not commit error with respect to any of those assigned by the Petitioner, or otherwise. The correct interpretation of Campbell Deed #1 is that the grantor, P.P. Campbell [Sr.], conveyed to P.P. Campbell, Jr., 166 acres excepting 50 acres therefrom and reserving the oil and gas under the 50 acres only. Thereafter in Campbell Deed #2, P.P. Campbell, Jr., conveyed the real estate back to his father, P.P. Campbell, Sr., subject to the exceptions and reservations set forth in Campbell Deed #1. Thereafter in Campbell Deed #3, P.P. Campbell, Sr., conveyed the same realty to A.B. Campbell, reciting that it was the same property conveyed in Campbell Deed #2, subject however to all reservations contained in or referred to in said deed.

After Campbell Deed #2, P.P. Campbell, Sr. owned both the surface and the oil and gas by either party’s analysis of Campbell Deed #1. He then conveyed it to A.B. Campbell in Campbell Deed #3 without effectively reserving the oil and gas to himself

### **III. STATEMENT REGARDING ORAL ARGUMENT AND DECISION**

Oral argument may be deemed unnecessary pursuant to the criteria in Rule 18(a), as the dispositive issue or issues have been authoritatively decided; and 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.

#### IV. ARGUMENT

The Petitioner asserts that this Respondent and others have relied on an apparent erroneous construction of early deeds in asserting ownership of mineral interests adversely to Petitioner. This Respondent disagrees and asserts that the proper deed construction supports its ownership interest.

The Petitioner asserts that the lower court ignored the foundational rule in construing instruments, that where a valid written instrument expresses intent of the parties in plain and unambiguous language, it is not subject to judicial interpretation but will be applied and enforced according to such intent. *Faith United Methodist Church v. Morgan*, 231 W.Va. 423, 745 S.E2d 461 (2013). Respondent certainly agrees with this fundamental tenet and asserts that the lower court gave it adherent credence in its decision.

The Petitioner also asserts that the lower court considered parol or extrinsic evidence. It did not.

In Campbell Deed #1, 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 to sell lease release and operate the same [*sic*].”

A common sense reading of the whole of the deed should be employed. It is the duty of a court to construe an instrument as a whole, “taking into consideration all the parts together, and giving effect to the intention of the parties wherever that is reasonably clear and free from doubt . . .” *Maddy v. Maddy*, 87 W.Va. 581, 105 S.E. 803 (1921).

Importantly, in Campbell Deed #1, the reservation of minerals language was not connected to either the granting clause or to the description of the parcels 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 salient language was referring to reserving the coal, oil, and gas only from the 50 acre exception, and not the 116 acres 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. Consequently, the surface and oil and gas under the 116 acre tract was conveyed to P.P. Campbell, Jr. at that point in time.

Bolstering this interpretation is a deed recorded the same day and immediately prior to Campbell Deed #1. On the same date, April 10, 1908, P.P. Campbell [Sr.] conveyed 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. (A.R. 67-68). [Since this deed is discounted as irrelevant and not assigned a number by the Petitioner, it will be referred to herein as Campbell Deed #0 since it was, in time, prior to Campbell Deed #1]. The following descriptive language was used in the granting clause of 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 with (*sic*) the right to sell lease release and operate.” This is almost identical reservation language to that employed in Campbell Deed #1 in exactly the same

structure and sentence with the 50 acre tract. It is impossible for the Petitioner to argue (as it did with respect to Campbell Deed #1) that this striking similar wording somehow referred to a parcel in some other part of the deed other than the 50 acre tract since it was the only parcel addressed in this deed. The operative point being that coal, oil and gas was unarguably reserved as to the 50 acre parcel in Campbell Deed #0. We must be mindful and give credence to the fact that this is the exact same 50 acres in both deeds and almost exactly the same reservation/exception language. Then when the second deed of the day was made, Campbell Deed #1, it becomes abundantly and unambiguously clear that there was no reservation of oil and gas from anything other than the 50 acres. Consequently, in Campbell Deed #1, the oil and gas underlying the 116 acre parcel conveyed to P.P. Campbell, Jr., went with the surface conveyed to him as well.

Moreover, note that immediately after the exception language in the first deed recorded on April 10, 1908, (Campbell Deed #0) conveying the 50 acres in trust, it specifically indicated that as to the coal, oil and gas, “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*).” (Emphasis supplied). No such language was employed in the second deed of the day (Campbell Deed #1). There was therefore no intention in the second deed of the day to reserve anything to the first party, P.P. Campbell, Sr. with respect to the parcel conveyed therein. The language was merely a reference that coal, oil, and gas had been reserved from the 50 acre exception.

This is not consideration of parol or extrinsic evidence as asserted by the Petitioner. It is a deed conveying property from the very tract that is the subject of this litigation. Moreover, the

50 acre parcel conveyed is identical to the 50 acre parcel reserved in Campbell Deed #1 with the identical grantor in both deeds, and on the same day.

West Virginia law regarding application of the parol evidence rule is well-settled. “[W]here the terms of a written instrument are unambiguous, clear and explicit, extrinsic evidence of statements of any of the parties to it made contemporaneously with or prior to its execution is inadmissible to contradict, add to, detract from, vary or explain its terms, in the absence of fraud, accident or mistake in its procurement.” *Haymaker v. General Tire Inc.*, 187 W.Va. 532, 420 S.E.2d 292 (1992); *Yoho v. Borg-Warner Chemicals*, 185 W.Va. 265, 266, 406 S.E.2d 696, 697 (1991); *Kanawha Banking & Trust Co. v. Gilbert*, 131 W.Va. 88, 101, 46 S.E.2d 225, 232-33 (1947). The lower court has not considered extrinsic evidence of statements of any parties. Campbell Deed #0 does not fall within the definition of parol evidence. The lower court was free to consider any recorded document of a party that might bear relevance to the issues of the *case sub judice*.

Thereafter in Campbell Deed #2, P.P. Campbell, Jr., conveyed the same realty back to P.P. Campbell, Sr., setting forth that the conveyance was “subject to the exceptions and reservations set forth in [Campbell Deed #1], reference being here made to said deed and record for a more particular description of said exceptions and reservations.” Pursuant to Respondent’s theory, the reference to exceptions and reservations referred to a 50 acre tract not being conveyed in Campbell Deed #2. Consequently, there was again no reservation with respect to the oil and gas underlying the 116 acres conveyed.

Thereafter in Campbell Deed #3, P.P. Campbell, Sr., conveyed the same realty to A.B.

Campbell setting forth that the conveyance was “Subject, however to all the reservations as contained in or referred to in said deed.” (Said deed referring to Campbell Deed #2). Again, pursuant to Respondent’s theory, the reservations contained in the prior deed were not referencing the 116 acres conveyed. Consequently, there was again no reservation with respect to the oil and gas underlying the 116 acres conveyed. The surface and minerals went to A.B. Campbell.

Petitioner on the other hand argues that P.P. Campbell, Sr. reserved the oil and gas underlying the surface of the property conveyed to P.P. Campbell, Jr. in Campbell Deed #1 and again when he conveyed the surface to A.B. Campbell in Campbell Deed #3. Consequently, Petitioner argues that P.P. Campbell, Sr. died owning the oil and gas interest, passing it to his heirs rather than it passing down through A.B. Campbell through his heirs to the Respondent (and others).

First, as aforesaid, P.P. Campbell, Sr., did not reserve the oil and gas under the 116 acres in Campbell Deed #1 as aforesaid. But even if he did, Campbell Deed #2 makes it irrelevant.

In Campbell Deed #2, P.P. Campbell, Jr. conveyed the 116 acres back to his father, P.P. Campbell, Sr. At this point P.P. Campbell owned the surface and the oil and gas underlying the 116 acres, whether by prior reservation (Petitioner’s viewpoint), or by conveyance in the instant Campbell Deed #2 (Respondent’s viewpoint).

So, assuming for this purpose, *arguendo*, that the grantor, P.P. Campbell, Sr., did somehow effectively reserve the minerals in Campbell Deed #1 from the subject tract, the same became extinguished when he got title back in Campbell Deed #2. At that point, it cannot be disputed that he owned both the surface and the minerals as a combined unity. 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 only 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.

It cannot be disputed that 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 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. By contrast, we see that he certainly knew how to except and reserve to himself with particularity, i.e. “reserved to the first party,” as he effectively did so before in Campbell Deed #0.

Reservations in deeds are to be strictly construed against the grantor. *Erwin v. Bethlehem Steel Corp.*, 134 W.Va. 900, 62 S.E.2d 337 (1950); *Wall v. Landman*, 152 Va. 889, 148 S.E. 779 (1929). 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. Stalaker*, 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)<sup>3</sup>.

Consequently, in Campbell Deed #3, A.B. Campbell was conveyed the surface and the minerals. This Respondent (and any other similarly situated) takes title through the A.B. Campbell line and therefore owns the minerals under its portion of the subject property.

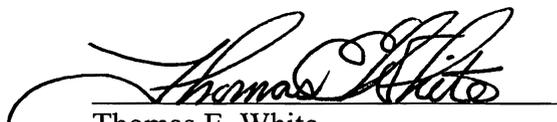
#### IV. CONCLUSION

The ruling of the circuit court was correct and should be affirmed.

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<sup>3</sup> The Petitioner’s time spent trying to distinguish away the case of *Bennett v. Smith*, 136 W.Va. 903, 69 S.E.2d 42 (1952) is unimportant. This scrivener does not rely on Bennett deeming it to be factually inapt.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Thomas E. White", is written over a horizontal line. The signature is fluid and cursive.

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**CERTIFICATE OF SERVICE**

Service of the foregoing **BRIEF OF RESPONDENT, SOUTHERN COUNTRY FARMS, INC.** was had upon the petitioners by mailing a copy thereof to the following, by first class U.S. Mail, this 11<sup>th</sup> day of June, 2016:

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