
Texas Supreme Court Ruling Requires Careful Analysis of Mineral Deeds

Gray Reed Legal Alert

August 9, 2017

On June 23, 2017, the Texas Supreme Court issued its opinion in *Wenske v. Ealy*. The issue in this case was whether a deed passed the entire burden of a non-participating royalty interest to the grantees or proportionately burdened the grantor and grantees' interest with the NPRI. In so doing, the Court highlighted the distinction between a "reservation from" and "exception to" a mineral conveyance and re-affirmed that reviewing courts must focus on the parties' intent and must not resort to default rules for resolving deed disputes (much to the consternation of those desiring clear rules for deed interpretation).

The Facts: In 1988, the Wenskes purchased a 55-acre mineral estate from Marian Vyvjala, Margie Novak and others. Vyvjala and Novak each reserved a 1/8 NPRI (i.e, a total 1/4 NPRI) for 25 years (the "Vyvjala NPRI"). In 2003, the Wenskes conveyed the property to the Ealys by warranty deed. The deed stated the conveyance was "subject to the Reservations from Conveyance and Exceptions to Conveyance and Warranty" listed in the deed. The deed then reserved a 3/8ths royalty to the Wenskes and *excepted* the Vyvjala NPRI from the conveyance and warranty. The "Reservation" and "Exception" clauses read as follows:

Reservations from Conveyance:

For Grantor and Grantor's heirs, successors, and assigns forever, a reservation of an undivided 3/8th of all oil, gas, and other minerals in and under and that may be produced from the Property. If the mineral estate is subject to existing production or an existing lease, the production, the lease, and the benefits from it are allocated in proportion to ownership in the mineral estate.

Exceptions to Conveyance and Warranty:

Undivided one-fourth (1/4) interest in all of the oil, gas and other minerals in and under the herein described property, reserved by Marian Vyvjala, et al for a term of twenty-five (25) years in instruments recorded in Volume 400, Page 590 of the Deed Records of Lavaca County, Texas, together with all rights, express or implied, in and to the property herein described out of or connected with said interest and reservation, reference to which instrument is here made for all purposes.

The Fight: Eventually, a dispute arose about whose interest was burdened by the Vyvjala NPRI. The Wenskes claimed their 3/8ths interest was not burdened by the Vyvjala NPRI at all

while the Ealys claimed the Vyvjala NPRI burdened the parties' mineral estates in proportion to their fractional ownership in the minerals. The Trial Court granted summary judgment in favor of the Ealys, and the Court of Appeals affirmed.

The Texas Supreme Court affirmed as well. The Court focused on the deed's Subject-to clause, noting it made the Wenskes' conveyance of their mineral interest "subject to" both the "Reservations from Conveyance" and "Exceptions to Conveyance and Warranty." The deed clearly "reserved" to the Wenske's a 3/8 royalty interest. And, by listing the Vyvjala NPRI as an "Exception[]" from Conveyance and Warranty," the Court held the deed put the Ealys on notice the conveyance did not include the portion of the mineral interest subject to the Vyvjala NPRI, thus protecting the Wenske's from a warranty claim. It did not, as the dissent and some commentators have argued, make the Ealys' 5/8 royalty interest "subject to" the entire Vyvjala NPRI. The Court noted that a "severed fraction of a royalty interest"—like a NPRI—generally burdens the entire mineral interest from which it is carved out. The Court held the deed from the Wenskes to the Ealys did not contain any language that would alter that general rule and cause the 5/8ths mineral interest conveyed to the Ealys responsible for the entire Vyvjala NPRI.

The Fallout: The confusion this case creates stems from the Court's continued efforts to discourage the use of default rules when interpreting oil and gas documents. The Court of Appeals based its decision on a decades-old default rule that in the absence of language to the contrary, a deed conveying a portion of a mineral estate subject to an NPRI subjects the conveyed and reserved mineral interest to the NPRI proportionately. The Texas Supreme Court held the use of "mechanical rules of construction" like this was improper. Instead, reviewing courts must engage in a "careful and detailed examination" of a deed "in its entirety" to determine how to allocate an NPRI. The Court then stated that, "Going forward, drafters of deeds should endeavor to plainly express the parties' intent within the four corners of the instrument they execute." But, the Court ignored the fact its own holding was based on a default rule. That is, the rule that in the absence of language to the contrary, an NPRI burdens the conveyed and reserved mineral estate proportionately. In so doing, the Court created a source of uncertainty for interpreters of mineral deeds—the exact opposite of what it sought out to do.

Case: Wenske v. Ealy, No. 16-0353, 2017 WL 2719330 (Tex. June 23, 2017)

About the Author

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