Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-14-00711-CV

Peter J. **DRAGON**,
Appellant

v.

Charles E. **HARRELL** and Hollis R. Harrell,
Appellees

From the 218th Judicial District Court, Karnes County, Texas
Trial Court No. 13-11-00232-CVK
Honorable Donna S. Rayes, Judge Presiding

Opinion by: Patricia O. Alvarez, Justice

Sitting: Rebeca C. Martinez, Justice
Patricia O. Alvarez, Justice
Luz Elena D. Chapa, Justice

Delivered and Filed: March 30, 2016

REVERSED AND REMANDED

This appeal centers on what type of royalty interest was reserved in a warranty deed. Appellant Peter Dragon argues the deed reserved a fraction of interest: one-half of whatever royalty was paid on the oil and gas produced. Appellees contend the deed reserved—as a royalty—a fractional interest: one-half of all the oil and gas that was produced. The trial court granted Appellees' motion for summary judgment, awarded them attorney's fees, and Dragon appeals.

Applying a holistic approach that considers all of the deed's words and parts in context, we conclude the deed reserved a fraction of royalty interest: one-half of 15/16ths of whatever royalty

is to be paid on the oil, gas, and minerals produced from the property. We reverse the trial court's judgment, render judgment for Appellant, and remand this cause to the trial court solely for reconsideration of any award of attorney's fees.

BACKGROUND

In 1991, Hollis R. and Mary Harrell (the Harrell grantors) conveyed by warranty deed (the Harrell deed) approximately ten acres of land to Peter and Sharon Dragon. Later, Sharon conveyed her interest to Peter, and Peter became the sole owner of the surface estate and whatever mineral estate was conveyed by the Harrell deed. The Harrell deed was subject to prior reservations that affected the mineral estate, as well as a new reservation in favor of the Harrell grantors—the Harrell reservation.

In November 2013, Appellees Charles E. Harrell and Hollis R. Harrell sued Dragon. They sought a declaratory judgment that the Harrell deed "reserved a one-half (½) royalty interest in the Subject Land"; they also sought attorney's fees and costs. Dragon counterclaimed and sought a declaratory judgment that the Harrell deed "reserved a one-half (½) fraction of royalty interest in the Property." Both sides filed traditional motions for summary judgment. The trial court denied Dragon's motion and granted Appellees' motion; Dragon appeals.

STANDARD OF REVIEW

To prevail on a traditional motion for summary judgment, the movant must show "there is no genuine issue as to any material fact and the [movant] is entitled to judgment as a matter of law." TEX. R. CIV. P. 166a(c); *accord Nixon v. Mr. Prop. Mgmt. Co.*, 690 S.W.2d 546, 548 (Tex. 1985). If the facts are not in dispute, we review de novo the questions of law to determine whether the trial court properly determined that the movant was entitled to judgment. *See* TEX. R. CIV. P. 166a(c); *Nixon*, 690 S.W.2d at 548. "When both sides move for summary judgment and the trial court grants one motion and denies the other, [we] review both sides' summary judgment

evidence[,] . . . determine all questions presented[,] . . . [and] render the judgment that the trial court should have rendered." *FM Props. Operating Co. v. City of Austin*, 22 S.W.3d 868, 872 (Tex. 2000) (citations omitted); *accord Mann Frankfort Stein & Lipp Advisors, Inc. v. Fielding*, 289 S.W.3d 844, 848 (Tex. 2009).

DEED CONSTRUCTION

In construing a deed, our primary concern is to determine the parties' intentions as expressed by the words the parties used. *See Hysaw v. Dawkins*, No. 14-0984, 2016 WL 352229, at *4 (Tex. Jan. 29, 2016) (citing *Luckel v. White*, 819 S.W.2d 459, 461–62 (Tex. 1991)); *Coker v. Coker*, 650 S.W.2d 391, 393 (Tex. 1983). Looking within the four corners of the document, we read the instrument as a whole and give meaning to all its words and parts. *Hysaw*, 2016 WL 352229, at *8; *Luckel*, 819 S.W.2d at 462; *Coker*, 650 S.W.2d at 393. We do not isolate a single clause or phrase and give it predominance; rather, we construe it and all the other words and phrases together and in context. *Hysaw*, 2016 WL 352229, at *8; *J.M. Davidson, Inc. v. Webster*, 128 S.W.3d 223, 229 (Tex. 2003); *Luckel*, 819 S.W.2d at 462. We adopt the construction that gives meaning to all the words and phrases and that does not render any provision meaningless. *Coker*, 650 S.W.2d at 393; *see also Italian Cowboy Partners, Ltd. v. Prudential Ins. Co. of Am.*, 341 S.W.3d 323, 333 (Tex. 2011).

ANALYSIS

The parties agree that Dragon owns the mineral estate conveyed in the Harrell deed—subject to the deed's provisions—but they disagree on the meaning of the Harrell reservation.

A. Parties' Arguments

Dragon argues that because "the [reserved] interest consists of 'the royalty on oil, gas and other mineral[s],' and not 'all of the oil, gas and other minerals,' the [Harrell] Reservation clearly creates a fraction of royalty." He asserts "the reserved interest comes out of 'the royalty on oil,

gas and other minerals.'" Appellees contend the Harrell reservation "reserved a fixed fractional royalty interest entitling [them] to . . . one-half (1/2) of total production of the oil and gas produced from the Subject Land."

B. Harrell Reservation

We begin by reciting the deed's relevant provisions.[1] The Harrell deed conveyed the surface and mineral estates for the land described in the deed, but the conveyance was limited by prior reservations and by a reservation the Harrell grantors added. The Harrell reservation—the center of the parties' dispute—reads as follows:

> SAVE AND EXCEPT HOWEVER, and there is hereby reserved unto the GRANTORS, their heirs and assigns, a free non-participating interest in and to the royalty on oil, gas and other mineral in and under the hereinabove described property consisting of ONE-HALF (1/2) of the interest now owned by Grantors together with ONE-HALF (1/2) of the reversionary rights in and to the presently outstanding royalty in on and under said property, perpetually from date hereof. It being understood and hereby provided, however, that GRANTORS, their heirs or assigns, shall not be entitled to participate in the bonus money or annual delay rentals paid, or to be paid, under any present or future oil, gas and mineral lease on said premises, and that it shall not be necessary for GRANTORS, their heirs or assigns, to join in the execution of any future oil, gas or mineral lease or leases on said premises.

The Harrell reservation specifies it reserves a "non-participating interest in and to the royalty" that consists of "the interest now owned by Grantors" and "the reversionary rights in and to the presently outstanding royalty." Reading the deed as a whole, we conclude these quoted phrases refer to the prior reservations, and the proper construction of the Harrell reservation depends on the prior reservations. *See Heritage Res., Inc. v. NationsBank*, 939 S.W.2d 118, 121 (Tex. 1996) ("[W]e examine the entire document and consider each part with every other part so that the effect and meaning of one part on any other part may be determined.").

[1] We have reviewed the *entire* deed and we construe its provisions as a whole and in context, but we recite only those portions that affect or inform the disputed Harrell reservation.

C. Prior Reservations

The four prior reservations were listed in the Harrell deed as follows:

> This conveyance is made SUBJECT, HOWEVER, to the following:
>
> 1. Mineral Reservation contained in, and herein quoted verbatim, from a Deed of Conveyance to Claude D. Winerich, from Frank A. Winerich and Ida Lee Winerich, dated February 17, 1940, recorded in Volume 118, Page 615-616, of the Deed Records of Karnes County, Texas, said reservation being as follows, to-wit:
>
> "It is expressly agreed under this conveyance that the Grantors hereby retain one-sixteenth (l/16th) or one-half (l/2) of the one-eighth (l/8th) of all minerals in, on and under said above described 611 acres, said interest to be a participating interest."
>
> 2. An undivided one-fourth (l/4th) interest in and to all of the oil royalty, gas royalty and royalty in other minerals reserved for the natural life of C. D. Winerich and Dorice Winerich, and contained in that certain Deed of Conveyance from C. D. Winerich and Dorice Winerich to Frances W. Bowers, said Deed of Conveyance being recorded in Volume 240, Pages 267–269, of the Deed Records of Karnes County, Texas.
>
> 3. Deed from Claude Winerich to the County of Karnes, et al., dated November 24, 1950, recorded in Volume 195, Page 575, of the Deed Records of Karnes County, Texas.
>
> 4. Lease from Dorice Winerich to Continental Oil Corporation, dated June 29, 1977, recorded in Volume 468, Page 120, of the Deed Records of Karnes County, Texas.

D. Prior Reservations Reduced Conveyable Estate

Because the parties do not argue or discuss prior reservations provisions 3 or 4, and those reservations do not affect the questions before us, we do not address them. The parties discuss prior reservations provisions 1 and 2, and we address them below and consider their effects on the conveyed mineral estate.

1. First Prior Reservation: 1940 Deed Reservation

The first prior reservation was for a participating interest—meaning one which may participate in each of the rights of a mineral estate. "[A] mineral estate is comprised of five severable rights: '1) the right to develop, 2) the right to lease, 3) the right to receive bonus payments, 4) the right to receive delay rentals, and 5) the right to receive royalty payments.'"

Hysaw, 2016 WL 352229, at *5 (quoting *French v. Chevron U.S.A. Inc.*, 896 S.W.2d 795, 797 (Tex. 1995)); *see Altman v. Blake*, 712 S.W.2d 117, 118 (Tex. 1986). The 1940 deed from Frank and Ida Winerich reserved "one-sixteenth (l/16th) or one-half (l/2) of the one-eighth (l/8th) of all minerals in, on and under said above described 611 acres, said interest to be a participating interest." By its plain language, the 1940 deed reserved to Frank and Ida one-sixteenth of the mineral estate. *See Concord Oil Co. v. Pennzoil Expl. & Prod. Co.*, 966 S.W.2d 451, 459 (Tex. 1998) (distinguishing a royalty interest and a mineral estate); *French*, 896 S.W.2d at 797; *Altman*, 712 S.W.2d at 118. Consistent with this plain language interpretation of the reservation, Appellees acknowledge the Harrell grantors owned "15/16 of the mineral estate." Thus, the 1940 deed reserved one-sixteenth of all five of the severable rights: i.e., the rights to develop, to lease, and to receive bonus, delay rentals, and royalty payments. *See French*, 896 S.W.2d at 797; *Altman*, 712 S.W.2d at 118.

2. Second Prior Reservation: Bowers Deed Life Estate

The second prior reservation was for "an undivided one-fourth (1/4th) interest in and to all of the oil royalty, gas royalty and royalty in other minerals reserved for the natural life of C. D. Winerich and Dorice Winerich." This reservation created a life estate of one-fourth of whatever royalty was paid on any oil, gas, or other minerals produced. *See Schlittler v. Smith*, 101 S.W.2d 543, 544–45 (Tex. 1937). At the time of the Harrell deed's execution, Dorice Winerich was still living, and the Harrell grantors' estate was reduced by this life estate, but the Harrell grantors' estate retained the reversionary interest. *See El Dorado Land Co., L.P. v. City of McKinney*, 395 S.W.3d 798, 802 n.7 (Tex. 2013) ("[A] 'reversion' is 'a future interest retained by the transferor that could become possessory upon the termination of a life estate . . . .'" (quoting RESTATEMENT (THIRD) OF PROPERTY § 25.2 cmt. b. (AM. LAW INST. 2000)).

3. Harrell Grantors' Remaining Mineral Estate

Given these two prior reservations, at the time the Harrell deed was executed, the Harrell grantors could convey only the following: 15/16 of the mineral estate, less a life estate in a one-fourth floating royalty interest, but with a reversionary interest to that then-outstanding life estate royalty interest. *See Cockrell v. Tex. Gulf Sulphur Co.*, 299 S.W.2d 672, 675 (Tex. 1956) ("We take it that no authority need be cited for the proposition that a deed can pass no greater estate than that owned by the grantor."). We conclude this is the mineral estate the Harrell grantors owned before they executed the Harrell deed, a warranty deed.

E. Harrell Deed, Reservation

1. Harrell Deed Conveyed Mineral Estate

"[A] warranty deed will pass all of the estate owned by the grantor at the time of the conveyance unless there are reservations or exceptions which reduce the estate conveyed." *Id.*; *Graham v. Prochaska*, 429 S.W.3d 650, 655 (Tex. App.—San Antonio 2013, pet. denied); *see Lesley v. Veterans Land Bd.*, 352 S.W.3d 479, 486 (Tex. 2011). Thus, except for the Harrell reservation, the Harrell deed conveyed all the mineral estate the Harrell grantors owned including their rights to develop, to lease, and to receive bonus, delay rentals, and royalty payments. *See French*, 896 S.W.2d at 797 (bundle of sticks); *Altman*, 712 S.W.2d at 118 (same); *Cockrell*, 299 S.W.2d at 675 (estate conveyed). The Harrell reservation's plain language confirms this transfer of rights when it identifies the reservation as a "non-participating" interest and expressly disavows the rights

> to participate in the bonus money or annual delay rentals paid, or to be paid, under any present or future oil, gas and mineral lease on said premises, and that it shall not be necessary for GRANTORS, their heirs or assigns, to join in the execution of any future oil, gas or mineral lease or leases on said premises.

2. Essential Phrases Defining Reservation

The Harrell reservation defines the interest it reserves as a "non-participating interest in and to the royalty on oil, gas and other mineral[s]." *See Coghill v. Griffith*, 358 S.W.3d 834, 838 (Tex. App.—Tyler 2012, pet. denied) (citing *Schlittler*, 101 S.W.2d at 544–45) (deciding the clause "'an undivided one-eighth (1/8) interest in and to all of the oil royalty [and gas royalty]'" described a fraction of royalty) (alteration in original). *See generally* PATRICK H. MARTIN & BRUCE M. KRAMER, WILLIAMS & MEYERS, OIL AND GAS LAW § 327.2 (5th ed. 2014) (providing examples of phrases that indicate a fraction of royalty such as "1/16 of all oil royalty" and "[a]n undivided one-half interest in and to all of the royalty"). The Harrell reservation does not identify the interest as being in and to the oil, gas, and other minerals; it unambiguously states it is an interest in the *royalty* on those minerals. After it has clearly identified the reserved interest whole—a non-participating interest to the royalty on the oil, gas, and other minerals produced from the land—it uses the expression "consisting of" to identify the two parts that make up the whole: "ONE-HALF (1/2) of the interest now owned by Grantors together with ONE-HALF (1/2) of the reversionary rights in and to the presently outstanding royalty in on and under said property, perpetually from date hereof." *See* SHORTER OXFORD ENGLISH DICTIONARY 497 (6th ed. 2007) (defining consist as "[being] made up or composed of").

a. <u>"[I]nterest [N]ow [O]wned"</u>

The first part of the whole is "the interest now owned by Grantors." This phrase recognizes that the royalty interest being reserved was reduced by the prior reservations. *See Heritage Res.*, 939 S.W.2d at 121. The first prior reservation—the 1940 deed—included a reservation of 1/16th of the royalty interest and the second prior reservation—the Bowers deed life estate—reserved "an undivided one-fourth (1/4th) interest in and to all of the [remaining royalty]" as a life estate. Thus, "the interest now owned by Grantors" had been reduced by each of these two prior reservations.

b. Reversionary Rights

The second part of the whole is "ONE-HALF (1/2) of the reversionary rights in and to the presently outstanding royalty in on and under said property, perpetually from date hereof." This phrase reserved one-half of the reversionary interest in the outstanding royalty life estate to the Harrell grantors rather than allowing the entire reversionary interest to be conveyed to Dragon. *See Cockrell*, 299 S.W.2d at 675; *Graham*, 429 S.W.3d at 655.

3. Logical Construction

Reading the entire deed with all its words and parts, and recognizing that the royalty interest whole consists of its parts, we conclude that the phrase "the interest now owned by Grantors" means the *royalty* interest owned by the Harrell grantors at the time the Harrell deed was executed. *See Hysaw*, 2016 WL 352229, at *5. This construction gives meaning to each phrase, does not create any inconsistencies, and does not render any phrase meaningless. *See J.M. Davidson, Inc.*, 128 S.W.3d at 229; *Coker*, 650 S.W.2d at 393.

4. Appellees' Construction

On the other hand, Appellees contend the phrase "the interest now owned by Grantors" means the entire estate the Harrell grantors then owned at the time the Harrell deed was executed. But if "the interest now owned by Grantors" meant the entire estate the Harrell grantors then owned, the remainder of the sentence—"together with the ONE-HALF (1/2) of the reversionary rights in and to the presently outstanding royalty"—would be rendered meaningless. *Contra Coker*, 650 S.W.2d at 393. If "the interest now owned by Grantors" meant all the estate the Harrell grantors owned, that phrase alone would include any reversionary rights, and there would be no need to again reserve one-half of the reversionary rights. *See Lesley*, 352 S.W.3d at 486. We cannot adopt a construction that would render the reversionary rights phrase meaningless. *See Coker*, 650 S.W.2d at 393.

F. Proper Construction

To construe the Harrell reservation, we began by reading the entire deed with all its words and parts. *See Hysaw*, 2016 WL 352229, at *8; *Coker*, 650 S.W.2d at 393. We then considered the words and phrases in the reservation in conjunction with all the other words and parts including the prior reservations. *See Hysaw*, 2016 WL 352229, at *8; *Coker*, 650 S.W.2d at 393. We also considered the undisputed fact that before the underlying suit was filed, the life estate beneficiaries passed away and the life estate reverted accordingly. Having examined the deed as a whole, its parts, and "the effect and meaning of one part on any other part," *see Heritage Res., Inc.*, 939 S.W.2d at 121, we conclude the Harrell deed reserved to the Harrell grantors a fraction of royalty interest: one-half of 15/16ths of whatever royalty is to be paid from the land, *see Coghill*, 358 S.W.3d at 838 (citing *Schlittler*, 101 S.W.2d at 544–45).

G. Competing Motions for Summary Judgment

Having construed the deed as a matter of law, we turn to the trial court's disposition of the motions for summary judgment. Appellees moved for summary judgment on the basis that the deed reserved a fixed fraction of the oil, gas, and minerals produced from the land. Dragon moved for summary judgment on the basis that the deed reserved a floating fraction of royalty. Because the deed reserved only a floating fraction of royalty interest, the trial court erred when it granted Appellees' motion and denied Dragon's motion. We reverse the trial court's judgment and render judgment that the Harrell deed reserved a fraction of royalty interest—one-half of 15/16ths of whatever royalty is to be paid on the oil, gas, and other minerals produced from the property. *See FM Props. Operating Co.*, 22 S.W.3d at 872; *Mann Frankfort*, 289 S.W.3d at 848.

ATTORNEY'S FEES

In their respective petitions, Dragon and Appellees sought a declaratory judgment in their favor construing the reservation according to their respective view. Citing the authority to award

fees as part of a declaratory judgment action, the trial court awarded attorney's fees to Appellees. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 37.009 (West 2014); *Ridge Oil Co., Inc. v. Guinn Invs., Inc.*, 148 S.W.3d 143, 161 (Tex. 2004). Because the trial court erred when it granted Appellees' motion and denied Dragon's motion, we also reverse the trial court's award of attorney's fees.

CONCLUSION

The Harrell deed is unambiguous and we have construed it as a matter of law. Having applied a holistic approach that considers all of the deed's words and parts in context, we conclude the Harrell deed reserved a floating fraction of royalty interest to the Harrell grantors: one-half of 15/16ths of whatever royalty is to be paid on the oil, gas, and minerals produced from the property.

The trial court erred when it denied Dragon's motion for summary judgment, granted Appellees' motion for summary judgment, and awarded Appellees attorney's fees. We reverse the trial court's judgment and render judgment for Appellant. In light of our decision, we remand this cause to the trial court solely for it to reconsider any award of attorney's fees.

Patricia O. Alvarez, Justice