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Texas Court of Appeals Decides Major Mineral Ownership Row

Energy Law, Mineral Leases, Royalty Disputes, Title Disputes / December 22, 2017

On December 14, 2017, the Corpus Christi Court of Appeals decided *Haywood WI Units, Ltd. v. B&S Dunagan Investments, Ltd., et al.*, a long-running dispute over the ownership of minerals in Liberty County. The decision addresses mineral deed interpretation issues and the recoverability of attorneys' fees under the declaratory judgment statute where non-possessory interests such as royalties are being adjudicated.

The dispute arose from the interpretation of a 1972 General Warranty Deed ("Deed"). That deed conveyed numerous parcels of property (approximating 15,000 acres) in Liberty County to Marvy Finger, but retained to the selling family (the "Heirs") an interest in the minerals. Thereafter, Finger conveyed half of his interest in the minerals to a joint venture, among other purchasers. Several years later the joint venture sold half of its interest to Haywood. This dispute relates to the northwest quarter of a 640-acre tract included in the 15,000 acres.

Finger, the Heirs and other interest owners entered into mineral leases with Crimson Exploration, in order to produce oil and gas on the pertinent tract. On three separate occasions, the Heirs entered into leases by themselves with Crimson; Finger and Haywood did not join in the leases. Production began and continued for some time and Crimson paid royalties to the Lessors as well as amounts to Haywood commensurate with his unleased interest.

In 2011, a "correction deed" was circulated to all parties interested under the original Deed seeking to affirm the Heirs' executive rights. All interested parties, other than Haywood, signed the proposed correction deed. Instead, Haywood sued the Heirs and Crimson. He argued that, under the 1972 Deed, the Heirs had actually conveyed their entire mineral interest. He further asserted that the Heirs were only due royalties when and if he signed a mineral lease. Therefore, Haywood argued that Crimson and the Heirs owed it the royalties paid to the Heirs.

The 1972 Deed provides, in relevant part:

> For any of those properties described in Exhibit "A" in which the Grantors collectively own, prior to this conveyance, one-half or more (but less than 100%) of all of the oil, gas and other minerals in, on and under any of the properties described in Exhibit "A" provided, that the Grantors join with Grantee, his successors or assigns, in any future oil, gas, and/or mineral leases covering any of said properties (which right to join in such leases is hereby reserved to Grantors), *then the oil, gas and mineral lease bonuses, rental, royalties or other sums to be received under or for the lease will be allocated so that the Grantors (collectively) and the Grantee shall share equally in the mineral lease bonuses, rental, royalties or other sums received.*

In the trial court, Crimson, the Heirs and Haywood all moved for summary judgment on, among other issues, the proper interpretation of the 1972 Deed. The Court granted the Heirs' and Crimson's motions. It found that the Heirs had reserved one-quarter of all bonuses, delay rentals, and royalties and had retained executive rights. The Court also awarded attorneys' fees pursuant to the declaratory judgment statute.

The Court of Appeals affirmed. In doing so, it first considered Haywood's argument that the above excerpt of the Deed only reserved to the Heirs the right to receive a royalty if Haywood signed a lease. The Court rejected that argument. Instead, the Court concluded that the clause clearly provided for the Heirs and Finger "to share equally in the mineral lease bonuses, rental, royalties and other sums received from the 640 acre-tract."

In so ruling, the Court relied on *Luecke v. Wallace*, 961 S.W.2d 257 (Tex. App.—Austin, 1997, no writ). In *Luecke*, the deed reserved to the grantor an undivided one-half non-participating royalty interest in the royalties reserved by the grantee, "at any time in the future and which may be payable to Grantee, his heirs and assigned under any future lease of the property." There, the appellant argued, just as Haywood argues here, that the terminology of the Deed—"reserved … in the future" and "under any future lease"—precluded vesting of the royalty interest until a lease was, in fact, executed. The Austin Court of Appeals disagreed. It held that neither oil and gas production nor a lease was necessary for the royalty interest to be a vested present interest. Rather, all the royalty owner had to show was a "present right" to a share of production in the future.

Having concluded that the Heirs had a one-fourth royalty, the Court did not address whether they had also retained executive rights. The Court reasoned that, since Crimson had paid Haywood his one-sixteenth share of production, he could have suffered no damages even if the Heirs did not have the right to lease to Crimson.

Finally, the Court considered whether the award of attorneys' fees under the Declaratory Judgments Act was correct. Haywood contended that the lawsuit was not properly filed as a declaratory judgment action, allowing for the recovery of attorneys' fees, and maintained that instead the suit was really a suit for trespass to try title, which does not allow for the recovery of fees. The Heirs and Crimson argued that, since royalties, bonuses and delay rentals are all non-possessory interests, they are not properly adjudicated in a trespass to try title case. The Corpus Christi court agreed.

Tom Ciarlone, represented the Heirs at trial and on appeal.