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Where Does the Mineral Estate End and the Surface Begin?

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In *Lightning Oil Co. v. Anadarko E&P Onshore, LLC*, the Texas Supreme Court recently declined to consider an appeal from a Fourth Court of Appeals decision denying Lightning's request for a temporary injunction that would have blocked Anadarko from drilling through its mineral estate. Although the Court did not state its reasons in declining to hear the appeal, one surmises it is because the merits had already been decided. It is the merits issues which make the case noteworthy

Lightning owns a mineral lease in Dimmit County Texas. Briscoe Ranch, Inc. owns the surface. Anadarko is the lessor under a mineral lease giving it the right to develop the mineral estate underlying the nearby Chaparral Wildlife Area (the "Chaparral WMA"). Anadarko's lease obligated it to drill offsite "when prudent and feasible." Anadarko attempted to obtain a surface-use agreement from the Texas Parks and Wildlife Department (the "TWPD") so that it could drill on the surface of the Chaparral WMA, but couldn't reach agreement with the TPWD. Consequently Anadarko sought and obtained a Surface Use and Subsurface Agreement from the Briscoe Ranch. Anadarko's plan was to drill wells on Briscoe Ranch land that would extend through—but not produce from—Lightning's leasehold. Anadarko advised Lightning of its intentions.

Lightning opposed Anadarko's plan and discussions between the two regarding the dispute ultimately came to a halt. Thereafter, Lightning filed suit against Anadarko alleging claims for trespass and tortious interference with contract and sought a declaratory judgment and injunctive relief. The trial denied a request for a temporary injunction, and Lightning then appealed the denial. On appeal the Court found that Lightning had not proven injuries to its mineral estate that were probable and imminent nor that such injuries could not be quantified or compensated.

Anadarko moved for summary judgment on the merits in the trial court. That motion was granted. On appeal, the Fourth Court of Appeals affirmed. It reasoned that "Lightning does not own or control the earth surrounding any hydrocarbon molecules that may lie within the boundaries of its lease." It went on to conclude that: "[a]s the surface owner, Briscoe Ranch controls the surface and subsurface; it may grant Anadarko permission to site a well on its ranch, drill though the earth within the Boundaries of [Lightning's leasehold estate], and directionally alter its wellbore into" Anadarko's leasehold estate. While observing that Anadarko could not lawfully produce minerals from Lightning's mineral estate without Lightning's permission, the Court went on to say that Anadarko could, with Briscoe Ranch's permission, lawfully "penetrate the earth under the Briscoe Ranch to access Anadarko's mineral estate ...." Since Anadarko had permission from the Briscoe Ranch to site its well on Briscoe Ranch's land the Court decided that there was no evidence of trespass and, further, that any interference with Lightning's lease was permissible because of the rights Anadarko acquired from Briscoe Ranch.

Pending a decision from the Texas Supreme Court, the effect of this decision suggests that it would be wise as a matter of drafting to directly address who controls the subsurface geologic formations, especially given the prevalence of horizontal drilling. In this case, the deed severing the mineral estate did not address who had the right to control the earth underlying

the surface. Furthermore, the case does not address whether the result would have been different had the lease to Lightning been made before the mineral estate had been severed from the surface. That question may be answered later.