

STATE OF MICHIGAN
COURT OF APPEALS

E.V. ZIOBRON, W.T. ZIOBRON, and E.G.
ZIOBRON,

UNPUBLISHED

Plaintiffs-Appellants,

v

No. 195090

Otsego Circuit Court

MARVIN L. WILKIE and MARJORIE E. WILKIE,

LC No. 93-005750 CK

Defendants-Appellees,

and

RICHARD H. FRUEHAUF, JR. and H.R.F.
ANTRIM LTD PARTNERSHIP,

Defendants.

Before: O'Connell, P.J., and White and Bandstra, JJ.

O'CONNELL, P.J., (concurring in part and dissenting in part).

I concur with the well-written lead opinion and its conclusion that the trial court erred and should be reversed. However, I write separately to observe that neither the land contract nor the warranty deed contains a reservation of the oil and gas rights. Neither document is ambiguous and both clearly transfer to plaintiffs all of defendants' interest in the subject property. We invite much mischief if we allow recalcitrant sellers to reform contracts and deeds some twenty-four years after they have been executed, especially when significant oil and gas reserves have been discovered in the geographical region.

While I concur with the majority opinion's discussion and legal analysis, I disagree with its order to remand this case to the trial court for further fact finding. The trial court found as a matter of fact that there existed neither mutual mistake nor unilateral mistake accompanied by fraud. This determination precludes reformation of the deed. Remanding this case for further fact finding is simply a waste of judicial resources.

In summary, I would reverse the trial court and award plaintiffs the benefit of their purchase, including all of the oil and gas rights previously owned by defendants. I would also direct the trial court on remand to quiet title in plaintiffs' favor. I would decline to remand for further findings of fact, as the present record is sufficient for this Court to resolve the issues in dispute. I concur with the lead opinion that the issue of damages must be addressed, and that this Court need not retain jurisdiction.

/s/ Peter D. O'Connell