

**IN THE COURT OF APPEALS OF OHIO**

SEVENTH APPELLATE DISTRICT  
HARRISON COUNTY

PATRICIA CAROL SMITH, et al.,

Plaintiffs-Appellants,

v.

COLLECTORS TRIANGLE, LTD., et al.,

Defendants-Appellees.

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**OPINION AND JUDGMENT ENTRY**  
**Case No. 19 HA 0010**

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Civil Appeal from the  
Court of Common Pleas of Harrison County, Ohio  
Case No. CVH-2019-0039

**BEFORE:**

Cheryl L. Waite, Gene Donofrio, David A. D'Apolito, Judges.

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**JUDGMENT:**

Reversed and Remanded.

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*Atty. Sara E. Fanning*, Roetzel & Andress, LPA, 41 South High Street, Huntington Center, 21st Floor, Columbus, Ohio 43215 and *Atty. Richard S. Mitchell*, Roetzel & Andress, LPA, 1375 East Ninth Street, One Cleveland Center, 10th Floor, Cleveland, Ohio 44114 and *Atty. David J. Wigham* and *Atty. Emily K. Anglewicz*, Roetzel & Andress, LPA, 222 South Main Street, Suite 400, Akron, Ohio 44308, for Plaintiffs-Appellants

*Atty. Andrew P. Lycans and Atty. Eric T. Michener, Critchfield, Critchfield & Johnston, LTD, 225 North Market Street, P. O. Box 599, Wooster, Ohio 44691, for Defendants-Appellees Collectors Triangle, Ltd.*

*Atty. Nathan D. Vaughn and Atty. Giuseppe Ionno, Kimble Company, 3596 S.R. 39 NW, Dover, Ohio 44622, for Defendants-Appellees ESK ORI, LLC, GDK ORI, LLC, GWK ORI, LLC, JEM ORI, LLC, KBK ORI, LLC, and RHDK Oil & Gas, LLC.*

*Atty. Kevin Colosimo, Atty. Christopher Rogers, and Atty. Daniel P. Craig, Frost Brown Todd, LLC, Union Trust Building, 501 Grant street, Suite 800, Pittsburgh, Pennsylvania 15219, for Defendant-Appellee Ascent Resources-Utica, LLC.*

Dated: September 28, 2020

**WAITE, P.J.**

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{¶1} Appellants Patricia Carol Smith, Catherine Finney, Agnes Worrell, and Doug Worrell appeal an August 27, 2019 Harrison County Court of Common Pleas judgment entry which granted a Civ.R. 12(B)(6) motion to dismiss the complaint filed by Appellees Ascent Resources Utica LLC, “Collectors Triangle” aka “Collector’s Triangle,” ESK ORI LLC, GDK ORI LLC, GWK ORI LLC, KBK ORI LLC, JEM ORI LLC, RHDK ORI LLC. Appellants argue that the court’s decision is erroneous for three reasons. First, Appellants contend that Appellees’ arguments as to the 1998 Sheriff’s Deed amount to an improper collateral attack on the trial court’s partition order. Second, the Stranger Rule to a deed does not apply where the so-called stranger owns an interest before the conveying deed is executed. Third, the 2006 General Warranty Deed conveyed only a portion of what Appellants obtained through the 1998 Sheriff’s Deed to Collector’s Triangle. For the reasons provided, Appellants’ arguments have merit and the judgment of the trial court is reversed and the matter is remanded for further proceedings consistent with this Opinion.

### Factual and Procedural History

{¶12} The instant action involves property that was initially owned by Ross Harris. The property includes two tracts of land: 103.75 acres and 63.7 acres. It appears that this appeal involves only the 63.7 acre tract. On February 2, 1984, Harris entered into an oil and gas lease with Floyd Kimble. Kimble drilled a well referred to as the “Harris Well” which began producing in 1987. In addition to the royalties associated with the well, Kimble agreed to provide the Harris house with free gas.

{¶13} On January 21, 1988, Harris died intestate and his estate was divided equally between his two children, Catherine Finney and Mildred I. Worrell. According to Appellants, the parties orally agreed that Mildred and her husband, Adrian, would receive the oil and gas royalties from the 63.7 acre tract. It is unclear whether there was any agreement as to the remaining 103.75 acre tract.

{¶14} On November 24, 1992, Mildred and Adrian conveyed their one-half interest in the property to their three children (Robert, Ross, and Patricia) in equal shares, retaining a life estate in a one-acre residence located on the 63.7 acre property. After these conveyances, Catherine owned a one-half interest in the property, Robert Worrell owned a one-sixth interest, Ross Worrell owned a one-sixth interest, and Patricia Smith owned a one-sixth interest.

{¶15} Sometime in 1997 a dispute arose between Catherine and the Worrell children regarding who was responsible for the farming and maintenance of the property. The dispute led to a partition complaint filed on November 26, 1997.

### 1997 Partition Action

{¶6} The partition complaint sought a division of the property among Catherine and the Worrell children. The complaint also sought reservation of a life estate in favor of Mildred and Adrian for a one-acre section of the property where their existing house was situated. However, on February 6, 1998, a motion for default judgment was filed against Mildred and Adrian, as they had not filed an answer. The trial court granted this motion and entered default judgment against Mildred and Adrian.

{¶7} The court ultimately determined that the property could not be fairly divided and ordered a sale of the property. On May 14, 1998, a Sheriff's Deed pertaining to the 63.7 acre tract was executed. Despite the fact that default had been entered against Mildred and Adrian, the deed provided, in relevant part:

EXCEPTING AND RESERVING UNTO Adrian Worrell and Mildred I. Worrell a life estate in the residence situate on the above described premises, being the tract consisting of 63 acres, 2 rods, and 37 perches, an unsurveyed one (1) acre square surrounding the said residence, and ingress to and egress from the said residence for and during the natural lifetimes of Adrian Worrell and Mildred I. Worrell.

FURTHER EXCEPTING AND RESERVING unto Adrian Worrell and Mildred I. Worrell the right to receive all royalties payable under a certain oil and gas lease and any extension or modification thereof, said lease being recorded in Lease Volume 69, Page 79, Records of Harrison County, Ohio.

FURTHER EXCEPTING AND RESERVING unto Adrian Worrell and Mildred I. Worrell the right to receive such gas as produced by the existing well free of charge for use at their residence.

(6/13/19 Motion to Dismiss, Exh. A.)

{¶18} The 63.7 acre property was sold to Appellee Collector's Triangle in accordance with the Sheriff's Deed, and the deed was recorded by Appellee.

2006 General Warranty Deed

{¶19} On March 4, 2005, Mildred died. Shortly thereafter, Adrian moved into an assisted living facility. Collector's Triangle approached Patricia Worrell and inquired whether the family would consider terminating Adrian's life estate in the one-acre property. On March 24, 2006, the life estate was terminated through a general warranty deed. In relevant part, the deed stated:

**KNOW ALL MEN BY THESE PRESENTS, Adrian Worrell**, an unmarried person, (the "Grantor"), for valuable consideration paid, grants, with general warranty covenants, to Collector's Triangle, Ltd., an Ohio limited liability company, whose tax mailing address is P.O. Box 473, Sugarcreek, Ohio 44681 (the "Grantee"), all of his interest in the real property described on Exhibit A (the "Property"), being an estate for life in the residence located on the Property as set forth in a certain Sheriff's Deed in Partition recorded in Official Record Volume 52, Page 163.

\* \* \*

The Property is conveyed subject to, and there are excepted from the general warranty covenants, the following:

1. All easements, leases, covenants, conditions and restrictions of record

\* \* \*

GRANTOR ALSO CONVEYS TO GRANTEE, ITS SUCCESSORS AND ASSIGNS, ALL OF GRANTOR'S RIGHT TO RECEIVE ROYALTIES AND FREE GAS IN CONNECTION WITH A CERTAIN OIL AND GAS WELL LOCATED ON THE PROPERTY AND DRILLED PURSUANT TO THE LEASE RECORDED IN LEASE VOLUME 69, PAGE 79, IN THE RECORDER'S OFFICE, HARRISON COUNTY, OHIO.

{¶10} Sometime thereafter, Ascent began horizontal drilling, which resulted in new production. Ascent paid royalties resulting from the new drilling to Collector's Triangle, and not to Appellants, which led to the instant action.

#### 2019 Complaint

{¶11} On May 13, 2019, Appellants filed a complaint against Doug Worrell, Agnes Worrell, Collector's Triangle, ESK ORI LLC, GDK ORI LLC, KBK ORI LLC, JEM ORI LLC, RHDK Oil and Gas LLC, and Ascent Resources - Utica LLC. The complaint sought the following: a declaratory judgment that Appellants own the royalty interests at issue and are entitled to receive those royalties; quiet title; breach of contract (solely against Ascent); and conversion and accounting (solely against Ascent.) On June 3, 2010, an answer was filed on behalf of all defendants except Collector's Triangle.

{¶12} On June 13, 2019, Ascent filed a Civ.R. 12(B)(6) motion to dismiss the complaint in its entirety. In this motion Ascent argued that any claim that the Sheriff's Deed vested certain rights in Mildred and Adrian is barred by *res judicata*. Ascent also argued that Mildred and Adrian were strangers to the Sheriff's Deed, thus the deed could not reserve any interests in their favor. Finally, Ascent argued that Adrian conveyed all of his interests in the property through the 2006 General Warranty Deed. Collector's Triangle filed a motion to join the motion to dismiss.

{¶13} On June 26, 2019, Appellants filed an amended complaint. The amended complaint contained additional facts surrounding the oral agreement as to a division of royalties between Mildred and Patricia, but did not add any new legal claims.

{¶14} On August 27, 2019, the trial court granted Ascent's Civ.R. 12(B)(6) motion to dismiss. The court determined that even if the 1998 Sheriff's Deed properly reserved property and royalty interests in favor of Mildred and Adrian, any claim to those interests was extinguished by the 2006 General Warranty Deed. This timely appeal followed.

Civ.R. 12(B)(6)

{¶15} This action was dismissed pursuant to Civ.R. 12(B)(6). "A Civ.R. 12(B)(6) motion to dismiss for failure to state a claim upon which relief can be granted tests only the legal sufficiency of the complaint." *Youngstown Edn. Assn. v. Kimble*, 2016-Ohio-1481, 63 N.E.3d 649, ¶ 11 (7th Dist.), citing *State ex rel. Hanson v. Guernsey Cty. Bd. of Comms.*, 65 Ohio St.3d 545, 548, 605 N.E.2d 378 (1992).

{¶16} When reviewing a Civ.R. 12(B)(6) motion, "the court must accept the factual allegations contained in the complaint as true and draw all reasonable inferences from these facts in favor of the plaintiff." *Kimble, supra*, at ¶ 11, citing *Mitchell v. Lawson Milk*

Co., 40 Ohio St.3d 190, 192, 532 N.E.2d 753 (1988). In order to grant a Civ.R. 12(B)(6) motion, “it must appear beyond doubt from the complaint that the plaintiff can prove no set of facts entitling him to recovery.” *O’Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242, 327 N.E.2d 753 (1975), syllabus. However, “[i]f there is a set of facts consistent with the complaint that would allow for recovery, the court must not grant the motion to dismiss.” *Kimble, supra*, at ¶ 11, citing *York v. Ohio State Hwy. Patrol*, 60 Ohio St.3d 143, 144, 573 N.E.2d 1063 (1991).

{¶17} A Civ.R. 12(B)(6) claim is reviewed *de novo*. *Ford v. Baska*, 2017-Ohio-4424, 93 N.E.3d 195, ¶ 6 (7th Dist.), citing *Perrysburg Twp. v. Rossford*, 103 Ohio St.3d 79, 2004-Ohio-4362, 814 N.E.2d 44, ¶ 5.

#### ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED BY DISMISSING APPELLANTS’ FIRST AMENDED COMPLAINT FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED.

{¶18} Appellants contend that Appellees’ arguments regarding the Sheriff’s Deed are improper as they attempt to attack the earlier partition order. As the Sherriff’s Deed was accepted by the trial court at the time, they argue that it inherently became part of the court’s order. Because Appellees not only had notice of the existence and contents of the Sherriff’s Deed but possessed and recorded the deed without ever attempting to attack its provisions, any argument pertaining to the validity of the Sheriff’s Deed constitutes an improper collateral attack on the trial court’s order.



{¶19} In response, Appellees contend that the Sherriff’s Deed was not part of the trial court’s order in the partition action. Even so, Appellees argue that they could not appeal the order because they were not a party to the partition action. Appellees also argue that it is Appellants who are barred by *res judicata* from seeking to relitigate the issue of Mildred and Adrian’s interests in the property.

{¶20} Again, this matter was dismissed as a result of a Civ.R. 12(B)(6) motion. There are certain defenses that cannot be raised in a motion to dismiss. Relevant to this matter, the Ohio Supreme Court has held that “the defense of *res judicata* may not be raised by motion to dismiss under Civ.R. 12(B).” *State ex rel. Freeman v. Morris*, 62 Ohio St.3d 107, 109, 579 N.E.2d 702, 703 (1991). Thus, Appellees’ reliance on *res judicata* within their Civ.R. 12(B)(6) motion is misplaced. However, as to Appellants’ argument regarding collateral estoppel, these arguments may properly be raised in defense of a Civ.R. 12(B)(6) motion. See *Ohio Pyro, Inc. v. Ohio Dept. of Commerce*, 115 Ohio St.3d 375, 2007-Ohio-5024, 875 N.E.2d 550.

{¶21} This matter is governed by Civ.R. 12(B)(6). We are limited to a review of the complaint and the amended complaint. All facts asserted within the complaint and amended complaint must be accepted as true. With that understanding, resolution of this matter involves the analysis of three issues: whether the 1998 Sheriff’s Deed properly reserved oil and gas interests in favor of Mildred and Adrian, whether Appellee Collector’s Triangle waived their ability to contest the rights granted in the 1998 Sheriff’s Deed, and whether the 2006 General Warranty Deed conveyed all of the rights obtained through the 1998 Sheriff’s Deed.

{¶22} Beginning with the 1998 Sheriff’s Deed, a question remains as to what rights were conferred. Appellants allege within their amended complaint that Mildred and Patricia had orally agreed at some point before the partition action was filed that Mildred and Adrian were to receive the oil and gas royalties stemming from the 63.7 acre tract. Although the record before us is limited, it does appear that Mildred and Adrian received these oil and gas royalties during the relevant time period.

{¶23} Appellee Collector’s Triangle does not dispute that it was Appellants who received the royalties from the time the Sheriff’s Deed was executed until the dispute over payment of royalties following the execution of the General Warranty Deed terminating Adrian’s life estate. This dispute appears to have begun in 2008. Thus, in addition to having actual knowledge of this reservation through the recorded deed, Collector’s Triangle knew that Appellants had been receiving any and all royalties. Collector’s Triangle made no effort whatsoever to dispute the provision nor did it seek to obtain any portion of the royalties.

{¶24} Appellees contend that if an oral agreement existed vesting all royalty payments to Mildred and Adrian, it would be barred by the statute of frauds. The Ohio Supreme Court addressed this issue in *Nonmaker v. Amos*, 73 Ohio St. 163, 76 N.E. 949 (1905). The *Nonmaker* Court reviewed whether an oral agreement regarding royalty interests raises a statute of frauds issue. The Court held that an agreement to increase or decrease a royalty division stemming from an oil lease is not within the statute of frauds because “when the parties entered into the parol contract, \* \* \* they were not contracting for an interest in or concerning real estate, but for a division of personal property in proportions different from those named in the written lease.” *Id.* at 171.

{¶25} Taking all of the allegations in the complaint as true, the limited evidence suggests that the oral agreement at issue was not a contract dealing with a new interest in the royalties, but modified the existing proportions already reserved. The exact parameters of the agreement are unknown, particularly whether the agreement pertained only to the tract at issue or the property as a whole. However, it is clear that Catherine and Mildred jointly inherited all royalty interests from Ross Harris. Thus, the oral agreement did not create a new interest in favor of Mildred, it merely changed the royalty proportions as between Mildred and Patricia. This oral agreement does not fall within the prohibition of the statute of frauds.

{¶26} Appellees argue that Mildred and Adrian were strangers to the 1998 Sheriff's Deed, meaning they were not a grantor or grantee in the deed and so, the deed could not reserve interests in their favor.

{¶27} The Stranger Rule was first announced in *The Akron Cold Spring Co. v. Ely*, 18 Ohio App. 74 (9th Dist.1923). The *Ely* court stated "a reservation in a deed is ineffectual to create title in a stranger to the conveyance; a reservation is something issuing from or coming out of the thing granted, and must be to the grantor or party executing the conveyance and not to a stranger." *Id.* at 80. However, *Ely* acknowledged an exception existed where an interest was conveyed to a party before the deed was executed. *Id.* at 78-79. In other words, if the grantor conveys an interest to a third party and then executes a deed concerning the property to the grantee, the third party is not a stranger to the deed because the conveyed interest predates the deed.

{¶28} Appellees contend that this case is analogous to *In re Allen*, 415 B.R. 310 (Bankr. N.D. Ohio 2009). *In re Allen* involved a conveyance of land to a trust where

grantor reserved a life estate in favor of a third party before grantor filed for bankruptcy. *Id.* at 313. The *Allen* court determined that the third party was a stranger to the deed because there was no evidence that his rights existed before the deed containing the reservation. *Id.* at 317. Contrary to Appellees' arguments, however, this case actually supports Appellants' position, as the court acknowledged that pre-existing rights were not subject to the Stranger Rule. Unlike *Allen*, in the instant matter reveals evidence that Mildred and Adrian had pre-existing rights in the disputed royalty interests.

{¶29} Because we must accept as true the existence of the oral agreement, we must also deal with the question of whether Appellee waived its rights to attack the 1998 Sheriff's Deed. This record establishes that Collector's Triangle was indirectly a party to the partition action. While Collector's Triangle is not a third-party beneficiary, it was clearly the party who benefitted from the partition and sale. Importantly, Collector's Triangle signed the deed and recorded it on June 1, 1998.

{¶30} In *Ohio Pyro, Inc. v. Ohio Dept. of Commerce*, 115 Ohio St.3d 375, 2007-Ohio- 5024, 875 N.E.2d 550, the Ohio Supreme Court held that a prior judgment may only be collaterally attacked if the trial court lacked jurisdiction in the original action or if the judgment was the result of fraud. The *Ohio Pyro* Court noted that the ability to collaterally attack a judgment is limited and disfavored, because judgments are meant to be final. *Id.* at ¶ 22, citing *Coe v. Erb*, 59 Ohio St. 259, 267-268, 52 N.E. 640 (1898).

{¶31} The Court held that “[a]lthough res judicata principles apply only to parties and those in privity with them, the collateral-attack doctrine applies to both parties and nonparties, contrary to Ohio Pyro's position that the collateral-attack doctrine cannot

apply to a nonparty.” *Id.* at ¶ 35, citing *Moor v. Parsons*, 98 Ohio St. 233, 243, 120 N.E. 305 (1918); *Plater v. Jefferson*, 136 N.E.2d 111 (8th Dist.1956).

{¶32} In *Jefferson*, an exception to this principle was announced. Strangers to the court order who, “if the judgment were given full credit and effect, would be prejudiced in regard to some pre-existing right, \* \* \* are permitted to impeach the judgment. Being neither parties to the action, nor entitled to manage the cause nor appeal from the judgment, they are by law allowed to impeach it whenever it is attempted to be enforced against them so as to effect rights or interests acquired prior to its rendition.” *Id.* at 113.

{¶33} Appellees were not parties to the partition action in the instant case. Regardless, they are prohibited from attacking the original court order unless they can demonstrate that that they have pre-existing rights that would be prejudiced by enforcement of that order. Collector’s Triangle arguably may be prejudiced by the inability to receive royalties. However, to the extent they argue entitlement to that right, it did not pre-exist the court’s partition order in this case. Thus, they cannot collaterally attack the partition order.

{¶34} Additionally, Appellees did not argue at any point during this action that the trial court lacked jurisdiction or that the judgment was procured through fraud. Instead, they contend the Sheriff’s Deed does not form part of the trial court’s judgment, and even if it is part and parcel of the judgment, it was erroneous, because the sheriff lacked the authority to grant Mildred and Adrian any rights to the royalty interests. Due to the limited nature of the record before us, we are unable to fully determine whether the Sheriff’s Deed forms part of the trial court’s order in the partition. On May 7, 1998, the trial court entered an order confirming the sale and proceeds which stated, in relevant part, “[t]he

court having examined the return of the sheriff and the sales having been made to James C. Lottes and Eddie Yoder as to Sale 1 and [Collector’s Triangle] as to Sale 2. The sales are hereby confirmed and approved in all respects by this court.” (5/7/98 J.E.). The court then ordered the Sheriff to execute and deliver the deeds. This property concerns “sale 2.”

{¶35} From the court’s language, it appears that all aspects of the sale known by the court were approved at confirmation. However, it is unclear whether the royalty reservation to Mildred and Adrian was known and approved by the trial court at the time it accepted the sale and ordered the Sheriff’s Deed. The Sheriff’s Deed was executed one week later on May 14, 1998. Accepting the allegations of the complaint as true, it should have been known by the trial court when it approved “all aspects of the sale.” If so, then the royalty reservation is part of the trial court’s order, which cannot be collaterally attacked.

{¶36} Instead of analyzing critical issues surrounding the execution and recording of the 1998 Sheriff’s Deed, the trial court focused its analysis on the 2006 General Warranty Deed, finding that it conveyed all royalties to Collector’s Triangle. However, a review of the 2006 General Warranty Deed reveals that Adrian conveyed less than what was reserved to him in the 1998 Sheriff’s Deed.

{¶37} In relevant part, the 1998 Sheriff’s Deed specifically stated:

FURTHER EXCEPTING AND RESERVING unto Adrian Worrell and Mildred I. Worrell the right to receive *all royalties payable under a certain oil and gas lease and any extension or modification thereof*, said lease being

recorded in Lease Volume 69, Page 79, Records of Harrison County, Ohio.  
(Emphasis added.)

(6/26/19 Amended Complaint, Exh. 1.) This language clearly reserved all royalty interests in the lease, as well as future modifications and extensions of the lease.

**{¶38}** In comparison, the 2006 General Warranty Deed stated, in relevant part,

GRANTOR ALSO CONVEYS TO GRANTEE, ITS SUCCESSORS AND ASSIGNS, ALL OF GRANTOR'S RIGHT TO RECEIVE *ROYALTIES AND FREE GAS IN CONNECTION WITH A CERTAIN OIL AND GAS WELL LOCATED ON THE PROPERTY AND DRILLED PURSUANT TO THE LEASE* RECORDED IN LEASE VOLUME 69, PAGE 79, IN THE RECORDER'S OFFICE, HARRISON COUNTY, OHIO. (Emphasis added)

**{¶39}** The language used in the 2006 General Warranty Deed specifically limited the conveyance to those royalties in connection with the Harris Well. In contrast, the 1998 Sheriff's Deed used broad language reserving royalties from any well drilled pursuant to the lease. Thus, the plain and unambiguous language of the 2006 General Warranty Deed conveyed only the oil and gas that is produced by the Harris Well, and not the subsequent drilling that is at issue in this action.

**{¶40}** Although Appellees encourage this Court to construe the 2006 conveyance broadly, the language is clear and unambiguous. The express language of the 1998 Sheriff's Deed clearly reserved all royalty rights deriving from the lease and any extension or modification, whereas the 2006 General Warranty Deed conveyed only the oil and gas in connection with the Harris Well, without extension or modification.

{¶41} This matter was dismissed on the pleadings, based on the determination that Appellants have failed to raise any set of facts on which to base a valid claim. However, our review of the filings reveals that Appellants have raised allegations, which must be accepted as true, that could establish a viable claim for relief. The 2006 General Warranty Deed does not appear to convey all rights obtained through the 1998 Sheriff's Deed. There remains a question as to whether the Sheriff's Deed may now be attacked. Hence, Appellants have presented a claim upon which relief can be granted,

{¶42} As such, Appellants' sole assignment of error has merit and is sustained.

#### Conclusion

{¶43} Appellants argue that the court's decision to grant Appellees' Civ.R. 12(B)(6) motion is erroneous as their mother and father obtained a reservation of all royalty rights in the 1998 Sheriff's Deed and conveyed only a portion of those interests in a 2006 General Warranty Deed. For the reasons provided, Appellants' arguments have merit and are sustained. The judgment of the trial court is reversed and the matter is remanded for further proceedings consistent with this Opinion.

Donofrio, J., concurs.

D'Apolito, J., concurs.



For the reasons stated in the Opinion rendered herein, the assignment of error is sustained and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Harrison County, Ohio, is reversed. We hereby remand this matter to the trial court for further proceedings according to law and consistent with this Court's Opinion. Costs to be taxed against the Appellees.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

**NOTICE TO COUNSEL**

**This document constitutes a final judgment entry.**