[Cite as *Kemp v. Rice Drilling, L.L.C.*, 2023-Ohio-4732.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
BELMONT COUNTY

DALLAS ROGER KEMP et al.,

Plaintiffs-Appellants,

v.

RICE DRILLING D, LLC et al.,

Defendants-Appellees.

OPINION AND JUDGMENT ENTRY
Case No. 22 BE 0059

Civil Appeal from the
Court of Common Pleas of Belmont County, Ohio
Case No. 20CV25

BEFORE:
Cheryl L. Waite, David A. D'Apolito, Mark A. Hanni, Judges.

JUDGMENT:
Reversed and Remanded.
Judgment Entered in Favor of Appellants on their MTA claim.

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Dated: December 20, 2023

WAITE, J.

{¶1} This appeal involves a dispute over one-half of the rights to oil and gas under an 80-acre property in Belmont County. The parties entered into a drilling lease in 2012, but Appellees ("the lessees") determined in 2017 that Appellants did not own 50% of the oil and gas rights based on a deed from 1917. Appellees, which are oil and gas companies, sought out the heirs of those mineral rights and purchased the fee interest in those rights. Appellees then withheld 50% of the royalties from Appellants. Appellees also began to withhold additional royalties to recoup money they believed had been previously paid erroneously. Appellants filed a complaint against the Appellee companies, and the trial court ruled in summary judgment against Appellants on all claims.

{¶2} Appellants correctly argue on appeal that the trial court should have determined that the oil and gas rights from the 1917 deed were extinguished by the Marketable Title Act ("MTA") because the reference to those rights was merely a general reference in the 1975 root title deed. Appellants also argue that Appellees should not have tried to recoup prior payments based on a provision of their lease strictly prohibiting recoupment, nor should they have purchased the questionable oil and gas rights and instead should have attempted to clear Appellants' title. This second issue is not ripe for review because the trial court did not reach those issues once it erroneously decided against Appellants based on its interpretation of the MTA. The judgment of the trial court

is reversed, judgment is entered in favor of Appellants on their MTA claim, and the matter is remanded to the trial court to determine the remaining causes of action and damages, if any.

Factual and Procedural History

{¶3} In this appeal, the "property" refers to an approximately 80-acre parcel of land in Goshen Township, Belmont County, Ohio. The Appellants are Dallas R. Kemp and Billi Kemp, who undisputedly own the surface of the entire 80 acres and at least 50% of the oil and gas rights. The Appellees are Rice Drilling D, LLC ("Rice Drilling"), EQT Production Company ("EQT"), and Gulfport Appalachia, LLC ("Gulfport"). Appellees are related companies that assert they have acquired a fee interest in one-half of the oil and gas rights at issue.

{¶4} In a deed recorded in November 1917 (the "1917 Deed"), Samuel and Mary Moore conveyed the property to Victor Kemp. This was recorded in Belmont County deed records, Volume 214, Page 435. The 1917 Deed contained the following reservation: "The said Grantors hereby reserve the one half interest in all oil and gas underlying said premises." This reservation will be referred to as the "Moore Interest."

{¶5} After Victor Kemp's death on October 24, 1955, the property passed to Emily Kemp by way of a certificate of transfer recorded in May 1956 (the "1956 Certificate"). This is recorded in the Belmont County deed records, Volume 424, Page 390. The 1956 Certificate provides: "Also, excepting and reserving one half interest in all Oil and Gas, underlying said premises." The 1956 Certificate cited the volume and page number of the Belmont County deed records of the 1917 Deed, Volume 214, Page 435.

{¶6} In a deed recorded in May of 1975 (the "1975 Deed"), Emily Kemp conveyed the property to Seaway Coal Company. This transfer is recorded in the Belmont County deed records Volume 554, Page 171. The 1975 Deed included the following language:

> EXCEPTING AND RESERVING the Pittsburgh Seam of Coal and mining rights as heretofore reserved.
>
> ALSO RESERVING one-half of the oil and gas royalty as heretofore reserved.

{¶7} In November of 1992, Seaway Coal Company conveyed the property to R&F Coal Company (the "1992 Deed"). This was recorded in Belmont County deed records Volume 684, Page 1, and continuing through Page 46. This deed specifically referenced the 1975 Deed, Volume 524, Page 171. The 1992 deed contains the following language: "ALSO RESERVING one-half of the oil and gas royalty as heretofore reserved."

{¶8} In October of 1999, R&F Coal Company conveyed the property to Appellant Dallas Kemp (the "1999 Deed"). This was recorded in Belmont County records, Volume 752, Page 189. The 1999 Deed specifically references the 1975 Deed, Volume 554, Page 171. The deed contained the following language: "EXCEPTING from the above described TRACT ONE and TRACT TWO all the previously excepted and reserved, sold and conveyed coal and oil and gas and mining rights" and "TRACT ONE and TRACT TWO being UNDER AND SUBJECT to any and all exceptions, reservations, restrictions, easements, rights of way, estates, covenants and conditions apparent on the premises or shown by instruments of record."

{¶9} In April of 2008 Appellants conveyed the property to themselves by way of a survivorship deed (the "2008 Deed"). This was recorded in the Belmont County official records Volume 149, Page 206. The 2008 Deed specifically referenced the 1999 Deed. It excepted and reserved all previously existing mineral rights.

{¶10} Starting in September of 2012, Appellants attempted to have the Moore Interest deemed abandoned. The trial court concluded that Appellants failed to notify potential holders of the Moore Interest of the abandonment proceedings.

{¶11} In November of 2012, Appellants and EQT agreed to a paid-up oil and gas lease for the entire 80-acre property. The lease provided that if Appellants were found to own less than the entire fee simple estate, royalties would be paid in proportion to Appellants' interest.

{¶12} On April 1, 2017, EQT sent Appellants two letters indicating that the holding of *Corban v. Chesapeake Expl., L.L.C.*, 149 Ohio St.3d 512, 2016-Ohio-5796, 76 N.E.3d 1089, provided a reason to suspend 50% of the royalties being paid to Appellants.

{¶13} In August and September of 2017, EQT attempted to obtain an ownership interest in the oil and gas rights by recording various deeds from the Moore heirs. EQT believes that it now owns the entirety of the Moore Interest.

{¶14} On January 23, 2020, Appellants filed their complaint. They raised claims relating to the MTA, the Dormant Mineral Act ("DMA"), breach of contract, slander of title, civil conspiracy, and constructive trust, and sought specific performance, declaratory judgment, and injunctive relief. Appellees have not filed any counterclaims. On November 6, 2020, the parties filed cross motions seeking summary judgment. The case was stayed from December 9, 2020, until June 30, 2021, due to Gulfport's bankruptcy

filing. On October 3, 2022, the court heard arguments on the motions for summary judgment. On October 12, 2022, the court ruled in favor of Appellees on the MTA and DMA claims and decided that all other matters were moot. Appellants filed their notice of appeal on November 7, 2022. They raise two assignments of error on appeal.

ASSIGNMENT OF ERROR NO. 1

> THE TRIAL COURT ERRED IN FINDING THAT THE MARKETABLE TITLE ACT DID NOT EXTINGUISH THE SEVERED MINERALS AND THAT APPELLEES WERE ENTITLED TO SUMMARY JUDGMENT ON APPELLANTS' MARKETABLE TITLE ACT CLAIM.

{¶15} Appellants are challenging the trial court's summary judgment in favor of Appellees regarding their MTA claim. They have not addressed their DMA claim. An appellate court conducts a *de novo* review of a trial court's decision to grant summary judgment, using the same standards as the trial court set forth in Civ.R. 56(C). *Grafton v. Ohio Edison Co.,* 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996). Before summary judgment can be granted, the trial court must determine that: (1) no genuine issue as to any material fact remains to be litigated, (2) the moving party is entitled to judgment as a matter of law, (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing the evidence most favorably in favor of the party against whom the motion for summary judgment is made, the conclusion is adverse to that party. *Temple v. Wean United, Inc.,* 50 Ohio St.2d 317, 327, 364 N.E.2d 267 (1977). Whether a fact is "material" depends on the substantive law of the claim being litigated. *Hoyt, Inc. v. Gordon & Assoc., Inc*., 104 Ohio App.3d 598, 603, 662 N.E.2d 1088 (8th Dist.1995).

{¶16} "[T]he moving party bears the initial responsibility of informing the trial court of the basis for the motion and identifying those portions of the record which demonstrate the absence of a genuine issue of fact on a material element of the nonmoving party's claim." (Emphasis deleted.) *Dresher v. Burt*, 75 Ohio St.3d 280, 296, 662 N.E.2d 264 (1996). If the moving party carries its burden, the nonmoving party has a reciprocal burden to set forth specific facts showing that there is a genuine issue for trial. *Id.* at 293. In other words, when presented with a properly supported motion for summary judgment, the nonmoving party must produce some evidence to suggest that a reasonable factfinder could rule in that party's favor. *Brewer v. Cleveland Bd. of Edn.,* 122 Ohio App.3d 378, 386, 701 N.E.2d 1023 (8th Dist.1997).

{¶17} The evidentiary materials to support a motion for summary judgment are listed in Civ.R. 56(C) and include the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact that have been filed in the case. In resolving the motion, the court views the evidence in a light most favorable to the nonmoving party. *Temple*, 50 Ohio St.2d at 327, 364 N.E.2d 267.

{¶18} Appellants argue that the MTA extinguished any mineral interests arising prior to 1975 because the 1975 Deed is a proper root of title and does not contain any specific reference to a prior mineral interest that might be preserved under the MTA exception found in R.C. 5301.48. Appellants contend that the relevant portion of the 1975 Deed is this sentence: "ALSO RESERVING one-half of the oil and gas royalty as heretofore reserved." Appellants argue that this sentence contains only a general reference that does not preserve any prior mineral interest pursuant to the MTA.

{¶19} Appellees concede that the relevant language of the 1975 Deed is quoted above. Appellees argue, however, that the "ALSO RESERVING" language is a specific reference to the 1917 Deed that preserves the Moore Interest under the MTA.

{¶20} "The MTA was enacted to extinguish stale interests and claims in land that existed prior to the root of title, with 'the legislative purpose of simplifying and facilitating land title transactions by allowing persons to rely on a record chain of title.' " *Cattrell Family Woodlands, LLC v. Baruffi*, 7th Dist. No. 20 JE 0023, 2021-Ohio-4660, 184 N.E.3d 186, ¶ 12. It provides that any person who has a recorded, unbroken chain of title to any interest in land for at least 40 years has "marketable record title" to the interest. R.C. 5301.48. Unless an exception in R.C. 5301.49 applies, the MTA operates to extinguish interests and claims existing prior to the root of title. R.C. 5301.47(A).

> Balanced against the desire to facilitate title transactions is the need to protect interests that predate the root of title. To this end, the act provides that the marketable record title is subject to interests inherent in the record chain of title, "provided that a general reference * * * to * * * interests created prior to the root of title shall not be sufficient to preserve them, unless specific identification be made therein of a recorded title transaction which creates such * * * interest." R.C. 5301.49(A).

Blackstone v. Moore, 155 Ohio St.3d 448, 2018-Ohio-4959, 122 N.E.3d 132, ¶ 8.

{¶21} Prior severances of oil and gas interests may be declared null and void by the application of the MTA. *West v. Bode*, 162 Ohio St.3d 293, 2020-Ohio-5473, 165 N.E.3d 298, ¶ 17.

{¶22} Appellants' first argument is that the trial court erred when it determined the 1975 Deed was not the correct root of title. Determining the correct root of title is one of the first steps in an MTA analysis. The trial court found that the 1975 Deed contained a reservation, and because of that reservation, was not a proper root of title. This conclusion was based on a prior holding of this Court in *Soucik v. Gulfport Energy Corp.*, 7th Dist. Belmont No. 17 BE 0022, 2019-Ohio-491, which was based on much earlier holdings in *Christman v. Wells*, 7th Dist. No. 539, 1981 WL 4773, and *Holdren v. Mann*, 7th Dist. No. 592, 1985 WL 10385.

{¶23} *Holdren*, *Christman*, and *Soucik* are no longer followed in this Court: "[W]e have repeatedly recognized that *Christman* and *Holdren* are no longer good law following the Ohio Supreme Court's decision in *Blackstone*." *McClellan v. McGary*, 7th Dist. Monroe No. 19 MO 0018, 2020-Ohio-1109, ¶ 35, aff'd, 163 Ohio St.3d 541, 2020-Ohio-6762, 171 N.E.3d 320, ¶ 35. We now recognize that "the 'root of title' can contain a repetition of a reservation; the deed must merely account for the interest the person is claiming to have record marketable title to and not be the severance deed." *Senterra Ltd. v. Winland*, 7th Dist. No. 18 BE 0051, 2019-Ohio-4387, 148 N.E.3d 34, ¶ 55. As the trial court based its reasoning on outdated caselaw, Appellants contend it was clearly mistaken on this point.

{¶24} Appellees respond that, regardless, the 1975 Deed cannot be Appellants' root of title because Appellants are claiming the entire fee simple interest in the property, but the 1975 Deed contains a reference to a prior reservation, transferring less than 100% of the property. This is mere sophistry on Appellees' part. Pursuant to the MTA, root of title "means that conveyance or other title transaction in the chain of title of a person,

purporting to create the interest claimed by such person, upon which he relies as a basis for the marketability of his title, and which was the most recent to be recorded as of a date forty years prior to the time when marketability is being determined." R.C. 5301.47(E). In 1975 Emily Kemp conveyed the property to Seaway Coal Company. The property then passed to R&F Coal Company, then to Dallas Kemp, then to both Appellants by way of a survivorship deed. The 1975 Deed is the appropriate starting point for Appellants when making a determination under the MTA. Appellants contend that, in addition to the interests conveyed to them in the 1975 Deed, the effect of the MTA is to extinguish the general reference to prior oil and gas interests. This is the manner in which many, if not most, MTA arguments are made. *See, e.g.*, *Blackstone* at ¶ 9; *Erickson v. Morrison,* 165 Ohio St.3d 76, 2021-Ohio-746 at ¶ 7; *Chartier v. Rice Drilling D LLC*, 7th Dist. No. 21 BE 0046, 2023-Ohio-272, 206 N.E.3d 755; *O'Kelley v. Rothenbuhler*, 7th Dist. No. 20 MO 0009, 2021-Ohio-1167, 171 N.E.3d 775; *Cattrell Family Woodlands, LLC v. Baruffi*, 7th Dist. No. 20 JE 0023, 2021-Ohio-4660, 184 N.E.3d 186.

{¶25} It is clear that the 1975 Deed is the root of title for the interests that Appellants are claiming. The 1975 Deed does not simply repeat a prior reservation, but contains a citation back to an earlier interest: "ALSO RESERVING one-half of the oil and gas royalty *as heretofore reserved*." (Emphasis added.) Pursuant to the MTA exception in R.C. 5301.49(A), "marketable record title remains subject to an interest that predates the effective date of the root of title when (1) the preexisting interest is specifically identified in the muniments that form the record chain of title, (2) the holder of the preexisting interest has recorded a notice claiming the interest, in accordance with R.C. 5301.51, or (3) the preexisting interest arises out of a title transaction that was recorded

subsequent to the effective date of the root of title." *West v. Bode*, 162 Ohio St.3d 293, 2020-Ohio-5473, 165 N.E.3d 298, ¶ 16.

{¶26} In examining such a preexisting interest, a court must apply the three-part test of *Blackstone*: (1) whether an interest is described within the chain of title; (2) if so, whether the reference to that interest is a general reference; and (3) if the answers to the first two questions are in the affirmative, whether the general reference contains the specific identification of a recorded title transaction. *Blackstone* at ¶ 12.

{¶27} The interest here is described in the chain of title, and the interest is a general reference to "one-half of the oil and gas royalty as heretofore reserved." Turning to the third part of the test, the analysis is a bit more complex. For a prior reference to be deemed a "specific" identification it must clearly indicate that the prior interest actually exists, and there must be no question as to which prior interest is referenced. *Cattrell* at ¶ 24; *Erickson* at ¶ 21. Specificity may take the form of the recorded volume and page number, the name of the owner of the prior interest, or may consist of other information that removes any ambiguity as to the prior interest. *Blackstone* at ¶ 14. In *Erickson*, there was no ambiguity regarding the prior interest because the language in the root of title was a verbatim (or nearly verbatim) recitation of the original severed interest. *Erickson* at ¶ 32.

{¶28} The language of the 1975 Deed does indicate that a prior interest exists by use of the phrase "as heretofore reserved." It does not, however, contain a verbatim recitation of the prior interest. The 1975 Deed states: "ALSO RESERVING one-half of the oil and gas *royalty* as heretofore reserved." (Emphasis added.) The next deed in the chain of title is the 1956 Deed, which states: "Also, excepting and reserving one half

interest in all Oil and Gas, underlying said premises." The 1956 Deed does not mention a royalty interest. The 1956 Deed then refers back to the 1917 Deed, which states: "The said Grantors hereby reserve the one half interest in all oil and gas underlying said premises." Again, there is no mention of "royalty."

{¶29} A royalty is generally understood as " 'one stick the bundle' of the five attributes of a severed mineral estate: right to develop (with ingress and egress), right to receive bonus payments, right to receive delay rentals, right to receive royalty payments, and right to lease (known as the executive right)." *Eisenbarth v. Reusser*, 7th Dist. No. 13 MO 10, 2014-Ohio-3792, 18 N.E.3d 477, ¶ 60, aff'd, 150 Ohio St.3d 342, 2016-Ohio-5819, 81 N.E.3d 1222, ¶ 60. "Royalty is defined as the landowner's share of production, free of the expenses of production." *Chesapeake Expl., L.L.C. v. Hyder*, 427 S.W.3d 472, 476, aff'd, 483 S.W.3d 870. "Royalty is share of product or profit reserved by owner for permitting another to use the property[.]" *Mobil Oil Corp. v. Dept. of Treasury*, 422 Mich. 473, 484, 373 N.W.2d 730 (1985).

> A royalty has been defined as an agreed return paid for oil or gas reduced to possession and taken from the leased premises, and as a share of the profits or proceeds from gas and oil operations. An oil and gas 'royalty' has been described as that fractional interest in the production of oil or gas that was created by the owner of land, either by reservation when the mineral lease was entered into, or by direct grant to a third person.

Buegel v. Amos, 7th Dist. Monroe No. 577, 1984 WL 7725, *1.

{¶30} If one were perusing the documents down the chain of title looking for a verbatim recitation of the royalty interest described in the 1975 Deed, it would not be found in the 1956 Deed or any other document along the chain. Appellees, though, argue that a mineral interest in its entirety may be referred to as a royalty. Therefore, the 1975 Deed may be referring to broader mineral interests than simple royalties. Appellees cite *Peppertree Farms, L.L.C. v. Thonen*, 167 Ohio St.3d 52, 2022-Ohio-395, 188 N.E.3d 1061, for this premise: "Professor Eugene Kuntz, the author of a renowned treatise on the law of oil and gas, has noted that the word 'royalty' has been used 'loosely,' including in the broad sense of referring to the mineral interest itself. 1 Kuntz, A Treatise on the Law of Oil and Gas, Section 15.4." *Id.* at ¶ 25.

{¶31} The issue in *Peppertree* was whether a deed written prior to 1925 reserved a fee interest or merely a life estate when it reserved a one-half royalty of the oil and gas. This was a dispute because, prior to 1925, when a new property right was contained in a conveyance (and this new right was typically referred to as a "reservation"), the document needed to contain words of inheritance or else it was presumed that only a life estate was being reserved. *Id.* at ¶ 17. After 1925 a statute was enacted, R.C. 5301.02, that removed the requirement to use words of inheritance when creating a new property estate. *Peppertree* also discussed the distinction between a "reservation" and an "exception" in pre-1925 deeds, a distinction which is not quite as important after the enactment of R.C. 5301.02.

{¶32} The "mineral interest" in *Peppertree* was an unaccrued royalty interest, i.e., royalties that might come from future production. *Peppertree* clarified the law in Ohio that an accrued royalty is personal property, whereas unaccrued royalties are in the nature of

real property. *Id.* at ¶ 26-27. This distinction was important in deciding that some of the parties held property interests that were not tied to any specific lease, were not life estates, could be severed from other aspects of the mineral rights, and were absolute rights rather than defeasible. *Peppertree* has overruled many of our prior opinions in which we held that a royalty can only be a personal property right. *Pollock v. Mooney*, 7th Dist. Monroe No. 13 MO 9, 2014-Ohio-4435, ¶ 16; *Buegel v. Amos*, *supra*, at *1; *Marquette ORRI Holdings, LLC v. Ascent Resources-Utica, LLC*, 7th Dist. No. 21 BE 0035, 2022-Ohio-3786, 199 N.E.3d 199, ¶ 17; *Rochus v. Thompson*, 7th Dist. Noble No. 16 NO 0430, 2017-Ohio-4138, ¶ 15.

{¶33} *Peppertree* does not support Appellees' argument that the word “royalty” used in an instrument may refer to something other than a royalty. The point in *Peppertree* is that a royalty right may be either personal property, real property, or both, but it is still a royalty. "It is true that oil and gas royalty is an interest in land, but it is not true that every interest in land is royalty." *State Nat. Bank of Corpus Christi v. Morgan*, 135 Tex. 509, 514, 143 S.W.2d 757 (Tex.Comm.App.1940). "A royalty interest is a smaller interest in a mineral estate which is a share of the product or proceeds reserved to the owner for permitting another to develop or use the property. 1 Williams & Meyers, supra, at § 301; 8 Williams & Meyers, supra, at p. 564." *Acoma Oil Corp. v. Wilson*, 471 N.W.2d 476, 481 (N.D.1991). Even in light of *Peppertree*, a person conducting a title search for a royalty interest would still be looking for the word “royalty,” since that is the word used in the 1975 Deed. “Royalty” is really the only specific clue in the chain of title in this case. In conducting a search, here, for purposes of the MTA, one would not be

looking for "one half interest in all oil and gas" as found in the 1956 Deed, because this is a completely different mineral estate.

{¶34} It would be stretching the *Erickson* holding too far to deem a general reference as specific when it contains no volume and page number, no names of prior interest holders, no dates of prior recorded documents, and uses different language to describe the possible prior recorded interest.

{¶35} Therefore, Appellants are correct that the 1975 Deed is its root of title, and that deed does not contain a specific reference to any prior oil and gas reservation. For this reason, the Moore Interest has been extinguished by operation of the MTA as a matter of law. The trial court's decision to the contrary is in error, and Appellant's first assignment of error is sustained.

ASSIGNMENT OF ERROR NO. 2

> THE TRIAL COURT ERRED IN FINDING THAT TO SUCCEED ON THE BREACH OF CONTRACT/LEASE CLAIMS THE APPELLANTS FIRST HAD TO ESTABLISH THAT THE MOORE INTEREST NO LONGER AFFECTED THE MINERAL INTEREST IN THE PROPERTY.

{¶36} In this assignment of error Appellants contend that Gulfport should not have been permitted to recoup 50% of the royalties paid to Appellants from July of 2016 to March of 2017. Appellants argue that Gulfport breached the Lease by withholding future royalty payments to recoup what Appellees believed were erroneous payments made during this period. Appellants posit that, whether or not they were successful regarding their MTA argument, Gulfport has no right under the lease to recoup payments and their

breach of contract claim should have been sustained, at least in part. Appellants also argue that Rice Drilling and EQT committed a breach of their lease by purchasing the presumed mineral rights of the Moore heirs rather than attempting to clear Appellants' title to the oil and gas rights. Appellants argue that it was the duty of Rice Drilling and EQT to clear any title deficiencies.

{¶37} The trial court rejected Appellants' claims for breach of contract, slander of title, civil conspiracy, and all damages related to these claims, because it concluded that Appellants must first prove that the Moore Interest was extinguished. As the trial (erroneously) concluded that the Moore Interest was not extinguished, the court never reached these other claims and never considered the issue of damages. Based on our decision regarding Appellants' first assignment of error, the Moore Interest was extinguished by operation of the MTA. As to the other issues, we cannot provide Appellants the relief they seek on appeal because they have not yet been considered by the trial court, particularly the matter of damages. Appellants' second assignment of error is not yet ripe for review.

Conclusion

{¶38} Appellants filed their complaint to extinguish a reservation of oil and gas rights contained in a 1917 Deed referred to as the Moore Interest regarding a parcel they now own. They argue on appeal that the trial court failed to identify a 1975 Deed as the root of title. They also argue that the trial court failed to find that the reference in the 1975 Deed to a prior royalty interest was a general reference that was extinguished by the MTA. Appellants are correct on both issues, and the trial court should have granted summary judgment to Appellants pursuant to the operation of the MTA. Appellants also

contend that Appellees had no right to recoup oil lease royalties and were required to attempt to clear title to disputed oil and gas rights rather than buying the rights, themselves. Since the trial court failed to address all of Appellants claims once it incorrectly determined that the Moore Interest was preserved, we remand the case to the trial court for that court to resolve the remaining causes of actions and determine any necessary damages. The judgment of the trial court is reversed and judgment is entered in favor of Appellants on their MTA claim. The case is remanded to the trial court to resolve all remaining claims and determine damages.

D'Apolito, P.J., concurs.

Hanni, J., concurs.

For the reasons stated in the Opinion rendered herein, Appellants' first assignment of error is sustained and its second assignment is overruled. It is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Belmont County, Ohio, is reversed. We hereby enter judgment in favor of Appellants on their MTA claim. We remand this matter to the trial court for further proceedings to determine the remaining causes of action and damages 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.