[Cite as *White Revocable Trust v. Kemp*, 2023-Ohio-4513.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
BELMONT COUNTY

THE ROGER L. WHITE AND RUTH E. WHITE

REVOCABLE TRUST et al.,

Plaintiffs-Appellants,

v.

KENNETH R. KEMP et al.,

Defendants-Appellees.

OPINION AND JUDGMENT ENTRY
Case No. 22 BE 0072

Civil Appeal from the
Court of Common Pleas of Belmont County, Ohio
Case No. 19 CV 0294

BEFORE:
Cheryl L. Waite, Carol Ann Robb, David A. D'Apolito, Judges.

JUDGMENT:
Reversed and Remanded.

Atty. Sara E. Fanning, Roetzel & Andress, LPA, 41 South High Street, Huntington Center, 21st Floor, Columbus, Ohio 43215, *Atty. Timothy B. Pettorini*, and *Atty. Michelle F. Noureddine*, Roetzel & Andress, LPA, 222 South Main Street, Suite 400, Akron, Ohio 44308, for Plaintiffs-Appellants

Atty. Todd M. Kildow and *Atty. Heidi R. Kemp*, Emens, Wolper, Jacobs & Jasin Law Firm Co., LPA, 250 West Main Street, Suite A, St. Clairsville, Ohio 43950, for Defendants-Appellees

Dated: December 5, 2023

WAITE, J.

{¶1} This appeal involves the Belmont County Court of Common Pleas' determination that the Ohio Marketable Title Act (MTA), R.C. 5301.47 et seq., did not extinguish claims to oil and gas rights of Defendants-Appellees. Appellants claim fee simple ownership, including oil and gas rights, of 76 acres of land in Belmont County by virtue of the MTA relying on a deed from 1970. Appellees claim to own the oil and gas rights, including the rights to leases and drilling, based on a deed recorded in 1930 and from the last will and testament of James L. Shultz.

{¶2} The trial court made three key determinations in this case: that the 1970 deed contained a specific reference to a 1968 oil and gas lease for purposes of the MTA; that a lease cancellation recorded in 1978 was a title transaction for purposes of preserving the Shultz heirs' interests under the MTA; and that the Shultz heirs inherited a reversionary interest that was not extinguished by the MTA.

{¶3} Appellants disagree with all three of these determinations, arguing: 1) that a reference in the 1970 deed to an oil and gas lease was a general reference which was not preserved under the MTA; 2) the 1978 lease cancellation did not mention or affect any interest claimed by the Shultz heirs and was not a preserving event under the MTA; and 3) the interest held by the Shultz heirs was a remainder interest and not a reversionary interest. Hence, it was not an exception to the MTA pursuant to R.C. 5301.53. A review of this record reveals that Appellants are correct on all three issues.

The judgment of the trial court is reversed and the case is remanded to the trial court for a determination of the correct distribution of royalties under the current oil and gas lease.

Case History and Facts

{¶4} James L. Shultz (also spelled Schultz at various points in the record) became vested in a 76.81 acre-parcel located in Goshen Township, Belmont County, Ohio, by virtue of three deeds recorded in 1929. On November 1, 1930, James L. Shultz and his wife Estella Shultz conveyed the property to John C. Gatten and Edna Gatten in a deed recorded on November 20, 1930 ("Shultz Deed"). This was recorded in Deed Book 279, Page 354. Estella Shultz was not vested with any interest in this deed and was a stranger to title at this point. The Shultz Deed contains the following:

> Also Excepting and Reserving, all the oil and gas rights and privileges as to Leases, Rentals, and Drilling, also pipe lines, underlying said land, is held by James & Estella Shultz.

(Tr., Exh. 2.)

{¶5} James L. Shultz died testate on January 23, 1932. His will devised all of his property as follows:

> SECOND: I give, devise and bequeath to my beloved wife, Estella Shultz, in lieu of her dower and distributive share, all my property real and personal, of every kind and description, during her natural life or so long as she remains my widow, with power to sell and dispose of so much of said personal property only, as she may deem necessary for the best interests of the estate.

> THIRD: At the death of my said wife, or at her remarriage, I give, devise and bequeath, all my property, real and personal, of every kind and description, to my three children, Lucile Shultz, Loyd [sic] Shultz and Wilda Marie Shultz, each the equal undivided one-third part thereof, to them and their heirs forever.

(Tr., Exh. 3, James L. Shultz Last Will and Testament.)

{¶6} After James Shultz's death, on March 11, 1935, John and Edna Gatten conveyed the property at issue back to Estella Shultz, excepting and reserving all the oil and gas rights and privileges as to leases, rentals, and drilling, as well as pipelines underlying the land. The deed was recorded April 6, 1935 ("Gatten Deed").

{¶7} On March 8, 1935, Estella Shultz conveyed the property to Harvey Calvert. The deed was recorded on April 6, 1935 ("Estella Deed"). This deed contained the following provision: "ALSO EXCEPTING AND RESERVING unto the grantor one-half of all moneys received for oil and gas royalties." This deed conveyed the entire property, including Estella Shultz's determinable estate in the oil and gas rights, less one half of the royalties.

{¶8} Appellants trace their interest in the property through Harvey Calvert. Appellees trace their interest in the property through the exception and reservation of oil and gas rights by James L. Shultz in 1930, and to the remainder estate granted to the Shultz heirs in the Shultz 1932 last will and testament.

{¶9} Foreclosure proceedings on the Calvert property were instituted, and foreclosure was finalized on December 1, 1945. The Sheriff of Belmont County thus conveyed the property to The Peoples Building and Loan Company. The Building and

Loan deed was recorded on July 31, 1947. There is no reference to any Shultz interest in this deed.

{¶10} On November 13, 1948, The Peoples Building and Loan Company conveyed the property to William and Ruth Clift. This deed was recorded on November 22, 1948. There is again no reference to any Shultz interest in the deed.

{¶11} On March 28, 1950, William and Ruth Clift conveyed the property to Stanley Earl Moore. The deed was recorded on March 31, 1950 ("Moore Deed"). There is no reference to any Shultz interest in this deed.

{¶12} On October 7, 1950, Estella Shultz married Harvey Calvert. Their marriage was recorded in Franklin County, Ohio.

{¶13} On December 7, 1967, Stanley Earl Moore entered into an oil and gas lease regarding the property with Mid-Continent Land Incorporated. The lease was recorded on February 27, 1968 ("Moore Lease").

{¶14} On August 18, 1970, Stanley Earl Moore conveyed the property to Seaway Coal Company. This deed was recorded on September 1, 1970 and forms the basis for both sides' MTA argument as root of title ("Root Deed"). The Root Deed contains the following language:

> Said premises also subject to oil and gas lease previously given and also subject to easements for rights of way as previously given and conveyed.

(Tr., Exh. 11.)

{¶15} The 1968 Moore Lease was cancelled and surrendered by an instrument recorded on March 20, 1978 ("Moore Lease Cancellation").

{¶16} Estella Calvert, f.k.a. Estella Shultz, died on November 15, 1978. There are no estate records for Estella Calvert in Belmont County Probate Court. Evidence of her death was not recorded in Belmont County until February 3, 2014, when an Affidavit of Facts to Prevent Abandonment was filed.

{¶17} On November 12, 1992, Seaway Coal Company conveyed the property to R & F Coal Company. The deed was recorded on November 16, 1992. There is no reference to any Shultz interest in this deed.

{¶18} On August 14, 2002, Capstone Holding Company (f.k.a. R & F Coal Company) conveyed the property to Roger L. White and Fred E. White. The deed was recorded on August 23, 2002. There is no reference to any Shultz interest in this deed.

{¶19} On April 11, 2012, Roger L. White and Fred E. White conveyed the property to F & R White Farm, LLP. The deed was recorded on April 30, 2012. The deed contains no reference to any Shultz interest.

{¶20} On November 16, 2012, F & R White Farm, LLP, leased the oil and gas from the property to Rice Drilling D, LLC. The lease was recorded on December 26, 2012 ("White Lease"). The property and the White Lease were pooled into several drilling units and are currently producing oil and gas. On September 26, 2017, Rice Drilling D, LLC assigned 80% of its rights to Gulfport Energy Corporation. On June 12, 2019, Gulfport Energy Corporation assigned its rights to Gulfport Appalachia LLC.

{¶21} On October 24, 2014, F & R White Farm, LLP, conveyed an undivided one-half interest in the oil and gas in the property to Freddie E. White, Co-Trustee of the Freddie E. White Revocable Trust. The deed was recorded on October 31, 2014. There is no reference to any Shultz interest in this deed.

{¶22} Also, on October 24, 2014, F & R White Farm, LLP, conveyed an undivided one-half interest in the oil and gas in the property to Roger L. White and Ruth E. White, Co-Trustees of the Roger L. White and Ruth E. White Revocable Trust. The deed was recorded on October 31, 2014. There is no reference to any Shultz interest in this deed.

{¶23} On July 31, 2019, Appellants, The Roger L. White and Ruth E. White Revocable Trust and The Freddie E. White Revocable Trust, filed their complaint in Belmont County against Kenneth R. Kemp, Mary E. Barnes, James V. Kemp, Kimberly Stephen, Kathy Stephen, Beth Ann McGee, Robert E. Kemp, Melvin V. Kemp, Shirley I. Jenewein, Sandra K. Wees, Barbara L. Wright, Patricia L. Falconer, Charles Daniel Kemp, Penny Morris, Steven Kemp, Cindy A. Mako, Carol J. Earliwine, Bettie L. Adcock, Keith Shultz, Jr., Jason Shultz, Bernice Chase, Patti J. Shultz, Lida Michelle Davidson, Terry D. Davidson, Rice Drilling D, LLC, EQT Production Company, and Gulfport Appalachia LLC. Collectively, these parties are the Appellees. Appellants claimed that they were the sole owners of the 76.81 acres of property at issue, including the oil and gas rights, and that any rights claimed by the Shultz heirs were extinguished under the MTA by operation of the 1970 Root Deed. They also claimed slander of title, requested injunctive relief, alleged breach of contract by the oil companies for failure to pay royalties (due to the confusion about ownership of the oil and gas rights), requested specific performance, and asked for declaratory judgment.

{¶24} Appellees Rice Drilling D, LLC and EQT Production Company have leased the oil and gas under the 76-acre property from both Appellants and Appellees, and have paid the full bonus to both sides as if each owned 100% of the property.

{¶25} The parties filed cross-motions for summary judgment, which were denied. The case went to bench trial on November 9, 2022. The parties filed a joint exhibit list and compilation of evidence. The parties agree that the 1970 Moore Deed is the Root Deed and forms the root of title for purposes of the MTA. The trial court held that the Root Deed specifically described an existing oil and gas lease, that the release of the lease in 1978 was a title transaction pursuant to R.C. 5301.49(D), that the MTA does not apply to extinguish a lessor's reversionary rights, that the Shultz defendants' interests in the oil and gas rights were preserved by the 1978 cancellation of the 1968 lease, and that the Shultz heirs owned a reversionary interest in the oil and gas that was not affected by the MTA. Thus, the court held that Appellants' claims were all dismissed or rendered moot. The judgment entry was filed on November 21, 2022.

{¶26} This timely appeal was filed on December 8, 2022, alleging one assignment of error.

ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED AS A MATTER OF LAW WHEN IT HELD THE SHULTZ INTEREST WAS PRESERVED FROM EXTINGUISHMENT UNDER THE OHIO MARKETABLE TITLE ACT.

{¶27} Appellants raise three alleged errors we must resolve under its sole assignment of error. We will address these one by one.

1. The Shultz interest was not specifically referenced in the Root Deed or any instrument recorded 40 years after the Root Deed.

{¶28} This appeal arises out of a civil bench trial. A court of appeals reviews a civil bench trial under a manifest weight of the evidence standard. *DeSarro v. Larkins*, 7th Dist. Columbiana No. 15 CO 0021, 2017-Ohio-726, ¶ 13. There is no dispute about the material facts in this case. The issues on appeal primarily involve matters of law regarding the interpretation of deeds, leases, and statutes, particularly the MTA. Deeds and leases are contracts, and "[t]he construction of written contracts and instruments of conveyance is a matter of law." *Graham v. Drydock Coal Co.*, 76 Ohio St.3d 311, 313, 667 N.E.2d 949 (1996). "Unlike determinations of fact which are given great deference, questions of law are reviewed by a court de novo." *Nationwide Mut. Fire Ins. Co. v. Guman Bros. Farm*, 73 Ohio St.3d 107, 108, 652 N.E.2d 684 (1995). Likewise, the interpretation of the MTA is a question of law that is reviewed de novo. *Richmond Mills, Inc. v. Ferraro*, 7th Dist. Jefferson No. 18 JE 0015, 2019-Ohio-5249, ¶ 29.

{¶29} Appellees base their claim to the property's oil and gas through the 1930 Shultz Deed reservation and the last will and testament of James L. Shultz, who died on January 23, 1932. Appellants derive their claim by virtue of the MTA and the language of 1970 Root Deed, which is the root of title. The phrase "root of title" arises out of the MTA. The MTA was enacted to simplify and facilitate land title transactions by allowing persons to rely on a record chain of title. R.C. 5301.55; *Blackstone v. Moore*, 155 Ohio St.3d 448, 2018-Ohio-4959, 122 N.E.3d 132, ¶ 7. The MTA provides that a person "who has an unbroken chain of title of record to any interest in land for forty years or more, has a marketable record title to such interest." R.C. 5301.48. A marketable record title "operates to extinguish such interests and claims, existing prior to the effective date of the root of title." R.C. 5301.47(A). A "root of title" is "that conveyance or other title

transaction in the chain of title of a person * * * 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). Under the MTA, record marketable title "shall be taken by any person dealing with the land free and clear of all interests, claims, or charges whatsoever, the existence of which depends upon any act, transaction, event, or omission that occurred prior to the effective date of the root of title." R.C. 5301.50.

{¶30} The MTA also provides that the marketable record title is subject to interests inherent in the recorded 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). This means that "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.

{¶31} The parties do not dispute that the 1970 deed is the Root Deed and root of title. Appellants claim that the reference in the Root Deed to "oil and gas lease previously given" is a general reference rather than a specific reference to an existing lease. Under *Blackstone*, a general reference to a prior interest must satisfy a three-part test: (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

yes, whether the general reference contains a specific identification of a recorded title transaction. *Blackstone* at ¶ 12.

{¶32} A general reference pursuant to the MTA "is defined as 'marked by broad overall character without being limited, modified, or checked by narrow precise considerations: concerned with main elements, major matters rather than limited details, or universals rather than particulars: approximate rather than strictly accurate.' " *Id.* at ¶ 13. A general reference is one that is ambiguous and subject to multiple interpretations. *Chartier v. Rice Drilling D LLC*, 2023-Ohio-272, 206 N.E.3d 755, ¶ 52 (7th Dist.), appeal not allowed sub nom. *Chartier v. Rice Drilling D., L.L.C.*, 170 Ohio St.3d 1420, 2023-Ohio-1507, 208 N.E.3d 856, ¶ 52. "[A] general reference leaves it unclear whether a prior interest in fact exists." *Erickson v. Morrison*, 165 Ohio St.3d 76, 2021-Ohio-746, 176 N.E.3d 1, ¶ 30, reconsideration denied, 163 Ohio St.3d 1430, 2021-Ohio-1721, 168 N.E.3d 526, ¶ 30; *Cattrell Family Woodlands, LLC v. Baruffi*, 2021-Ohio-4660, 184 N.E.3d 186, ¶ 24 (7th Dist.).

{¶33} On the other hand, any interest that is specifically referenced within the marketable record title is not extinguished by the MTA. *Erickson* at ¶ 21. Specific references are not required to have volume, page numbers, or the dates that the interest was recorded. *Id.* at ¶ 22. The name of the interest holder need not be stated in the root of title or subsequent to it to preserve any interest that predates the root of title. *Id.* at ¶ 27, 29.

{¶34} In this appeal, the language in the Root Deed does not include the name or names of the holder of any prior interest. It does not contain any reference to a particular recorded instrument nor does it contain any information to narrow down any particulars

regarding a prior lease. It does not include any reference, either general or specific, to the Shultz heirs' remainder interest. The exact phrase used in the Root Deed is "subject to oil and gas lease previously given." It does not state "subject to *an* oil and gas lease." The trial court assumed the language referenced only a single lease, as did the attorney who testified at trial on behalf of Appellees. This attorney testified that "it was pretty obvious that there was a reference to oil and gas lease being out there." (11/9/22 Tr., p. 74.) General references to prior interests may make it "pretty obvious" that there are leases "out there." That does not convert the reference to a specific one. The attorney simply assumed there was only one lease, but he would not have actually known how many leases had involved the property without searching the entire title record back to 1930 or earlier. Requiring parties to search the entire record based on some general reference to prior interests is exactly what the MTA is designed to prevent.

{¶35} Appellees argue that this question about specific versus general references does not involve a matter of law to be reviewed *de novo*. Instead, they claim the question involves a factual matter to be reviewed under a manifest weight standard. Appellees cite *Cattrell Family Woodlands, LLC*, which held that: "Ultimately, the question of whether a reference is general or specific can only be answered by means of a fact driven analysis." *Id.* at ¶ 28. What *Cattrell Family Woodlands, LLC*, meant by that statement is that the question of law under review, (whether there was a general or specific reference to a prior interest) is dependent on the facts of the case. For the most part, it is dependent on the language of the recorded instruments under review. For example, the "fact" that a reservation was included within each deed in the chain of title was important in *Erickson*, whereas the "fact" that there was no reference to the original interest in any subsequent

instrument was important in *Cattrell Family Woodlands, LLC*. *Erickson*, at ¶ 32; *Cattrell Family Woodlands, LLC*, at ¶ 33.

{¶36} As *Cattrell Family Woodlands, LLC* involved summary judgment, the standard of review was, in fact, *de novo*. Nevertheless, even using Appellees' logic, it is factually vitally significant that the interests on which they rely, the reservation of oil and gas rights in the 1930 Shultz deed and the Shultz heirs' remainder interest, are not repeated in any document in the chain of title up to and including the Root Deed or thereafter. The conclusion reached by the court in *Cattrell Family Woodlands, LLC* was that the root of title deed did not contain a specific reference to original mineral rights, based in part on the lack of any subsequent references to those rights. Thus, Appellees' reliance on this case is actually detrimental to their argument on appeal.

{¶37} Even if the Root Deed language could be construed as a specific reference to an existing prior interest, this reference could only be to the February 27, 1968 Moore Lease. This lease was executed by Stanley E. Moore, from whom Appellants trace their claim to these rights. The lease was released on March 20, 1978, with the underlying leasing rights reverting back to the lessor, Stanley E. Moore. Even in this scenario, the leasing rights are owned by Appellants as the successors to Stanley E. Moore. The plain language of the 1968 Moore Lease and the 1978 Moore Lease Cancellation provide no mention as to any Shultz interests.

{¶38} Appellants are, then, correct when they assert in their first sub-issue that the trial court erred. The Root Deed reference to a prior lease is not a specific reference to an existing prior interest, it is only a general reference. Whatever was intended by this general reference, it is extinguished by the MTA. The Root Deed transferred, by virtue of

operation of the MTA, fee simple interest, including all the oil and gas rights, from Stanley E. Moore to Seaway Coal Company, and eventually to Appellants through subsequent transfers of the property. Appellants' first sub-issue has merit and is dispositive, in and of itself, of this appeal.

2. The recording of the Moore Lease Cancellation is not a title transaction for the Shultz interest under the MTA.

{¶39} Assuming arguendo that the 1970 Root Deed contained a valid specific prior reference to the 1968 lease, Appellants contend that the 1978 cancellation of that lease could not revive or preserve Estella Shultz's life estate, or the remainder interest of the Shultz heirs that arose from the 1932 last will and testament of James L. Shultz. Appellants explain that Stanley E. Moore did not actually own the oil and gas leasing rights in 1968, because those rights had transferred to the Shultz heirs in 1950 due to the remarriage of Estella Shultz. Moore had obtained his rights to the property from Harvey Calvert, who obtained his interest in 1935 from Estella Shultz. From 1935 until 1950, Calvert did own the determinable rights over oil and gas, but lost those rights in 1950 when Estella remarried. Calvert then had no rights in oil and gas to transfer to Stanley E. Moore.

{¶40} Appellants contend that an oil and gas lease given by the surface owner who does not own the underlying oil and gas is not a title transaction for purposes of the MTA, and neither is a cancellation of such lease. Appellants also argue that the interests of the Shultz heirs was not preserved by the 1978 lease cancellation since they were not

parties to the 1968 lease or the 1978 cancellation. Therefore, the 1970 Root Deed transferred fee simple interest to Seaway Coal Company, and ultimately to Appellants.

{¶41} The trial court apparently based its decision on the theory that the 1970 Root Deed referred to a prior lease, which was then referenced in the cancellation of that lease in 1978. The court then concluded that the 1978 lease cancellation was a title transaction that somehow referred back to the oil and gas rights mentioned in the James L. Shultz 1930 deed and to rights transferred in the Shultz 1932 last will and testament.

{¶42} Appellees contend that Estella's remarriage did not appear in title records of Belmont County in 1970, and so should have no effect in the chain of title. The parties do not dispute that Estella remarried in 1950, nor do they dispute that the fact of her remarriage would not be found by means of a title search in Belmont County in 1970. It is the legal significance of this fact that the parties dispute.

{¶43} R.C. 5301.49(D) of the MTA provides that an interest may be preserved from extinguishment if such interest arises out of a title transaction recorded within forty years after the root of title. The parties agree that a recorded lease or the recorded cancellation of a lease can be a title transaction that preserves a mineral interest for MTA purposes. For a lease or cancellation of the lease to rise to the level of a "title transaction" under the MTA, the lease: 1) must involve a legal interest rather than a fictitious or non-existent one; and 2) must refer to the party who is attempting to establish its interests under the MTA.

{¶44} These factors were established in our recent case, *Pernick v. Dallas*, 7th Dist. Jefferson No. 21 JE 0011, 2021-Ohio-4635, appeal not allowed, 166 Ohio St.3d 1449, 2022-Ohio-994, 184 N.E.3d 159. In *Pernick*, the defendants asserted that an oil

and gas lease entered into by the surface owner plaintiffs was a preserving title transaction under the MTA. *Id.* at ¶ 28. We rejected that conclusion for two reasons. First, we opined that a title transaction pursuant to R.C. 5301.49(D) of the MTA must be a valid title transaction: "[W]hen the lease was entered into between Appellees' and Belden and Blake Corporation, Appellees did not own the minerals. Thus, the lease was not a valid lease and even if it could constitute a preservation of Appellant's interest, it would not because it was not a valid title transaction." *Id.* at ¶ 33.

{¶45} Second, *Pernick* held that an oil and gas lease granted by one party (whether or not that party actually owns the oil and gas rights) cannot preserve any oil and gas rights of another party not mentioned in the lease: "Appellant was not a party to this lease and this lease purports to show Appellees' oil and gas interest, not the Dallas heirs' interest. Or in other words, there is no language in this lease referencing the Dallas heirs or even suggesting that anyone other than Appellees own the mineral interest." *Id.* Hence, a lease cannot be used as a saving "title transaction" under the MTA for a party who is not mentioned in the lease.

{¶46} Precisely the same situation occurred in this appeal. First, Stanley E. Moore entered into a lease with Mid-Continent Land Incorporated in 1968. The record on appeal reveals that Moore's oil and gas interest ended in 1950 when Estella Shultz remarried. Therefore, Moore did not own the oil and gas rights when he leased them, and any title transactions involving that lease cannot be used to attempt to preserve interests prior to the Root Deed under review. It is equally clear, however, that the fact that Moore did not "own" the leasing rights in an absolute sense in 1968 does not undermine Appellants' ownership of those rights by virtue of the MTA.

{¶47} There is nothing in the Moore Lease to suggest that anyone other than Stanley E. Moore owned the oil and gas rights. Similarly, the 1978 cancellation by Columbia Gas Transmission Corp. (successor to Mid-Continent Land Incorporated) refers to the lessor as Stanley E. Moore, and does not suggest that anyone else had any interest in this lease. As we reasoned in *Pernick*: "We are puzzled as to [the defendants'] claim that this lease would constitute a savings event for them, as they were never parties to this lease." *Pernick* at ¶ 34.

{¶48} Appellees expend a great deal of time explaining why, in their view, the remarriage of Estella Shultz should not be considered part of the accepted facts of this case until the 2014 affidavit was executed by Shirley Jenewein. Their argument appears to be that if Estella were deemed to remain unmarried until 1968, the determinable oil and gas rights she conveyed to Harvey Calvert in 1935 would still have existed in 1968 when Stanley E. Moore entered into the oil and gas lease with Mid-Continent Land Incorporated. If Moore owned the oil and gas rights in 1968, the lease and its cancellation may result in a different interpretation as to a Root Deed.

{¶49} Appellees appear to want to have it both ways in regard to this record. They want this Court to ignore Estella's remarriage in an MTA analysis of the facts, but also want us to include in our analysis such records as the Shultz 1930 deed and 1932 last will and testament, as well as other documents between 1932 and 1970, even though those documents fall outside of an analysis for MTA purposes. Appellees cannot take contradictory positions in this matter. Appellees rely on an exception to the MTA, R.C. 5301.53(A), in order to connect the 1978 lease cancellation with the reservation of oil and gas rights in the 1930 deed in their discussion of the third sub-issue. If Appellees' success

in this appeal depends upon an exception to the MTA, and a review of facts that are not usually part of a basic MTA analysis, they cannot also argue that Appellants are not permitted to rely on similar facts and documents, such as Estella's remarriage in 1950.

{¶50} Whether or not the fact of Estella's 1950 remarriage is recognized for purposes of this appeal, Appellees cannot and have not supported their claims to the oil and gas in this matter. There is no record of her oil and gas determinable interest, or the Shultz heirs' remainder interest, in the 1968 Moore Lease, in the Root Deed, or in any subsequent title documents. This is exactly the type of issue that the MTA is designed to eradicate. The 1978 lease cancellation is not in any way a title transaction that can be used to support the interests of the Shultz heirs. Therefore, Appellants' second sub-argument is correct and the judgment of the trial court must be reversed on this basis, as well.

3. The Shultz interest is not a reversionary interest arising from the Moore Lease under R.C. 5301.53(A) of the MTA.

{¶51} The trial court held that the 1978 Moore Lease Cancellation affected title pursuant to the MTA, and that the Shultz heirs' oil and gas interest was preserved via the exception to the MTA found in R.C. 5301.53(A), which states: "The provisions of sections 5301.47 to 5301.56 of the Revised Code shall not be applied to bar or extinguish any of the following: (A) Any lessor or his successor as reversioner of his right to possession on the expiration of any lease, or any lessee or his successor of his rights in and to any lease, except as may be permitted under section 5301.56 of the Revised Code[.]"

{¶52} The trial court reasoned as follows: 1) the 1970 Root Deed has a specific reference to a prior 1968 lease; 2) the prior lease was cancelled in 1978, which makes it a title transaction under the MTA; 3) the 1978 title transaction actually preserved the reversionary rights of the Shultz heirs rather than the rights of Stanley Moore. The trial court also appears to have concluded that the Shultz heirs were the ultimate owners of the oil and gas leasing rights at the time of trial by virtue of the remainder interest in the 1932 last will and testament of James L. Shultz.

{¶53} In our earlier analysis, however, we have determined that the trial court erred in its determination as to the first two premises. The trial court was also in error regarding its third conclusion. As a threshold matter no person can claim rights arising out of title transactions when that person is not a party to those transactions, as stated in *Pernick*, *supra*. Additionally, R.C. 5301.53(A) only applies to "[a]ny lessor or his successor," and the only lessor involved in the 1968 Lease or its 1978 cancellation was Stanley E. Moore. Finally, the interest held by the Shultz heirs was not a reversionary interest. The estate that existed after James L. Shultz granted a life estate to Estella Shultz was a remainder to the Shultz heirs, not a reversionary interest. *Natl. City Bank v. Beyer*, 6th Dist. Huron No. H-98-006, 1998 WL 769768000, *4. If R.C. 5301.53 had meant to exclude remainder interests from the MTA, it would have used that word. Any reversionary rights, had they existed, in the 1978 Moore Lease Cancellation would have reverted to Stanley E. Moore (the named lessor) and his successors, not to the Shultz heirs, who are not mentioned in the lease or the lease cancellation. Appellant's third sub-issue is also well taken and Appellants are the owners of the oil and gas rights at issue.

{¶54} Because all of Appellants' sub-arguments are correct, their sole assignment has merit and is sustained. The judgment of the trial court is reversed. The case is hereby remanded solely to determine the liability of the oil and gas companies as to proper payment of royalties.

Conclusion

{¶55} The trial court made three key determinations in this case: that the 1970 Root Deed contained a specific reference to a 1968 oil and gas lease; that the lease cancellation recorded in 1978 was a title transaction for purposes of preserving the Shultz heirs' interests under the MTA; and that the Shultz heirs inherited a reversionary interest that was not extinguished by the MTA.

{¶56} The record reveals that the trial court erred in all three determinations. A reference in the 1970 root of title to an oil and gas lease was a general reference that does not preserve any interest pursuant to the MTA. The 1968 Moore Lease and the 1978 lease cancellation did not mention or affect any interest claimed by the Shultz heirs under the MTA. The interest held by the Shultz heirs was a remainder interest and not a reversionary interest. As such, this interest does not amount to an exception to the MTA under R.C. 5301.53. Because Appellants' arguments are correct as to all three of these issues, any one of which requires reversal, the judgment of the trial court is reversed and ownership interests in the oil and gas belongs to Appellants. The case is remanded to the trial court to determine the correct distribution of royalties under the currently active oil and gas lease.

Robb, J. concurs.

D'Apolito, P.J., concurs.

For the reasons stated in the Opinion rendered herein, Appellants' 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 Belmont 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.