[Cite as *Moore Family Trust v. Jeffers*, 2023-Ohio-3653.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MONROE COUNTY

MOORE FAMILY TRUST,

Plaintiff-Appellant,

v.

J.M. JEFFERS, et al.,

Defendants-Appellees.

OPINION AND JUDGMENT ENTRY
Case No. 22 MO 0013

Civil Appeal from the
Court of Common Pleas of Monroe County, Ohio
Case No. 2021-205

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

JUDGMENT:
Affirmed.

Atty. Craig J. Wilson, C.J. Wilson Law, LLC, 2606 Hilliard Rome Road, PMB 3007, Hilliard, Ohio 43026, for Plaintiff-Appellant

Atty. Daniel P. Corcoran, Theisen Brock, L.P.A., 424 Second Street, Marietta, Ohio 45750, for Defendant-Appellee Mineral Development, Inc.

Atty. John Kevin West, *Atty. John C. Ferrell*, and *Atty. Melanie M. Norris*, Steptoe & Johnson, PLLC, 1233 Main Street, Suite 3000, P.O. Box 751, Wheeling, West Virginia 26003-0751, for Defendants-Appellees Gulfport Energy Corporation and Gulfport Appalachia, LLC

Dated: September 28, 2023

WAITE, J.

{¶1} Appellant Moore Family Trust ("the Moore Trust") filed a complaint in the Monroe County Court of Common Pleas seeking the court to either declare that an 1896 royalty assignment ("Royalty Assignment") to J.M. Jeffers had expired, or that the royalty assignment was limited to a 1/16th royalty interest. Appellant also requested an accounting from Appellees Gulfport Energy Corporation and Gulfport Appalachia, LLC (collectively "Gulfport") for royalties paid, and sought quiet title regarding the assets in the Royalty Assignment. The trial court ruled that Appellant failed to state a claim because the Royalty Assignment was perpetual and had not expired, and because the formula for the royalty interest was a floating fraction of one-half the total royalty under any operative lease rather than a fixed 1/16th interest.

{¶2} The court also held that a request for an accounting does not comprise a standalone cause of action. The trial court dismissed the complaint in its entirety for failure to state a claim. Based on this record, the trial court properly interpreted the 1896 Royalty Assignment, and was correct as a matter of law that Appellant could not request the court to order an accounting. Appellant also argues that default judgment in its favor should have been granted against the non-answering defendants prior to dismissing its complaint for failure to state a claim, but this argument is defeated by the holding of *Scarpelli v. Young*, 7th Dist. No. 19 MO 0009, 2019-Ohio-4880, 149 N.E.3d 206. The judgment of the trial court is affirmed.

Case History and Facts

{¶3} This case is on appeal from a judgment on the pleadings, so the facts are limited to only those that can be gleaned from the pleadings. Appellant trust owns a 56.06-acre tract in Monroe County. The documents attached to the complaint trace Appellant's interest in the property starting from a quit claim deed dated June 25, 1896, until the present day. Appellant derives its interest through a conveyance from Daniel Kimpton to Anna Millison.

{¶4} On March 30, 1896, Daniel Kimpton, James Millison, and Anna Millison executed a Royalty Assignment to J.M. Jeffers and S.D. Griffith. This Royalty Assignment was recorded on July 7, 1896 in Volume 21, Page 10, in the Lease Records of Monroe County, and provided in part:

> Daniel Kimpton, James Millison, and Anna Millison * * * do hereby grant, bargain, sell and convey to the said J.M. Jeffers and S.D. Griffith their heirs and assigns forever full equal one sixteenth (1/16) of all the petroleum oil and gas in and under the premises hereinafter described, that may hereafter be produced from said premises, under and by virtue of a certain oil and gas lease entered into the 30 day of November 1894 to one S.D. Griffith or to any other party or partys [sic] to whom said premises may hereafter be leased, for oil and gas purposes * * * said 1/16 interest being the one half part of the royalty to be set apart to me free of charge into tanks or pipe lines receiving said oil which is hereby conveyed to the grantee and to be reserved to them in any contract of lease hereinafter to be entered by us or our assigns, heirs, executors or administrators.

{¶5} Appellant commenced this action on June 8, 2021, seeking to quiet title over the interests conveyed in the 1896 Royalty Assignment. Appellant raised causes of action seeking four things from the court: a declaration that the Jeffers royalty interest was derived from a lease or license that had expired; a declaration (in the alternative) that the Jeffers royalty interest involved only a fixed one-sixteenth interest; an order from an accounting; and quiet title.

{¶6} Appellant named nineteen defendants. Two of the defendants were Gulfport Energy Corporation and Gulfport Appalachia, LLC. The other seventeen were presumed heirs and assigns of J.M. Jeffers and S.D. Griffith. Defendant Mineral Development, Inc., was not named as a defendant but later joined the case as an assignee of defendant Barbara Jean Ohlinger.

{¶7} Gulfport filed an answer on July 27, 2021, and also filed a motion for judgment on the pleadings on November 3, 2021. Appellant filed its own cross-motion for judgment on the pleadings on January 18, 2022. Appellant also filed a motion for default judgment against sixteen of the defendants on January 18, 2022.

{¶8} Defendant Mineral Development, Inc., filed an answer-counterclaim-cross-claim on January 10, 2022. It also filed a motion for judgment on the pleadings on January 31, 2022.

{¶9} The trial court dismissed Appellant's complaint for failure to state a claim on August 19, 2022. The court addressed each cause of action separately and included findings of fact and conclusions of law. The court's judgment provided that there was no just reason for delay and the judgment was a final appealable order. Appellant raises two assignments of error. Two Appellees' brief have been filed, one from the Gulfport

defendants, and one from Mineral Development, Inc. Both Appellees' briefs present the same arguments on appeal.

ASSIGNMENT OF ERROR NO. 1

> THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING APPELLANT'S MOTION FOR DEFAULT JUDGMENT AGAINST THE NON-ANSWERING DEFENDANTS THAT OWNED MORE THAN 95% OF THE INTEREST AT ISSUE IN THIS CASE.

{¶10} Appellant argues that the trial court should have ruled on its default judgment motion against the non-answering defendants prior to ruling on Appellees' motions for judgment on the pleadings. Appellant contends that default judgment in its favor would have resulted in Appellant's ownership of nearly all of the royalty rights in question. Because the court did not rule on the motion for default judgment, it was impliedly denied when the court dismissed the complaint. Appellant argues that Civ.R. 55 required the trial court to rule on the motion for default judgment prior to issuing a final order in this case.

{¶11} Civ.R. 55 governs motions for default judgment and provides that when a party against whom judgment is sought fails to plead or otherwise defend, the opposing party may apply to the court for a default judgment. Default judgments are reviewed for abuse of discretion. *Pabin v. Eberle*, 7th Dist. Monroe No. 18 MO 0008, 2019-Ohio-2728, ¶ 51. "Abuse of discretion connotes an unreasonable, arbitrary, or unconscionable attitude." *Johnson v. McClain*, 164 Ohio St.3d 379, 2021-Ohio-1664, 172 N.E.3d 1012, ¶ 20.

{¶12} Appellant cites this general principle in support: "A plaintiff has the right to have a motion for default judgment heard and decided before trial." *Davis v. Immediate Med. Services, Inc.*, 80 Ohio St.3d 10, 684 N.E.2d 292 (1997). In *Davis*, a defendant, Alliance Immediate Care, Inc. (hereinafter "AIC"), was added to the case through an amended complaint. AIC failed to file an answer, and the plaintiff requested default judgment, which was denied. AIC then filed an answer but used the wrong name in the caption. The plaintiff filed another motion for default judgment, but it was not resolved prior to trial and final verdict was issued in favor of AIC. Both the Fifth District Court of Appeals and the Ohio Supreme Court held that the trial court should have ruled on the motion for default judgment prior to trial and final verdict.

{¶13} Appellant's citation to *Davis* is not analogous because there was no trial in this case. This appeal is based on a pretrial motion for judgment on the pleadings. Gulfport's motion for judgment on the pleadings was filed prior to Appellant's motion for default judgment. Gulfport filed its motion for judgment on the pleadings on November 3, 2021. Appellant filed the motion for default judgment on January 18, 2022. Thus, the motion for judgment on the pleadings was pending on the court's docket eleven weeks before Appellant even requested default judgment. It is not clear why Appellant alleges some error in the trial court's decision to resolve a pretrial motion that was filed before Appellant's motion for default judgment.

{¶14} Appellees respond that default judgment against non-answering defendants should not be granted when the complaint, on its face, contains no grounds for relief and must be dismissed for failure to state a claim. There are many cases supporting Appellees' contention. For example, as we recently ruled in *Scarpelli v.*

Young, 7th Dist. No. 19 MO 0009, 2019-Ohio-4880, 149 N.E.3d 206: "This raises the question of whether default judgment should be granted when there is no valid claim for relief under the established facts. Case law indicates no; a default judgment should not be granted when the complaint fails to state a claim upon which relief could be granted." *Id*. at ¶ 30-31. *Scarpelli* cited numerous cases in which courts reached the identical conclusion: *X-S Merchandise, Inc. v. Wynne Pro, L.L.C.*, 8th Dist. Cuyahoga No. 97641, 2012-Ohio-2315 (breach of contract regarding shoes); *Streeton v. Roehm*, 83 Ohio App. 148, 81 N.E.2d 133 (1st Dist.1948) (personal injury action); *Lopez v. Quezada*, 10th Dist. Franklin No. 13AP-389, 2014-Ohio-367 (breach of contract and fraud); *Whiteside v. Williams*, 12th Dist. Madison No. CA2006-06-021, 2007-Ohio-1100 (defamation action); *City of Girard v. Leatherworks Partnership*, 11th Dist. Trumbull No. 2004-T-0010, 2005-Ohio-4779 (suit to recover demolition costs); *State ex rel. Pullins v. Eyster*, 5th Dist. Knox No. 2009-CA-09, 2009-Ohio-2846 (mandamus and prohibition action regarding a shareholder suit).

{¶15} *Scarpelli* also cites *Wampum Hardware Co. v. Moss*, 5th Dist. Guernsey No. 14 CA 17, 2015-Ohio-2564, for the principle that a trial court, in some instances, cannot grant default judgment to non-answering defendants "because the judgment and findings therein effectively predetermine the ultimate decision in this matter as to the oil and gas rights." *Id.* at ¶ 30. In *Wampum*, the trial court granted the plaintiff default judgment against the non-answering defendants in a matter involving ownership of oil and gas rights in 104.45 acres in Richland County. As a result, the mineral rights became vested in the plaintiff. The answering defendants appealed. The Fifth District held that the trial court, before having the chance to determine the oil and gas rights of the

answering defendants, had incorrectly predetermined the entire outcome of the case when it granted default judgment against the non-answering parties. *Id.* at ¶ 30. The appellate court also held there was a possibility judgments within the case could conflict regarding the merits of the answering defendants' defenses and counterclaim. *Id.* at ¶ 31. The Fifth District reversed the default judgment that granted judgment in favor of the plaintiffs.

{¶16} The Ohio Supreme Court has held that: "Sua sponte dismissal of a complaint for failure to state a claim upon which relief can be granted is appropriate if the complaint is frivolous or the claimant obviously cannot prevail on the facts alleged in the complaint." *State ex rel. Kreps v. Christiansen*, 88 Ohio St.3d 313, 316, 725 N.E.2d 663 (2000). We cited this law holding: "Although Civ.R. 55 permits default judgments, this Court is not required to do so where the complaint on its face does not state a claim upon which relief may be granted." *Scarpelli* at ¶ 32.

{¶17} The law in this area is clear: a trial court may deny default judgment, or simply refuse to grant default judgment in some circumstances, when the complaint does not raise a justiciable claim.

{¶18} Appellant argues that *Scarpelli* only applies to claims involving oil and gas leases when the Dormant Mineral Act, R.C. 5301.56, is at issue. There is nothing in *Scarpelli* that would lead to such a conclusion, and the cases relied on in *Scarpelli* cover a wide variety of litigation, not simply involving mineral rights or the DMA.

{¶19} Appellant posits that failure to require the trial court to rule on his requests for default in this matter would effectively eliminate the use of default judgment in oil and gas cases. Appellant's concerns to this effect are absurd. This appeal addresses the

limited situation in which a plaintiff has filed a frivolous or meritless claim on its face against multiple defendants. In that situation, the trial court is free for a myriad of reasons to rule on a motion to dismiss, or in some situations *sua sponte* dismiss the case, prior to dealing with a motion for default judgment.

{¶20} Appellant's first assignment of error is without merit and is overruled.

ASSIGNMENT OF ERROR NO. 2

THE TRIAL COURT ERRED IN GRANTING APPELLEES' MOTION FOR JUDGMENT ON THE PLEADINGS, AND DENYING APPELLANT'S MOTION ON THE SAME.

{¶21} There are three sub-issues raised in this assignment of error: whether the 1896 Royalty Assignment described a perpetual nonparticipating royalty interest ("NPRI"); whether the Royalty Assignment conveyed a floating one-half royalty interest; and whether Appellant had the right to request an accounting from Gulfport.

1. Is the Royalty Assignment a mere license or a perpetual interest?

{¶22} Appellant contends that, regarding count one of its complaint, the trial court incorrectly concluded the Royalty Assignment conveyed a permanent, ongoing, and perpetual interest in the mineral rights, which the court described as a perpetual non-participating royalty interest, or perpetual NPRI. Appellant argues that the plain language of the Royalty Assignment described an interest that was tied to a lease, and therefore, was a lease or license interest that expired when the underlying lease expired. It is Appellant's view that the trial court relied on non-binding authority from other states and

ignored the relevant caselaw, such as *Back v. Ohio Fuel Gas Co.*, 160 Ohio St. 81, 113 N.E.2d 865 (1953).

{¶23} An assignment, such as a royalty assignment, is a contract and is subject to the laws governing contracts. *Nationwide Ins. Co. v. Russell*, 6th Dist. Lucas No. L-87-288, 1988 WL 61006, *2. The construction of a written contract is a matter of law that is reviewed *de novo*. *Saunders v. Mortensen*, 101 Ohio St.3d 86, 2004-Ohio-24, 801 N.E.2d 452, ¶ 9. "The purpose of contract construction is to discover and effectuate the intent of the parties." *Graham v. Drydock Coal Co.*, 76 Ohio St.3d 311, 313, 667 N.E.2d 949 (1996). "If a contract is clear and unambiguous, the court need not concern itself with rules of construction or go beyond the plain language of the agreement to determine the rights and obligations of the parties." *Seringetti Const. Co. v. City of Cincinnati*, 51 Ohio App.3d 1, 553 N.E.2d 1371 (1st Dist.1988).

{¶24} This case was dismissed on the pleadings. Courts review the decision to grant a motion for judgment on the pleadings by the same standard used to review the decision on a Civ.R. 12(B) motion to dismiss. *Ohio Pub. Works Commission v. Barnesville*, 7th Dist. Belmont No. 19 BE 0011, 2020-Ohio-4034, ¶ 27, aff'd, 2022-Ohio-4603. A Civ.R. 12(B)(6) motion to dismiss for failure to state a claim upon which relief can be granted is a procedural motion that tests the sufficiency of the complaint. *State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs.*, 65 Ohio St.3d 545, 548, 605 N.E.2d 378 (1992). In order for a trial court to dismiss the action, "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. When making a determination on a Civ.R. 12 (B)(6) motion, a court

must accept the facts as alleged within the complaint as true and draw all reasonable inferences from those facts in favor of the plaintiff. *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192, 532 N.E.2d 753 (1988). A reviewing court applies a *de novo* standard of review to the trial court's determination under Civ.R. 12(B)(6). *Ford v. Baska*, 7th Dist. Harrison No. 16 HA 0008, 2017-Ohio-4424, ¶ 6 citing *Perrysburg Twp. v. Rossford*, 103 Ohio St.3d 79, 2004-Ohio-4362, 814 N.E.2d 44, ¶ 5.

{¶25} Before examining the language of the Royalty Assignment, we first address an assumption made by Appellant. Appellant assumes that a royalty assignment must be interpreted as either a license to remove minerals or as a fee simple interest in the underlying land. Neither of these is correct. This Court set out the parameters and characteristics of a royalty interest nearly forty years ago in *Buegel v. Amos*, 7th Dist. Monroe No. 577, 1984 WL 7725:

> The nature of royalty interests has been thoroughly discussed:
>
> "* * * 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. And the word 'royalty' as applied to an existing oil and gas lease has been said to refer to the compensation provided in the lease for the privilege of drilling for, and producing, oil and gas, and is said to consist of a share of the oil and gas produced or the profits therefrom but not to include a perpetual

> interest in the realty." 38 American Jurisprudence 2d 670, Gas and Oil, Section 189.
>
> As to the particular royalty in the case sub judice, the following is pertinent:
>
> "It seems that an interest may very well be designated 'royalty' though not limited to an existing or any particular lease and not embracing title to oil and gas in situ - constituting simply a definite beneficial interest in future production from premises decribed (sic) (see discussion supra, Section 1). Such an interest when entirely unlimited as to time or lease is called perpetual nonparticipating royalty, in case no right to participate in future leases is granted or reserved." Annotation, 4 A.L.R. 2d 505.
>
> All of the characteristics of a nonparticipating royalty interest (and in this case, perpetual), as set out in *Mounger v. Pittman* (Sup. Ct. Miss., 1959), 108 So. 2d 565, have been met. They are as follows:
>
> "The distinguishing characteristics of a 'non-participating royalty interest' are: (1) Such share of production is not chargeable with any of the costs of discovery and production; (2) the owner has no right to do any act or thing to discover and produce the oil and gas; (3) the owner has no right to grant leases; and (4) the owner has no right to receive bonuses or delay rentals."

Id. at *1-2.

{¶26} A right to a royalty may entail a right over personal property, i.e., oil and gas that has been or might later be removed from the ground, or may amount to a real property

right if the minerals remain in the ground and the royalty is unaccrued. *Peppertree Farms, L.L.C. v. Thonen*, 167 Ohio St.3d 52, 2022-Ohio-395, 188 N.E.3d 1061, ¶ 26. A royalty interest, by itself, is not a right to remove oil and gas, and thus it is not a license or lease. *Bath Twp. v. Raymond C. Firestone Co.*, 140 Ohio App.3d 252, 259, 747 N.E.2d 262 (9th Dist.2000).

{¶27} Based on the analysis in *Buegel*, it can be said that a royalty interest is a right to be compensated for a fractional part of any oil and gas that has been removed from the ground or may be removed in the future, and may be a right associated with existing leases or may be a perpetual right that attaches to future leases as well.

{¶28} Turning back to the language of the Royalty Assignment, the relevant section states:

> [Assignors] do hereby grant, bargain, sell and convey to [Assignees] their heirs and assigns forever full equal one sixteenth (1/16) of all the petroleum oil and gas in and under the premises hereinafter described, that may hereafter be produced from said premises, under and by virtue of a certain oil and gas lease entered into the 30 day of November 1894 to one S.D. Griffith or to any other party or partys [sic] to whom said premises may hereafter be leased, for oil and gas purposes * * *.

{¶29} There are clearly two parts to this assignment: the assignment of royalties under an existing lease dated November 30, 1894; and the assignment of royalties under any other future lease. Appellant argues that only the first part of this paragraph is relevant. Appellant relies on *Back v. Ohio Fuel Gas Co.*, 160 Ohio St. 81, 113 N.E.2d

865 (1953), to support its contention that the Royalty Assignment is a mere license that expired when the 1894 lease expired.

{¶30} *Back* is not relevant to this appeal. *Back* mentions the word "royalty" one time, and royalty rights are not the subject of the case. The document at issue in *Back* granted 100% of the rights over the oil and gas on the property, including the right to extract the oil and gas, lay pipes, divert waterways, transport the minerals, etc. The court was tasked with determining whether the instrument was properly recorded in the record of leases, and if so, whether it gave constructive notice to a subsequent purchaser of the land. *Back* itself recognized that minerals, while they are in the ground, are part of the realty, becoming personal property once extracted. *Id.* at 88. *Back* provides absolutely no guidance regarding whether a royalty assignment should be limited to a single lease or can be perpetual and apply to future leases.

{¶31} As Appellees note, the concept of a perpetual NPRI is well-established in oil and gas law, including in Ohio as seen in the *Buegel v. Amos* case cited above. The basic rule of royalty rights is: "A deed reservation of royalty interests in a lease intends to reserve the royalty interest perpetually and is not limited to the term of the existing mineral lease." 53A Am. Jur. 2d Mines and Minerals § 168. Appellees urge that the plain language of the Royalty Assignment refers to oil and gas "that may hereafter be produced * * * to any other party or partys [sic] to whom said premises may hereafter be leased * * *." Since the document itself refers to future leases, Appellees explain it is a perpetual royalty assignment rather than a royalty assignment associated only with the 1894 lease.

{¶32} The trial court and Appellees cited cases from a jurisdiction outside of Ohio to bolster this point, but it was hardly necessary. *Buegel* is a Seventh District Court of

Appeals case involving a deed in which the grantors "reserve to themselves their heirs or assigns the one-half (½) part of all Royalty oil and gas underlying said premises[.]" *Id.* at *1. We concluded that the deed reserved a perpetual non-participating royalty because it encompassed future mineral interests. *Id.* at *2.

{¶33} Appellees were not able to find any other Ohio cases with language substantially similar to the Royalty Assignment, but did find an Arkansas case in which the royalty agreement granted: "unto their heirs and assigns a one-sixteenth part of all the oil and gas produced and saved by the said W. D. Wingfield their successors, or assigns, or any one else who may operate for oil and gas from any of the premises aforesaid[.]" *Hanson v. Ware*, 224 Ark. 430, 432, 274 S.W.2d 359 (1955). The Arkansas Supreme Court interpreted the words "or any one else who may operate for oil and gas" as a perpetual royalty in oil and gas. *Id.* at 434.

{¶34} The language in the Royalty Assignment in this case is plain and clear. The words "or to any other party or partys [sic] to whom said premises may hereafter be leased, for oil and gas purposes" refers to future leases. The fact that the Royalty Assignment also refers to an existing lease does not destroy the perpetual nature of the assignment. Appellant's first cause of action does not state a claim for relief because it is based on the conclusion that the Royalty Assignment is a mere license limited to the 1894 lease, and so the royalty interest expired when that lease expired. There is no set of facts in which Appellant's assertion could be true. Therefore, the trial court correctly dismissed it because it fails to state a claim for relief.

2. Is the Royalty Assignment a fixed fractional interest or a floating fraction?

{¶35} Appellant's second cause of action was raised in the alternative to its first cause of action and asserted that, if the Royalty Assignment was deemed to still be in effect, the most it conveyed was a fixed 1/16th percentage of any royalties paid from any leases. As in the first assignment of error, this is reviewed *de novo*.

{¶36} Appellant argues that the Royalty Assignment grants a "full equal one sixteenth (1/16) of all the petroleum oil and gas in and under the premises hereinafter described, that may hereafter be produced from said premises * * *." We note that this signifies a full, undiluted 1/16th interest. Appellant compares this clause to language appearing later in the Royalty Assignment, where there appears a different fraction ("said 1/16 interest being the one half part of the royalty") to describe the interest. Appellant argues that when a conflict arises between the granting clause and some other part of the instrument, the granting clause takes precedence, citing *Brannan v. Easter*, 4th Dist. Scioto No. 11CA3428, 2012-Ohio-2045, ¶ 9. Appellant believes this later section of the Royalty Assignment should be ignored as being in conflict with the granting clause.

{¶37} Appellant acknowledges that there are two recognized methods for describing a NPRI: a fixed, also known as "fractional," interest that does not change from lease to lease; and a floating, also known as "fraction of," interest, that varies depending on the amount of the landowner's royalty set forth in each specific lease. Williams & Meyers, Oil and Gas Law § 327.1 (2016); *Hysaw v. Dawkins*, 483 S.W.3d 1 (Tex.2016), 14; see also, *Ogren v. Sandaker*, 2017 ND 105, 893 N.W.2d 750 (N.D.2017), ¶ 10 (containing a detailed description of fixed versus floating royalty interests). Appellant argues that the "one half part" description flatly contradicts the "one sixteenth" part grant, and therefore, should not be considered.

{¶38} Appellees and the trial court took the approach that the "one sixteenth" and "one half part" phrases should and could be reconciled. The starting premise in all contractual interpretation is that "the court examines the contract as a whole and presumes that the intent of the parties is reflected in the language used in the agreement." *Martin Marietta Magnesia Specialties, L.L.C. v. Pub. Util. Comm.*, 129 Ohio St.3d 485, 2011-Ohio-4189, 954 N.E.2d 104, ¶ 22. Courts will attempt to give effect to every provision of the contract, and an interpretation that will give a clause meaning (rather than rendering it contradictory or meaningless) will always be sought if possible. *Sunoco, Inc. (R & M) v. Toledo Edison Co.*, 129 Ohio St.3d 397, 2011-Ohio-2720, 953 N.E.2d 285, ¶ 54.

{¶39} Appellees contend that Appellant has contrived a contradiction where none exists. The typical royalty reserved by a lessor is a one-eighth royalty. *See, e.g.*, *Hysaw*, *supra*, at 10 (describing 1/8th royalty as "ubiquitous"). It is also fairly common for part of this 1/8th interest to be assigned to others, often as a 1/16th interest. A 1/16th royalty is described in various leases, deeds, and royalty assignments as both a 1/16th interest and a 1/2 interest (of the presumed 1/8th royalty). *West v. Bode*, 7th Dist. No. 18 MO 0017, 2019-Ohio-4092, 145 N.E.3d 1190, ¶ 12; *Rubel v. Johnson*, 7th Dist. No. 17 MO 0009, 2017-Ohio-9221, 101 N.E.3d 1092, ¶ 2; *DeVitis v. Draper*, 7th Dist. No. 13 MO 0017, 2017-Ohio-1136, 87 N.E.3d 656, ¶ 2; *Headley v. Ackerman*, 7th Dist. Monroe No. 16 MO 0010, 2017-Ohio-8030, ¶ 5. Thus, the reference to both 1/16 and 1/2 royalty in the same document is not at all unusual in Ohio.

{¶40} In this case, though, the assigned royalty interest describes two interests: the interest in an existing 1894 lease, and the interest in any possible future leases.

Although Appellant argues that applying a fixed "one sixteenth" amount (and ignoring the "one half part" reference) is the only reasonable interpretation in order to make sense of both the 1894 lease and any future leases, the interpretation adopted by Appellees and the trial court is much more reasonable, and is legally preferred.

{¶41} The first mention of the one-sixteenth fraction clearly refers to the 1894 lease ("full equal one sixteenth (1/16) * * * that may hereafter be produced from said premises, under and by virtue of a certain oil and gas lease entered into the 30 day of November 1894"). The second mention of one-sixteenth, tied to a reference to "one half part," clearly refers to future leases ("said 1/16 interest being the one half part of the royalty * * * in any contract of lease hereinafter to be entered by us"). The only reasonable interpretation giving effect to both the one-sixteenth and "one half part" provisions is to conclude that the 1894 lease withheld a one-eighth royalty and the Royalty Assignment assigned one half of the one-eighth royalty (one-sixteenth). The Royalty Assignment then also assigned one half of the royalty withheld in any future leases (which most typically would be one-eighth royalty). This interpretation of a floating, or variable, one-half royalty interest with respect to any future leases also resolves a conflict that arises from Appellant's interpretation where a future lease may not reserve a one-eighth royalty. In that instance, the taking of "one half part" of that royalty would not equal one-sixteenth and the second reference in the Royalty Assignment to one-sixteenth would be contradictory or meaningless. "[I]nterpreting the deed to reserve a floating royalty interest harmonizes both clauses of the reservation * * *." *U.S. Shale Energy II, LLC v. Laborde Properties, L.P.*, 551 S.W.3d 148 (Tex.2018), 155.

{¶42} Appellant's citation to the Fourth District *Brannan* case is inapposite because there are no conflicting clauses in this instrument that would force one clause to be elevated over another.

{¶43} Appellees' interpretation that the Royalty Assignment assigns a floating one-half of any royalty reserved in existing and future leases is the only reasonable interpretation as a matter of law, and therefore, the trial court correctly dismissed Appellant's second cause of action for failure to state a claim.

3. Did Appellant have a right to request an accounting from Gulfport?

{¶44} Appellant contends that it had an equitable right to an accounting of unpaid rents and profits regarding the severed royalty interest. Appellant cites *Sandusky Properties v. Aveni*, 15 Ohio St.3d 273, 473 N.E.2d 798 (1984). In *Sandusky Properties*, the plaintiff brought a breach of contract claim and requested relief in the form of specific performance. The court held that an equitable right to an accounting was appropriate as an ancillary right to specific performance. *Id.* at 278. *Sandusky Properties* does not support Appellant's argument. Instead, it supports Appellees' contention that a demand for an accounting does not form the basis for a standalone action but is instead, a remedy. "Accounting and punitive damages are remedies, and not causes of action." *Meehan v. Mardis*, 2019-Ohio-4075, 146 N.E.3d 1266, ¶ 8 (1st Dist.).

{¶45} The elements of an action that would result in the equitable remedy of an accounting are: fraud; fiduciary or trust relationship; and necessity. *Miller Med. Sales, Inc. v. Worstell*, 10th Dist. Franklin No. 91AP-610, 1992 WL 31988, *6. Appellant has not alleged an action for fraud, nor has it alleged that Gulfport stands in a fiduciary relationship with the Moore Family Trust. Although Appellant listed an accounting as its third cause

of action, a request for an accounting is at most a remedy ancillary to its other three causes of action. Counts one and two were properly dismissed as explained above, and no accounting can be attached to them. Count four (quiet title) is based on, and is dependent on the success of, either count one or count two. Since the entire basis for the claim seeking quiet title was dismissed, the quiet title action itself was also properly dismissed. There are no remaining causes of action to which the remedy of an accounting may attach. Appellees' argument is correct, and the trial court appropriately dismissed count three asking for an accounting.

{¶46} As none of Appellant's sub-arguments under this assignment of error have merit, Appellant's second assignment of error is overruled.

Conclusion

{¶47} Appellant filed a complaint in the Monroe County Court of Common Pleas attempting to either declare that an 1896 Royalty Assignment to J.M. Jeffers had expired, or that the Royalty Assignment was limited to a fixed 1/16th royalty interest. Appellant also requested quiet title and an accounting from Appellee Gulfport. The trial court properly interpreted the 1896 Royalty Assignment as a perpetual royalty covering both current and future oil and gas leases. The trial court also correctly held that the Jeffers royalty was a floating one-half portion of the assignors' royalty, calculated lease by lease, rather than a fixed one-sixteenth royalty applying to the 1894 lease and any other possible lease. The trial court was also correct as a matter of law that Appellant could not request an accounting as a standalone action. Additionally, pursuant to the holding of *Scarpelli*, *supra*, the trial court correctly ruled on the motion for judgment on the pleadings rather

than granting Appellant's motion for default judgment against the non-answering defendants. The judgment of the trial court is hereby affirmed.

Robb, J. concurs.

D'Apolito, P.J., concurs.

For the reasons stated in the Opinion rendered herein, the assignments of error are overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Monroe County, Ohio, is affirmed. Costs to be taxed against the Appellant.

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.