

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

ROBERT D. RAY AND DIANE RAY,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellants	:	
	:	
v.	:	
	:	
WESTERN PENNSYLVANIA	:	
CONSERVANCY, a Non-Profit	:	
Corporation,	:	
	:	
Appellee	:	No. 1799 WDA 2011

Appeal from the Order entered on October 19, 2011  
in the Court of Common Pleas of Westmoreland County,  
Civil Division, No. 3388 of 2011

BEFORE: MUSMANNO, BOWES and WECHT, JJ.

MEMORANDUM BY MUSMANNO, J.: Filed: February 21, 2013

Robert D. Ray and Diane Ray (“the Rays”) appeal from the Order denying the Motion for judgment on the pleadings filed by them and entering judgment in favor of the Western Pennsylvania Conservancy (“the WPAC”), a Non-Profit Corporation. We affirm.

The trial court summarized the relevant history underlying the instant appeal as follows:

This action pertains to a tract of real estate consisting of 83.957 acres in Ligonier Township, Westmoreland County. On June 6, 2006, [the Rays’] predecessor in title, Colcom Foundation [“Grantor”], a non-profit corporation, granted a Perpetual Conservation Easement and Declaration of Restrictive Covenants (hereinafter [“Conservation Easement”]) to [WPAC], ... pursuant to the Conservation and Preservation Easements Act [“the Act”], 32 P.S. [§] 5051 *et seq.* It was filed with the Recorder of Deeds of Westmoreland County, Pennsylvania[,] at Instrument Number 200606200029698[,] on June 20, 2006.

On June 22, 2006, [Grantor] conveyed the real estate in question to [the Rays], subject to the perpetual [Conservation Easement]. That Deed was filed with the Recorder of Deeds of Westmoreland County, Pennsylvania[,] at Instrument Number 200606260030506.

Trial Court Opinion, 10/19/11, at 1-2.

In April 2009, the Rays contacted the WPAC, advising the WPAC of the Rays' intent to explore natural gas on the Conserved Property via horizontal drilling. Complaint, Exhibit C. The Rays sought confirmation that horizontal drilling, from an adjacent property under the Conserved Property, would not violate the Conservation Easement. *Id.* In December 2009, the WPAC advised the Rays that the proposed drilling would violate the Conservation Easement.

In May 2011, the Rays filed a Complaint for declaratory relief. Specifically, the Rays sought a declaration that drilling under the Conserved Property would not violate the Conservation Easement. At the close of the pleadings, the Rays filed a Motion for judgment on the pleadings. Following the filing of briefs by the parties and a hearing, the trial court entered an Order denying the Rays' Motion, and declaring, in relevant part, the following:

It is the judgment of this Court that [the Rays] are not permitted to remove or extract any gas, minerals or any other similar materials from the real estate in question by drilling or any other method of removal or extraction, including but not limited to, horizontal drilling, as those activities would be violative of the [Conservation Easement] herein.

Trial Court Order, 10/19/11. Thereafter, the Rays filed the instant timely appeal, followed by a court-ordered Concise Statement of matters complained of on appeal, pursuant to Pa.R.A.P. 1925(b).

The Rays now present the following claims for our review:

1. Does a [Conservation Easement] burdening [the Rays'] property prohibit [the Rays] from accessing, by means of horizontal drilling from a well located on a neighboring parcel, the natural gas deposits contained in the Marcellus Shale formation deep below the property?
2. Did the trial court commit an error of law by finding, on [the Rays' M]otion for judgment on the pleadings, that the [Conservation Easement] unambiguously disclosed the parties' intent to prohibit accessing, by means of horizontal drilling from a well located on a neighboring parcel, the natural gas deposits contained in the Marcellus Shale formation deep below the property?

Brief of Appellants at 2.

The Rays challenge the trial court's entry of judgment on the pleadings in favor of the WPAC.

The standard by which a court reviews a request for judgment on the pleadings is limited. A motion for judgment on the pleadings will be granted only where, on the facts averred, the law says with certainty no recovery is possible. As this issue concerns a question of law, our review of the entry of judgment on the pleadings is *de novo*.

It is fundamental that a judgment on the pleadings should not be entered where there are unknown or disputed issues of fact. The court must treat the motion as if it were a preliminary objection in the nature of a demurrer. In conducting this inquiry, the court should confine its consideration to the pleadings and relevant documents.

***Piehl v. City of Philadelphia***, 987 A.2d 146, 154 (Pa. 2009) (citations omitted).

The Rays first claim that the “construction [that] the trial court gave to the [Conservation] Easement is contrary to the clear intention of the parties[,] as embodied in the [Conservation] Easement.” Brief of Appellants at 7. According to the Rays, the trial court improperly construed the Conservation Easement’s restrictions in isolation, rather than in the context of the Conservation Easement as a whole. ***Id.*** at 8. The Rays argue that the Conservation Easement expressly sought to protect the conservation values of the region by conveying the Conservation Easement “over” and “across” the Conserved Property. ***Id.*** The Rays argue that the plain meaning of the terms “over” and “across” express a relationship with the surface or top of the location, and provides insight into the parties’ intention regarding the scope of the Conservation Easement. ***Id.***

The Rays also rely upon the stated purposes of the Conservation Easement to support their claim. ***Id.*** According to the Rays, the stated purpose of the Conservation Easement was to ensure the preservation of the forested, open space character of the Conserved Property, “both as an end in itself and as a means to conserve the quality of water and to promote biological diversity.” ***Id.*** at 9. The Rays further direct our attention to the Baseline Survey, incorporated into the Conservation Easement, which cataloged only the surface features of the Conserved Property. ***Id.***

According to the Rays, the trial court improperly divorced the restrictions set forth in the Conservation Easement from the express purposes that the Conservation Easement was designed to serve, *i.e.*, the preservation of the surface characteristics of the Conserved Property. *Id.* at 11.

The Rays' claim requires this Court to construe the provisions of the Conservation Easement. Under Pennsylvania law, easement provisions are interpreted under the same rules of construction as contracts. ***Zettlemyer v. Transcontinental Gas Pipeline Corp.***, 657 A.2d 920, 924 (Pa. 1995).

These rules provide that if the location, size or purpose of an easement is specified in the grant, then the use of an easement is limited to the specifications. If, however, the language of a granting deed is ambiguous regarding these matters, then the intent of the parties as to the original purpose of a grant is a controlling factor in determining the extent of an easement. Moreover, the intention of the parties is determined by a fair interpretation and construction of the grant and may be shown by the words employed construed with reference to the attending circumstances known to the parties at the time the grant was made.

Whether a trial court properly interpreted a contract is a question of law and our scope of review is plenary. As with any contract the rights conferred by the grant of an express easement must be ascertained solely from the language of the deed, provided that the deed language is unambiguous. When the language is ambiguous, however, a court may resort to evidence of extrinsic circumstances as an aid to interpretation. When the purposes of an express easement are not specifically stated, the court must ascertain the objectively manifested intention of the parties in light of the circumstances in existence at the time of conveyance. Whether an ambiguity exists is a question of law subject to plenary review. However, resolution of conflicting parol evidence relevant to what the parties intended by an ambiguous provision is for the trier of fact.

***PARC Holdings, Inc. v. Killian***, 785 A.2d 106, 111-12 (Pa. 2001)  
(citations and internal quotation marks omitted).

The Conservation Easement at issue in this case provided, in relevant part, as follows:

**RECITALS**

1. Grantor is the owner of a certain parcel of real property, located in Ligonier Township, Westmoreland County, Pennsylvania, comprising 83.957 acres, more or less, hereinafter called the "Real Estate." ...
2. Within the Real Estate shall be an area designated as the "Building Envelope" which will contain not more than 3.0 acres....
3. It is [WPAC's] corporate purpose to preserve and conserve natural areas for preservation of open space, public outdoor recreation and education, and protection of natural environmental systems.
4. Grantor and [WPAC] recognize the conservation values of the region in which the Real Estate is located, and propose the protection of such values by the conveyance to [WPAC] of a conservation easement over and across those parts of the Real Estate which are outside of the Building Envelope. The parts of the Real Estate which will not be within the Building Envelope are hereinafter referred to as the "Conserved Property." The conveyance of said easement shall conserve the quality of water resources by maintaining the forested areas of the Conserved Property. These forested areas protect water resources from sediment and non-point pollution and promote the infiltration, detention and natural filtration of storm water. The [Conservation E]asement shall also conserve biological diversity and perpetuate and foster the growth of a health and unfragmented forest. Features to be conserved include native species, continuous canopy with a multi-tiered understory of trees, shrubs, wildflowers, and grasses; and breeding sites and corridors for the migration of birds and wildlife. The easement shall also ensure that agriculture, forestry, and other uses, to the extent that they are permitted, be conducted in a manner

that will neither diminish the biological integrity of the Conserved Property nor deplete natural resources over time nor lead to irreversible disruption of ecosystems and associated purposes.

5. Pursuant to the [Act], Grantor intends by this Grant and Declaration to declare a conservation easement to the Conserved Property in favor of and for the benefit of [WPAC], and Grantor wishes to impose certain limitations and restrictions on the use and development of the Conserved Property so that the natural condition of the Conserved Property will be forever preserved, subject to uses and changes permitted hereby.

6. The terms "natural character," "natural environmental systems," "natural condition" and "natural values", as used herein shall, without limiting their generality, have meanings which may be ascribed to such terms by ordinary usage, and are further intended to describe the condition of the Conserved Property on the date hereof. **The specific conservation values of the Conserved Property are further documented in an inventory of relevant features of the Conserved Property, on file at the office of the [WPAC] and incorporated by this reference ("Baseline Documentation")** ..., which consists of reports, maps, photographs, and other documentation that the parties agree provide, collectively, an accurate representation of the Conserved Property at the time of this grant and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant.

Grant and Declaration at 1-2 (emphasis added).

As set forth above, the terms "Real Estate" and "Conserved Property" are defined terms. The term "Real Estate" refers to the property as a whole. The term "Conserved Property" refers to the portion of the Real Estate that is not part of the Building Envelope.

Grantor's conveyance of the Conservation Easement to WPAC was subject to the following provisions:

1. **Grant of Easement: Acceptance.** Subject to the terms of this Grant and Declaration, Grantor hereby unconditionally and absolutely grants and conveys unto [WPAC], in perpetuity, an easement in gross and a declaration of restrictive covenants with respect to the Conserved Property, as more particularly hereinafter set forth ..., exclusively for the purposes of preserving and protecting the natural, agricultural and water resource values of the Conserved Property, and preserving the Conserved Property in its present natural condition. [WPAC] hereby accepts the [Conservation] Easement and agrees to hold it exclusively for such purposes and not to transfer it (a) in exchange for money, other property or services, or (b) to any organization which is not described in both Section 170 (h)(3) and Section 2522(a) of the Internal Revenue Code of 1954, as amended (hereinafter called the "code"), and (c) only as permitted in Paragraph 13 below.

2. **Declaration of Restrictions.** In order to safeguard and promote the purposes of the Easement set forth in paragraph 1 above, **and to preserve the natural values and environmental systems of the Real Estate**, but subject however to the other terms and conditions of this Grant and Declaration, Grantor hereby declares and covenants that **the following restrictions are imposed, and shall apply forever to the use and enjoyment of the Real Estate:**

...

C. No quarrying, excavation, drilling *or other removal* of coal, clay, oil, *gas*, minerals, gravel, sand, topsoil or other similar materials including but not limited to, extraction or removal of any such minerals by surface mining methods, **from the Real Estate** shall occur except incidentally in connection with any activity or construction specifically permitted under the terms of this Grant and Declaration.

...

E. In order to preserve the natural condition of the Conserved Property, trees growing on the Conserved Property may be cut or removed in a manner consistent with the following, and provided that such cutting or removal does not impair and is necessary for the



protection of the significant conservation interest which are created pursuant to this [Conservation Easement] ....

...

I. No use or activity that causes or is likely to cause significant soil degradation or erosion or significant depletion or pollution of any surface or subsurface water shall be permitted **on the Real Estate**.

Grant and Declaration at 2-3 (emphasis added).

The restriction at issue in this case, set forth at paragraph 2C, prohibits "*drilling ... or other removal of ... gas ... from the Real Estate[.]*"<sup>1</sup> *Id.* at ¶ 2C (emphasis added). This language is clear and unambiguous. The Conservation Easement prohibits "drilling" and/or "other removal of ... gas" from the Real Estate. *See id.* Paragraph 2C does not limit its scope to surface drilling on the Conserved Property. Rather, paragraph 2C's restriction encompasses all removal of gas from the Real Estate.

This Court cannot ignore the parties' intentions, as expressed by the unambiguous restriction set forth at paragraph 2C. Grantor and WPAC expressly agreed to prohibit the removal of gas from the Real Estate.<sup>2</sup> The

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<sup>1</sup> The Rays do not argue that the removal of gas would be incidental "in connection with any activity or construction specifically permitted under the terms of this Grant and Declaration." Conservation Easement at ¶ 2C.

<sup>2</sup> The Rays direct our attention to the Baseline Survey appended to the Conservation Easement in support of their claim. Brief of Appellants at 9. The Baseline Survey, however, describes only the Conserved Property, not the Real Estate. The prohibition set forth at paragraph 2C applies to the Real Estate as a whole. That the Baseline Survey depicted only surface features does not negate the unambiguous restriction set forth at paragraph 2C.

horizontal drilling proposed by the Rays constitutes “drilling” or “other removal of ... gas ... from the Real Estate.” **See id.** Because the trial court committed no error in interpreting the Conservation Easement, we cannot grant the Rays relief on this claim.

The Rays next argue that in interpreting the Conservation Easement, the trial court improperly engaged in fact-finding in the absence of an evidentiary record. Because we conclude as a matter of law that the unambiguous restriction set forth at paragraph 2C of Conservation Easement prohibits the Rays’ removal of gas from the Real Estate, we need not address this claim.

The Rays also argue that the trial court improperly “gave a broader meaning to the [Conservation] Easement than permitted by the [the Act].” Brief of Appellants at 13. The Rays argue that the Act’s focus is to provide a statutory basis for easements “that protect primarily surface features of open space land in this Commonwealth.” **Id.** According to the Rays, the trial court improperly expanded the scope of the Conservation Easement” to “prohibit activities that occur predominately on a neighboring parcel.” **Id.**

Regardless of the purpose of the Act, the Rays cannot avoid the Conservation Easement’s unambiguous prohibition on “drilling ... or other removal of ... gas ... from the Real Estate.” Conservation Easement at ¶ 2C. The restriction’s scope is not limited to the surface of the property, and encompasses *all* manner of removal. Further, the Rays have not established

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that the Conservation Easement violates any provision of the Act. Accordingly, we cannot grant the Rays relief on this claim.

For the foregoing reasons, we affirm the Order of the trial court.

Order affirmed.