Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-16-00700-CV

Richard **CASH**,
Appellant

v.

Cara **KING** and Christian Cash,
Appellees

From the 81st Judicial District Court, Karnes County, Texas
Trial Court No. 15-03-00055-CVK
Honorable Stella Saxon, Senior Judge Presiding[1]

Opinion by: Luz Elena D. Chapa, Justice

Sitting: Karen Angelini, Justice
Marialyn Barnard, Justice
Luz Elena D. Chapa, Justice

Delivered and Filed: August 23, 2017

AFFIRMED

This is an appeal from a summary judgment in which the trial court declared the parties' respective rights and interests regarding a mineral estate. Richard Cash argues the trial court erred by misconstruing assignments appellees Cara King and Chris Cash had executed, rendering a declaratory judgment, and awarding attorney's fees. We affirm the trial court's judgment.

[1] Sitting by assignment.

BACKGROUND

The parties to this appeal are the children and heirs of Phyllis Whipple, who died intestate in January 2007. When she died, Phyllis owned a house in Comal County and an interest in real property in Karnes County. Richard was appointed administrator of Phyllis's estate in March 2007. As administrator, Richard sold the house and split the proceeds with Cara and Chris.

Richard pursued claims Phyllis's estate had against the parties' extended family, but Cara and Chris decided not to finance the litigation. Cara and Chris executed nearly identical assignments under the Texas Probate Code in 2008. The assignments provided:

> [I]n accordance with the provisions of [the] Texas Probate Code, [I] do hereby assign to Richard Cash any interest which I may be entitled to receive from the Estate of William Whipple, Deceased, and any additional interest, other than that already received, which I may be entitled to receive from the Estate of Phyllis Whipple, Deceased, including any interest which I may have in the claim which the Estate of Phyllis Whipple, Deceased, may have against the Estate of Raymond Whipple, Deceased, and/or John Lesile [sic] Whipple, Jr., which claim is set out in Plaintiffs Original Petition filed on behalf of the Estate of Phyllis Whipple, Deceased, in the Estate of Raymond Oatman Whipple, Deceased.[2]

In 2015, Richard executed a mineral deed "as Independent Executor" of Phyllis's estate, purporting to convey the entire mineral estate of the Karnes County property to himself individually. At the time Richard executed the deed, Cara and Chris had outstanding mineral leases covering the mineral estate.

Cara and Chris sued Richard, seeking among other relief a declaration that the assignments did not authorize Richard to convey the mineral estate to himself. Richard generally denied Cara and Chris's allegations and alleged a counterclaim for declaratory judgment, seeking a declaration that the 2015 mineral deed is valid and that the assignments transferred Cara's and Chris's interests

[2] Chris's assignment further provided, "I understand that I will be reimbursed the money I have put in for attorney fees only if Richard Cash wins any cash or property in a settlement. I understand I will provide receipts or checks for attorney fees that I have paid."

in the mineral estate to him.[3] The parties filed competing traditional motions for summary judgment, after which the trial court rendered a final judgment in Cara and Chris's favor. The final judgment declared the assignments did not authorize Richard to convey the mineral estate to himself, declared the 2015 mineral deed void, and awarded Cara and Chris attorney's fees. Richard timely appealed.

STANDARD OF REVIEW

We review a trial court's summary judgment de novo. *Rife v. Kerr*, 513 S.W.3d 601, 609 (Tex. App.—San Antonio 2016, pet. denied). To be entitled to summary judgment, the movant must show there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law. *Id.* "When parties file competing motions for summary judgment, and the trial court grants one and denies the other, we review all issues presented and render the judgment the trial court should have rendered." *Id.*

CONSTRUCTION OF THE ASSIGNMENTS

Richard argues the trial court misconstrued the assignments. Cara and Chris executed the assignments "in accordance with the provisions of [the] Texas Probate Code," which was in effect at that time. Section 37B of the Texas Probate Code provided, "A person entitled to receive property or an interest in property from a decedent . . . by inheritance . . . and who does not disclaim the property . . . may assign the property or interest in property to any person." TEX. PROB. CODE ANN. § 37B(a).[4] The parties' contentions require us to construe the assignments, which are written instruments. *See id.*

[3] In his live pleading, Richard raised the counterclaim "in the alternative" in the event the trial court found "that this litigation is subject to a Declaratory Judgment."

[4] Section 122.201 of the Texas Estates Code re-codifies this provision. *See* TEX. EST. CODE ANN. § 122.201(a) (West Supp. 2016).

We construe written instruments "to ascertain the true intentions of the parties as expressed in the instrument." *See Coker v. Coker*, 650 S.W.2d 391, 393 (Tex. 1983). To achieve this objective, we examine and consider the entire instrument "in an effort to harmonize and give effect to all provisions so that none will be rendered meaningless." *Id.* "No single provision taken alone will be given controlling effect; rather, all the provisions must be considered with reference to the whole instrument." *Id.* "If the written instrument is so worded that it can be given a certain or definite legal meaning or interpretation, then it is not ambiguous and the court will construe the [instrument] as a matter of law." *Id.* We construe a written instrument in accordance with the plain meaning of the language used. *See id.* at 393-94.

Through the assignments, Cara and Chris assigned their interests in Phyllis's estate except the interests "already received." The parties dispute whether the interests "already received" included Cara's and Chris's interests in the disputed mineral estate. Cara and Chris argue their rights and interests in the minerals of the Karnes County property vested immediately upon Phyllis's death because she died intestate. Richard agrees Cara and Chris's rights and interests "vested" immediately, but he argues the phrase "already received" refers only to property distributed through the administration of Phyllis's estate (i.e. only the proceeds from the sale of the house). Richard argues Cara and Chris had not "already received" their interests in the minerals because he had not signed a deed conveying Phyllis's interest in the Karnes County property to Cara and Chris.

Considering the assignments as a whole, we agree with Cara and Chris's construction. "[W]henever a person dies intestate, all of his estate shall vest immediately in his heirs at law." TEX. PROB. CODE ANN. § 37. "Vest" means "to place or give into the possession or discretion of some person or authority." WEBSTER'S THIRD NEW INT'L DICTIONARY (2002), at 2547; *see ExxonMobil Pipeline Co. v. Coleman*, 512 S.W.3d 895, 899 (Tex. 2017) (per curiam) (explaining

we construe statutes according to their plain meaning). As used in the phrase "other than that already received," "received" is the past participle of "receive," which means "to take possession or delivery of." *See* WEBSTER'S THIRD NEW INT'L DICTIONARY, at 1894. "Already" means "prior to some specified or implied past, present, or future time." *Id.* at 62. The phrase preceding "already received" in the assignment refers to an "interest," which is a "right, title, or legal share in something." *Id.* at 1178.

Considering the plain meaning of the language used in the assignments and in section 37, Richard, Cara, and Chris immediately took possession of—i.e. "received"—their interests in all of the estate assets at the time of Phyllis's death. *See* TEX. PROB. CODE ANN. § 37.[5] Because Cara and Chris had "already received" their respective interests immediately *after* the time of Phyllis's death, the subsequent appointment of Richard as the estate's administrator does not change the fact that Cara and Chris had "already received" their interests in the estate assets when they executed the assignments. Thus, when Cara and Chris executed the assignments, they had "already received" their interests in the disputed mineral estate. We hold Cara and Chris did not assign their interests in the disputed mineral estate to Richard, and Richard therefore had no authority to convey the mineral estate to himself under the 2015 mineral deed.

DECLARATORY JUDGMENT & ATTORNEY'S FEES

Richard argues the trial court erred by rendering a declaratory judgment, and awarding Cara and Chris attorney's fees under the Declaratory Judgment Act, because trespass to try title is the sole method to establish ownership to real property and attorney's fees are not available in trespass-to-try-title actions. Although a trespass-to-try-title action is the exclusive method of

[5] Section 101.001 of the Texas Estates Code re-codifies this provision. *See* TEX. EST. CODE ANN. § 101.001(b) (West 2014).

determining title to real property when a claimant seeks to recover possession of the property, a claimant is not required to bring a trespass-to-try-title action when the action is for relief that pertains to a nonpossessory interest. *See Glover v. Union Pac. R.R. Co.*, 187 S.W.3d 201, 210-11 (Tex. App.—Texarkana 2006, pet. denied); *see also Martin v. Amerman*, 133 S.W.3d 262, 263 (Tex. 2004) (requiring a trespass-to-try-title action and prohibiting a declaratory judgment action when the Texas trespass-to-try-title statute governs the parties' substantive rights). Here, there are outstanding mineral leases covering the disputed mineral estate, in which Cara and Chris had only nonpossessory interests at the time they filed suit. *See Glover*, 187 S.W.3d at 211 (holding royalty interests and possibility of a reverter under an oil and gas lease are nonpossessory interests and not subject to a trespass-to-try-title action). Cara and Chris did not seek a determination of their rights or title to a possessory interest, and they were therefore not required to bring a trespass-to-try-title action. *See id.*

Cara and Chris sought from the trial court a declaration to determine their rights under the assignments and under the 2015 mineral deed, as those instruments pertained to Cara and Chris's nonpossessory interests in the mineral estate. The Declaratory Judgment Act authorizes a trial court to determine the rights of parties under legal instruments and to award attorney's fees to the prevailing party. *See* TEX. CIV. PRAC. & REM. CODE ANN. §§ 37.004(a), 37.009 (West 2014). Cara and Chris prevailed in the trial court, and Richard has not demonstrated the trial court erred in granting the requested declaratory relief. Thus, the Declaratory Judgment Act authorizes an award of attorney's fees in this case. *See id.* § 37.009.

CONCLUSION

The trial court properly granted Cara and Chris's motion for summary judgment and properly denied Richard's competing motion. We therefore affirm the trial court's judgment.

Luz Elena D. Chapa, Justice