**[J-110-2003]**
**IN THE SUPREME COURT OF PENNSYLVANIA**
**WESTERN DISTRICT**

**CAPPY, C.J., CASTILLE, NIGRO, NEWMAN, SAYLOR, EAKIN, LAMB, JJ.**

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| IN RE: ESTATE OF ROBERT H. QUICK | : | No. 10 WAP 2003 |
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| | : | Appeal from the Order of the Superior Court entered September 17, 2002 at No. 2122 WDA 2001, affirming the Decree of the Court of Common Pleas of Westmoreland County, entered November 9, 2001 at No. 65-81-1614. |
| APPEAL OF: ROBERT H. QUICK II, EXECUTOR OF THE ESTATE OF ROBERT H. QUICK, AND ROBERT H. QUICK II, INDIVIDUALLY AND RICHARD M. QUICK | : | |
| | : | ARGUED: September 9, 2003 |

**OPINION**

**MR. JUSTICE EAKIN** **DECIDED: AUGUST 23, 2006**

We granted allowance of appeal to determine whether a joint tenancy with right of survivorship (JTWROS) was severed by execution of an oil and gas lease. We conclude the parties intended the JTWROS to remain intact when the oil and gas lease was executed; accordingly, we affirm the Superior Court's decision.

In July, 1957, A. Frank Jones and Grace A. Jones, by general warranty deed, conveyed fee simple title to approximately 23 acres of land in Loyalhanna Township, Westmoreland County, to Kenneth Quick, Robert Quick, and Robert Bean as JTWROS; the deed was recorded in October, 1957. On December 26 of the same year, the three joint tenants and their wives executed an oil and gas lease with respect to the property in favor

of William and Marcus Seanor; the lease was recorded March 18, 1958.[1] Kenneth Quick died April 27, 1972, and title to the property vested in Robert Quick and Bean as the surviving JTWROS.

On June 14, 1979, Bean executed an oil and gas lease on the property in favor of Paul H. Gerrie & Associates, Inc. On September 15, 1979, Quick gave a similar oil and gas lease to Gerrie. Both leases were recorded September 20, 1979, assigned by Gerrie to Largent Investments May 15, 1980, and further assigned to Loyalhanna Drilling Program February 3, 1981.

The leases Bean and Quick executed are identical, except the Bean lease contains a type-written addition that states: "Should any question of property ownership or royalty dispursements [sic] arise, the Lessor has agreed to accept full responsibility." Bean Lease at Original Record, Exhibit E to Item 29 (Petition for Declaratory Judgment), at 2. The Quick lease does not contain this clause. Quick Lease at Original Record, Exhibit F to Item 29 (Petition for Declaratory Judgment), at 2.

Drilling commenced, and all royalties were paid to Bean and Quick—each received one-half of one-eighth (one-sixteenth) of the royalties from the drilling. This continued until Quick died September 25, 1981; after that date, the royalties were paid in the same amount, one-sixteenth each to Bean and the Estate of Quick. By deed dated June 29, 1992, recorded July 6, 1992, Bean, through his attorney-in-fact, appellee Marilyn Bean Jeffers, transferred the property to appellee. Since 1992, one-sixteenth of the royalties have been paid to appellee, and one-sixteenth of the royalties have been held in escrow pending resolution of the ownership of the interest that belonged to Quick.

[1] Bean executed an Affidavit of Non-Development covering this lease May 5, 1980, and recorded it three days later. This affidavit vitiated the 1957 lease.

In April, 1993, appellee filed a petition for a citation, alleging title to the property vested in Bean upon Quick's death. Petition for Citation at Original Record, Item 18, at 4-5. She requested the court require the executor of Quick's estate to account for funds received as royalties under the lease and distribute them to her, and to order Loyalhanna Drilling Program to pay over the royalties held in escrow. Id., at 8-9. Robert H. Quick, II, as executor of the Estate of Quick, as well as Robert H. Quick, II and Richard M. Quick individually, Robert Quick's sons and heirs (appellants), filed an answer and counterclaim alleging the JTWROS between Bean and Quick was severed by Bean's June 14, 1979 oil and gas lease to Gerrie, and therefore title to the property did not vest in Bean upon the death of Quick, since Bean and Quick held the property as tenants in common.

At an April, 2001 hearing, appellee and appellants submitted stipulated facts and petitioned the court to declare whether the JTWROS was terminated by the 1979 leases. The court determined the 1979 leases did not sever the JTWROS, and thus, by operation of law, Bean became the sole owner of the property upon Quick's death. Appellants appealed to the Superior Court, which affirmed the trial court's decision. Appellants petitioned this Court for allowance of appeal, which we granted, limited to the following issue:

> Did the conveyance by Robert J. Bean of his one-half interest in and to the oil and gas estate sever the joint tenancy with rights of survivorship then existing between Robert J. Bean and Robert H. Quick?

In re Estate of Quick, 817 A.2d 473 (Pa. 2003) (per curiam). As with all questions of law, our standard of review is de novo, and our scope of review is plenary. Straub v. Cherne Industries, 880 A.2d 561, 566 n.7 (Pa. 2005).

When two or more persons hold property as JTWROS, title to that property vests equally in those persons during their lifetimes, with sole ownership passing to the survivor

at the death of the other joint tenant.[2] In re Parkhurst's Estate, 167 A.2d 476, 478 (Pa. 1961). In contrast, a tenancy in common is an estate in which there is unity of possession but separate and distinct titles. In re Sale of Property of Dalessio, 657 A.2d 1386, 1387 n.1 (Pa. Cmwlth. 1995). The essence of a JTWROS is the four unities: interest, title, time, and possession. General Credit Co. v. Cleck, 609 A.2d 553, 556 (Pa. Super. 1992). A JTWROS must be created by express words or by necessary implication, Thompson, at 771, but there are no particular words which must be used in its creation. Maxwell v. Saylor, 58 A.2d 355, 356 (Pa. 1948). In fact, courts have found the intent to create a JTWROS trumps the use of imprecise or improper language in creating it.

In Thompson, property was conveyed to two brothers by deed as "tenants by the entireties." Thompson, at 771. Since tenancy by the entireties is reserved for ownership by a husband and a wife, this Court determined the brothers held the property as JTWROS in order to effectuate the conveyor's intent of creating a right of survivorship. Id., at 772.

In Maxwell, two unmarried people were designated husband and wife on a deed, which would convey the land as tenants by the entireties if they had been married. Maxwell, at 355-56. Again, this Court determined the parties desired to establish a right of survivorship, and in order to give meaning to that intent, concluded the unmarried man and woman were JTWROS. Id., at 356.

In Zomisky v. Zamiska, 296 A.2d 722 (Pa. 1972), a father conveyed title in land to himself and his son "as joint tenants and as in common with the right of survivorship." Id., at 723. Following the father's death intestate, the deed was challenged because the phrase "right of survivorship" conflicted with the concept of tenants in common. This Court

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[2] While JTWROS has been said to be disfavored in Pennsylvania, see Pennsylvania Bank and Trust Co. v. Thompson, 247 A.2d 771, 771-72 (Pa. 1968), it is a legitimate and permissible means by which individuals hold title.

found the deed created a JTWROS, because to find otherwise would render the phrase "right of survivorship" meaningless. Id., at 724.

In each of the cases cited above, this Court considered the intent of the parties to determine the type of tenancy established. As we previously explained:

> [W]here there is any doubt or ambiguity as to the meaning of the covenants in a contract or the terms of a grant, they should "receive a reasonable construction, and one that will accord with the intention of the parties; and, in order to ascertain their intention, the court must look at the circumstances under which the grant was made." "It is the intention of the parties which is the ultimate guide, and, in order to ascertain that intention, the court may take into consideration the surrounding circumstances, the situation of the parties, the objects they apparently have in view, and the nature of the subject-matter of the agreement."

Hindman v. Farren, 44 A.2d 241, 242 (Pa. 1945) (citation omitted) (emphasis added).

Clearly and without dispute, the parties here intended to hold title as JTWROS. Appellants argue that following the execution of Bean's 1979 oil and gas lease, the JTWROS between Bean and Quick was severed, resulting in a tenancy in common. Appellants would have us adopt a rule that a lease executed by fewer than all of the joint tenants, in all instances severs a JTWROS. This we refuse to do. The intentions of the parties executing the leases cannot be ignored, lest we cause unwary titleholders to inadvertently undo that unity of title which they must purposefully create.

Intent is equally as significant when addressing the severance of a JTWROS as it is when considering whether a JTWROS was created. "A joint tenancy is severed when one or more of the four unities is destroyed." Cleck, at 556. "[I]t is well settled in this state that a joint tenancy with right of survivorship is severable by the action, voluntary or involuntary, of either of the parties." Angier v. Worrell, 31 A.2d 87, 88 (Pa. 1943) (citation omitted). An involuntary severance "requires an act which effectively divests the joint tenant's interest, such as an attachment execution on a joint tenancy, or an assignment in trust or by judgment and execution …." Sheridan v. Lucey, 149 A.2d 444, 445-46 (Pa. 1959) (citation

omitted). A voluntary severance, such as is alleged here, occurs when one of the joint tenants takes affirmative steps to create a tenancy in common. For example, "[a] joint tenant may obtain a severance or separation of the property or a decree granting partition and obtain thereby an undivided fee interest in one-half of the property." In re Estate of Larendon, 266 A.2d 763, 766 (Pa. 1970). "[A]lthough a voluntary act on the part of one of the joint tenants is adequate to work a severance, that act must be of sufficient manifestation that the actor is unable to retreat from his position of creating a severance of the joint tenancy." Sheridan, at 446; see also Clingerman v. Sadowski, 519 A.2d 378, 383 (Pa. 1986) ("[A] joint tenancy can be severed by a unilateral act of one of the parties, so long as the act clearly and unequivocally signifies an intent to sever.").

Therefore, to determine whether the 1979 oil and gas leases severed the JTWROS, we must consider the parties' intentions in executing them. As the trial court observed, the record is devoid of any action by either Bean or Quick which would signify the intent to destroy the joint tenancy. Trial Court Opinion, 11/9/01, at 22. The separate dates on which the leases were signed is not determinative, for the parties may very well have intended to execute the leases contemporaneously. The same corporation was seeking the gas and oil rights, and obviously knew the permission of both tenants was needed before drilling could begin. Both leases were executed in favor of the same party, and neither was recorded until the other was signed—both were recorded on the same day. Both were simultaneously assigned to the same third party. The difference of execution dates of the oil and gas leases by the geographically distant owners does not evince an intent to sever the JTWROS. This is not a situation where each tenant changed the use of the property without the other's agreement. The difference in dates of the leases is simply not the definitive factor it might be in other scenarios.

The leases indicate Bean lived in Kissimmee, Florida, and Quick lived on Long Island, New York. Bean Lease at Original Record, Exhibit E to Item 29 (Petition for

Declaratory Judgment), at 1; Quick Lease at Original Record, Exhibit F to Item 29 (Petition for Declaratory Judgment), at 1. Fax machines had not attained ubiquity in 1979, and overnight mail delivery was not then a routine means of sending business documents. Teleconferencing and the like, a staple today, was not the norm 27 years ago. Simultaneous signings by parties 1500 miles apart could not be expected, and more importantly, it was not legally significant, as nothing happened until both leases were executed. Taken in the context of technology and business practices in 1979, the time separating the execution of the leases is not indicative of differing visions of the owners, much less a desire to fundamentally alter the way the two held title.

The two leases themselves were virtually identical by their terms. See Trial Court Opinion, 11/9/01, at 22; In re Estate of Quick, No. 2122 WDA 2001, unpublished memorandum at 5 (Pa. Super. filed Sept. 17, 2002). The only difference in the two leases—an additional single type-written clause in the Bean lease—is hardly determinative of an intention to sever the JTWROS. The clause states the lessor agreed to take "full responsibility" for questions of ownership and "disbursements"—what "responsibility for questions" means is anyone's guess, but there is no reason to guess that it had anything to do with the way Bean wanted to hold title. The extra clause is so vague and ambiguous as to be meaningless, and is no basis for finding the leases are really different at all; these leases are essentially two copies of the same lease.

The subject matter of the leases also sheds light on the parties' intentions. While this Court has stated that, as between oil and gas leases and other leases, "there is no difference [between them] as respects the interest or estate conveyed …," Hamilton v. Foster, 116 A. 50, 52 (Pa. 1922), we recognized that

> [i]t is, of course, true that there is a distinction, upon questions of interpretation, between an oil and gas lease and [other types of lease[s]…the reason being that leases, like all other instruments relating to a particular

> business, must always be construed with due regard to the known characteristics of the business ….

Id. (citations omitted). Thus, while an oil and gas lease may not be legally dissimilar to other leases, such a lease is clearly contextually different. Here, the oil and gas leases to Gerrie were assigned to Largent Investments at the same time, and then were simultaneously assigned to Loyalhanna Drilling. Moreover, drilling on the property did not commence until after both leases were executed and recorded. Although the leases were executed at different times, in a business context, they were treated functionally as the attainment of but one lease.

The intention of the parties is the ultimate guide when there is doubt or ambiguity regarding a covenant in a contract or a term in a grant. See Hindman, at 242. Their intention is determinative when considering whether a JTWROS was created. Thompson, at 771. The intention of the parties must also be considered when determining the severance of that tenancy. There is no evidence the parties here intended the 1979 oil and gas leases to sever their JTWROS; their JTWROS remained intact and, by operation of law, Bean became the sole owner of the property upon Quick's death. Accordingly, we affirm the decision of the Superior Court.

Mr. Chief Justice Cappy and Mr. Justice Castille join this opinion.

Mr. Justice Saylor joins this opinion and files a concurring opinion.

Former Justices Nigro and Lamb did not participate in the decision of this case.

Madame Justice Newman files a dissenting opinion.