



Fourth Court of Appeals
San Antonio, Texas

DISSENTING OPINION

No. 04-16-00168-CV

LABORDE PROPERTIES, L.P., and Laborde Management, LLC,
Appellants

v.

U.S. SHALE ENERGY II, LLC, Raymond B. Roush,
Ruthie Roush Dodge, and David E. Roush,
Appellees

From the 218th Judicial District Court, Karnes County, Texas
Trial Court No. 16-02-00049-CVK
Honorable Russell H. Wilson, Judge Presiding

**OPINION DISSENTING TO THE DENIAL OF APPELLEES’
MOTION FOR EN BANC RECONSIDERATION**

Dissenting Opinion by: Luz Elena D. Chapa, Justice

Sitting en banc: Sandee Bryan Marion, Chief Justice
Karen Angelini, Justice
Marialyn Barnard, Justice
Rebeca C. Martinez, Justice
Patricia O. Alvarez, Justice
Luz Elena D. Chapa, Justice
Jason Pulliam, Justice

Delivered and Filed: December 28, 2016

The panel opinion gives no effect to the deed’s reservation of “an undivided one-half (1/2) interest” in “the” royalty and fails to adhere to longstanding harmonization principles. The panel opinion also misapplies the estate misconception theory by holding the theory supports finding a fixed interest. As a result of misinterpreting the deed’s reservation, the panel opinion conflicts with

prior decisions of this court, the Supreme Court of Texas, and other courts of appeals. *E.g.*, *Hysaw v. Dawkins*, 483 S.W.3d 1, 12 (Tex. 2016); *Graham v. Prochaska*, 429 S.W.3d 650 (Tex. App.—San Antonio 2013, pet. denied); *Coghill v. Griffith*, 358 S.W.3d 834, 840 (Tex. App.—Tyler 2012, pet. denied); *Hausser v. Cuellar*, 345 S.W.3d 462 (Tex. App.—San Antonio 2011, pet. denied) (op. on en banc reh’g). Because the panel opinion creates title uncertainty and will likely generate future title disputes, en banc reconsideration is necessary. *See* TEX. R. APP. P. 41.2(c). I therefore respectfully dissent.

Luz Elena D. Chapa, Justice