



**In The
Court of Appeals
Seventh District of Texas at Amarillo**

No. 07-17-00112-CV

**TOMMY YOWELL; GAIL YOWELL; HARRY GRAFF; EL TERCIO, LLC; AND
CASUARINA INVESTMENTS, LLC (D/B/A LAR RESOURCES, LLC),
APPELLANTS**

V.

**GRANITE OPERATING COMPANY AND APACHE CORPORATION, AND
PAC PRODUCTION CO.; MESA OIL & GAS CORP.; AND CATTALO, LTD.,
APPELLEES**

AND

GRANITE OPERATING COMPANY AND APACHE CORPORATION, APPELLANTS

V.

**PEYTON ROYALTIES, L.P.; BAILEY PEYTON, INDIVIDUALLY AND AS TRUSTEE
OF THE GEORGE BAILEY PEYTON, IV 2007 GRANTOR RETAINED ANNUITY
TRUST NO. 1; AND PEYTON HOLDINGS CORP., APPELLEES**

**On Appeal from the 31st District Court
Wheeler County, Texas
Trial Court No. 12,944, Honorable Steven R. Emmert, Presiding**

July 26, 2018

DISSENTING OPINION

Before CAMPBELL and PIRTLE and PARKER, JJ.

It is with the utmost respect that I dissent from the opinion of my learned colleagues. One can read thousands of opinions regarding complex oil and gas litigation and never encounter the terms “anti-washout,” “rule against perpetuities,” and “doctrine of *cy pres*” in the same opinion. It is the uniqueness of those rarely cited principles that has caused me to examine so closely the appropriateness of the trial court’s summary disposition of this dispute. Because the majority affirms the decision of the trial court to dispose of this dispute, as a matter of law, based upon the rule against perpetuities and then dismisses consideration of the doctrine of *cy pres*—I respectfully dissent.

Patrick A. Pirtle
Justice