NO. 12-15-00177-CV

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

WALTER BOUNDS AND WIFE, CAROLYN B. BOUNDS, APPELLANTS/CROSS-APPELLEES	***§***	***APPEAL FROM THE 1ST***
V.		
JOHN THOMAS PRUD'HOMME, JOSEPH GILBERT PRUD'HOMME, JOSEPH LYNN PRUD'HOMME, PETER A. BREEN, INDIVIDUALLY AND AS SUCCESSOR TRUSTEE OF THE BREEN FAMILY TRUST, JANET M. SUTRO, SUSAN E. BREEN, AND TERRANCE E. BREEN, INDIVIDUALLY AND D/B/A E.G. AND M.A. PRUD'HOMME BENEFICIARIES PARTNERSHIP, APPELLEES/CROSS-APPELLANTS	***§***	***JUDICIAL DISTRICT COURT***
	§	***SAN AUGUSTINE COUNTY, TEXAS***

MEMORANDUM OPINION

This is a declaratory judgment action concerning ownership of the mineral interest in a 126 acre tract of land conveyed by six separate deeds. Walter and Carolyn Bounds, purchasers of the land, appeal from the trial court's judgment declaring that a forty-five percent interest in the minerals belongs to the sellers, John Thomas Prud'homme, Joseph Gilbert Prud'homme, Joseph Lynn Prud'homme, Peter A. Breen, individually and as successor trustee of the Breen Family Trust, Janet M. Sutro, Susan E. Breen, and Terrance E. Breen, individually and doing business as the E.G. and M.A. Prud'homme Beneficiaries Partnership. In three issues, the Boundses contend the trial court erroneously construed the deed from the Partnership as reserving the mineral interest to the grantors, and failed to reform the deeds. Appellees contend that the trial court erred in construing five of the deeds as conveying an undivided five percent interest in the minerals to the Boundses. We reverse and remand.

BACKGROUND

In 2001, the Boundses contracted to purchase an approximate 126 acre tract in San Augustine County from the E.G. and M.A. Prud'homme Beneficiary Partnership. To effectuate the purchase, the Boundses' attorney prepared six deeds. The first deed (the Partnership deed) was executed by Eck G. Prud'homme, Jr., Hal Joseph Breen, John Thomas Prud'homme, Joseph Gilbert Prud'homme, and Joseph Lynn Prud'homme, individually and doing business as the E.G. and M.A. Prud'homme Beneficiary Partnership. Additionally, the heirs of Eleanor Prud'homme Breen each signed a separate deed. Those heirs are Hal Joseph Breen, Peter A. Breen, Susan M. Breen, Terence J. Breen, and Janet M. Breen Sutro.

In 2008, the Prud'homme/Breen parties entered into a series of oil and gas leases related to the mineral interests associated with the subject property. After learning of the leases, the Boundses filed suit pursuant to the Uniform Declaratory Judgment Act asking the court to construe the language of the deeds as conveying the minerals to them and, if necessary, to reform the deeds to reflect conveyance of the minerals to the Boundses. The Boundses also sought cancellation of the leases as a cloud on their title to the minerals.

After a bench trial, the trial court found that the Partnership deed unambiguously reserved the mineral interest owned by the grantors. The trial court also found that the five separate Breen deeds were ambiguous and construed them to convey the mineral interests owned by those grantors to the Boundses. Accordingly, the trial court ordered that Appellees recover title to and possession of an undivided forty-five percent interest in the oil, gas, and other minerals in the 126 acres. The court further ordered that the Boundses recover title to and possession of an undivided five percent interest in the oil, gas, and other minerals in the 126 acres. Each side filed a notice of appeal seeking review of the judgment. The question at the center of the dispute is whether the six deeds that conveyed the subject property to the Boundses reserved or conveyed the property's mineral interest.

STANDARD OF REVIEW

Whether a deed is ambiguous is a question of law for the court, which we review de novo. ***Gore Oil Co. v. Roosth***, 158 S.W.3d 596, 599 (Tex. App.—Eastland 2005, no pet.). Likewise, the construction of an unambiguous deed is a question of law, which we review de novo. ***Luckel v. White***, 819 S.W.2d 459, 461 (Tex. 1991). In conducting a de novo review, we

exercise our own judgment and give no deference to the trial court's decision. ***Quick v. City of Austin***, 7 S.W.3d 109, 116 (Tex. 1998).

APPLICABLE LAW

When construing a deed, the primary duty of a court is to ascertain the intent of the parties as expressed by the language in the deed. ***Frost Nat'l Bank v. L & F Distribs., Ltd***., 165 S.W.3d 310, 311-12 (Tex. 2005) (per curiam). It is not the intent that the parties meant but failed to express that governs, but the intent of the parties as expressed in the instrument as a whole, without reference to matters of mere form, relative position of descriptions, technicalities, or arbitrary rules. ***Luckel***, 819 S.W.2d at 462; ***Gore Oil Co.***, 158 S.W.3d at 599. We give effect to all parts of the conveyance and attempt to harmonize them. ***Holloway's Unknown Heirs v. Whatley***, 131 S.W.2d 89, 92 (Tex. 1939); ***Frost Nat'l Bank***, 165 S.W.3d at 312.

The effort to harmonize all parts of an instrument does not require that every part of the deed be treated as of equal weight in the solution of every question. ***Fleming v. Ashcroft***, 175 S.W.2d 401, 406 (Tex. 1943). Notably, the granting clause prevails over other provisions of a deed. ***Lott v. Lott***, 370 S.W.2d 463, 465 (Tex. 1963). Ambiguity does not arise simply because the parties advance conflicting interpretations of the contract. ***Columbia Gas Transmission Corp. v. New Ulm Gas, Ltd.***, 940 S.W.2d 587, 589 (Tex. 1996). If, after we apply the relevant rules of construction, a written instrument can be given a definite legal meaning or interpretation, it is not ambiguous. ***Frost Nat'l Bank***, 165 S.W.3d at 312; ***R & P Enters. v. LaGuarta, Gavrel & Kirk, Inc.***, 596 S.W.2d 517, 519 (Tex. 1980).

A warranty deed will pass all of the estate owned by the grantor at the time of the conveyance unless there are reservations or exceptions that reduce the estate conveyed. ***Johnson v. Conner***, 260 S.W.3d 575, 579 (Tex. App.—Tyler 2008, no pet.). A reservation is the creation, by and on behalf of the grantor, of a new right issuing out of the thing granted when the grantor intends to retain an interest in the land. *See* ***Bagby v. Bredthauer***, 627 S.W.2d 190, 195 (Tex. Civ. App.—Austin 1981, no writ). An exception operates to exclude from the grant some part of the thing granted, typically an interest outstanding in a third party. ***Id***. To be effective, a reservation of minerals must be by clear language. *See* TEX. PROP. CODE ANN. § 5.001(a) (West 2014); ***Sharp v. Fowler***, 252 S.W.2d 153, 154 (Tex. 1952). Courts do not favor reservations by implication. ***Sharp***, 252 S.W.2d at 154.

THE PRUD'HOMME PARTNERSHIP DEED

In their first issue, the Boundses contend the trial court incorrectly construed the Prud'homme Partnership deed to unambiguously reserve the mineral estate to the grantors. In support, they argue the deed did not contain an express reservation and the text in question was intended as a limitation of the grantors' warranty. They also assert that the trial court failed to construe the deed most strongly against the grantor to confer upon the grantee the greatest estate permitted by the language used.

Appellees contend that the language after the reservations and exceptions heading, that is, "TITLE to any of the oil, gas and other minerals, in, under and that may be produced from the above-described property," is an express reservation from conveyance of the mineral estate that the grantors still owned. We disagree.

The deed contains the following language:

> **Reservations from and Exceptions to Conveyance and Warranty**: TITLE to any of the oil, gas and other minerals, in, under and that may be produced from the above-described real property, together with all rights, privileges and immunities relating thereto, including the following:
>
> i. MINERAL RESERVATION as set forth in instrument from Roy Atkinson to V. R. Harlow, dated November 7, 1934, and recorded in Vol. 74, Page 542, Deed Records of San Augustine County, Texas, reserving one-half (1/2) of the minerals and/or royalty interests, the royalties, bonuses and rentals in connection therewith.
>
> ii. MINERAL RESERVATION as set forth in the instrument from E. G. Prud'homme, et ux, to Eck G. Prud'homme, et al, dated May 22, 1971, recorded in Vol. 166, Page 239, Deed Records, San Augustine County, Texas, reserving one-half (1/2) of the minerals and/or royalty interest, the royalties, bonuses and rentals in connection therewith.

The subject deed contains a heading that references three separate concepts. The deed groups reservations from and exceptions to conveyance and exceptions from warranty under the same heading. The text immediately following the heading is a sentence fracture lacking a verb, which makes sense only when read in conjunction with the two paragraphs that follow, identifying prior mineral reservations. Here, under the triple concept heading, the deed merely states that there is a mineral reservation set out in a 1934 instrument and a mineral reservation set forth in the 1971 Prud'homme instrument, which is the common source of title to the subject property. The deed does not specify that the grantor, in 2001, is reserving a mineral interest from

conveyance and warranty. The deed does not explicitly create a new right. We will not interpret the deed as creating a reservation by implication. *See* ***Sharp***, 252 S.W.2d at 154.

We give the language used its plain, grammatical meaning unless doing so would clearly defeat the parties' intentions. ***Tana Oil & Gas Corp. v. Cernosek***, 188 S.W.3d 354, 359 (Tex. App.—Austin 2006, pet. denied). In order to reserve the mineral estate, clear language expressing that intent was needed. Here, the language used following the "Reservations from and Exceptions to Conveyance and Warranty" heading does not constitute an express reservation of the mineral interest possessed by the Prud'homme grantors. At most, the language following the heading is an exception to warranty, excluding from the grant the mineral interests previously reserved in the 1934 and 1971 deeds identified in that section. *See* ***Bagby***, 627 S.W.2d at 195.

The "granting clause" in the deed conveyed all interest the grantors held in the property "subject to the reservations from and exceptions to conveyance and warranty" contained under the reservations and exceptions heading. The language contained within the granting clause creating a warranty of title is a covenant, separate from the conveyance, which creates a contract on the part of the grantor to pay damages to the grantee in the event of failure of title. ***Bass v. Harper***, 441 S.W.2d 825, 827 (Tex. 1969). The term "subject to" is a limiting, qualifying term and, when used in a mineral deed, means "subordinate to," "subservient to," or "limited by." ***Gore Oil Co.***, 158 S.W.3d at 599. The "subject to" clause does not reserve any interest in the grantor. It provides that the conveyance was limited by whatever reservations and exceptions were contained in the disputed section.

There is no conflict in the language used in the granting clause, nor does the granting clause conflict with other provisions in the deed. Though the parties differ as to the meaning of the language under the reservations and exceptions heading, an ambiguity is not created because the parties have conflicting views as to its interpretation. ***Columbia Gas Transmission Corp.***, 940 S.W.2d at 589. We conclude, after an inquiry limited to its four corners, that the Prud'homme Partnership warranty deed is so worded that it can be given a definite legal meaning, and hence, is not ambiguous. *See* ***Frost Nat'l Bank***, 165 S.W.3d at 312. This deed does not contain a provision reserving the mineral rights to the grantors. We decline to apply the two canons of construction relied on by the Boundses, the greatest estate canon and the construe against the grantee canon. These canons should be employed only if, after harmonization has been attempted, the language remains in doubt. *See* ***Hancock v. Butler***, 21 Tex. 804, 816

(1858); ***Arnold v. Ashbel Smith Land Co.***, 307 S.W.2d 818, 824 (Tex. Civ. App.—Houston 1957, writ ref'd n.r.e.). Here, there is no doubt as to the meaning intended by the parties as expressed in the deed.

Because the Prud'homme Partnership deed failed to create an express reservation, title to the mineral estate in question passed to the grantees. *See* ***Melton v. Davis***, 443 S.W.2d 605, 608 (Tex. Civ. App.—Tyler 1969, writ ref'd n.r.e.) (held that if appellees had intended to reserve the disputed minerals, they could have done so by apt language specifically and unequivocally expressing such intent). The trial court erred in determining that the deed unambiguously reserved the minerals to the grantors. Moreover, the Prud'homme Partnership deed unambiguously conveyed the minerals held by the grantors to the Boundses. *See* ***Johnson***, 260 S.W.3d at 579. We sustain the Boundses' first issue. We need not reach the Boundses' second and third issues. *See* TEX. R. APP. P. 47.1.

THE BREEN DEEDS

In their cross-issue, Cross-appellants contend that the five Breen deeds are not ambiguous and they reserve the mineral estate to the grantors. Consistent with their earlier argument, Cross-appellants contend the language following the reservations from and exceptions to conveyance heading expressly reserved the minerals.

The five Breen deeds each contain a "Reservations from and Exceptions to Conveyance and Warranty" section identical to the one in the Partnership deed. However, there is a distinction between the Partnership deed and the Breen deeds. Each of the five Breen deeds includes a statement not included in the Partnership deed. At the end of the property description and just before the heading "Reservations from and Exceptions to Conveyance and Warranty" is the following statement: "This Deed is intended to convey all of Grantor's interest in and to the above-described real property." The trial court found that the five Breen deeds are ambiguous and construed them as conveying the minerals to the Boundses.

Cross-appellants' argument begins with the premise that the deeds contain an express reservation in the reservations and exceptions section. Building on that argument, they assert that the additional sentence in the Breen deeds is confirmation of the grantors' intent to convey the property to the Boundses, "but as tempered by the mineral reservation." They argue that the additional sentence did not render the deeds ambiguous or undo that alleged clear expression of

mineral reservation under the reservations and exceptions heading. As explained above, and contrary to Cross-appellants' initial premise, the reservations and exceptions section of the deeds did not expressly reserve the minerals to the grantors. The additional sentence is a clear expression that the intent of the grantors was to convey to the Boundses all interest the grantors had in the property. We must consider what effect, if any, the single additional sentence in each Breen deed has on the disposition of the minerals.

In construing the five Breen deeds, we consider the entire instrument in order to ascertain the intention of the parties as expressed in the language of the document. ***Frost Nat'l Bank,*** 165 S.W.3d at 311-12. We strive to harmonize all parts of the deed in a manner consistent with the meaning intended by the parties. ***Luckel***, 819 S.W.2d at 462. There is no conflict between the statement that the deed is intended to convey all of the grantor's interest in the property and any other statement in the deed, including the language found under the reservations and exceptions heading. The language in the reservations and exceptions section continues to refer only to exceptions of prior reservations and does not create a new reservation. The reservations and exceptions section, by failing to expressly reserve the minerals to the grantors, indicates conveyance of the minerals to the Boundses. *See* ***Johnson***, 260 S.W.3d at 579. That provision is in accord with the sentence specifying the grantor's intent to convey all of the grantor's interest to the Boundses. Construing these provisions together, we conclude that the provisions are in harmony and the Breen deeds can be given a definite legal meaning. *See* ***Frost Nat'l Bank***, 165 S.W.3d at 312; ***Luckel***, 819 S.W.2d at 462. We agree with Cross-appellants that the additional sentence in the Breen deeds did not render the deeds ambiguous. We conclude that the five Breen deeds unambiguously conveyed the minerals held by the grantors to the Boundses. Cross-appellants' cross-issue is sustained to the extent it complains that the trial court erroneously found the five Breen deeds to be ambiguous. Their cross-issue is otherwise overruled.

CONCLUSION

The Partnership deed unambiguously conveyed the grantors' interest in the minerals to the Boundses. Though we determined, contrary to the trial court's finding, that the five Breen deeds were not ambiguous, we concur with the trial court's determination that the deeds conveyed to the Boundses whatever mineral interests were owned by the Breen grantors.

Accordingly, all of the mineral interest possessed by the grantors named in the six deeds at issue was conveyed to Walter and Carolyn Bounds.

We ***reverse*** the trial court's judgment and ***remand*** the case to the trial court for further proceedings consistent with this opinion. In particular, the trial court should consider any relief necessary to remove the cloud on the Boundses' title to the mineral estate resulting from the oil and gas leases executed by the Prud'homme and Breen parties after transfer of the subject property to the Boundses in 2001.

GREG NEELEY
Justice

Opinion delivered March 31, 2016.
Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.

(PUBLISH)

COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

MARCH 31, 2016

NO. 12-15-00177-CV

WALTER BOUNDS AND WIFE, CAROLYN B. BOUNDS,
APPELLANTS/CROSS-APPELLEES
V.
JOHN THOMAS PRUD'HOMME, JOSEPH GILBERT PRUD'HOMME, JOSEPH LYNN PRUD'HOMME, PETER A. BREEN, INDIVIDUALLY AND AS SUCCESSOR TRUSTEE OF THE BREEN FAMILY TRUST, JANET M. SUTRO, SUSAN E. BREEN, AND TERRANCE E. BREEN, INDIVIDUALLY AND D/B/A E.G. AND M.A. PRUD'HOMME BENEFICIARIES PARTNERSHIP,
APPELLEES/CROSS-APPELLANTS

Appeal from the 1st District Court

of San Augustine County, Texas (Tr.Ct.No. CV-13-9488)

THIS CAUSE came to be heard on the oral arguments, appellate record, and the briefs filed herein, and the same being considered, it is the opinion of this court that there was error in the judgment of the court below.

It is therefore ORDERED, ADJUDGED and DECREED that the judgment of the court below be **reversed** and the cause **remanded** to the trial court.

It is further ORDERED that all costs of this appeal are hereby adjudged against the Appellees/Cross-appellants, **JOHN THOMAS PRUD'HOMME, JOSEPH GILBERT PRUD'HOMME, JOSEPH LYNN PRUD'HOMME, PETER A. BREEN,**

INDIVIDUALLY AND AS SUCCESSOR TRUSTEE OF THE BREEN FAMILY TRUST, JANET M. SUTRO, SUSAN E. BREEN, AND TERRANCE E. BREEN, INDIVIDUALLY AND D/B/A E.G. AND M.A. PRUD'HOMME BENEFICIARIES PARTNERSHIP, for which execution may issue, and that this decision be certified to the court below for observance.

Greg Neeley, Justice.
Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.