Cite as 2011 Ark. App. 362

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CA10-1272

BILLY BURGESS and REBECCA BURGESS et al. APPELLANTS	Opinion Delivered May 11, 2011
	APPEAL FROM THE VAN BUREN COUNTY CIRCUIT COURT [NO. CV-08-213]
V.	HONORABLE MICHAEL A. MAGGIO, JUDGE
THOMAS B. LEWIS, J.E. SCANLAN, MARGARET J. SCANLAN, WILLIAM O. DUNAWAY, JR., et al. APPELLEES	AFFIRMED

WAYMOND M. BROWN, Judge

Appellants Billy Burgess, Rebecca Burgess, Patrick Shaw Burgess, Denise L. Burgess, Todd H. Burgess, and Michelle L. Burgess (the Burgesses) appeal the August 26, 2010 order of the Van Buren County Circuit Court finding that the reservation clause found in the 1921 deed executed by J.E. and Margaret Scanlan to T.A. Harper and his heirs and assigns ("Scanlan-Harper Deed") created an "undivided one-half non-participating perpetual fraction of royalty interest in the subject property" that did not end upon the termination of the lease in effect at the time of the deed. The Burgesses contend that the trial court erred in determining the scope of the mineral reservation contained in the deed. We find no error and affirm.

The facts in this case are undisputed. On or about December 20, 1921, the Scanlan-Harper Deed was executed.[1] In the deed, the Scanlans conveyed a 160-acre tract, located in Van Buren County, to Harper. The deed contained the following language after the land description:

> Said J.E. Scanlan and his heirs hereby retain One Half interest in any and all royalties that may at any time derive from this land, in any way, from Oil, gas or mineral. This land was Leased on the First day of August 1921 for Mineral, Oil & Gas. The Two deferred payments on this land are as follows. One Note for $125.00 bearing even date and drawing Ten per cent interest from date until paid and due Jan. 1st, 1923. The Second Note for $125.00 of even date and drawing Ten per cent interest from date until paid and due January First 1924.

The Burgesses began this case by filing a petition to quiet title against appellees on October 1, 2008, alleging to be the legal owners of the surface and mineral rights of the subject property.[2] The court entered an order on January 16, 2009, quieting title in the Burgesses. Appellees William O. Dunaway, Jr., Margo Dunaway Taylor, Suzanne Dunaway Harris, Nancy Dunaway, Debbie Dunaway Moore, Michael Dunaway, Betty Dunaway, and Justin Mitchell (the Dunaways)[3] filed a motion to set aside the default decree quieting title in the Burgesses. The Dunaways also asked the court to quiet title to the royalty interests in their favor. The Burgesses filed a trial brief on May 12, 2010, contending that the reservation clause in the Scanlan-Harper Deed was "limited by the indefinite term of the 1921 lease." According

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[1]The Scanlan-Harper Deed was not filed until August 7, 1947.

[2]With the exception of the 6.7-acre tract owned by Michael Gardner.

[3]The heirs at law of the Scanlans.

to the Burgesses, since that lease had expired, so had the Scanlans' royalty interest. The Dunaways also submitted a trial brief on May 12, 2010. They argued that the reservation clause found in the deed created an undivided one-half non-participating perpetual royalty interest. The Dunaways included the affidavit of G. Alan Perkins with their brief. The affidavit supported their argument that the reservation did not terminate at the expiration of the lease in effect in 1921.

The court entered an order on August 26, 2010, based on the evidence submitted from both parties. There was no testimony taken. The order stated in pertinent part:

> [T]he present case contains no language that modifies the mineral reservation to the lease. While plaintiffs contend that "there is no valid reason why the lease should be identified in the reservation if J.W. [sic] Scanlan were in fact reserving an unconditional and perpetual royalty interest in the minerals in the subject property," there is, in fact, a very good reason to mention that the estate was encumbered by a leasehold estate. As the defendants' evidence in the affidavit of G. Alan Perkins correctly notes, that fact would have to be mentioned in order to protect the grantor from being liable for breach of warranty under a general warranty deed. Further, the sentence regarding the lease is not even in the same sentence as the reservation clause. The language in the deed, as appears from the four corners of the instrument, is not ambiguous.[4]

The court found that the Dunaways had a non-participating perpetual royalty interest that was not limited by the 1921 lease. The Burgesses, according to the court, had the exclusive right to execute oil and gas leases on the property, and the right to receive bonus money or delay rental payments for the lease. This appeal followed.

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[4]The Burgesses argued below that the language in the deed was ambiguous; however, they now concede that no ambiguity exists.

The Burgesses ask this Court to "decide whether or not the reference to the lease was made to qualify and limit the reservation or was made to qualify and limit the warranty." The construction of a deed is a matter of law, which we review de novo.[5] When interpreting a deed, we give primary consideration to the intent of the grantor.[6] We examine the deed from its four corners for the purpose of ascertaining that intent from the language employed.[7] Further, we gather the intention of the parties, not from some particular clause, but from the whole context of the agreement.[8] We will not resort to rules of construction when a deed is clear and contains no ambiguities.[9]

The issue on appeal is whether the language concerning the August 1921 lease limits the reservation clause. We hold that it does not. It is clear from the language "any and all royalties that may at any time derive from this land, in any way, from Oil, gas or mineral" that the intent of the grantors was to retain the royalty interest for a long time. The inclusion of language concerning a lease on the subject property does not take away from the clear intent of the grantors. Accordingly, we affirm the trial court.

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[5]*Barger v. Ferrucci*, 2011 Ark. App. 105.

[6]*Id.*

[7]*Id.*

[8]*Id.*

[9]*Id.*

As an alternative, the Burgesses ask that we set out the exact nature and scope of the parties' ownership of oil, gas, and mineral interests. We decline to do so. The trial court's order clearly sets out the parties' ownership interests. If the Burgesses wanted specific findings regarding interest rights, they could have made a timely request to the trial court. Rule 52(a) of the Arkansas Rules of Civil Procedure affords a litigant a right to request specific findings of the trial court. However, failure to make a timely request for separate findings constitutes a waiver of that right.[10]

Affirmed.

WYNNE and ABRAMSON, JJ., agree.

[10] *Erickson v. Erickson*, 2010 Ark. App. 302.