

ARKANSAS COURT OF APPEALS

DIVISION III

No. CA10-87

HOLLIS ROBISON AND JEAN
ROBISON

APPELLANTS

V.

THOMAS LEE AND SEECO, INC.

APPELLEES

Opinion Delivered December 15, 2010

APPEAL FROM THE VAN BUREN
COUNTY CIRCUIT COURT
[NO. CV-2007-211]

HONORABLE CHARLES E.
CLAWSON, JR., JUDGE

AFFIRMED

JOHN MAUZY PITTMAN, Judge

This is an appeal from a summary judgment dismissing only those claims brought by appellants Hollis and Jean Robison against appellees Thomas Lee and SEECO, Inc. Although other issues remain to be tried, the present appeal is brought pursuant to an Ark. R. Civ. P. 54(b) certification that we find to be sufficient to support our jurisdiction. Appellants argue on appeal that the trial court erred in granting summary judgment for appellees. We find no reversible error, and we affirm.

The record shows that Paul Lee acquired property from his father, Thomas Lee. When the property was initially conveyed, Thomas Lee retained a life estate in the mineral rights; subsequently, he conveyed the mineral rights to Paul Lee subject to a life estate in the mineral rights retained for himself. Afterward, appellants Robison bought the property from Paul Lee, receiving a warranty deed purporting to convey all rights to the property in fee simple

absolute. Thomas Lee leased the oil and gas rights to appellee SEECO, Inc. SEECO obtained a written ratification from appellants allowing payment of the lease proceeds to Thomas Lee as holder of the life estate. Appellants sued Paul Lee, Thomas Lee, and SEECO, asserting that appellants were entitled to the lease proceeds. Thomas Lee and SEECO moved for summary judgment based on Thomas Lee's mineral deed and the ratification obtained by SEECO from appellants. The trial judge granted summary judgment to both parties, ruling that, because of the reservation of Thomas Lee's life estate in the mineral interests, Paul Lee had only a remainderman interest in the minerals to convey to appellants, and that appellants were not entitled to any mineral lease proceeds until the termination of the life estate. The rights and liabilities of Paul Lee as appellants' grantor remain to be determined. On appeal, appellants argue, *inter alia*, that the trial court erred in granting summary judgment on disputed evidence, and that the ratification was void for lack of consideration.

The standard of review applicable to appeals from a grant of summary judgment is well settled:

Summary judgment should only be granted when it is clear that there are no genuine issues of material fact to be litigated, and the moving party is entitled to judgment as a matter of law. In reviewing summary-judgment cases, we determine whether the trial court's grant of summary judgment was appropriate based on whether the evidence presented by the moving party left a material question of fact unanswered. The moving party always bears the burden of sustaining a motion for summary judgment. Where there are no disputed material facts, our review must focus on the trial court's application of the law to those undisputed facts. When the facts are not at issue but possible inferences therefrom are, we will consider whether those inferences can be reasonably drawn from the undisputed facts and whether reasonable minds differ on those hypotheses.

Parker v. Southern Farm Bureau Casualty Insurance Co., 104 Ark. App. 301, 304, 292 S.W.3d 311, 314 (2009) (internal citations omitted).

In their first point, appellants argue that a fact question exists as to ownership of the property. We do not agree. The motions were decided on the basis of deeds, contracts, and other documents provided by the parties. There is no dispute as to the content of those documents. Where the meaning of the language of such writings does not depend on disputed extrinsic evidence, their construction and legal effect are questions of law. *See Smith v. Prudential Property & Casualty Insurance Co.*, 340 Ark. 335, 10 S.W.3d 846 (2000); *Maxey v. Kossover*, 2009 Ark. App. 611. Therefore, as with any question of law, our review is *de novo*. *Moses v. State*, 72 Ark. App. 357, 39 S.W.3d 459 (2001).

Appellants assert that a fact question was created by a report issued by a title insurance company that varied from the deeds exchanged by the Lees in showing that Thomas Lee retained only a half-interest in the property's mineral rights. We hold that this created no issue of material fact as to whether appellees were entitled to summary judgment. The title report was created subsequent to both deeds, and, even in cases of conflicting deeds, the deed first executed and recorded is controlling. *Hughes v. Yates*, 228 Ark. 860, 311 S.W.2d 179 (1958). Any error in the title report is a matter between appellants and the title company; the deeds are controlling as to ownership, and they clearly show that Paul Lee's rights were subject to Thomas Lee's life estate in the mineral rights.

Appellants, in their second point on appeal, argue that the mineral lease is invalid because the procedure set out in Ark. Code Ann. §§ 15-73-301 *et seq.* was not followed. We need not address this issue, which challenges the somewhat Byzantine reasoning underlying the trial judge's ruling that it was unnecessary for him to decide whether the ratification executed by appellants was in fact valid, because it is clear, on our review of the record, that the ratification admittedly executed by appellants is unquestionably valid and binding on them as to the rights of Thomas Lee and SEECO. Appellants asserted that, despite the ratification's recital that it was obtained in exchange for nominal consideration, it was invalid because no consideration was actually exchanged. We construe the effect of this document as a matter of law, and consequently must employ the parol evidence rule, a rule of substantive law precluding the terms of a written contract from being added to or varied by parol evidence. *Hagans v. Haines*, 64 Ark. App. 158, 163, 984 S.W.2d 41, 44 (1998). Where a contract is plain, unambiguous, and complete in its terms, parol evidence is not admissible to contradict or add to the written terms. *Id.* Appellants cannot, in the absence of any allegation of fraud, challenge the recital of consideration contained in the ratification. *See Pope v. Pennzoil Producing Co.*, 288 Ark. 10, 701 S.W.2d 366 (1986). Because we conclude that the deeds were controlling as to title as concerns the parties to this appeal, and that the ratification executed by appellants was valid, we hold that the trial court did not err in granting summary judgment to appellees.

Cite as 2010 Ark. App. 839

Affirmed.

GLADWIN and KINARD, JJ., agree.