Cite as 2022 Ark. App. 125 (Substituted by 2022 Ark. App. 268)

ARKANSAS COURT OF APPEALS

DIVISION III
No. CV-21-97

PATRICK DIXON MEHAFFY
APPELLANT

V.

MARLEY JO CLARK, INDIVIDUALLY AND AS TRUSTEE OF THE CLARK REVOCABLE TRUST DATED AUGUST 7, 2003; THE CLARK REVOCABLE TRUST DATED AUGUST 7, 2003; MARLEY JO CLARK, AS TRUSTEE OF THE MARLEY JO CLARK REVOCABLE TRUST; THE MARLEY JO CLARK REVOCABLE TRUST; AND MARLEY JO CLARK, JR., INDIVIDUALLY AND AS TRUSTEE OF THE CLARK REVOCABLE TRUST
APPELLEES

Opinion Delivered March 9, 2022

APPEAL FROM THE FAULKNER COUNTY CIRCUIT COURT
[NO. 23CV-19-395]

HONORABLE SUSAN WEAVER, JUDGE

REVERSED AND REMANDED

MIKE MURPHY, Judge

This case is a dispute over percentage ownership in mineral interests in a tract of land in Faulkner County, Arkansas. The circuit court quieted title in the minerals with a 1/2 interest to the appellees and 1/4 interest to the appellant, Patrick Mehaffy.[1] Mehaffy appeals, contending that the circuit court erred in its calculation. He argues that each party owns a

[1]The remaining 1/4 interest was reserved by previous owners of the land, Joyce and Robert Mayer.

3/8 interest. We agree and reverse and remand for entry of judgment awarding 3/8 interest in the mineral rights to both parties.

The parties derived their respective mineral interests from two brothers: L.R. Clark, Mehaffy's predecessor; and W.G. Clark, Jr., Marley Jo Clark's late husband. The brothers were shareholders in National Holding Company, an Arkansas corporation.[2] In June 1980, National Holding received a warranty deed from Joyce and Robert Mayer conveying approximately 1,780 acres of land, including the property now at issue. In that deed, the Mayers retained and reserved a 1/4 interest in the oil, gas, and other minerals. Two years later, National Holding transferred its interest to two shareholders, W.G. Clark, Jr., and L.R. Clark, pursuant to two quitclaim deeds dated April 16, 1982. The granting clauses in those deeds both state that for the sum of ten dollars, National Holding Company

> does grant, sell, quitclaim unto the said GRANTEE and unto his heirs and assigns forever, all its right, title, interest and claim in and to the following lands lying in Faulkner County, Arkansas
>
> > An undivided half of the following: [the legal description of the land, including the land in dispute].

No mention was made in either quitclaim deed of the 1/4 reservation by Joyce and Robert Mayer or minerals in general. The deeds were executed on the same day (April 16, 1982), in the presence of the same witnesses, and with the stamp of the same notary public. There is no evidence regarding the order of delivery of these deeds. Two and a half years later, and once again on the same day (June 1, 1984), the deeds were recorded in Faulkner

[2]There were two other shareholders at National Holding Company, but they are not part of this litigation. All of the shareholders are now deceased.

County. The W.G. Clark, Jr., deed was recorded by the Faulkner County Circuit Clerk and Ex-Officio Recorder at 4:10 p.m., and the L.R. Clark deed was recorded at 4:15 p.m.[3]

Turning to present day, the mineral interests were subsequently leased by the respective parties to oil- and gas-exploration companies, and it was during the examination of title by those companies that the issue of the timing of the filing of the two deeds came about. In 2019, Mehaffy filed this quiet-title action against the appellees because one of the companies was holding royalties from production from the property pending resolution of the issue. Because National Holding owned a 3/4 interest in the mineral rights and conveyed an undivided and unreserved 1/2 interest by quitclaim to each grantee, Mehaffy argues that each grantee (and thus, their successors) subsequently possessed a 3/8 mineral interest.

The appellees denied the claim and took the position that they owned 1/2 of the mineral rights by virtue of their predecessor in title filing his deed first; leaving only a 1/4 interest in the disputed mineral rights to L.R. Clark. Their argument relies on the plain language of the granting clause conveying 1/2 of the entire tract not just 1/2 of National Holding's 75% mineral interest. And, since the W.G. Clark deed was recorded first, they believe he received 4/8 of the disputed mineral interests and L.R. Clark received the remaining 2/8 of the disputed mineral interest. They also counterclaimed, asserting adverse possession and stating that they were entitled to a declaratory judgment that they owned 1/2 of the mineral rights.

[3]There is no reason to go through the chain of title to present day because the issue in this case is the intent of the parties to the transaction between National Holding and the Clark brothers.

On November 9, 2020, the court entered an order in favor of the appellees, adopting their reasoning and granting them declaratory judgment.[4] It found that the evidence of the order of delivery was lacking and that priority of recording is controlling because Mehaffy could not prove that the brothers were on notice of each other's deed. To support its findings, the court's order provided:

> 10. Although it's likely that a person of ordinary intelligence would have known about his brother's conveyance, when the litigation does not involve the original parties, a subjective inquiry into what the original parties understood is barred by Arkansas law.
>
> 11. Determining the grantor's subjective intent with extrinsic evidence is only allowed to construe an "ambiguous, uncertain, or doubtful deed." *Deltic Timber Corp. v. Newland*, 374 S.W.3d 261, 267 (Ark. Ct. App. 2010); see also, *Riffle v. Worthen*, 327 Ark. 470, 472, 939 S.W.2d 294, 295 (1997). See also, *Mason v. Buckman*, 2010 Ark. App. 256, 7 (Ark. App. 2010).
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> 12. Because the deed is not ambiguous, extrinsic evidence is barred. *See*, e.g., *Deltic Timber Corp. v. Newland*, 374 S.W.3d 261, 267 (Ark. Ct. App. 2010).
>
> 13. Because this case does not involve the original parties, interpretation of the subjective intent of the grantor and grantee is "inappropriate." *Peterson v. Simpson*, 690 S.W.2d 720, 723 (Ark. 1985).

Mehaffy now appeals from the trial court's order.[5] On appeal, he argues that the circuit court clearly erred in awarding him only a 1/4 interest in the minerals and instead should have awarded him a 3/8 interest.

Quiet-title actions have traditionally been reviewed de novo as equity actions. *SEECO, Inc. v. Holden*, 2015 Ark. App. 555, at 4, 473 S.W.3d 36, 38. Our standard of

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[4]It also found that appellees' adverse-possession claim was moot.

[5]The appellees filed a cross-notice of appeal, but it is considered abandoned because their brief asks for no affirmative relief.

review on appeal from a bench trial is not whether there was substantial evidence to support the finding of the circuit court but whether the circuit court's findings were clearly erroneous or clearly against the preponderance of the evidence. *Mauldin v. Snowden*, 2011 Ark. App. 630, at 2, 386 S.W.3d 560, 562. A finding of fact is clearly erroneous when, although there is evidence to support it, we are left with the definite and firm conviction that a mistake has been committed. *Rice v. Welch Motor Co.*, 95 Ark. App. 100, 103, 234 S.W.3d 327, 330 (2006).

The basic rule in the construction of deeds, as with other contracts, is to ascertain and give effect to the real intention of the parties, particularly of the grantor, as expressed by the language of the deed, when not contrary to settled principles of law and rules of property. *Duvall v. Carr-Pool*, 2016 Ark. App. 611, at 9–10, 509 S.W.3d 661, 667. We will resort to the rules of construction only when the language of the deed is ambiguous, uncertain, or doubtful. *Barger v. Ferrucci*, 2011 Ark. App. 105, at 3–4.

The circuit court was correct in finding that the deeds are unambiguous, but it interpreted the deeds' meaning incorrectly. On appellate review, we examine the circuit court's determination of whether an ambiguity exists, and if we conclude there is no ambiguity, then we examine the deed's meaning as a question of law upon de novo review. *Carroll v. Shelton*, 2018 Ark. App. 181, at 3, 547 S.W.3d 94, 96.

Here, the deeds from National Holding Company to the Clark brothers were quitclaim deeds. A quitclaim deed can only transfer what is possessed by the grantor. *Xayprasith-Mays v. Wallace*, 2021 Ark. App. 370, 635 S.W.3d 359. In this case, National Holding possessed at the time of the conveyances 3/4 of the mineral interests. The identical

granting clauses granted each brother an undivided half interest. That is, an undivided half interest of what National Holding possessed. Thus, by conveying a half interest in its 3/4 interest, each brother obtained a 3/8 interest in the mineral rights. We are not concerned with the time of filing because, in this situation, one deed was always going to be filed first. The deed still had the effect of conveying a 3/8 interest whether it was recorded or unrecorded.

If we were to strictly adhere to the order of recordation, then W.G. Clark would have been quitclaimed half of National Holding Company's 3/4 mineral interest, or 3/8 and L.R. Clark would then be entitled to half of National Holding Company's remaining 3/8 interest, or 3/16. That would leave a 3/16 interest in the minerals in National Holding Company and we lack evidence that the company is still in existence. The only rational result here is to treat the conveyances as a simultaneous transaction whereby both Clark brothers received half the surface rights and a 3/8 interest in the minerals.

Under our de novo review, we hold that the circuit court erred in the respective percentages of mineral rights it assigned to each party. Accordingly, we reverse and remand for entry of judgment consistent with this opinion.

Reversed and remanded.

WHITEAKER and HIXSON, JJ., agree.

Richard Mays Law Firm PLLC, by: *Richard H. Mays*, for appellant.

Taylor & Taylor Law Firm, P.A., by: *Andrew M. Taylor* and *Tasha C. Taylor*, for separate appellee Marley Jo Clark.