Texas Oil and Gas Law: A Year of Decisions

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I. SCOPE OF THE ARTICLE

This article surveys select oil and gas cases decided by Texas state courts from October 1, 2019 through October 11, 2019. Below are one-paragraph abstracts of the selected cases. Full case summaries follow the abstracts.

II. ABSTRACTS

1. While an executive rights holder's refusal to lease, alone, may not constitute a breach of the executive's duty to other mineral owners, the decision not to lease can violate the duty where the refusal unfairly diminishes the value of the non-executive interest. In this breach-of-executive-duty case, a non-executive mineral owner sued the executive after repeated failures to enter into a lease. The evidence showed that keeping the land free from a lease benefitted the executive (who was also the surface owner) to the detriment of the other mineral owners. The Court found that this was evidence of self-dealing and affirmed the decisions of the courts below in finding for the non-executive mineral owner. *Tex. Outfitters Ltd., LLC v. Nicholson*, 17-0509, 2019 WL 1575018 (Tex. Apr. 12, 2019).

2. A "subject-to" clause in a mineral conveyance is insufficient to reserve an interest from the conveyance absent language clearly expressing an intent to limit the conveyance. The heirs of mineral grantors argued that their parents' deed was subject to a prior conveyance reserving a possibility of reverter in royalties in this deed construction case. Despite the number of "subject-to" clauses in the deed, the deed did not express a clear intention to convey anything less than the full estate owned, and so conveyed the entire estate. *Jarzombek v. Marathon Oil Co.*, 04-18-00587-CV, 2019 WL 1547574 (Tex. App.—San Antonio Apr. 10, 2019, pet. filed).

3. Production by a co-tenant does not propel the leases of the non-producing co-tenant into the secondary term where the lease required the lessee to cause production itself. In this lease termination case, a non-producing co-tenant argued its lease was ambiguous and that it could rely on production from the producing co-tenant's well to propel its lease into the secondary term. The court, however, found that the non-producer's lease unambiguously required the lessee to directly cause production and the leases, therefore, expired. *Cimarex Energy Co. v. Anadarko Petroleum Corp.*, 08-16-00353-CV, 2019 WL 1146790 (Tex. App.—El Paso Mar. 13, 2019, no pet. h.).

4. A continuous development provision in a lease allowing the operator to apply unused days to the next drilling deadline did not allow the operator to store up unused days "like pennies in a jar." In this lease termination dispute, a mineral lessee argued that it had accumulated over 200 days by virtue of completing wells ahead of schedule as part of the lease's continuous development program. The court found, however, that this reading was not supported by the clause itself, which expressly limited the manner in which the operator could accumulate days and apply them to the next 150-day term. *Endeavor Energy Res., L.P. v. Energen Res. Corp.*, 563 S.W.3d 449 (Tex. App.—Eastland 2018, pet. filed).

5. Elected unit operator can delegate operatorship duties to a contract operator, and that contract operator is not liable to non-operators for breach of any duties imposed on the unit operator under that unit operating agreement. PBJV was designated as unit operator and entered into a contract with Apache to perform a number of those duties, including an obligation to submit JIBs on behalf of PBJV. After a mineral owner declined to pay certain JIBs, Apache filed suit. The mineral owner argued that Apache did not have standing because the unit operating agreement requires the "Unit Operator" to be a working interest owner. However, the operating agreement permitted the delegation of operatorship duties. *OBO, Inc. v. Apache Corp.*, 566 S.W.3d 26 (Tex. App.—Houston [14th Dist.] 2018, no pet.).

6. A subsequent specific conveyance cannot further limit a general warranty clause that is already subject to a reservation, as this would constitute an unlawful reservation by implication. The deed at issue contained a general warranty clause that purported to convey a fee simple interest in property, subject to a specific reservation. The deed also contained a specific conveyance clause subsequent to the general warranty clause that only conveyed a fraction of the grantors' interests. At issue was whether the grantors conveyed their entire interest pursuant to the general warranty clause, or only a fraction of their interest pursuant to the subsequent specific conveyance. The Court determined that because the deed contained a reservation, the grantors kept only the interest contained in that reservation. As such, the specific warranty did not carve out an additional reservation, and the grantors conveyed their entire interest subject only to the specific reservation in the general warranty. *Rahlek, Ltd. v. Wells*, 11-17-00141-CV, 2019 WL 2220600 (Tex. App.—Eastland May 23, 2019, no pet. h.).

7. The two-year statute of limitations for a trespass to real property cause of action begins to run once the lessee has actual knowledge that their lease rights are being infringed upon; however, actual knowledge of damage to one lease may not constitute actual knowledge of damage to another lease. Contamination from an injection well damaged two separate mineral leases. At issue was when causes of action for trespass, negligence, gross negligence, and nuisance accrued for each lease, and when the lessee is charged with knowledge of an injury to their lease. The Court determined that e-mail notice from an operator with a well entirely surrounded by one of the leases gave the lessee notice of an injury to his lease, and began the limitations period. However, this notice as to one lease did not establish notice as to the other lease. *Swift Energy Operating, LLC v. Regency Field Services LLC*, 04-17-00638-CV, 2019 WL 2272900 (Tex. App.—San Antonio May 29, 2019, no pet. h.).

8. The Comptroller of Public Accounts may not pay a claim for unpaid royalties to a reported owner of property's assignee. At issue here was determining the meaning of "reported owner" in Title 6 of the Property Code for purposes of submitting claims for unpaid royalties to the Comptroller. The Court determined that the reported owner was the person the property holder named as the owner in the report provided to the Comptroller when the unclaimed property is given to the State. Because the person filing the claim for unpaid royalties was the reported owner's assignee, the claim was denied. *Enerlex, Inc. v. Hegar*, 03-18-00238, 2019 WL 3680134 (Tex. App.—Austin Aug. 7, 2019, pet. filed).

9. The estoppel by deed, *Duhig*, and after-acquired title doctrines do not apply to estop a grantor's heirs from claiming title to the property from a source independent from the deed. At issue was whether the estoppel by deed doctrine applied where a grantor's heirs were asserting an interest in property they inherited from their mother, when their father purported to convey that interest in an earlier deed. The Court concluded that neither the *Duhig*, estoppel by deed, nor after-acquired title doctrines applied to divest the grantor's heirs of their interest in the property, because they were claiming their interest via inheritance, and not the prior deed. *Trial v. Dragon*, 18-0203, 2019 WL 2554130 (Tex. June 21, 2019).

10. Texas Courts will not supplement a contract with extrinsic evidence that was unambiguous yet silent as to an immaterial, non-essential term. In this case, the parties agreed to a farmout provision that required consent-to-assign. A dispute arose over whether a party could withhold consent for any reason or no reason at all. The Court found that extrinsic evidence of any prior negotiation was inadmissible since the farmout was unambiguous yet silent to this immaterial term. In reaching this conclusion, the Court avoided an impermissible restraint on alienation and relied on the clear language of the agreement. *Barrow-Shaver Res. Co.*

v. Carrizo Oil & Gas, Inc., 17-0332-CV, 2019 WL 2668317 (Tex. June 28, 2019).

11. Estoppel applies when a party accepts the benefit of a reservation and does not dispute the presence or legitimacy of the signatures on the deed imputing survivorship. The issue before the court was whether a 1989 deed created a joint tenancy or a tenancy in common. Since the appellants had accepted the benefits of the reservation—received their respective shares of the royalty payments—they could not claim the deed created a tenancy in common. *Wagenschein v. Ehlinger*, 13-17-00515-CV, 2019 WL 3048462 (Tex. App.—Corpus Christi July 11, 2019, no pet. h.)

III. CASE SUMMARIES

1. *Tex. Outfitters Ltd., LLC v. Nicholson*, 17-0509, 2019 WL 1575018 (Tex. Apr. 12, 2019)

In a 1000-acre tract, Texas Outfitters owned the surface estate, a 4.16% mineral interest, and executive rights to a 45.84% mineral interest. The Carters owned the remaining rights related to the 45.84% interest. In 2010, the owners of the other 50% mineral interest leased their interest to El Paso Oil Exploration & Production Company for $1,750-per-acre bonus and a 25% royalty. El Paso made the same offer to Texas Outfitters for the remaining 50% mineral interest. The Carter family wanted to accept the offer, but Texas Outfitters refused. Texas Outfitters subsequently received two offers to lease with higher bonuses, but the companies withdrew both offers after learning of El Paso's existing lease. Texas Outfitters eventually sold the surface, free of any mineral lease for a substantial profit.

The Carters brought a claim against Texas Outfitters for breaching its executive duty, claiming that Texas Outfitters was engaging in self-dealing by refusing to lease the minerals. At the trial court, Texas Outfitters claimed that it "wanted to see how the play matured and try to get more money," but other evidence indicated that Texas Outfitters "planned not to lease because of [its] business of a hunting lease for bringing in hunters." After a bench trial, the court rendered judgment against Texas Outfitters for nearly $900,000 based on a finding that Texas Outfitters' refusal to lease was motivated by self-interest to the Carters' detriment. The court of appeals affirmed, finding sufficient evidence to support the trial court's findings. Texas Outfitters appealed to the Texas Supreme Court.

Texas Outfitters argued that an executive rights holder does not generally breach its duty merely by declining a lease offer in honest anticipation of obtaining better terms. The Court noted, however, that the decision not to lease could violate the duty where the refusal unfairly diminishes the value of the non-executive interest. The Court reasoned that, in this case, the trial court found sufficient evidence that the refusal to lease was unfairly detrimental to the Carters' interests; remaining unleased substantially benefitted Texas Outfitters—the surface owner—while offering no benefit to the Carters. Turning what should be a benefit to both the executive and non-executive holders into a benefit only for the executive, the Court noted, is evidence of unfair self-dealing.

The Court further specified that "we cannot and do not say that an executive primarily interested in the surface necessarily breaches his duty by engaging in conduct that benefits the surface but not the mineral estates, we conclude that legally sufficient evidence supports the trial court's finding that Texas Outfitters did so in this case." The Court reiterated that whether the plaintiff proved that the defendant engaged in self-dealing that unfairly diminished the value of the plaintiff's non-executive interest remains a fact-dependent inquiry. Accordingly, the Texas Supreme Court affirmed the rulings below.

2. *Jarzombek v. Marathon Oil Co.*, 04-18-00587-CV, 2019 WL 1547574 (Tex. App.—San Antonio Apr. 10, 2019, pet. filed)

In 1965 Ben and Olga Janecek purchased 70 acres of land; the 1965 Deed reserved an undivided one-fifth royalty interest to Olga and her

four siblings for a period of 20 years or as long thereafter as there was production in paying quantities (with the possibility of reverter conveyed to Ben and Olga). In 1976, the Janeceks conveyed the land and minerals to the Swaffords. The 1976 Deed contained several "subject-to" clauses, each of which referred, in some way, to the royalty reservation in the 1965 Deed.

The Janeceks' children sued the Swaffords (and other successors in interest) for title to the possibility of reverter Ben and Olga received in the 1965 Deed. (The term royalty interest had expired, so the possibility of reverter had since become a 4/5ths royalty interest.) Both parties moved for summary judgment. The trial court determined that the title to the royalty interest passed to the Swaffords with the execution of the 1976 Deed. The Janecek Children appealed.

The Janecek Children argued that the interest remained with their parents because the 1976 Deed was made "subject to" the 1965 Deed. Conversely, the Swaffords argued that the "subject-to" provisions were simply notices of a prior reservation or warranty. The Eastland Court of Appeals, noting that a warranty deed conveys the greatest estate possible unless there is language that clearly shows an intent to convey a lesser interest, affirmed the trial court's decision.

The first "subject to" clause in the 1976 Deed ("Such conveyance is subject, however, to all … royalty conveyances, or reservations"), the court found, served to put the grantee on notice that there was a prior royalty reservation through a prior deed. As the court noted, subject-to language that serves to put a grantee on notice is not a clear intention to reserve or except an interest.

The same was true for the second subject-to clause ("this conveyance is subject to [the 1965 Deed] … for all purposes"). Even with the addition of "for all purposes," the court noted, the subject-to clause still did not express a clear intention to reserve or except the royalty interest. The third and fourth uses of "subject to" were in the warranty provision. The court reasoned that *Bass v. Harper* expressly rejected the argument that a subject-to clause in a warranty limits the grant.

The Janacek Children's final argument was that the use of "heirs and assigns" (rather than "heirs or assigns") in the 1965 Deed meant that the possibility of reverter had already descended to the Janacek Children before the future interest could be conveyed. But the Janacek Children offered no authority to support the argument.

Because the Janacek Children could not point to anything in the 1976 Deed that expressed a clear intention to convey anything less than the full estate owned, the court affirmed the trial court's judgment and found for the Swaffords.

3. *Cimarex Energy Co. v. Anadarko Petroleum Corp.*, 08-16-00353-CV, 2019 WL 1146790 (Tex. App.—El Paso Mar. 13, 2019, no pet. h.)

In 2009, Cimarex leased 1/6th of the interest in a 440-acre tract in Ward County. Cimarex's lease contained a habendum clause providing for a five-year primary term. Meanwhile, between 2007 and 2010, Anadarko leased the remaining 5/6ths in the 440-acre tract. In 2012, Anadarko drilled two wells, each reaching payout within a year of first production.

Upon hearing that drilling had begun on the land, Cimarex's lessors demanded royalty payments from Cimarex. As a result, a dispute arose between Cimarex and Anadarko over cotenant accounting for the two wells, with Cimarex claiming that it had several times sought participation. The parties entered into a Settlement Agreement in 2013, in which Anadarko agreed to account to Cimarex for its 1/6th less drilling and operating expenses. Both parties agreed to pay royalties to their respective lessors.

From July of 2013 to December of 2014, Anadarko paid Cimarex its share of production. After December 21, 2014, however, the primary term of Cimarex's lease expired and Anadarko ceased making payments to Cimarex. Prior to the dispute between the parties, Anadarko secured top

leases on the Cimarex interest. Consequently, Anadarko asserted its entitlement to the rights to Cimarex's 1/6th interest by paying bonuses to the mineral owners, which they accepted. Cimarex sued Anadarko for breach of the 2013 Settlement Agreement. The trial court granted Anadarko's motion for summary judgment, finding that Cimarex had failed to drill a well during the primary term as required by its lease. Without any interest in the land, Anadarko no longer owed Cimarex an accounting and was, therefore, no longer beholden to the 2013 Settlement Agreement. Cimarex appealed.

The El Paso Court of Appeals affirmed the trial court's decision. Cimarex argued that its lease did not terminate for any of three reasons: (1) the lease was ambiguous as to whether Cimarex was required to directly cause production to propel the lease into the secondary term; (2) the lease unambiguously allowed Cimarex to rely on Anadarko's production; and (3) that the 2013 Settlement Agreement was actually a joint operating agreement which would allow Cimarex to claim Anadarko's production as its own. But even if the court ruled against Cimarex on the validity of its lease, Cimarex argued that Anadarko was estopped from claiming that the lease had terminated because the lessors accepted royalty payments during the primary term of the lease.

The court first dealt with the issue of ambiguity. After interpreting the language of the lease, the court held that the lease unambiguously required Cimarex to directly cause production to carry the lease into the primary term. The lease, the court noted, expressly stated that its purpose was for the production of oil and gas. Moreover, the lease contained several provisions requiring Cimarex to take action to keep the lease alive (such as a requirement to pay royalties on actual production during the term of the lease or the ability to keep the lease alive after cessation if the "Lessee" commences operations for "additional drilling"). Finally, although the primary term of the lease was based on cash consideration, the secondary term required actual production and that evinced an intent to require Cimarex to take some action to cause production. As such, the court determined that Cimarex was required to directly cause production on the leased premises.

Cimarex further argued that because it was required to pay royalties on Anadarko's production, it should be allowed to rely on that same production to carry its lease into the secondary term. But the court rejected that argument, returning to the plain language of the lease. The lease imposed an obligation on Cimarex to pay royalties and likewise imposed an obligation to cause production—the two were not contradictory and could easily co-exist.

Cimarex next argued that the 2013 Settlement Agreement was actually a joint operating agreement—which would have kept Cimarex's lease alive by attributing to Cimarex Anadarko's production. The court noted that joint operating agreements typically describe the proportionate costs to be shared, but also allocated the liabilities to be shared. Nothing in the 2013 Settlement Agreement, the court determined, indicated that the parties agreed to jointly develop the land—it merely clarified Cimarex's right as a co-tenant to receive a proportionate share of production and bear proportionate costs. Therefore, the 2013 Settlement Agreement was not a joint operating agreement and could not save Cimarex's lease.

Cimarex's final argument that the payment of royalties during the primary term of the lease (and the acceptance of those royalties by its lessors) estopped Anadarko (as the party stepping into the shoes of the lessors) from asserting that Cimarex could not rely on Anadarko's production under the doctrine of quasi-estoppel. The court determined that Anadarko was not estopped from claiming Cimarex's lease expired because Cimarex's lessors were similarly allowed to assert that the lease had expired. The plain language of the lease, the court held, required Cimarex to *both* pay royalties in the primary term on production *and* to cause production to enter the secondary term. Payment of royalties was merely an obligation Cimarex had to fulfill and it did not excuse its failure to cause production. Accordingly, the court affirmed the trial court's

granting of summary judgment in favor of Anadarko.

4. *Endeavor Energy Res., L.P. v. Energen Res. Corp.*, 563 S.W.3d 449 (Tex. App.—Eastland 2018, pet. filed)

Endeavor Energy Resources was the successor in interest of a leasehold interest in a lease with Quinn, the mineral owner. The lease included a continuous development clause that required the lessee to adhere to a continuous development program. The clause provided that the lessee was required to drill a new well every 150 days. Failure to drill a subsequent well in time would cause the lease to terminate "as to all non-dedicated acreage." The clause also allowed the lessee to "accumulate unused days in any 150-day term during the continuous development program in order to extend the next allowed 150-day term between the completion of one well and the drilling of a subsequent well" (the "accumulation provision")

During the secondary term of the lease, Endeavor drilled twelve wells over the course of five years, with each well completed within the time required by the continuous development clause. After it completed the twelfth well, however, Endeavor did not drill another well for approximately 320 days. On the 311th day, Quinn executed a new lease in favor of Energen Resources Corp. Energen sued Endeavor, alleging that the continuous development program had lapsed and that the lease had automatically terminated as to all "non-dedicated acreage." Shortly thereafter, Endeavor spudded its thirteenth well.

Endeavor and Energen filed competing motions for summary judgment. Endeavor argued that the accumulation provision allowed it to accumulate unused days "like pennies in a jar" to use on any subsequent well. Under Endeavor's reading, it had accumulated 227 unused days, allowing it to wait 377 days to commence its thirteenth well. Energen argued that accumulated days from one well could only be used to extend the 150-day period for the next well. The trial court sided with Energen, granting its motion for summary judgment; Endeavor appealed.

The Eastland Court of Appeals' analysis focused on interpreting the accumulation provision. The second half of the provision ("in order to extend the next allowed 150-day term between the completion of one well and the drilling of a subsequent well") specifies the manner in which any accumulated days could be used. The court focused on the limitation inherent in "next allowed," finding that the phrase was akin to "immediately following, as in time, order, or sequence." As such, the court found that the provision was clear, certain, and unambiguous, and that Energen's interpretation of the provision was proper, affirming the judgment of the trial court.

Endeavor first argued that Energen's interpretation rendered the words "accumulate" and "extend" meaningless, asserting that accumulate implied that it could amass unused days "like pennies in a jar." The court noted, however, that Endeavor was still allowed to accumulate days, but that the second half of the provision limited the manner in which Endeavor could so accumulate.

Endeavor next argued that "150-day" was merely a label for the term and not an actual limitation; what the phrase means is actually the "next" term. The court disagreed, noting that the term "150-days" appears several times in the continuous development clause and that its frequent use meant that each term was meant to be a 150-day term.

The court next found that its interpretation was consistent with the purpose and policy behind continuous development clauses: balancing the interests of the lessor in developing the lease and the interests of the lessee in delaying production based on market conditions. Endeavor's interpretation—which would permit a gap in development of over a year—was inconsistent with this stated purpose.

Finally, the court found that its interpretation would not result in a forfeiture, because the continuous development clause was a special limitation that automatically terminated the lease as to the described acreage.

5. *OBO, Inc. v. Apache Corp.*, 566 S.W.3d 26 (Tex. App.—Houston [14th Dist.] 2018, no pet.)

OBO, Inc. owns a minority working interest in a gas unit in Andrews County, Texas. Permian Basin Joint Venture, LLC (PBJV) owns 81.4% of the working interest in the unit and was designated as the unit operator. The American Petroleum Institute's (API) Model Form Unit Agreement and Model Form Unit Operating Agreement require the operator to be a working interest owner. PBJV contracted with Apache to serve as contract operator and to perform duties, including an obligation to submit JIBs on behalf of PBJV. OBO declined to pay a number of JIBs and Apache and PBJV sued for the unpaid JIBS.

OBO filed a counter-claim, alleging that Apache lacked standing because the API Unit Operating Agreement indicates that the "Unit Operator" must be a working interest owner. OBO also filed a counterclaim against Apache for breach of an alleged duty under the API Unit Operating Agreement to act as a reasonably prudent operator, and claimed that the exculpatory clause did not serve to limit Apache's liability. The trial court granted summary judgment against OBO.

On appeal, it was undisputed that only a working interest owner can be designated as the Unit Operator under the API Unit Operating Agreement. The crux of the appeal was whether Apache was actually *acting* as the Unit Operator or was merely *delegated* operator duties.

The Court concluded that Apache was merely delegated duties:

> In its Contract Services Agreement with Apache and attendant power of attorney, PBJV did not name or designate Apache as Unit Operator; it merely contracted with Apache to provide operator services for the unit, i.e., PBJV delegated those contractual duties to Apache. As mentioned above, under the Contract Services Agreement, Apache's services were to be "subject to the reasonable direction of [PBJV]."

OBO claimed that the API Model Form prohibited delegation of operator duties. OBO argued that allowing delegation of operator duties would render meaningless the definition of "Unit Operator" in Section 1.10 of the Unit Agreement, defined as "the Working Interest Owner designated by Working Interest Owners under the Unit Operating Agreement to develop and operate the [unit], ***acting as operator*** and not as a Working Interest Owner." However, the court disagreed, explaining that a more reasonable explanation is that the definition is merely intended to differentiate between the Unit Operator's actions as operator and actions as owner, "not creating a prohibition against delegation."

OBO also argued that permitting Apache to become Unit Operator under the governing documents would render meaningless the operator removal language in Section 6.2 of the API Model Form, which allows nonoperators to remove the operator "at any time by the affirmative vote of at least eight percent (80%) of the voting interest remaining after excluding the voting interest of the Unit Operator."

OBO argued that, PBJV could "effectively nullify the provision by voting its 81.4% interest in favor of [keeping] Apache." Court disagreed again, explaining that because PBJV was the Unit Operator, not Apache, and this provision was unaffected by PBJV's delegation of operator duties to Apache.

Lastly, the Court affirmed the dismissal of OBO's breach of contract claim. When PBJV contracted with Apache for operator services, Apache did not become the operator. Rather,

Apache was merely performing operator services for PBJV under a contract with PBJV, not the other working interest owners. Apache could not owe any duties under that agreement because Apache was not a party to that agreement. If Apache operated the unit negligently or in a manner that breached the unit agreement, the other working interest owners needed to sue PBJV, not Apache.

6. *Rahlek, Ltd. v. Wells*, 11-17-00141-CV, 2019 WL 2220600 (Tex. App.—Eastland May 23, 2019, no pet. h.).

In this deed interpretation case, the Eastland Court of Appeals considered whether two grantors conveyed their entire interest in property when the deed contained a general conveyance followed by a more specific conveyance.

Rahlek, Ltd. and Eugenia Campbell owned all of the surface estate, and each owned a 1/8 interest in the mineral and royalties in and under property in Coleman County (i.e., they each owned 1/2 of the collective 1/4 interest in the minerals and royalties). In 2006, Rahlek and Campbell conveyed, by warranty deed, the property and mineral and royalty interests to Lake Phantom, L.P ("2006 Deed"). The deed contained a general warranty in its granting/habendum clause, which read: "Grantor …grants, sells, and conveys to Grantee the property, together with all and singular the rights and appurtenances thereto in any wise belonging …." This general conveyance was "subject to the reservations from and exceptions to conveyance and warranty." The sole reservation stated "Grantor RESERVES unto itself and its successors and assigns all current oil and gas production." The deed also contained a subsequent specific conveyance, which provided that "Grantor CONVEYS unto Grantee and its successors and assigns one-eighth (1/8) of mineral and royalty on all new production which are owned by Grantors upon the date of this conveyance."

After the 2006 Deed's execution, Lake Phantom subdivided the property into multiple tracts, and conveyed its interest to other parties, who then made similar conveyances to others. Some of these subsequent purchasers, including Robert Wells, filed a declaratory judgment action against Rahlek and Campbell to determine what interests the grantors conveyed in the 2006 Deed.

Campbell also conveyed all of her mineral and royalty interests to her children in equal shares after the 2006 Deed's execution. Campbell's children intervened and countersued for declaratory judgment, seeking a favorable interpretation of the 2006 Deed. Campbell's children joined Lake Phantom's successors in interest, including Ricky Grubbs. In 2008, Lake Phantom sold the property and its mineral interest to Grubbs. Grubbs subdivided the property into two tracts: the Grubbs "A" Lease Tract, and the Grubbs "D" Lease Tract, which were part of the property conveyed in the 2006 Deed.

The parties exchanged claims for unjust enrichment, each party alleging that the other improperly received royalty payments. The trial court concluded that the 2006 Deed was unambiguous, conveyed the entirety of the grantors' mineral and royalty interests on "all new production," and reserved only "all current oil and gas production." As such, the trial court ruled in favor of Lake Phantom and their successors in interest.

On appeal, the Eastland Court of Appeals affirmed the trial court's rulings that the 2006 Deed was unambiguous, and that the deed conveyed all of Rahlek and Campbell's interests in new oil and gas production. The parties' dispute concerned what percentage of the minerals and royalties the deed conveyed on new production.

Rahlek, Campbell, and Campbell's children argued that the specific conveyance shows that they only conveyed a fraction (1/8) of their collective 1/4 mineral and royalty interests on all new production, not their entire fractional 1/8 interests. They argue that the specific conveyance limited the general conveyance in the granting/habendum clause. Thus, according to Rahlek, Campbell, and the children, the grantors con-

veyed only 1/8 of their collective 1/4 mineral interest and 1/8 of the royalties on new production attributable to that 1/4 mineral interest.

Conversely, Lake Phantom and their successors argued that, because Rahlek and Campbell each owned an undivided 1/8 mineral and royalty interest and the deed conveyed that exact interest in "mineral and royalty on new production," the 2006 Deed conveyed all of their interests on new production. They contended that the word "which" in the specific conveyance referred to the two separate 1/8 interests that each grantor owned. In addition, they claimed that the word "of" in the phrase "one-eighth (1/8) of mineral and royalty" did not proportionately reduce the grant, but highlighted the types of interests being conveyed. The Eastland Court of Appeals agreed, concluding that Rahlek and Campbell each conveyed 100% of their interests on new production.

The Court noted that the 2006 Deed initially conveyed a fee simple interest in the granting/habendum clause. The Court explained that the general conveyance was only "subject to the reservations from and exceptions to conveyance and warranty," and that the only express reservation in the deed related to current oil and gas production. Therefore, the grantors made no reservation of any interest in new production, and thus conveyed all of their interest in new production.

Next, the Court interpreted the specific conveyance. The Court determined that if it were to hold that this conveyance limited only the conveyed interest to just a fractional part of the collective 1/4 interest, then the general conveyance would be "meaningless and superfluous." Additionally, if the Court read the specific conveyance as granting a lesser estate, they would be allowing the grantors to make an illegal reservation by implication.

Therefore, the Court determined that the specific conveyance clarified the quantity and extent of the interest conveyed in the general conveyance. As such, the 2006 Deed conveyed all of Rahlek and Campbell's interests in new production, and reserved only current production.

The Court distinguished *Hunsaker v. Brown Distributing Co.*, 373 S.W.3d 153 (Tex. App.—San Antonio 2012, pet. denied), where a grantor owned a 1/4 mineral interest in his property and executed a deed in which he purported to convey all of his property, which he described in an exhibit. The exhibit contained a specific grant of a "1/2 mineral interest now owned by Grantor." The *Hunsaker* court determined that the grantor conveyed only 1/2 of his 1/4 mineral interest, and not his entire 1/4 interest. The Eastland Court of Appeals noted that the *Hunsaker* deed did not include fee simple language in its granting/habendum clause. Instead, the *Hunsaker* deed stated that the grantor does "grant, sell, and convey . . . the following described property." As such, the *Hunsaker* deed conveyed the surface estate, not the mineral estate. Thus, the grantor did not have to expressly reserve a mineral interest when he later specifically conveyed a fraction of his mineral interest.

Here, the 2006 Deed did convey the mineral estate: "Grantor … grants, sells, and conveys to Grantee the property, *together with all and singular the rights and appurtenances thereto in any wise belonging* …." Thus, the grantors had to expressly reserve an interest in new production if they intended to reserve that interest.

Having interpreted the 2006 Deed in favor of Grubbs, the Court addressed the Campbell children's allegations that Grubbs waived his right to recover royalties from the Grubbs "A" Lease Tract. The children showed that, at the time Grubbs purchased the property in 2008, he believed he owned all of the 1/4 mineral and royalty interest. In addition, they showed that in March 2013, Grubbs sent letters to each of the children expressing that Grubbs "paid property taxes on [the Campbell Children's] royalty interest in Grubbs A," and requesting that the children reimburse him for the taxes. The court noted that the children continued receiving royalty payments until December 2014.

However, the Court concluded that it was "not clear from Grubbs's conduct that he intended to relinquish his right to recover royalties from the Campbell Children." The Court emphasized that although "Grubbs testified that he believed he owned 100% of the disputed one-quarter royalty interest" when he bought the property, there was no "conclusive evidence that Grubbs maintained this belief at all times prior to bringing his unjust enrichment counterclaim in 2015." Therefore, there was no evidence showing that Grubbs "had actual knowledge of the existence of his right" at the time he sent the letters. Thus, there was not conclusive evidence to show that Grubbs "intentionally engaged in conduct inconsistent with the right he now claims," and there was no waiver.

Similarly, because the Court held that there was no evidence showing that Grubbs knew he owned 100% of the royalty interest at the time he sent the letters, he did not "knowingly [make] a false representation or concealment of a material fact," as is necessary to establish equitable estoppel.

The children's quasi-estoppel claim failed for this reason as well, because "the evidence does not conclusively establish that Grubbs engaged in intentional conduct inconsistent with the right he now claims." Therefore, it would "not be unconscionable to allow Grubbs to assert his right to recover royalties from the Campbell Children."

7. *Swift Energy Operating, LLC v. Regency Field Services LLC*, 04-17-00638-CV, 2019 WL 2272900 (Tex. App.—San Antonio May 29, 2019, no pet. h.).

Swift Energy Operating, LLC, entered into a mineral lease with Leo Quintanilla ("PCQ Lease"). The PCQ Lease covered depths in the Olmos and Eagle Ford formations. Swift had other leases in the area as well (non-PCQ leases), some of which were contiguous to the PCQ Lease.

Regency Field Services sought the Texas Railroad Commission's permission to operate an injection well into the Wilcox formation to dispose of "a gaseous mixture of concentrated hydrogen sulfide … and carbon dioxide . . . ." The RRC issued the permit for the injection well, and Regency's model predicted a horizontal spread of 2,900 feet after thirty years of injection.

In August 2012, Layline Petroleum was operating the JCB Horton #1 well 3,300 feet from the injection well. Although this was outside Regency's predicted injection spread, Layline had to plug and cap the JCB Horton #1 well due to hydrogen sulfide contamination from the injection well.

On October 23, 2012, Layline e-mailed Swift, alerting Swift of its need to cap the JCB Horton #1 well, and warning them that Swift had two wells permitted close to the injection well. Layline identified Swift's wells that could be affected by the injection well.

In July 2014, Quintanilla sued Regency for trespass and negligence. On September 24, 2015, Swift intervened against Regency, alleging trespass, negligence, gross negligence, and nuisance for "present and future damage to seventy-four existing or planned wells."

Regency cited the two-year statute of limitations for injuries to real property in their motion for summary judgment. The trial court granted the motion, concluding that the limitations period had run on all of Swift's claims. On appeal, the San Antonio Court of Appeals affirmed with regard to the PCQ Leases, but reversed regarding the non-PCQ Leases.

Regarding the PCQ Lease, Swift argued that "no cause of action accrues until the 'uninvited molecules' actually infringe on its mineral rights in its PCQ lease," citing *Lightning Oil Co. v. Anadarko E&P Onshore, LLC*, 520 S.W.3d 39, 45 (Tex. 2017). Conversely, Regency claimed that the PCQ Lease claims accrued "when the injectate entered the PCQ lease," citing *Town of Dish v. Atmos Energy Corp.*, 519 S.W.3d 605, 608 (Tex. 2017). Regency alleged that the injectate entered the PCQ Lease before October 2012 because the JCB Horton #1 well was "wholly surrounded by

the PCQ lease," and thus Swift knew on October 23, 2012 that the PCQ Lease was contaminated.

The Court conducted a geological examination to determine when Swift's causes of action under the PCQ Lease accrued. The Court first noted that, horizontally, the JCB Horton #1 well was completely surrounded by the PCQ Lease. Vertically, the Court explained that of the three formations affected (Wilcox, Olmos, and Eagle Ford, in descending order from the Earth's surface), the Wilcox formation had the highest disposal zone. Therefore, the Court reasoned that Swift must drill through the contaminated Wilcox formation to reach its PCQ leased depths in the Olmos and Eagle Ford formations, which would cause damage to Swift.

Therefore, the Court concluded, "the injectate plume overlaid some portion of Swift's leased depths and would require Swift to drill any new wells through the contamination." As a result, "Layline's October 23, 2012 e-mail was notice to Swift that the plume had 'infringe[d] on [Swift]'s ability to exercise its rights' in its PCQ leases." In ruling that the statute of limitations had run on Swift's PCQ Lease claims, the Court cited *Lightning Oil* for the proposition that an "unauthorized interference with the *place* where the minerals are located constitutes a trespass as to the mineral estate [when] the interference infringes on the mineral lessee's ability to exercise its rights." As such, the two-year statute of limitations for the PCQ Lease claims began to run when Swift had actual knowledge that its PCQ lease rights were being infringed on October 23, 2012.

With respect to Swift's non-PCQ lease claims, Regency failed to produce any summary judgment evidence. Instead, they argued that because "(1) Swift sued Regency for damage to Swift's non-PCQ leases, (2) Swift's PCQ lease claims accrued more than two years before it sued, and (3) Regency moved for judgment against all of Swift's claims, Regency was entitled to judgment against all of Swift's claims." Regency relied on *Exxon Corp. v. Emerald Oil & Gas Co.*, L.C., 348 S.W.3d 194, 202 (Tex. 2011), for this proposition. In *Emerald Oil*, "notice of damage to eight wells in a thirty-four well group was notice of possible injury to each of the remaining twenty-six wells."

However, the Court distinguished *Emerald Oil*, noting that *Emerald Oil* was "not a spreading contamination case," because the well damage in *Emerald Oil* had already happened, and there was no ongoing risk of further contamination. Here, however, the non-PCQ Lease claims were "based on spreading contamination from an injection well's plume where the injection is ongoing." Thus, the Court held that *Emerald Oil*'s analysis did not apply, and notice of damage to the PCQ Lease did not constitute notice of damage to the non-PCQ Lease.

Therefore, because Regency did not provide summary judgment evidence to support when Swift's causes of action for the non-PCQ Lease accrued, Regency was not entitled to summary judgment on their limitations defense to the non-PCQ claims. The Court remanded the non-PCQ Lease claims to the trial court to determine when these causes of action accrued.

8. *Enerlex, Inc. v. Hegar*, 03-18-00238-CV, 2019 WL 3680134 (Tex. App.—Austin Aug. 7, 2019, pet. filed).

This case dealt with whether or not the assignee of mineral interests can submit a claim to the Comptroller of Public Accounts for unpaid royalties that accrued before the deed was executed.

In 2013, Enerlex, Inc. purchased mineral interests from William Wilson, III through a mineral deed. The deed provided Enerlex rights to "all royalties, accruals and other benefits, if any, from all Oil and Gas heretofore or hereafter run."

Enerlex sent an Unclaimed Property General Claim form to Glenn Hegar, the Comptroller of Public Accounts, "seeking $4,652.91 in unclaimed royalty payments for Wilson's mineral interests, which had been sent to the State between 2001 and 2010." The Comptroller denied the claim, because although Enerlex provided proof "of a transfer of the mineral interests"

from Wilson to Enerlex, Enerlex did not give proof "of a transfer of the proceeds of those mineral interests arising prior to the transfer of the mineral interests." Enerlex sued, seeking a declaration that they were entitled to the unpaid royalties. But, the trial court granted summary judgment for the Comptroller.

On appeal, the Austin Court of Appeals applied Title 6 of the Texas Property Code, which governs unclaimed or abandoned property, to the royalty payments. The Court, citing TEX. PROP. CODE § 74.501(e)(1), emphasized that "the Comptroller 'may not pay' a claim to 'a creditor, a judgment creditor, a lienholder, or an assignee of the reported owner or of the owner's heirs.'"

The Court looked to the context of Title 6 to determine that the "reported owner" is the person believed by the holder to be the property holder; the person "who 'from the records of the holder of the property, appears to be the owner of the property.'" Essentially, according to the Court, the reported owner is the person named as the owner by the property holder in the report provided to the Comptroller when the unclaimed property is given to the State. This made Wilson the reported owner for the 2001–2010 royalty payments and, via the deed, Enerlex became Wilson's assignee. Thus, Enerlex was not entitled to the unpaid royalties, because the Property Code "bars the Comptroller from paying an unclaimed-property claim submitted by the reported owner's assignee."

Because the Court held that the Property Code's terms were unambiguous, the Court did not look at extrinsic evidence, such as the parties' intent or arguments for different statutory interpretations.

Additionally, Enerlex argued that they were entitled to payment under Section 75.002 of the Property Code. Section 75.002 states "a person who purchases mineral proceeds—defined as 'all obligations to pay resulting from the production and sale of minerals, . . .' or 'an owner whose name has been reported' to the Comptroller must prove that 'the transfer is executed by the reported owner' or his agent." The Court rejected this argument because obligations to pay were not relevant to this case; this case concerned royalties that had already been paid, but were unclaimed.

Lastly, the Court rejected Enerlex's claim that the Comptroller's interpretation of the Property Code violated its constitutional rights. Enerlex asserted that the Comptroller had paid similar claims in the past, and has now changed its statutory interpretation. However, the Court refused to forbid an agency from changing its statutory interpretation when it determines that its prior interpretation was incorrect. According to the Court, "an earlier, incorrect interpretation of the law cannot be considered to create a vested right." Furthermore, the Comptroller's new interpretation did not interfere with the contractual rights of either party—it merely requires an assignee to look to the contract with the property owner, and not the Comptroller's unclaimed property process.

9. *Trial v. Dragon*, 18-0203, 2019 WL 2554130 (Tex. June 21, 2019).

In this case, the Supreme Court of Texas examined "whether the estoppel by deed doctrine applies to prevent [the Trial's children] from asserting title to an interest they inherited from their mother, when their father previously purported to sell that interest to the [Dragons]."

Leo Trial and his six siblings each owned a 1/7 interest in property. In 1983, he gifted to his wife, Ruth "one-half (1/2) of all of [his] right, title and interest in and to" the property. Thus, Leo and Ruth each owned a 1/14 interest in the property, with Ruth's share being her separate property.

Later, Leo and his siblings purported to sell the entire property to the Dragons using separate deeds with the following identical language: "WE, LEO TRIAL of Karnes County, Texas, [and other grantors] … do BARGAIN, GRANT, SELL AND CONVEY unto the [Dragons] all that certain parcel or tract of land, lying and being situate[d] in Karnes County, Texas …." The

Dragons financed their payment for the property over fifteen years. The deed contained a fifteen-year mineral reservation and a general warranty clause that provided:

> TO HAVE AND TO HOLD the above described premises, together with all and singular the rights and appurtenances thereto in anywise belonging unto the [Dragons], their heirs and assigns forever, and We do hereby bind ourselves, our heirs, executors and administrators to WARRANT AND FOREVER DEFEND all and singular the said premises unto the [Dragons], their heirs and assigns against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

The deed made no mention of Ruth's interest, Ruth was not a party to the deed, and the Dragons had no knowledge of Ruth's interest.

Four years later, Leo died, and his will devised his entire estate to trust for the remainder of Ruth's life, with the corpus going to their two sons upon her death. In 2010, Ruth died, and her 1/14 interest passed to the sons through intestacy.

After the 15-year mineral reservation expired, the Dragons sought a new division order to direct the operator to begin making payments to the Dragons. The Dragons received payments for six years, until a lease status report revealed the Trial sons' interest in the property. Consequently, a new division order was entered, directing the operator to make royalty payments to the sons.

The Dragons sued, asserting breach of warranty and estoppel by deed. The trial court granted the Trials' motion for summary judgment. The San Antonio Court of Appeals reversed, relying on *Duhig*, and concluding that the deed to the Dragons conveyed the entire interest in the property, and therefore estoppel by deed divested the sons of any interest.

On appeal to the Texas Supreme Court, the Trial sons argued that estoppel by deed did not apply, because they were not claiming the property interest from their father. Instead, they claimed the property interest from their mother, who was not a party to the deed. On the other hand, the Dragons argue that the *Duhig* doctrine applies because Leo only owned half of what he purported to convey, and therefore his sons, as Leo's privies, were bound by the deed and estopped from asserting title to the property.

The Texas Supreme Court agreed with the Trial sons, and distinguished *Duhig*. The Court clarified that *Duhig* was a narrow holding, and only stands for the proposition that "if a grantor reserves an interest and breaches a general warranty at the very time of execution, then an immediate passing of title is triggered to the grantee for that property that was described in the reservation." Stated differently, "if the grantor owns the exact interest to remedy the breach *at the time of execution* and equity otherwise demands it."

Here, the Court explained, Leo did not own the interest needed to remedy the breach at the time of the deed's execution. Ruth owned the interest as her separate property, and the sons did not inherit the interest until many years later. As such, *Duhig* was inapplicable.

Moreover, even though the Trial sons were privies to the deed with the Dragons, the broader estoppel by deed doctrine did not apply. The Court noted that the Trials were asserting their interest pursuant to their inheritance from Ruth, not the sale deed to the Dragons. The Court pointed out that "estoppel by deed does not bind individuals who are not a party to the reciting deed, nor does it bind those who claim title independently from the subject deed in question."

The Dragons also asserted that the after-acquired title doctrine supported their claim to the 1/14 interest. Citing *Houston First American Savings v. Musick*, 650 S.W.2d 764 (Tex. 1983), the Dragons argued that once the Trial sons inherited the 1/14 interest, the after-acquired title doctrine

was triggered, and the interest vested to the Dragons pursuant to the deed.

However, the Court distinguished *Musick*, which "dealt with a party claiming in the same capacity as the original grantor who made the warranty." Here, the sons claimed their interest through Ruth and the gift deed, not the deed to the Dragons. Thus, the after-acquired title doctrine did not apply.

Having ruled that the *Duhig*, estoppel by deed, and after-acquired title rules did not apply, the Court recognized that the Dragons did have a valid breach of warranty claim against the Trial sons. The deed of sale to the Dragons was valid and enforceable, and it was undisputed that Leo breached the general warranty provision when he purported to convey more than he owned. Moreover, the Trial sons are privy to the sale deed to the Dragons, and can therefore be held liable for breach of warranty. However, the Court held that because none of the above mentioned rules applied, the proper remedy for breach was not to divest the Trial sons of their 1/14 interest; the proper remedy would be monetary damages. The Court remanded to the trial court to determine the amount of monetary damages the Dragons were entitled to, if any.

10. *Barrow-Shaver Res. Co. v. Carrizo Oil & Gas, Inc.*, 17-0332-CV, 2019 WL 2668317 (Tex. June 28, 2019).

In this contract construction case, the Texas Supreme Court reviewed a consent-to-assign clause in a farmout agreement. Throughout negotiations, the parties debated the consent-to-assign provision and at one point included the language:

> The rights provided to [Plaintiff] under this Letter Agreement may not be assigned, subleased or otherwise transferred in whole or in part, without the express written consent of [Defendant] which consent shall not be unreasonably withheld.

The Defendant later revised the draft, deleting the "shall not be unreasonably withheld" language. In executing the farmout, the parties ultimately agreed to a consent-to-assign provision that stated:

> The rights provided to [Plaintiff] under this Letter Agreement may not be assigned, subleased or otherwise transferred in whole or in part, without the express written consent of [Defendant].

After entering the agreement, the Plaintiff drilled a new well costing $22 million, with unsuccessful results. A third party approached the Plaintiff, offering to purchase its interest under the farmout agreement. The Plaintiff attempted to sell, but the Defendant refused consent, countering with an offer to sell its own interest to the Plaintiff. The Plaintiff claims the Defendant premised its consent on the acceptance of this offer. Ultimately, the deal with the third party fell through and the Plaintiff sued for breach of contract, fraud, and tortious interference with contract.

The trial court submitted the breach of contract question to the jury, explaining that it may consider evidence of industry custom in deciding whether the Defendant breached the agreement. The jury reached a unanimous verdict in favor of Plaintiff on all three of its claims, awarding $27,690,466.86 in total damages, in addition to pre-judgment interest and attorneys' fees.

The court of appeals reversed the trial court's judgment. In addressing the breach of contract issue, the court of appeals held the purposeful deletion of the qualifying language "which consent shall not be unreasonably withheld" showed that the Defendant bargained for hard consent.

On appeal, the Supreme Court of Texas had to determine whether the "[Defendant] had an unqualified right to refuse consent for [Plaintiff] to assign the farmout…." First, it delved into an analysis of the meaning the parties assigned to word "consent" in the agreement. It stated,

"[n]othing in the agreement suggests that the parties intended to use the term in a technical sense; rather, the term can easily be understood according to its plain, ordinary, and generally accepted meaning—approval." The Court found that the plain language of the provision did not impose an obligation on the Defendant. In addition, "the crux of this contract construction issue is whether the agreement's silence as to refusal or withholding of consent should nevertheless be interpreted to qualify the [Defendant's] right to withhold consent to an assignment of [Plaintiff's] rights as farmee."

The Court found that silence as to a material term differs from silence as to an immaterial or non-essential term. "Because only material and essential terms need be sufficiently definite and certain, and we refrain from rewriting or adding to parties' contracts, it follows that a term that is immaterial or non-essential may not be supplemented or given further precision." Likewise, within a consent-to-assign provision, additional terms are not material when the agreement is sufficiently definite to understand the parties' obligations. And, "terms relating to the withholding of consent are immaterial to the farmout agreement, and the agreement's purported silence as to when consent may be withheld is of no legal consequence and needs no supplement to aid its interpretation." Thus, the silence in reference to the consent-to-assign provision did not mean the provision needed extrinsic evidence to be cognizable.

In that same regard, the Court directly addressed the trial court's decision to allow extrinsic evidence, specifically, the evidence of industry custom and usage. The Court noted that "[i]ndustry custom and usage is often invoked to shed light on the meaning of oil and gas related contract provisions, such as those found in leases, farmouts, and operating agreements." But, reiterating its prior analysis, the Court stated "when a contract is unambiguous yet silent as to an immaterial, non-essential term, it requires no further supplementation." The Court explained the reasoning behind this analysis:

> To supplement so clear and easily understood a provision containing "express written consent" with extrinsic evidence, as [Plaintiff] would have us do, would make almost every term, word, or phrase in every agreement, and any obligation not in an agreement, susceptible to litigation and ultimately a jury determination based on competing expert testimony, regardless of clarity.

Next, the Court determined whether there was an implied duty or covenant within the consent-to-sign provision. The Plaintiff argued for an implied obligation that the Defendant could not withhold consent "unreasonably, arbitrarily, or illegitimately." But, the Court emphasized that courts should be hesitant to imply terms into contracts. Further, it refused to read a reasonableness requirement into the consent-to-assign provision as a way to avoid any impermissible restraint on alienation. "The obligation [Plaintiff] asks us to imply—that [Defendant] not act unreasonably in withholding consent—amounts to an implied covenant to act reasonably and in good faith. The contract imposes no such duty, and our precedent does not support implying one."

The Court defined the consent-to-assign provision; "[i]n no way does the agreement suggest that the [Defendant] must justify its denial of consent, that the denial of consent must meet some standard … or the [Plaintiff] can assign its rights without [Defendant's] consent meeting any requirement other than the two explicitly stated (express and in writing)." The Court found the consent-to-assign provision to be exactly as the parties agreed in the farmout, and refused to acknowledge a separate duty or covenant in the provision, giving weight to the parties' ability to contract.

11. *Wagenschein v. Ehlinger*, 13-17-00515-CV, 13-17-00515-CV, 2019 WL 3048462

(Tex. App.—Corpus Christi July 11, 2019, no pet. h.)

The focus of this dispute is a mineral interest reservation in a 1989 warranty deed. The appellants are the surviving heirs of the original conveyance and argued the reservation in the 1989 deed created a tenancy in common, as opposed to a joint tenancy. Appellees raise a "cross-point" arguing that appellants are barred from making their arguments under the doctrine of quasi-estoppel. The deed in question included the following reservation:

> THERE IS HEREBY RESERVED AND EXCEPTED from this conveyance for Grantors and the survivor of Grantors, a reservation until the survivor's death, of an undivided one-half (1/2) of the royalty interest in all the oil, gas and other minerals that are in and under the property and that may be produced from it. Grantors and Grantors' successors will not participate in the making of any oil, gas and mineral lease covering the property, but will be entitled to one-half (1/2) of any bonus paid for any such lease and one-half (1/2) of any royalty, rental or shut-in gas well royalty paid under any such lease. The reservation contained in this paragraph will continue until the death of the last survivor of the seven (7) individuals referred to as Grantors in this deed.

After each death, Pioneer distributed the decedent's interest by signed division orders to the then-surviving heirs. Like appellees, Pioneer interpreted the reservation as providing a joint tenancy with right of survivorship. The surviving heirs each signed division orders, accepting and receiving their respective shares. In 2015, appellants filed their original petition for declaratory relief asking the court to find the deed created a tenancy-in-common.

Even though the trial court did not rule on this issue, the Court addressed the appellee's quasi-estoppel argument. Quasi-estoppel "precludes a party from asserting, to another's disadvantage, a right inconsistent with a position previously taken." The Court found the appellee's argument meritorious since the appellant's accepted the benefit of the reservation and did not dispute the presence or legitimacy of the siblings' signatures on the deed imputing survivorship. "Consequently, having once enjoyed the benefits of joint tenancy with right of survivorship, the now-deceased [appellants] cannot today, through their heirs, sue to claim benefits as tenants in common."

Since one of the appellant's heirs died in 2009, before Pioneer began production on its first well on the property, it did not receive any benefit from the deed. Thus, that claim survived the quasi-estoppel argument and the Court had to consider the reservation in the 1989 deed.

The crux of this argument is whether a joint tenancy or a tenancy in common was created by the 1989 deed. Both parties and the Court agreed that the deed was unambiguous; the parties diverged on its proper interpretation. The Court summed up the disagreements follows:

> Appellant argues that the reservation in the 1989 deed created a tenancy in common, as opposed to a joint tenancy, in a one-half interest in royalty and bonus income attributable to the lands described in the 1989 deed. Appellant's argument hinges on a single provision within the reservation that states, "Grantors and Grantors' successors … will be entitled to one half (1/2) of … any royalty … paid under any such lease.

But the court found that acceptance of this argument would require it to ignore specific language in the reservation's opening and closing statements ("the survivor of Grantors, a reservation until the survivor's death ….") This language implied that the "survivors" of the Grantors—not the Grantors' respective heirs—are the beneficiaries of the reservation. Accordingly, the Court found the specific words "survivor of Grantors," controlled. The Court also found that the fact that the deed reserves an interest for the "Grantors' successors" did not indicate a contrary intent. "When the deed is examined as a whole … it is apparent that the words 'survivor' and 'successor' carry synonymous meaning here."

Because the appellant could not point to anything in the 1989 Deed that expressed a clear intention to create a tenancy-in-common, the court overturned the appellate court and ruled for the appellees.