

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ROBERT F. MAY, TRUSTEE,

Plaintiff/Counter-Defendant-  
Appellee,

v

MCN OIL & GAS COMPANY,

Defendant/Counter-  
Defendant/Third-Party Defendant-  
Appellee,

and

STANLEY T. MAY, TRUSTEE and DEVONIAN  
ENERGY, INC.,

Third-Party Defendants-Appellees,

and

IRMA L. RICHARDSON, MARTIN L.  
RICHARDSON, RUTH SCHULIEN  
RICHARDSON,

Third-Party Defendants-Appellants,

and

PAXTON RESOURCES, LLC, QUICKSILVER  
RESOURCES, INC., ALBERT QUALL LIVING  
TRUST, CHRIS MELLING, HARRY S.  
MELLING ESTATE, MICHAEL J. MOIR,  
WILLIAM J. BELANGER, SANDRA M.  
BELANGER, PHILLIP G. BOSWOOD TRUST,  
JOHN A. BOTT TRUST, H. KEITH MILLER,  
RICHARD NEDOW, ROBIN NEDOW, GERALD  
LEROY LANGWEROWSKI, MARCELLA S.  
LANGWEROWSKI, WILLIAM J. MUZYL

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UNPUBLISHED

March 15, 2005

No. 251769

Otsego Circuit Court

LC No. 02-010021-CZ

TRUST, SCOTT D. LAMPERT TRUST, AND  
WHITING PETROLEUM CORPORATION,

Third-Party Defendants-Appellees.

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Before: Saad, P.J., and Smolenski and Cooper, JJ.

PER CURIAM.

Third-party defendants/cross-plaintiffs-appellants, Irma L. Richardson, Martin L. Richardson, and Ruth Schulien Richardson (hereinafter “appellants”), appeal as of right an order granting summary disposition in favor of plaintiff/counter-defendant Robert F. May as Trustee of the Robert F. May Trust, defendant/counter-plaintiff/third-party plaintiff MCN Oil and Gas Company, and third-party defendants Devonian Energy Inc., Paxton Resources LLC, and Whiting Petroleum Company. We affirm.

I

This case arises from a dispute over the ownership of mineral rights under a parcel of property. The facts in this case are generally not in dispute. In early 1968, the Richardsons’ predecessors, Albert and Lilly Richardson, owned three parcels of land in Otsego County, including the disputed property. The disputed property was correctly described as the “NE1/4 of the SE1/4 of Section 12, T31N, R4W, Elmira Township, Otsego County. On April 16, 1968, Albert and Lilly executed an oil and gas lease with W.B. Phillips. The lease included three properties owned by Albert and Lilly, two of which were correctly described. However, appellants claim that there was a typographical error in the description of the disputed property which was described in the lease as the “SE1/4 of the SE1/4 of Section 12, T31N, R4W, Elmira Township, Otsego County.” The alleged error (SE 1/4 rather than NE 1/4) thus referenced a property that appellants claim Albert and Lilly Richardson did not own. The lease was recorded. Appellants also claim that, even though there was an error in the property description, the parties to the lease knew that it pertained to the NE 1/4 and not the SE 1/4.

On July 24, 1968, Albert and Lilly Richardson conveyed the disputed property, this time correctly described, by warranty deed to CVU, Inc. in a deed which reserved all oil and gas rights. This deed was recorded. All parties agree that this reservation of mineral rights tolled the Dormant Minerals Act, MCL 554.291.

In 1971, Phillips assigned the lease to Shell Oil Company. The assignment was recorded and also described one of the properties as the SE 1/4 rather than the NE 1/4. On October 2, 1975, Shell Oil Company executed a release of the oil and gas rights, again with the property described as the SE 1/4 of the SE 1/4 of Section 12.

On June 30, 1981, Robert May signed a land contract for the purchase of the disputed property from CVU, Inc. On October 5, 1994, after several intervening conveyances, the terms of the land contract were fulfilled and the disputed property was owned by plaintiff. On September 7, 1994, plaintiff executed an oil and gas lease with Peak Exploration Company. A drilling permit was issued on October 26, 1994. After several intervening assignments, Mercury

Exploration Company developed an oil and gas well identified as the May C4-12 well on the disputed property. The well was completed in 1997 and started production in 1998. In March 2001, defendant MCN was assigned a portion of the mineral interest.

In July 2001, MCN performed a title examination and discovered the chain of title including the lease executed in 1968, the assignment in 1971, and the release in 1975. MCN's counsel opined that defendants may have a claim on the subsurface minerals of the disputed property and that it would be prudent to enter into a protective lease with appellants. The protective lease was executed and, because of the cloud on the title, MCN stopped paying royalties to plaintiff.

Plaintiff sued MCN for withholding royalties and alleged that it, and not appellants, owned the mineral rights under the disputed property by operation of the Dormant Minerals Act, MCL 554.291. MCN filed a counterclaim for breach of warranty of title against plaintiff and a third-party complaint against appellants. Appellants counterclaimed against plaintiff and third-party defendants who owned royalty interests in the May well.

After discovery, plaintiff filed a motion for summary disposition pursuant to MCR 2.116(C)(8) and (10). The trial court granted plaintiff's motion, ruling that the 1968 lease did not describe the disputed property and thus, was not effective in tolling the Dormant Minerals Act.

## II

Appellants argue that the trial court erred when it ruled that, as a matter of law, any typographical error in a legal description will render the document ineffective in tolling the Dormant Minerals Act. We review a trial court's conclusions of law de novo. *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000).

Appellants' argument is without merit. The trial court did not rule as a matter of law that "any" typographical error in a property description will fail to toll the Dormant Minerals Act. The trial court limited its holding to the facts in this case, where the alleged typographical error resulted in a "wild" conveyance which removed the property from plaintiff's chain of title.

## III

Appellants say that the trial court erred when it granted plaintiff's motion for summary disposition because there remains a genuine issue of material fact with respect to whether a reasonably diligent title examiner would have discovered the error in the 1968 lease and realized that the lease, in fact, referred to the disputed property. We review the grant or denial of a motion for summary disposition de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003).

The Dormant Minerals Act, MCL 554.291, provides:

Any interest in oil or gas in any land owned by any person other than the owner of the surface, which has not been sold, leased, mortgaged or transferred by instrument recorded in the register of deeds office for the county where such

interest is located for a period of 20 years shall, in the absence of the issuance of a drilling permit as to such interest or the actual production or withdrawal of oil or gas from said lands, or from lands covered by a lease to which such interest is subject, or from lands pooled, unitized or included in unit operations therewith, or the use of such interest in underground gas storage operations, during such period of 20 years, be deemed abandoned, unless the owner thereof shall, within 3 years after the effective date of this act or within 20 years after the last sale, lease, mortgage or transfer of record of such interest or within 20 years after the last issuance of a drilling permit as to such interest or actual production or withdrawal of oil or gas, from said lands, or from lands covered by a lease to which such interest is subject, or from lands pooled, unitized, or included in unit operations therewith, or the use of such interest in underground gas storage operations, whichever is later, record a claim of interest as hereinafter provided. Any interest in oil or gas deemed abandoned as herein provided shall vest as of the date of such abandonment in the owner or owners of the surface in keeping with the character of the surface ownership. The phrase "drilling permit" shall mean a permit to drill an oil or gas well issued by the conservation department or its successor.

The Act lists several actions which may be taken by the owner of the mineral interest, within successive twenty-year periods, to preserve his ownership of that interest. These actions include selling, leasing, mortgaging, or otherwise transferring the interest by recorded instrument. The owner may also preserve his interest by recording a claim of interest as provided under MCL 554.292. A valid "transfer of interest" which will serve to toll the Act includes the expiration of a lease. *Energetics, Ltd v Whitmill*, 442 Mich 38; 497 NW2d 497 (1993). The owner may also preserve his interest by acquiring a drilling permit, by actual extraction of the minerals, or by using the land for underground oil and gas storage activities.

It is clear that defendants' predecessors validly severed the minerals in the disputed property, when they executed and recorded a deed conveying the property to CVU, Inc. on July 24, 1968. However, from 1968 until 1981, while CVU owned the property, there is no record of any transfer, lease, conveyance, mortgage, or claim of interest in the chain of title of the disputed property. Nor was there any drilling permit issued or actual drilling on the property. After plaintiff acquired the property in 1981, there was still no document recorded or other act which would serve to preserve the interest reserved in the 1968 deed. Thus, it is clear from the record that the reservation in the July 1968 deed was abandoned twenty years later in July 1988.

Defendants maintain that their interest was also preserved in a lease executed on April 16, 1968, before the surface of the property was conveyed three months later. The lease was assigned in 1971 and released in 1975, with both transfers recorded. However, as discussed previously, none of these documents (the lease, the assignment, or the release) contained a legal description of the disputed property now claimed by plaintiff. Defendants argue that because the intent of the Dormant Minerals Act is not to forfeit property, but to make it easier to ascertain the owner of the subsurface minerals, the court should have quieted title in their favor. Defendants conclude that the court erred by failing to apply the Dormant Minerals Act so as to effectuate this intent. In the alternative, defendants argue that at least there was a genuine issue of material fact

whether a reasonable title examiner would have notice of their interest, despite the fact that the disputed property was not described in the 1968 lease.

The court's objective in construing a statute is:

“[T]o ascertain and give effect to the intent of the Legislature.” *People v Pasha*, 466 Mich 378, 382; 645 NW2d 275 (2002). If the statute's language is clear and unambiguous, we assume that the Legislature intended its plain meaning and we enforce the statute as written. *People v Stone*, 463 Mich 558, 562; 621 NW2d 702 (2001). In other words, when statutory language is unambiguous, judicial construction is not required or permitted because the Legislature is presumed to have intended the meaning it plainly expressed. [*People v Weeder*, 469 Mich 493, 497; 674 NW2d 372 (2004).]

In *Energetics, supra*, our Supreme Court held that the Dormant Minerals Act is tolled when an oil and gas lease is executed and recorded and that a “transfer” occurs when the lease expires, thus tolling the Act. Accordingly, it is not necessary for a claimant to record a release or other document to preserve a mineral claim for another twenty years.

The instant case, however, is distinguishable from *Energetics*. Unlike here, *Energetics* did not involve an attempt to preserve mineral interests under the wrong legal description. *Energetics* involved the issue of whether a transfer from a lessor to the owner which occurred automatically at the end of a lease, was sufficient to toll the Act. Similarly, defendants' reliance on *Mask v Shell Oil Co*, 77 Mich App 25; 257 NW2d 256 (1977), is misplaced. In *Mask*, this Court held that the issuance of a drilling permit, which did not precisely describe the property at issue, coupled with active development of an oil well on a leasehold, which included the property at issue, were sufficient to toll the Act. In *Mask*, there was record notice in the form of a lease and release, which described the disputed property, as well as constructive notice in the form of active development. Here, there was no record notice or constructive notice of defendants' interest in the property.

The Dormant Minerals Act is only tangentially implicated in the case at bar. The fundamental issue here is not whether the Legislature's intent in enacting the Dormant Minerals Act was *solely* to “make it possible” to locate owners of subsurface rights, but rather whether a surface owner or oil and gas developer should be able to rely on the face of the record<sup>1</sup> in determining whether severed mineral rights have been abandoned.

In *Atwood v Bearss*, 47 Mich 72, 73; 10 NW 112 (1881), our Supreme Court noted that: “The design of the statute requiring transactions relative to real estate to be recorded, is to

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<sup>1</sup> A diligent landowner or developer would also look outside the record to determine whether a drilling permit has been issued or whether there is any exploration or drilling actually occurring on the site.

prevent fraud by securing certainty and publicity in such dealings.” Furthermore, in *Savidge v Seager*, 175 Mich 47, 55; 140 NW 951 (1913), our Supreme Court held that:

The constructive notice imparted by the record of an instrument is strictly limited to that which is set forth on its face; and if, in a deed or mortgage as recorded, the particular land in controversy is not so described as to identify it with reasonable certainty, the record is not notice to subsequent bona fide purchasers or judgment creditors.

Here the recorded documents, on their faces, showed that: 1) defendants’ predecessors had reserved their mineral interest in three properties, including the disputed property, in a warranty deed in 1968; 2) from 1968 until 1988, when the twenty-year statutory period ended, there was no other mortgage, lease, transfer or claim of interest recorded at the Otsego County Register of Deeds pertaining to the disputed property. Defendants do not assert that there was a drilling permit issued, that the property was used for underground storage, or that actual exploration occurred in that period; 3) in April 1968, defendants’ predecessors recorded an oil and gas lease that covered three parcels – none of which was the disputed property.

Accordingly, it was not unreasonable for plaintiff to have relied on the face of the record that clearly showed that the Richardsons’ mineral interest was preserved in a deed in 1968 and abandoned in 1988. The alleged typographical error in a lease which effectively removed the transaction from the chain of title did not suffice to toll the Act and preserve the Richardsons’ interest. Finally, we note:

In general it will not be disputed that one who seeks a benefit from the recording laws must incur all risks of the failure to put his papers duly upon record, whether the fault shall be his own or that of an officer. An equitable construction cannot be put upon such laws by which they may be made to embrace cases not within them, or by means of which they may be made to give constructive notice of things the records do not show. And it has therefore been generally held that if a mistake has been made in recording, by means of which a mortgage appears to be for a less sum than it was in fact given for, or a deed to cover less than was embraced by it, a subsequent purchaser has a right to rely on the record as showing the exact facts. [*Barnard v Campau*, 29 Mich 162, 163-164 (1874).]

Affirmed.

/s/ Henry William Saad  
/s/ Michael R. Smolenski  
/s/ Jessica R. Cooper