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Land Boundary Surveys II

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Land Boundary

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Module 2

A deed carries the greatest estate the language permits. That is one of the key principles that came to bear on the construction of the mineral deed in this case. It was part of the resolution of the confusion between Davis and Andrews.

Van Zandt County Texas is about fifty miles east of Dallas in the Claypan Area of northeastern Texas. Today there are about 50,000 people in the county. Oil was discovered near Van in the eastern portion of the county in 1929 and it along with tourism, agribusinesses, salt production and more are still important to the areas economy today. This case had its beginning in a contention over exactly who should receive payments from the Pure Oil Company. Here is the case.

ARIA DAVIS et. al.

Appellants (Davis and the York Group)

versus

LINNIE LEE ANDREWS et al.,

Appellees (Andrews and the Persons Group)

Court of Civil Appeals of Texas,

Dallas

September 28, 1962

In the lower court, that is the District Court, Van Zandt, County, A. A. Dawson, J., rendered a judgment in favor of Andrews and the Persons Group, the Appellees here, from which an appeal was taken by Davis and the York Group, the Appellants.

This is an interpleader suit. That means that it involves two or more parties claiming the same thing of a third. In this case, the York Group, (Aria Davis and others) and the Persons Group, (Linnie Lee Andrews and others), claimed payments from the Pure Oil Company. The Pure Oil Company, which laid no claim itself, nevertheless it joined the two groups and asked them to resolve their claims so that the company would know who it should actually pay.

It involves the construction of this mineral deed.

"By deed dated June 2, 1930. Henry York, and wife, Ola York, Mrs. Ells York, a widow, G. N. York and wife, Dennie York, and Aria Davis joined by her husband L.L. Davis as grantors, conveyed, subject to oil and gas leases - a 1/32nd of 1/8 mineral interest in 50 acres of land of the John Walling Survey in Van Zandt County, Texas.

This deed, omitting immaterial portions, as well as the description of the land, reads as follows:

'We, Henry York and wife, Ola York and Mrs. Ella York, a widow, of Smith County, Texas, G. A. York and wife, Dennie York of Wood County, Texas, and Aria Davis joined by her husband L. L. Davis of Van Zandt County, Texas, for and in consideration of the sum of Ten Dollars ($10.00) cash in hand paid by J. T. York, hereinafter called Grantee, the receipt of which is hereby acknowledged, have granted, conveyed. assigned and delivered and by these presents do grant, sell, convey, assign and deliver unto the said Grantee an undivided 1/32nd of the usual one-eighth interest in and under, and that may be produced from the following described land situated in Van Zandt County, Texas, to wit:

This conveyance is intended to cover, the above described 50 acres of land does not affect interest in any excess acreage there may be in the above described tract of land together with the right of ingress and egress at all times for the purpose of mining, drilling and exploring said land for oil, gas and other minerals and removing the same therefrom.

Said land now being under an oil and gas lease executed in favor of F. L. Luckel it is understood and agreed that this sale is made subject to the terms of said lease but covers and includes one-thirty-second of all the oil royalty, and gas rentals or royalty due and to be paid under the terms of said lease, in so far as it covers the above described property.

It is understood and agreed that none of the money rentals which may be paid to the said Grantee and in event that the above described lease for any reason becomes cancelled or forfeited then and in that event undivided one-thirty-second of the lease interest and all future rentals on said land for oil, gas and other minerals privileges shall be owned by said Grantee herein owning 1/32nd of all oil, gas and other minerals in and under said lands together with 1/32nd interest in all future rents.

To have and to hold the above described property, together with all singular the rights and appurtenances thereto in any wise belonging unto the said Grantee herein, his heirs and as-signs forever and we do hereby bind ourselves, our heirs, executors and administrators to warrant and for ever defend all and singular the said property unto the said Grantee herein, his heirs and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, *for a period of 20 years from date hereof and no longer*.' (Emphasis supplied)

C. F. York and wife Lillian York executed and acknowledged file above deed, but were not named therein as grantors. On November 21, 1930, C. F. York and wife Lillian York, as grantors, executed and delivered a correction deed to J. T. York, in which the grantors recite the execution of the prior deed and the failure of that deed to contain their names as grantors. The correction deed does not anywhere contain that part of the quoted portion of the prior deed reading - - - *for a period of 20 years from date hereof and no longer*

Oil was discovered in paying quantities on the land in question prior to 1930 and has been continuously produced therefrom to the date of the trial. The Pure Oil Company is the admitted owner of oil and gas leases on the property.

On October 13, 1958 The Pure Oil Company is a stakeholder in this action." (*Davis v. Andrews*, 361 S.W. 2d 419, Tex. Civ. App., pages 421-422)

That means that the Pure Oil Company is a third party that holds the money, as in a wager, until the outcome of the event that decides which of the contesting parties has the right to it.

The Pure Oil Company "instituted this suit in the nature of a bill of interpleader naming therein a large number of defendants. Defendants aligned themselves in this lawsuit as follows: Aria Davis, and husband L. L. Davis, and others (sometimes referred to as the York Group) and being the heirs of the grantors under the two deeds described above as appellants; and Linnie Lee

Andrews, and others (sometimes referred to as the Persons Group) being the remote grantees under J. T. York, as appellees.

The Pure Oil Company alleged that it had been confronted with conflicting claims of interest by the two groups of defendants named, said contentions growing out of the construction to be placed upon the two deeds described above, and asked the court to determine the respective interest of the parties and deliver to the rightful owner the proceeds of oil and gas that had been produced from said property for a long period of time preceding the filing of this suit." (*Davis v. Andrews*, 361 S.W. 2d 419, Tex. Civ. App., pages 421-422)

Well, that presents a pretty good outline of the issues involved in the case. Now here are the arguments of the two parties, the York Group and the Persons Group.

In this appeal the York Group, which lost in the lower court, contended that the actual *grant* in the deed should have terminated on June 2, 1950, twenty years after the deed was executed. In other words, any interest that the Persons Group held for those twenty years under the deed has now lapsed. They should have no longer had any of the money from the Pure Oil Company. The Persons Group interest has expired.

The York Group further claimed that if the deed as it is worded does not accomplish that, "they alleged that through mutual mistake of the parties that the instrument dated June 2, 1930 did not convey the true meaning intended by the parties to limit the grant to a period of 20 years and therefore the court was requested to reform the instrument to correctly reflect such alleged intent." (*Davis v. Andrews*, 361 S.W. 2d 419, Tex. Civ. App., page 422). In other words the York Group said that both they and the Persons group believed that the deed conveyed the grant for only twenty years and no longer, and if that isn't what the deed said that was their mutual mistake.

The York Group also contends that if the deed does not limit the grant to twenty years it was ambiguous because that was certainly their intention.

The Persons Group, Appellees, took a different point of view. They said they were the owners in fee of the interest conveyed in the deed. They claimed that the limitation of 20 years mentioned in the deed only applied to the warranty not to the grant itself. In general a warranty is, of course, a promise that the facts are as represented. Here, more specifically, the

grantor they believed the grantor offered a guarantee of actually holding the rights which were being sold. In other words, the Persons Group believed that the warranty was the only thing that expired after 20 years, not the grant.

Also, "In answer to appellants (the York Group) prayer for reformation, appellees (The Persons Group) pled the statute of limitations, the statute of frauds, estoppel on the ground that appellants were bona fide purchasers, stale demand and laches."

That is quite a list. Let's look at each of these elements. A statute of limitations is a legal deadline by which a plaintiff must start a lawsuit. The original action took place eight years after the 20-year limitation mentioned in the deed. The Persons Group thought that the time had run out on the York Group's ability to bring the action.

"The Statute of Frauds, enacted by the English parliament in the reign of Charles II, 1672, made void any oral transfers of land. This statute has been re-enacted in all of the state of the Union. As so re-enacted in most states any oral agreement by the party conveying land changing fixed boundaries is at best voidable." (Grimes, J.S. 1976 *Clark on Surveying and Boundaries*, 4th edn, New York: Bobbs-Merrill, Page 6, Section 2). That means that if the York Group did not write what they meant to convey in the deed, they cannot now change the terms by testimony.

A stale demand is a claim which has been for a long time undemanded. For example, where there has been a delay of eight years before the initial suit as in this case without explanation the York Group cannot now make the demand.

Estoppel includes being prevented from claiming something by your own false representation or concealment. That is called equitable estoppel. Another kind of estoppel is based on the failure to take legal action until the other party is prejudiced by the delay. That is called estoppel by laches. In this case the Persons Group contended that the York Group had not mentioned that the 20 years applied to the grant for many years, and that to claim so now was prevented by their own, the York Group's, inaction. In other words, they could not let the Persons Group continue on as if they had a full right to the payments from Pure Oil by grant for eight years and then jerk the rug out from under them. An estoppel is a preclusion which prevents someone from alleging or denying a fact that is contrary to their own previous actions.

Laches is a legal doctrine that a claim will not be enforced or allowed if a long delay in asserting it has hurt the other party. In other words if one party knew the correct property line and yet watched his neighbor complete a house over the line and then sued it would be a legal ambush that is prevented by laches. This word, derived from the French *lecher,* which means negligence.

Now the plot thickens. It seems that J.T. York, Ella York's nephew, wrote the deed being litigated. "Appellants during the trial offered to introduce testimony of Mrs. Aria Davis, L. L. Davis and Mrs. Ola York, to the effect that some few days prior to June 2, 1930 J. T. York, a nephew of Ella York came to the York family in an effort to purchase royalty under the 50-acres of land in question; that appellants advised J. T. York that they had sold some mineral interest under the land but that same had been limited in the grant for a period of 20 years and that they would not make another sale of royalty unless the grant was likewise limited.

That thereafter J.T. York had a conveyance drafted and returned to the York family with it, such conveyance being the one in litigation. That the York family being inexperienced in the conveyance of mineral or royalty interest in lands and since they were with a nephew of Mrs. Ella York and a cousin of her children, relied upon his assertion that the limitation following the warranty clause in the conveyance would be effective to limit the conveyance for a period of 20 years from the date of such an instrument and that such conveyance expire on June 2, 1950: that the York family did rely upon such representations and but for them would not have executed same" (*Davis v. Andrews*, 361 S.W. 2d 419, Tex. Civ. App., pages 421-422)

The court was not convinced, "This testimony was rejected by the trial court.

At the conclusion of the non-jury trial the court rendered judgment decreeing that the Pure Oil Company be discharged from liability to all defendants; that the appellees (Andrews and the Persons Group) should recover title and possession of an undivided 1/32nd of 1/8 mineral interest in and under the 50 -acre tract of land subject to the oil and gas leases of The Pure Oil Company, together with the proceeds of the production of the oil and gas from said tract of land attributable to said interest: and denying all relief sought by appellants (the York Group)." (*Davis v. Andrews*, 361 S.W. 2d 419, Tex. Civ. App., pages 423)

In short, the court held that the 20-year limitation did not apply to the grant as the York Group contended. It only applied to the warranty as the Persons Group believed. The

language in the deed was not ambiguous. It actually conveyed a fee simple absolute title to the 1/32nd of 1/8 mineral interest in and under the 50 -acre tract of land.

The court dealt with each of the points raised by the appellants (the York Group).

"By their first seven points on appeal, appellants contend in essence,

(1) that the deeds in question clearly reflect that the grant thereby made was limited to a term of 20 years from and alter June 2, 1930;

(2) that the court erred it finding that the interest conveyed by the deeds was unlimited and that the only limitation was as to warranty for a period of 20 years;

. . . . . .

At the threshold of our determination of the inquiry presented by appellant's points, i. e., the construction to be placed upon the mineral deeds, we deem it advisable and proper to focus attention upon the cardinal objective which is to ascertain the intention of the parties to the written instruments in question. The first rule of construction of a deed is that the intention of the parties be ascertained and given effect 19 Tex.Jur.2d § 107, p. 391. Even this primary rule of construction must be immediately modified with the restriction that it is not the intention of the parties may have had, but failed to express in the instrument, but it is the intention which by said instrument did express. Stated another way, the question is not what the parties meant to say but the meaning of what they did say." (*Davis v. Andrews*, 361 S.W. 2d 419, Tex. Civ. App., pages 423)

The same idea is expressed in this quote, "In the determination of boundary lines as set forth in a deed all rules yield to the manifest intention of the parties to the extent that this can be ascertained from the language used, which is the controlling consideration" (Grimes, J.S. 1976 *Clark on Surveying and Boundaries*, 4th edn, New York: Bobbs-Merrill, Page 561, Section 454). And even though boundaries are not at issue here, rights in property are and the same principle holds. So, in this case it may be that the language in the deed does not express the intention of the York's. Nevertheless the language as stated will be enforced, because it is clear and unambiguous.

. . . . . .

(3) “that the deeds in question were ambiguous and uncertain:

. . . . . .

Another and equally important rule of construction, sometimes called "four corners rule" is that the intention of the parties and especially that of the grantor is to be gathered from the instrument as a whole and not from isolated parts thereof.” (*Davis v. Andrews*, 361 S.W. 2d 419, Tex. Civ. App., pages 423)”

In Clark the four corners rule is discussed this way,” In construing deeds the primary question is what the language speaks, not necessarily what the grantor intended by the words he used. A deed is said to speak from its ‘four corners.’” *Clark on Surveying and Boundaries*, 4th edn, New York: Bobbs-Merrill, Page 415, Section 328)

There is another Texas case that presents some ideas that are pertinent to this point - it is Ladd v. Du Bose, Tex.Civ.App., 344 S.W 2d 476. It also involved the construction of a mineral reservation. In that case the court wrote:

> (1) "A deed will be construed to confer upon the grantee the greatest estate that the terms of the instrument will permit.
>
> (2) "It is a principle of universal application that grants are liberally, exceptions strictly, construed against the grantor.
>
> (3) "Another applicable rule is that should there be any doubt as to the proper construction of the deed, that doubt should be resolved against the grantors, whose language it is, and be held to convey the greatest estate permissible under its language.
>
> (4) "Where a deed is capable of two constructions the one most favorable to the grantee and which conveys the largest interest the grantor could convey will be adopted." (*Davis v. Andrews*, 361 S.W. 2d 419, Tex. Civ. App., pages 423)”

. . . . . .

(4) “that since said instruments were ambiguous the trial court was error in not permitting extrinsic evidence to be introduced to ascertain the intention of the parties;

(5) that the court erred in refusing to permit appellants to introduce extrinsic evidence with reference to the circumstances surrounding the parties out of which the in question arose to thereby correctly ascertain the intent of the parties." (*Davis v. Andrews*, 361 S.W. 2d 419, Tex. Civ. App., pages 423)

. . . . . .

"the granting clause in the deed of June 2, 1930 reveals nothing the way of limitation of the grant by grantor to grantee of an undivided 1/32nd of to usual 1/8 interest in and to the oil, gas and other minerals under the land in question. Neither do we find any words of limitation in the habendum clause which grants to grantee, his heirs and assigns 'forever the interest conveyed in the granting clause. The only clause of limitation appearing in the instrument follows a comma at the end of the warranty clause, saying "for a period of 20 years from date hereof and no longer." Appellants argue that it is not reasonable that grantors would intend to limit the warranty clause for a period of 20 years. They say that such is not usually done. We are not impressed with this contention. The mere fact that something is not usually done does not render the doing of that act wrong or illegal. The fact that the parties have limited the warranty, though possibly unusual, does not destroy its validity." (*Davis v. Andrews*, 361 S.W. 2d 419, Tex. Civ. App., pages 423-424)

The habendum clause is the part of the deed that usually begins with the words "to have and to hold." It normally follows the granting clause and specifies the extent of the interest being conveyed. The court ruled that the limitation of 20 years occurred after the words, "to warrant" in the subject deed. The warranty clause is only to indemnify the grantee against loss that may results from a grantor's defective title. It does not speak to the character of the title conveyed.

"Neither can we agree with appellants that the instrument was ambiguous. We agree with the trial court in his finding that the instrument was free of ambiguity. A contract is not ambiguous in the sense that parol evidence is admissible to explain its meaning unless application of the pertinent rules of interpretation leave a real uncertainty as to which of two or more possible meanings represent the true intention of the parties. An application of the rules of construction discussed above reveals no conflict of meaning and therefore no ambiguity results." (*Davis v. Andrews*, 361 S.W. 2d 419, Tex. Civ. App., pages 425)

The court is here holding to a well-established principle that a patent ambiguity in the language of a deed is one that appears on its face. It is the result of defective language. Where a patent ambiguity is present parol, that is oral, testimony is not usually admissible to explain it. However, a latent ambiguity is an ambiguity that arises from evidence outside the deed itself. There parol testimony is often allowed.

"Holding as we do that the instrument in question dated June 2, 1930 was not ambiguous it necessarily follows that the trial court did not err in refusing to permit parol testimony concerning the intent of the parties. Appellants' points of error one through seven, inclusive are overruled." (*Davis v. Andrews*, 361 S.W. 2d 419, Tex. Civ. App., pages 425)

"Appellants contend that they had no knowledge of the alleged error in the mineral conveyance until this original suit was filed in 1958 and further that they did not have notice of the alleged error in 1950 at the time The Pure Oil Company commenced withholding payment of royalties We think the law to be settled that a grantor is charged as a matter of law with knowledge of the contents of his deed from the date of its execution and therefore limitations should begin to run against his action to correct such deed from the date. However, if this not be true then certainly the statute of limitations began to run at the expiration of 20 years from the date of the deed that is in 1950, being the time when appellants contend that the limitations of grant would expire. At that time a reasonably prudent person would be placed upon inquiry to ascertain the facts concerning the payment of royalty by the holder of the oil and gas lease on the property - there is no contention made by appellants that such was done." (*Davis v. Andrews*, 361 S.W. 2d 419, Tex. Civ. App., page 426)

"The Court of Civil Appeals, William, J. held that deed which contained no time limitation in granting clause or habendum but which stated, following warranty clause which formed, with habendum, compound sentence, 'for a period of 20 years from date hereof an no longer,' disclosed expressed intention to limit warranty but not to limit title conveyed." (*Davis v. Andrews*, 361 S.W. 2d 419, Tex. Civ. App., page 419)

The judgment of the lower court was affirmed.