

[Cite as *Blile v. Staley*, 2017-Ohio-9405.]

STATE OF OHIO, HARRISON COUNTY
IN THE COURT OF APPEALS
SEVENTH DISTRICT

ROGER L. BLILE, ET AL.,
PLAINTIFFS-APPELLANTS,
V.
GUY J. STALEY, ET AL.,
DEFENDANTS-APPELLEES.

CASE NO. 16 HA 0014

OPINION

CHARACTER OF PROCEEDINGS:

Civil Appeal from Court of Common
Pleas of Harrison County, Ohio
Case No. CVH-2015-0108

JUDGMENT:

Reversed and Remanded

JUDGES:

Hon. Gene Donofrio
Hon. Cheryl L. Waite
Hon. Mary DeGenaro

Dated: December 19, 2017

APPEARANCES:

For Plaintiffs-Appellants

Attorney David J. Wigham
Attorney James P. Burke
Attorney Lucas K. Palmer
Attorney J. Benjamin Fraifogl
Attorney Jason R. Ramsey

For Defendants-Appellees

ESK ORI LLC, GDK ORI LLC, GWK ORI
LLC, JEM ORI LLC, KBK ORI LLC, RHDK
Oil and Gas LLC

Attorney Giuseppe Ionno
Attorney Nathan D. Vaughan
3596 SR 39, NW
Dover, Ohio 44662

For Defendants-Appellees

Guy J. Staley
Norma Staley

Attorney Michael D. Dortch
Attorney Justin M. Dortch
65 East State Street, Suite 200
Columbus, Ohio 43215

For Defendant-Appellee

Ascent Resources, Utica, LLC

Attorney Daniel P. Craig
Attorney Kevin L. Colosimo
One PPG Place, Suite 2800
Pittsburgh, PA 15222

[Cite as *Blile v. Staley*, 2017-Ohio-9405.]
DONOFRIO, J.

{¶1} Plaintiffs-appellants, Roger Blile, Peggy Blile, Blair Heavilin, Carol Heavilin, Brent Heavilin, Melissa Heavilin, Larry Talkington, Becky Dillman, Stephen Kidd, and Heather Kidd, appeal from a Harrison County Common Pleas Court judgment granting a motion to dismiss their complaint filed by defendants-appellees, Ascent Resources-Utica, LLC (Ascent), Guy and Norma Staley (the Staleys), and ESK ORI LLC, GDK ORI LLC, GWK ORI LLC, JEM ORI LLC, KBK ORI LLC, AND RHDK Oil & Gas LLC (collectively referred to as ESK).

{¶2} On April 26, 1976, Guy and Norma Staley leased the oil and gas rights underlying their 179-acre farm (the Staley Farm) to the East Ohio Gas Company (the Staley Lease). The Staley Lease was for an initial term of three years “and so much longer thereafter either (1) as oil or gas or their constituents shall be found on the premises in paying quantities * * * or as the premises shall be operated by the Lessee in the search for oil or gas, or (2) as gas shall be injected, stored or held in storage, or removed into, in and from any sands, strata or formation underlying the premises.” A single well was drilled and completed on the Staley Farm on September 20, 1978.

{¶3} On January 10, 1980, the Staleys conveyed the Staley Farm to Bradley Knight by warranty deed (the Knight Deed). The Knight Deed contained a mineral reservation (Staley Reservation) that provided:

EXCEPTING AND RESERVING to the Grantors, their heirs and assigns the following minerals and mineral rights with respect to all of the above described premises:

* * *

3) All oil and gas and any interests that the Grantors may presently have in any existing oil and/or gas leases; provided, however, Grantors covenant and agree that the future oil and/or gas wells shall be located upon the surface of said premises so as not to unreasonably interfere with any agricultural uses of said premises. Further, Grantors covenant and agree to assign to Grantee any right they may presently

have or hereafter acquire to receive natural gas for domestic purposes in connection with any presently [sic] or future gas well on said premises.

{¶4} Appellants collectively now own approximately 164.79 acres of the 179-acre Staley Farm. Ascent and ESK, in addition to the Staleys' remaining interest, have acquired interests in the Staley Lease through various assignments.

{¶5} On September 23, 2015, appellants filed a complaint seeking a declaration that the Staley Lease terminated by its express terms due to a lack of production during the secondary term of the lease and, as a result, those claiming an interest in the oil and gas underlying the Staley Farm no longer possessed any interest. Appellants further sought a declaration that the Staley Reservation had terminated because it was tied to any interests the Staleys presently had in any existing oil and gas leases. Thus, appellants sought to quiet title in the oil and gas underlying the Staley Farm in their names, to eject appellees from their property, and to collect damages from Ascent for trespass and an accounting for all oil and gas removed by Ascent.

{¶6} On October 22, 2015, Ascent filed a Civ.R. 12(B)(6) motion to dismiss appellants' complaint for failure to state a claim upon which relief could be granted. Ascent argued that by the express terms of the Staley Reservation, the Staleys reserved *all* of the oil and gas underlying the Staley farm in fee simple and any interest they had in any oil and gas existing at the time of their conveyance. ESK and the Staleys adopted and incorporated Ascent's arguments in their motions to dismiss.

{¶7} The trial court held a hearing on the motions to dismiss. It then issued a judgment granting the motions and dismissing appellants' complaint for failure to state a claim upon which relief could be granted. In so doing, the trial court noted that the dispute in this case involved the Staley Reservation.

{¶8} Appellants claimed that the phrase "all oil and gas and any interests that the Grantors may presently have in any existing oil and/or gas leases" is

ambiguous. They argued this language reserved to the Staleys all of the oil and gas plus a portion of the rights associated with owning all of the oil and gas and that this reservation was internally inconsistent and would render part of the reservation redundant. Therefore, appellants argued that it was the parties' intent that the Staleys only reserve their interest in the Staley Lease. Appellees, however, argued that all of the words should be given effect and when they are, the meaning of the reservation is clear.

{¶9} The trial court began its analysis with the opening phrase of the Staley Reservation, "EXCEPTING AND RESERVING * * * All oil and gas[.]" The court found that stopping after this phrase leaves no question that the Staleys intended to reserve all of the interest in the oil and gas, with no limitations on their lease. The court then continued quoting the reservation, "and any interests that the Grantors may presently have in any existing oil and/or gas leases[.]" The court noted that the reservation regarding the leases had restrictions and the restrictions are the reason for the remaining reservation language. The court noted that the reservation went on to state that the grantee would receive a covenant that any "future oil and/or gas wells shall be located * * * so as not to unreasonably interfere with any agricultural use."

{¶10} Additionally, the court noted that the Staleys agreed to assign "any right they may presently have or hereafter acquire to receive natural gas for domestic purposes in connection with any presently [sic] or future gas well on said premises." The court found that if it were the intention of the Staleys to only reserve their interests in the Staley Lease, the words "or hereafter acquire" would not have been used. It noted that the right to receive gas for domestic purposes had already been established with the Staley Lease. The court found that the language "or hereafter acquire" could only have meaning when and if the Staleys signed future leases. The court noted that if the Staleys intended to convey, and the grantee intended to receive, all of the oil and gas through the Knight Deed, then Staleys would never sign a future lease.

{¶11} Based on its findings, the trial court determined that the Staley Reservation was clear and unambiguous. The court found that to interpret the Staley Reservation in the manner proposed by appellants would not give effect to all of its language. Thus, it found that the Staley Reservation extended beyond the expiration of the Staley Lease. Because appellants' claims were all based on the expiration of the Staley Lease, the trial court dismissed all of appellants' claims.

{¶12} Appellants filed a timely notice of appeal on July 26, 2016. They now raise a single assignment of error.

{¶13} Appellants' assignment of error states:

THE TRIAL COURT ERRED BY DISMISSING PLAINTIFF'S
FIRST AMENDED COMPLAINT FOR FAILURE TO STATE A CLAIM
UPON WHICH RELIEF MAY BE GRANTED.

{¶14} Appellants first argue that the trial court erred by not construing the Staley Reservation in their favor, as the grantees. Because they assert the Staley Reservation has several inconsistencies, appellants contend the court was obligated to construe it in their favor and against the grantors. They take issue with the trial court's interpretation because under this interpretation, the Staley Reservation reserved all right, title, and interest the Staleys had in the oil and gas underlying the Staley Farm *plus* all right, title, and interest the Staleys had under the existing lease. Appellants argue this interpretation is inconsistent and renders a portion of the Staley Reservation redundant. They assert that if the Staleys reserved all oil and gas rights, then there were no additional rights that they would need to reserve by referencing the existing lease. Thus, appellants argue, the trial court's interpretation fails to give meaning to the clause dealing with the existing lease. Appellants contend that if the first words of the Staley Reservation ("EXCEPTING AND RESERVING * * * All oil and gas") reserve all of the oil and gas, then there would be no need to also reserve a portion of the rights associated with owning the oil and gas under the existing lease. Due to this ambiguity, appellants argue the trial court erred in dismissing their

complaint and not allowing this case to proceed to the introduction of evidence, which might shed some light on what the grantors intended.

{¶15} Second, appellants argue that the language of the Staley Reservation indicates that appellees intended to reserve something other than a fee simple mineral estate. They cite to *Pure Oil v. Kindall*, 116 Ohio St. 188, 156 N.E. 119 (1927), in support.

{¶16} In *Pure Oil*, the reservation at issue stated:

Excepting and reserving to the grantors herein, their heirs and assigns forever, all the royalty in the oil, gas, and gasoline produced from wells drilled and now operated on said first above-described tract of land * * *; also excepting and reserving to said grantors, their heirs and assigns forever, one-half of all the royalty in all the oil, gas, and gasoline produced from wells that may be hereafter drilled upon said tract of land, * * *.

Id. at 191. The Court found that the extent of the reservation was for a royalty interest only. *Id.* at 199. The Court found significant that the parties to the reservation did not use “simple language of reservation or exception” such as “reserving and excepting all the oil and gas lying under and within the premises hereby conveyed,” which it noted commonly occurs in oil or coal conveyances. *Id.* at 202. The Court concluded the parties to the reservation avoided such language so that the reservation was confined to the royalty in the oil and gas. *Id.*

{¶17} Appellants point out that in this case, the grantors deliberately chose to not use simple language as discussed in *Pure Oil*. They assert the grantors could have simply stated that they excepted and reserved all oil and gas underlying the property. Instead, the grantors chose to use more complex and detailed language. Additionally, they point out that the coal reservations contained in the Staley Reservation used simple, direct statements. Thus, appellants argue that the grantors knew that they only needed simple language to make the coal reservations yet they

avoided this simple language in making the oil and gas reservation. These choices of language, appellants argue, must be construed against the grantors and in their favor.

{¶18} The standard of review for a Civ.R. 12(B)(6) motion to dismiss requires the appellate court to independently review the complaint to determine if the dismissal was appropriate. *Ferreri v. The Plain Dealer Publishing Co.*, 142 Ohio App.3d 629, 639, 756 N.E.2d 712 (8th Dist.2001).

{¶19} A motion to dismiss for failure to state a claim upon which relief can be granted is a procedural motion that tests the sufficiency of the complaint. *State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs.*, 65 Ohio St.3d 545, 548, 605 N.E.2d 378 (1992). In order to dismiss a complaint for failure to state a claim upon which relief can be granted, the court must find beyond doubt that the plaintiff can prove no set of facts warranting relief after it presumes all factual allegations in the complaint are true, and construes all reasonable inferences in the plaintiff's favor. *State ex rel. Seikbert v. Wilkinson*, 69 Ohio St.3d 489, 490, 633 N.E.2d 1128 (1994).

{¶20} In reviewing a Civ.R. 12(B)(6) motion, the court must presume that all facts presented in the complaint are true but it may not consider any evidence outside of the complaint. *Park v. Acierno*, 160 Ohio App.3d 117, 2005-Ohio-1332, 826 N.E.2d 324, ¶ 29. In considering the complaint, the court may consider certain written instruments that are attached to the complaint. *Id.*, citing Civ.R. 10(C) and (D). Thus, we may consider the Knight Deed, which contains the Staley Reservation, because it is attached to the complaint.

{¶21} The sole issue in this case is whether the Staley Reservation is ambiguous. In construing a deed, any ambiguities are to be construed against the grantor and in favor of the grantee. *Pure Oil*, 116 Ohio St. 188, 202-203.

{¶22} The Staley Reservation is ambiguous. The first phrase provides: "EXCEPTING AND RESERVING to the Grantors, their heirs and assigns * * * All oil and gas and any interests that the Grantors may presently have in any existing oil and/or gas leases[.]"

{¶23} This phrase may be read one of two ways.

{¶24} First, the phrase could be read all together, i.e., to be excepting and reserving all oil and gas and any interests in oil and gas leases. Under this reading, the oil, and the gas, and the interest in oil and gas leases could be viewed as referencing all of the oil and gas contained within the oil and gas leases.

{¶25} Alternatively, the phrase could be read to give more emphasis to the second “and,” i.e., to be excepting and reserving all oil and gas *and* any interest in the oil and gas leases. Under this reading, the second “and” joins two separate items that are being reserved (1) all of the oil and gas *and* (2) any interests in oil and gas leases.

{¶26} While the second reading may appear more reasonable than the first, we are not in a position to pick which is the more reasonable interpretation. We are only to determine if the Staley Reservation is in fact reasonably susceptible to two interpretations, which would make it ambiguous.

{¶27} The phrase at issue could have been more artfully drafted. For instance, had the drafter inserted a comma or semi-colon between the phrases “oil and gas” and “and any interests,” it would seem clear that they were two separate items being reserved. Or better yet, if the intent was a fee simple reservation, the drafter could have simply used the phrase “all oil and gas” and stopped there. The alternative would also hold true. If the intent was only to reserve the interest in the leases, the drafter could have just stated “all interests in the oil and gas leases.” But none of these is the case here.

{¶28} Here the trial court dismissed appellants’ complaint for failure to state a claim upon which relief could be granted. In reviewing the trial court’s ruling, we are to construe all reasonable inferences in appellants’ favor. *Seikbert*, 69 Ohio St.3d at 490. Thus, if there is a reasonable interpretation of the Staley Reservation under which appellants could state a claim, then we must reverse the trial court’s judgment.

{¶29} Construing all reasonable inferences in appellants’ favor, a reasonable interpretation of the Staley Reservation does exist under which appellants could state

a claim. Therefore, the trial court erred in dismissing appellants' complaint.

{¶30} Accordingly, appellants' sole assignment of error has merit and is sustained.

{¶31} For the reasons stated above, the trial court's judgment is hereby reversed and the matter is remanded for further proceedings pursuant to law and consistent with this opinion.

Waite, J., concurs.

DeGenaro, J., dissents with attached dissenting opinion.

DeGenaro, J., dissenting

{¶32} I respectfully dissent. The reservation is unambiguous for the reasons articulated by the trial court as recounted by the majority at ¶ 9-11, *supra*. Thus, I would affirm the decision of the trial court.