[Cite as *Gateway Royalty II, L.L.C. v. Gulfport Energy Corp.*, 2024-Ohio-4844.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
BELMONT COUNTY

GATEWAY ROYALTY II, LLC et al.

Plaintiffs-Appellees,

v.

GULFPORT ENERGY CORPORATION,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 23 BE 0042

Civil Appeal from the
Court of Common Pleas of Belmont County, Ohio
Case No. 22-CV-0046

BEFORE:
Cheryl L. Waite, Mark A. Hanni, Katelyn Dickey, Judges.

JUDGMENT:
Affirmed.

Atty. Molly K. Johnson, Johnson & Johnson, for Gateway Royalty II, LLC and Gateway Royalty, III, LLC

Atty. John Kevin West and *Atty. John C. Ferrell*, Steptoe & Johnson, PLLC, for Gulfport Energy Corporation

Atty. Gregory D. Russell, *Atty. Timothy B. McGranor* and *Atty. Ilya Batikov*, Vorys, Sater, Seymour & Pease, LLP, for Ohio Oil and Gas Association

Atty. Scott M. Zurakowski, Krugliak, Wilkins, Griffiths & Dougherty Co., LPA, for Beck Oil and Gas, Inc. and TDX, LLC

Atty. Thomas A. Hill, for Eric Petroleum Corporation

Atty. Alexander T. McElroy, McElroy Law Firm, LLC, for Buckeye Oil Producing Company and Buckeye Royalty Holdings, LLC

Dated: September 9, 2024

WAITE, J.

{¶1} This appeal involves a dispute over certain costs that were deducted from overriding royalty payments made by Appellant Gulfport Energy Corporation to Appellees Gateway Royalty II, LLC and Gateway Royalty III, LLC. The trial court granted summary judgment to Appellees, disallowing the deductions. Appellant contends that the deductions fall under the category of post-production costs, and that such costs are permitted to be deducted under the terms of the overriding royalty assignment documents. Appellant also argues that such post-production costs are widely viewed as deductible costs in the oil and gas industry. Appellees, on the other hand, argue that in Ohio such costs are not to be deducted from overriding royalties, citing to Seventh District caselaw. Appellees contend the overriding royalty assignment expressly states that the royalties are to be paid free of operating costs unless specifically stated in the overriding royalty contract. Appellees also submitted evidence in summary judgment that Appellant generally treated these costs as operating costs both in practice and in official business documents, and that the costs were not deducted from other overriding royalty holders. Appellees are correct, and the judgment of the trial court is affirmed.

Factual and Procedural History

{¶2} Appellees Gateway Royalty II, LLC and Gateway Royalty III, LLC (collectively referred to as "Gateway") filed a breach of contract complaint in Carroll County against Appellant Gulfport Energy Corporation ("Gulfport") on December 17, 2021, Case No. 21CVH29918. Venue was changed to Belmont County on February 14, 2022, and assigned Case No. 22CV0046. The complaint alleged that Gulfport wrongfully deducted four post-production expenses from Gateway's monthly overriding royalty interest ("ORRI") checks, specifically, the expenses of compression, processing, gathering, and fractionation. Gateway owns ORRIs in 55 oil and gas leases in which the current lessees/operators are Appellant Gulfport and an entity called EQT Corporation. EQT Corporation has not withheld any portion of the ORRI payments in dispute and is not involved in this appeal.

{¶3} The parties agree on the material facts of this case. As a preliminary matter, Gulfport filed a Chapter 11 Bankruptcy petition on November 13, 2020, and Appellees' breach of contract claim only affects damages after that date. Claims prior to that date fall under the jurisdiction of the bankruptcy court in Texas.

{¶4} The original lessee to the leases at issue in this appeal was OHTEX Energy Company, LLC ("OHTEX Energy"). OHTEX Energy gave a 7.5% ORRI to OHTEX Holding Company, LLC ("OHTEX Holding"). On September 26, 2011, OHTEX Energy granted the following to OHTEX Holding: "an overriding royalty, free and clear of all cost and expense of development and operation * * *." (Gulfport MSJ Exh. 1-A ORRI Assignment). The ORRI at Section C of the document also contains the following provision regarding expenses:

> The overriding royalty interest conveyed shall be free and clear of all drilling, development, and operating expenses; however, the overriding royalty interest shall bear its proportionate share of (i) all severance, excise, production, and other similar taxes measured by the amount of or value of the production attributed to said interest; (ii) oil and gas used as fuel in conducting operations on the lease or lands pooled therewith; and (iii) oil and gas used for treating production to make it merchantable.

Id.; *see also* Oldham Affidavit, Plaintiff's MSJ, ¶ 3.

{¶5} The OHTEX Energy leases were subsequently assigned to Appellant Gulfport. Through various assignments in 2015 and 2017, both Gateway Appellees acquired 55 of OHTEX Holding's overriding royalty interests. Gulfport continues to be the holder of the leases. There is no dispute that Gulfport is obligated to pay Gateway pursuant to the royalty language in the original ORRI assignment from OHTEX Energy to OHTEX Holding.

{¶6} Appellant has deducted post-production expenses from all ORRI royalty payments made to Appellee Gateway Royalty II, LLC starting in 2015, and to Gateway Royalty III, LLC, starting in 2018.

{¶7} In March of 2020, Gateway's president, Chris Oldham, began extensive communications with Gulfport's Director of Title and Land Administration, Jenae Allert, asserting that Gulfport was not permitted to deduct post-production expenses from Gateway's overriding royalties. Ms. Allert initially agreed with Gateway and stated that Gateway would refund the withheld post-production cost amounts, but in an email dated November 3, 2020, she changed her position without explanation and refused to issue a refund. Appellees responded by pointing out that EQT, operating many of the same leases, has never deducted post-production expenses. Appellant Gulfport filed for bankruptcy shortly thereafter. The record shows Appellant has refunded OHTEX Holding the deducted post-production expenses under the same ORRI assignment language. (Oldham Affidavit, Plaintiff's MSJ, ¶ 26.)

{¶8} Gulfport filed for bankruptcy on November 13, 2020. The deductions taken by Gulfport from Gateway's royalties through November 13, 2020 were litigated in bankruptcy court in Texas. On July 18, 2023, the bankruptcy court held that costs of compression, processing, and gathering are operating expenses and are not deductible by Gulfport. *In re Mule Sky*, No. 20-355561 (Bankr. S.D. Tex.). The bankruptcy court ruled that the cost of fractionation was deductible. This decision is currently being appealed by both parties to the U.S. District Court for the Southern District of Texas in case no. 4:23-cv-02623.

{¶9} In the instant case, both parties filed motions for summary judgment. On July 19, 2023, the court issued a journal entry ruling in favor of Appellees. The court awarded damages in the amount of $80,738.91 to Gateway Royalty II, LLC, and $113,822.62 to Gateway Royalty III, LLC. Interest was left to be calculated and awarded until the final judgment entry was filed in the matter. The court allowed Appellees to file a proposed entry containing findings of fact and conclusions of law. Appellant filed objections to the proposed entry, but on September 27, 2023 the court adopted it and entered final judgment in the matter. In that judgment, the court also awarded pre-judgment interest of $8,339.20 to Gateway Royalty II, LLC, and $11,454.65 to Gateway Royalty III, LLC. The court's entry indicates that pre-judgment interest was calculated separately on each monthly deduction up to the date of the entry. The court also enjoined Appellant from making any further deductions from the royalties for costs of compression, processing, gathering, or fractionation. This timely appeal followed.

Summary Judgment Standard of Review

{¶10} An appellate court conducts a *de novo* review of a trial court's decision to grant summary judgment, using the same standards as the trial court as set forth in Civ.R. 56(C). *Grafton v. Ohio Edison Co.,* 77 Ohio St.3d 102, 105 (1996). Before summary judgment can be granted, the trial court must determine that: (1) no genuine issue as to any material fact remains to be litigated, (2) the moving party is entitled to judgment as a matter of law, (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing the evidence most favorably in favor of the party against whom the motion for summary judgment is made, the conclusion is adverse to that party. *Temple v. Wean United, Inc.,* 50 Ohio St.2d 317, 327 (1977). Whether a fact is "material" depends on the substantive law of the claim being litigated. *Hoyt, Inc. v. Gordon & Assoc., Inc*., 104 Ohio App.3d 598, 603 (8th Dist.1995).

{¶11} "[T]he moving party bears the initial responsibility of informing the trial court of the basis for the motion and identifying those portions of the record which demonstrate the absence of a genuine issue of fact on a material element of the nonmoving party's claim." (Emphasis deleted.) *Dresher v. Burt*, 75 Ohio St.3d 280, 296 (1996). If the moving party carries its burden, the nonmoving party has a reciprocal burden of setting forth specific facts showing that there is a genuine issue for trial. *Id.* at 293. In other words, when presented with a properly supported motion for summary judgment, the nonmoving party must produce some evidence to suggest that a reasonable factfinder could rule in that party's favor. *Brewer v. Cleveland Bd. of Edn.,* 122 Ohio App.3d 378, 386 (8th Dist.1997).

{¶12} The evidentiary materials to support a motion for summary judgment are listed in Civ.R. 56(C) and include the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact that have been filed in the case. In resolving the motion, the court views the evidence in a light most favorable to the nonmoving party. *Temple*, 50 Ohio St.2d at 327.

ASSIGNMENT OF ERROR NO. 1

THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT TO GATEWAY AND DENYING SUMMARY JUDGMENT TO GULFPORT.

{¶13} Appellant challenges the trial court's decision to grant summary judgment in favor of Appellees. More specifically, Appellant contends that the trial court incorrectly concluded that Appellees' ORRI in Appellant's 55 leases is not subject to the post-production expenses of gathering, processing, compression, and fractionation. Generally, ORRIs are not subject to deductions for operating expenses, and this is true for the specific ORRI assignments in this case. The question that Appellant raises is whether post-production expenses are part of operating expenses, and if not, can they be deducted from the ORRI payments Appellant makes to Appellees.

{¶14} Appellees argue that it has long been the law in Ohio that an ORRI is a fractional interest in the gross production of oil and gas and is not subject to deductions for any expenses arising from exploration, drilling, development, operating, marketing, or any other cost relating to the production and sale of the oil and gas. The trial court cited a case from this Court, two cases from the Fourth District Court of Appeals, a case from the Federal District Court of the Southern District of Texas (applying Ohio law), and the federal bankruptcy court case from Texas that involves the identical parties and the very same ORRI assignment at issue in this appeal. Appellees urge us to follow the trial court analysis applying the definition used by this Court.

{¶15} Before looking at the details of Appellant's argument, it is helpful to summarize the trial court's thorough analysis of the case. The trial court examined the history of the Appellees' ORRI assignments and the exact amounts deducted by Appellant from the ORRI payments. The court cited the specific language in the ORRIs' assignments under review. The parties do not dispute this. The court then examined definitions of ORRIs in Ohio and determined that caselaw has defined these as "cost free," excluding expenses for exploration, drilling, development, operating, marketing, and other costs, citing three Ohio cases including *Marquette ORRI Holdings, LLC v. Ascent Resources-Utica, LLC*, 2022-Ohio-3786, (7th Dist.), quoting *GM Gas Expl., Inc. v. McClain*, 1991 WL 163644, *8 (4th Dist. Aug. 13, 1991). The trial court determined that no Ohio court has held an ORRI is cost bearing. Ultimately, the trial court held that expenses cannot be deducted from an ORRI unless the assignment granting the ORRI expressly contains such a deduction, and in this case, the assignment does not provide any such language.

{¶16} The court held that the ORRI assignment language in this case is unambiguous because it excludes expenses for operating costs and does not include the four post-production costs being deducted by Appellant. When the terms in a contract are unambiguous, courts will not, in effect, create a new contract by relying on an intent that was not expressed in the clear language employed by the parties. *Alexander v. Buckeye Pipe Line Co.*, 53 Ohio St.2d 241, 246 (1978). Courts presume that the intent of the parties to a contract resides in the language they chose to employ. *Kelly v. Med. Life Ins. Co.*, 31 Ohio St.3d 130 (1987), paragraph one of the syllabus. "Common words appearing in a written instrument will be given their ordinary meaning unless manifest absurdity results, or unless some other meaning is clearly evidenced from the face or overall contents of the instrument." *Alexander* at paragraph two of syllabus. The construction of written contracts is a matter of law for the court to determine and is reviewed de novo on appeal. *Saunders v. Mortensen*, 2004-Ohio-24, ¶ 9. The determination as to whether a contract is ambiguous is also a question of law subject to de novo review on appeal. *Bond v. Halcon Energy Properties, Inc.*, 2017-Ohio-7754, ¶ 23 (7th Dist.).

{¶17} Generally, parol evidence cannot be used to interpret unambiguous terms in a contract in order to show a different intent of the parties. *TRINOVA Corp. v. Pilkington Bros., P.L.C.*, 70 Ohio St.3d 271, 275 (1994). The trial court, though, recognized that parol evidence can be used to explain technical terms of art used in a matter particular to a trade or industry. *Career & Tech. Assn. v. Auburn Vocational School Dist. Bd. of Edn.*, 2014-Ohio-1572, ¶ 29 (11th Dist.). "Parol evidence, which in this case came in the form of expert testimony, is admissible to provide special meaning given by the industry to language employed in a contract." *Latina v. Woodpath Dev. Co.*, 57 Ohio St.3d 212, 214 (1991). The trial court was correct in this interpretation.

{¶18} With these legal principles in mind, the trial court examined the ORRI assignment language in question to see if the deductions for post-production costs were permissible. We will revise the order of the trial court's analysis in order to more clearly conduct our own.

{¶19} First, the trial court looked to Ohio law and determined that, in general, ORRIs are granted "cost-free," meaning that they are paid without making any deductions for exploration, drilling, development, operating, marketing, or other costs. The court cited our *Marquette ORRI Holdings* case, among others.

{¶20} Second, the court determined that the ORRI in question was to be paid free and clear of operating expenses, per the language of the ORRI assignment. The court examined whether the four post-production costs deducted by Appellant were, in fact, operating expenses. The court allowed parol evidence to explain the technical meaning of "operating expenses" in the oil and gas industry. Only Appellees provided such parol evidence. The court determined that the only case to interpret "operating expenses" in the context of ORRIs was the Texas federal case involving the same parties and the same assignment language. The Texas court held that operating expenses include post-production expenses, specifically compression, processing, and gathering. *In re Mule Sky,* No. 20-355561 (Bankr. S.D. Tex.). Because those costs are operating expenses, they cannot be deducted from any ORRI payments.

{¶21} Third, the trial court determined that the ORRI assignment only allowed deductions for taxes, oil and gas used as fuel, and oil and gas used for treating production. Appellant's deductions, which it calls post-production expenses, do not fit into those categories. The interpretive canon of expressio unius est exclusio alterius "tells us that the express inclusion of one thing implies the exclusion of the other." *Crawford–Cole v. Lucas Cty. Dept. of Job & Family Servs.*, 2009-Ohio-1355, ¶ 42. The combined effect of the general exclusion of deductions on the one hand, and language specifically listing only three exceptions to that general exclusion, strongly supports the conclusion the deductions at issue are disallowed.

{¶22} Fourth, the trial court examined the conclusion in *In re Mule Sky* that three of the costs deducted by Appellant were not operating costs, but the cost of fractionation could be deducted. The trial court determined that while the *In re Mule Sky* decision was mostly correct (involving the same parties, leases, and ORRIs in this appeal), *In re Mule Sky* was incorrect in allowing deduction of fractionation costs. This was because *In re Mule Sky* had already held that processing costs could not be deducted. As Ohio courts have held that fractionalization is a processing cost, the only logical conclusion is that fractionalization, because it is a processing cost, cannot be deducted from ORRI payment, citing *Kinder Morgan Cochin L.L.C. v. Simonson*, 2016-Ohio-4647, ¶ 2 (5th Dist.).

{¶23} Fifth, the trial court noted that although neither party introduced expert evidence as to operating expenses, Appellees did introduce parol evidence showing that the deducted costs were operating expenses even under Appellant's own practices and records. The court reasoned that, if the ORRI assignment was even arguably ambiguous, this parol evidence could be used to determine the intent of the parties. The court cited a binding party admission from Gulfport's Director, Jenae Allert, that the post-production costs were not properly deductible from ORRI payments. Appellant did not dispute Appellees' parol evidence, nor was any rebuttal evidence submitted. Appellant's inclusion of post-production costs as operating expenses in SEC filings also factored in the trial court's decision.

{¶24} Based on the language of the assignment, industry usage, Ohio and Texas caselaw, and Appellees' parol evidence, the court concluded that post-production costs were part of the operating expenses and Appellant was prohibited from deducting these from Appellees’ ORRI payments.

{¶25} The court declined to follow a number of out-of-state cases cited by Appellant allegedly allowing deductions for post-production costs. The court reasoned that oil and gas terminology and practice can vary from state to state, that the several Ohio cases and the Texas decision *In re Mule Sky* contained the only relevant legal precedent and that applying the only relevant law, here, resulted in denying the deduction of post-production costs from these ORRI payments.

{¶26} Even if the ORRI language was arguably ambiguous, the trial court held that parol evidence provided by Appellees showed the parties’ intent as to post-production cost deductions. This evidence, too, supports the conclusion that post-production costs were not intended by the parties to be deducted from royalty payments.

{¶27} Appellant attacks three aspects of the trial court decision. We address these out of order for ease of analysis.

Appellant's Issue #2.

{¶28} Appellant argues that the industry standard definition of "overriding royalty" does not per se prohibit a lessee from deducting post-production costs when paying overriding royalties. This is a straw argument, because the trial court did not hold that there was such a prohibition, or rely on this when it entered judgment for Appellees. The trial court held that even though overriding royalties are generally cost free, parties to an overriding royalty contract "can agree to any manner of cost sharing they choose". (Sept.

27, 2023 J.E.) The trial court determined that the parties in this case did not enter into a contract allowing deductions from the ORRI payment for post-production costs.

{¶29} Appellant is correct, though, that in Ohio the starting point when reviewing an overriding royalty is that no expenses should be deducted from it. In other words, an overriding royalty is based on the gross value of the oil and gas product taken from the ground. Appellant disagrees with that basic premise on the basis that no Ohio court has specifically held that post-production costs may never be deducted from an ORRI, or that post-production costs are part of the definition of "operating expenses," which are generally not deducted from an ORRI. In its contention, Appellant ignores the Ohio caselaw broadly defining an overriding royalty as cost free; that is, free from the post-production costs Appellant deducted from Appellees' royalties. As Appellees point out, at least seven Ohio cases have either expressly defined an ORRI to exclude operating expenses or relied on Ohio precedent that an ORRI is cost free. This Court in 2022 expressed the definition as: " 'An "overriding royalty" is a fractional interest in the gross production of oil and gas under a lease in addition to usual royalties paid to the lessor, free of any expense for exploration, drilling, development, operating, marketing and other costs incident to the production and sale of oil and gas produced from the lease.' " *Marquette ORRI Holdings, LLC* at ¶ 17. This definition excludes deductions for all expenses for the entire process of extracting, processing, and selling the oil and gas. Simply calling a particular phase of the operation "post-production" does not create an exception to this very broad, all-encompassing definition.

{¶30} In most of its argument Appellant urges this Court to disregard the "dicta" definition of an "overriding royalty" found in *Marquette ORRI Holdings, LLC* and related cases. However, It is apparent in even the most facile reading of the case that the definition of an ORRI in *Marquette ORRI Holdings, LLC* was not dicta, but was central to the case: "All claims are related to overriding royalty interests on a series of oil and gas leases in Belmont and Jefferson Counties." *Id.* at ¶ 1. The entire case concerned the effect of ORRIs. Therefore, our definition cannot be seen as mere dicta, and Appellant's argument otherwise is without merit.

Appellant's Issue #1.

{¶31} Appellant argues that the OHTEX overriding royalty assignment excludes only deductions for operating expenses, not all types of expenses. Appellant argues that the well-established meaning of "operating expenses" in the oil and gas industry, at least outside of Ohio, does not encompass post-production costs. Appellant contends that if post-production costs are not an operating expense, then they may be deducted from Appellees' ORRI payments. It is obvious that Appellant has created a circular argument, coming up with its own definition of operating expenses and then using that self-generated definition to justify its deductions from royalty payments. If Appellant had intended to prove that the phrase "operating expenses" was an industry technical term that can only be seen as diametrically opposed to the common usage of the phrase, Appellant was required to have introduced evidence of this alleged industry standard at trial.

{¶32} We have previously held: "The phrase 'operating expenses' has been defined as: 'Those expenses required to keep the business running, e.g., rent, electricity, heat. Expenses incurred in the course of ordinary activities of an entity.' *Black's Law Dictionary* 1091 (6th Ed. 1990)." *E. Liverpool v. Buckeye Water Dist.*, 2012-Ohio-2821,

¶ 93 (7th Dist.). It is apparent that Appellant's claimed post-production costs are operating expenses.

{¶33} Appellant seeks to have this Court rely on other definitions of "operating expenses" that allegedly apply more specifically to the oil and gas industry. Appellant concedes in its brief, however, that the case relied on the by trial court, *In re Mule Sky*, is the only case that has examined the exact ORRI assignment under review in this appeal. In that case the court determined three of the four post-production costs (compression, processing, and gathering) Appellant deducted were, in fact, operating expenses and could not be deducted from royalty payments. The fourth post-production cost deducted by Appellant, fractionation, is obviously also an operating expense because it is actually a processing cost. While *In re Mule Sky* allowed deduction of fractionation, that portion of the decision is internally inconsistent, as earlier in *In re Mule Sky* the court held that no production costs were deductible expenses.

{¶34} Appellant primarily relies on a North Dakota case to support its contention that a typical ORRI assignment allows the lessee to deduct post-production costs (whatever that might mean from case to case) from ORRI payments. Appellant characterizes *Highline Expl., Inc. v. QEP Energy Co.*, 43 F.4th 813 (8th Cir. 2022) as clearly holding that post-production costs can be deducted from ORRI payments, but *Highline* specifically dealt with non-standard ORRI assignments and was not intended to create a blanket rule applicable to all ORRIs. "Here, the parties did not create a standard ORRI." *Id.* at 817. Whether or not an ORRI is regarded as "standard" in North Dakota, a "standard" from North Dakota may not be regarded the same way in Ohio, and there is no evidence that the ORRI assignments in this appeal are anything other than "standard"

Ohio ORRI agreements. Appellant's reliance on *Highline Expl., Inc.* is further complicated by the reality that the Eighth Circuit prohibited parol evidence from being used to clarify the definition of the term of art: "operating expenses." In Ohio, courts do allow parol evidence to be used to clarify industry terms of art.

{¶35} Four amicus briefs have been filed in this appeal. Three support Appellees' position. The amicus brief filed by the Ohio Oil and Gas Association is the only one in support of Appellant's position. In this amicus brief, counsel argues that the definition of an ORRI used in Ohio cases is based on a flawed decision from the Tenth Circuit Court of Appeals that has since been reversed. The case to which counsel refers is *Meeker v. Ambassador Oil Co.*, 308 F.2d 875, 878 (10th Cir. 1962), a case arising out of Oklahoma and applying Oklahoma law. *Meeker* defined an ORRI as "a fractional interest in the gross production of oil and gas under a lease, in addition to the usual royalties paid to the lessor, free of any expense for exploration, drilling, development, operating, marketing and other costs incident to the production and sale of oil and gas produced from the lease." *Id.* at 882. *Meeker* is, in fact, quoted in one of the Ohio cases defining an ORRI as cost free. *GM Gas Expl., Inc. v. McCLain*, 1991 WL 163644, *8 (4th Dist. Aug. 13, 1991). The problem with Ohio Oil and Gas Association's argument is that, although *Meeker* was reversed on other grounds, the definition of ORRI in Oklahoma has not been reversed or changed. Oklahoma caselaw has used the same definition used in *Meeker* as recently as 2021. *Claude C. Arnold Non-Operated Royalty Interest Properties, L.L.C. v. Cabot Oil & Gas Corp.*, 2021 OK 4, fn. 2. Hence, while the decision of the Tenth Circuit may have been flawed, the flaw was not in its definition of an ORRI.

{¶36} Conversely, Eric Petroleum Company argues persuasively in support of Appellees in its amicus brief that the ORRI assignment language at issue is quite standard in Ohio and has been used for many decades in its own leases as well as its ORRI interests.

{¶37} Based on the relevant law, while the parties were not prohibited from agreeing to other language allowing deductions from the ORRI in question, the language in these agreements, as written, does prohibit the operating costs Appellant calls "post-production" from being deducted. There is no support for Appellant's contention that it was permitted to deduct these post-production expenses in the ORRIs or in law.

Appellant's Issue #3.

{¶38} Appellant contends that the parol evidence offered by Appellees does not change the unambiguous meaning of "operating expenses" as used in the ORRI. Since Appellant failed to establish an industry usage in Ohio of the phrase "operating expenses" that differs from the ordinary understanding of that term, and certainly has not shown "post-production costs" are not operating expenses, the entirety of this argument is moot. Nevertheless, the trial court meticulously examined the parol evidence submitted by Appellees (noting that Appellant did not provide any rebuttal evidence to support its position). All of this evidence supports the conclusion that even Appellant considered post-production costs to be operating expenses. Appellant deducts no expenses other than taxes from the overriding royalties it pays to OHTEX Energy, which has the identical ORRI language as contained in Appellees' ORRI assignments. EQT Corporation, using the same ORRI assignment language, also deducts no costs other than taxes. Appellant itemizes "gathering, processing and compression" as line items under the heading "operating expenses" in its quarterly and annual reports filed with the SEC. Appellant's Director, Jenae Allert, made binding party admissions in emails to Appellees' president Chris Oldham that the costs at issue should not have been deducted. Ms. Allert reversed her decision to refund the deductions, without any legal explanation, shortly before Appellant declared bankruptcy. Appellant did not counter or contradict any of Appellees' evidence, and it was proper for the trial court to use that evidence to the extent it was necessary to interpret Appellant's argument that the term "operating expense" in the oil and gas industry does not, in fact, mean "operating expense" in the usual sense. Appellees highlighted at oral argument that Appellant has seemingly singled out Appellees in deciding to exclude post-production costs from operating expenses and deduct them from only Appellees' ORRI payments.

{¶39} Appellees' note that Appellant waived its argument under its third issue because it failed to properly raise the argument to the trial court. Appellant put forth an additional argument that Texas custom and usage should apply to this matter because the original assignor and assignee were Texas companies. Appellant failed to present this argument to the trial court and it will not be considered on appeal. "Issues that could have been raised and resolved in the trial court cannot be raised for the first time on appeal and are deemed to be waived." *Adlaka v. Montella*, 2013-Ohio-1276, ¶33 (7th Dist.).

{¶40} All three sub issues of Appellant's first assignment of error are without merit and the first assignment of error is overruled.

ASSIGNMENT OF ERROR NO. 2

THE TRIAL COURT ERRED IN CALCULATING PREJUDGMENT INTEREST WITHOUT SUFFICIENT EVIDENCE.

{¶41} Appellant contends here that the trial court awarded prejudgment interest without having enough information to arrive at a specific amount. Appellant does not appear to be arguing that the trial court had no basis on which to generally award prejudgment interest. Instead, Appellant challenges the specific amounts calculated by the court: $8,339.20 to Gateway Royalty II, LLC, and $11,454.65 to Gateway Royalty III, LLC.

{¶42} Appellees respond that Appellant has waived this argument because it did not object to the amount of prejudgment interest when objecting to Appellees' proposed judgment entry submitted after the court ruled in favor of Appellees on the underlying issue. The trial court ordered Appellees to submit a proposed judgment entry containing findings of fact and conclusions of law. Appellant filed an objection to the proposed entry, but did not object to the amount of prejudgment interest included. Failure to object to a proposed judgment entry, or failure to specifically object to any alleged error contained within the entry (including errors regarding prejudgment interest), waives the right to appeal that aspect of the judgment. *Shah v. Cardiology S., Inc.*, 2005-Ohio-211, ¶ 13-14 (2d Dist.). Because Appellant did not object to the specific amount of prejudgment interest contained within the proposed entry, the court had no opportunity to correct any possible error before entering final judgment. Appellant's second assignment of error is also overruled.

Conclusion

{¶43} Appellant argues the trial court erred in ruling that deductions it made from ORRI payments to Appellees for post-production costs were improper. Appellant contends that such deductions are standard in the oil and gas industry and that the ORRI assignments in question allowed such deductions. Appellees respond that ORRIs are to be paid without deducting operating costs, and the costs that Appellant deducted were operating costs. Appellees also submitted evidence that Appellant had treated these as operating costs both in practice and in official business documents. Appellant's argument is not persuasive, and its first assignment of error is overruled. Appellant also argues that no evidence was submitted to support the specific amount of the prejudgment interest awarded to Appellees, but this argument was not first raised in the trial court and has been waived. Appellant's second assignment of error is also overruled. The trial court's decision to grant summary judgment to Appellees is affirmed.

Hanni, J. concurs.

Dickey, J. concurs.

For the reasons stated in the Opinion rendered herein, Appellant's assignments of error are overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Belmont County, Ohio, is affirmed. Costs to be taxed against the Appellant.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.