[Cite as *1803 Resources, L.L.C. v. Lineback*, 2025-Ohio-3271.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MONROE COUNTY

1803 RESOURCES, LLC,

Plaintiff-Appellant,

v.

ADRIENNE LINEBACK et al.,

Defendants-Appellees.

OPINION AND JUDGMENT ENTRY
Case Nos. 24 MO 0019, 24 MO 0023

Civil Appeals from the
Court of Common Pleas of Monroe County, Ohio
Case No. 2023-043

BEFORE:
Carol Ann Robb, Mark A. Hanni, Katelyn Dickey, Judges.

JUDGMENT:
Reversed and Remanded.

Atty. Jeremy D. Martin, *Atty. Sara E. Fanning, Atty. David J. Wigham,* Roetzel & Andress, LPA, for Plaintiff-Appellant 1803 Resources, LLC and

Atty. Richard A. Yoss, for Defendant-Appellee, Adrienne Lineback and *Atty. John Kevin West, Atty. John C. Ferrell,* Steptoe & Johnson PLLC, for Defendant-Appellee Gulfport Appalachia, LLC and *Atty. Karena Reusser,* for Defendant-Appellee Donald J. and Jane A. McBride and *Atty. Alexander T. McElroy,* McElroy Law Firm, LLC, for Defendant-Appellee Vine Royalty L.P. and

Atty. W. Stuart Dornette, Atty. James V. Maniace, Taft Stettinius & Hollister LLP, for Defendants-Cross-Appellants Barbara P. Guy, Successor Trustee of the Deloris Buxton and Lois Hamm and Collene Jones Trust and

Atty. Daniel P. Corcoran, Theisen Brock*,* for Amicus Curiae, Mineral Development, Inc.

Dated: September 5, 2025

Robb, P.J.

{¶1} This appeal concerns the ownership of oil and gas royalties associated with approximately 61 acres underlying two parcels in Center Township. One parcel, the McBride property, is owned by Donald J. and Jane A. McBride. The McBrides own the surface and claim to own one-half the oil and gas underlying their property. Vine Royalty, L.P. claims to own the other half of oil and gas underlying the McBride property.

{¶2} Adrienne Lineback owns the second parcel and claims to own one-half the oil and gas underlying it. Bounty Minerals, LLC claims to own the other half of the oil and gas underlying the Lineback property.

{¶3} Appellant, 1803 Resources, LLC, appeals the November 7, 2024 judgment issued by the Monroe County Court of Common Pleas entering summary judgment against it on all counts of its first amended complaint. 1803 argues the trial court erred by concluding 1803 lacks standing to pursue its claims. 1803 also challenges the trial court's decision finding the Charles Baker interest was extinguished via the MTA and the court's interpretation of the severance deed as not including a natural gas exception.

{¶4} Cross-Appellants, Barbara Guy, successor trustee of the Deloris Buxton trust, Lois Hamm, and Collene Jones (collectively the Guy Appellants) also appeal the trial court's summary judgment decision. The Guy Appellants assert the trial court erred in its construction of the deed and by ignoring and eliminating the Baker Family Royalty. The Guy Appellants also contend the Baker Family interest was not extinguished by the MTA. For the following reasons, we reverse and remand.

Statement of the Case

{¶5} 1803 filed its initial complaint in February 2023 against numerous defendants. Defendants McBride filed an answer, counterclaim, and a cross-claim against Gulfport Appalachia, LLC.

{¶6} Defendants, Barbara Guy, successor trustee of the Deloris Buxton trust, Lois Hamm, and Collene Jones (the Guy Appellants) filed a collective answer, counterclaim, and cross-claim. They sought declaratory judgment that the Baker Family Royalty was valid and they were the rightful owners. The Guy Appellants also sought to quiet title in their favor against the claims of the other parties. Additionally, the Guy Appellants filed a claim for breach of contract and accounting against co-defendant Gulfport, seeking an accounting and their proportionate share of the royalties from the sale of oil and gas from the property. (May 2, 2023 Answer, Counterclaim & Cross-Claim.)

{¶7} Defendant, Vine Royalty, L.P., filed an answer and counterclaim. Vine claims it is the record interest holder of a 50% interest in the oil and gas associated with 22.539 acres of the subject property. Vine contends it is in possession of this interest; it is producing oil and gas; and that Vine's interest is superior to 1803's claimed title. Vine sought declaratory judgment that it is the lawful record owner of a 50% interest in the parcel. Vine avers that 1803 is claiming ownership of an undivided 3/16 royalty interest. However, Vine contends the Baker interest is "at most" a 1/32 nonparticipating royalty interest. Additionally, Vine sought a judicial declaration that the MTA extinguished claims to any interest greater than the 1/32 royalty since the amount reserved was 1/32 of the royalty interest. Vine asked the court to quiet title in its favor and against the claims of 1803.

{¶8} Vine also cross-claimed against the Guy Appellants for declaratory judgment. Vine asked the court to find it is the lawful owner of a 50% interest in the parcel and that the Guy Appellants' interest is "at most, a non-participating one-thirty second (1/32) royalty interest." Vine also asked the court to declare that any amount greater than the 1/32 royalty has been extinguished under the MTA. (August 24, 2023 Answer, Counterclaim & Cross-Claim.)

{¶9} Vine sought a judicial declaration that it is the lawful owner of a percentage of the Baker royalty. Vine also alleged that any claims by the Bakers, their heirs, or assigns in excess of a 1/32 nonparticipating royalty interest were extinguished under the MTA. Vine also sought quiet title to its interest. Vine alleged "there is an unbroken chain of title for forty years after the root of title [a warranty deed dated April 11, 1934] as to the remaining . . . (31/32) royalty interest." (April 25, 2023 Vine's Answer & Counterclaim.)

{¶10} In May of 2023, Bounty moved to dismiss 1803's complaint, or in the alternative, sought a more definite statement seeking the court to order 1803 to amend

its complaint to identify the precise interests it sought. Bounty's motion states 1803's claimed interest is unreasonably ambiguous and vague. (May 8, 2023 Motion.)

{¶11} 1803 opposed the motion to dismiss and motion for a more definite statement. The trial court denied the motion to dismiss, but ordered 1803 to plead the precise interest it sought in the litigation with particularity. (July 12, 2023 Judgment.)

{¶12} In response, 1803 filed its first amended complaint on August 14, 2023. 1803 alleges the surface estate, consisting of approximately 61 acres, consists of two parcels. The first is owned by Defendant Adrienne Lineback as successor in interest to David Laime via a deed conveying the property from Donald J. and Jane A. McBride (the McBrides). 1803 claims Laime conveyed a 50% interest in the oil and gas underlying the property to Bounty Minerals, LLC and Bounty Minerals III Acquisitions, LLC.

{¶13} The second parcel consists of approximately 22 acres and is owned by the McBrides. The McBrides conveyed a 50% interest in the oil and gas underlying their parcel to Vine Royalty, L.P.

{¶14} According to 1803, the entire property (61 acres) was conveyed to Juletta Burkhead in April of 1922 from the five Baker heirs. The deed conveying the property to Burkhead contained two exceptions, the "Charles Baker Royalty" and the "Baker Family Royalty," collectively referred to as the "Total Baker Royalty" herein. The two exceptions are nearly identical.

{¶15} According to 1803, the five Baker heirs reserved ¼ of all the oil and gas royalties underlying the property, i.e., the Baker Family Royalty, and a separate ¼ of all the oil and gas royalties was excepted and reserved by Charles Baker. Thereafter, some of the Baker heirs' interests were passed by succession or sold. 1803 claims to have acquired the interests from three Baker heirs during the pendency of this lawsuit. Additionally, 1803 named other individuals and one business as defendants, who it alleged may claim an interest in the Baker royalties. As a result of the inheritances and subsequent conveyances, 1803 claims it now owns part of the Charles Baker Royalty and part of the Baker Family Royalty.

{¶16} 1803's complaint claims neither Baker Royalty has been extinguished via the MTA. Instead, 1803 alleges there were two "title transactions" preserving them from extinguishment, i.e., the 1956 affidavit for transfer from Charles Baker to his wife and daughter, and second, the filing of the last will and testament of Everett C. Baker in 1973.

1803 alleges these were title transactions pursuant to R.C. 5301.49(D). It also claims the root of title contained specific references to both Baker reservations.

{¶17} The interest is subject to two leases, the 2013 Laime lease covering the Lineback property and the 2012 McBride lease. 1803 contends it is entitled to the payment of royalties based on its proportional share. Gulfport is the current holder of the lease rights or lessee of both leases.

{¶18} 1803 sought declaratory judgment that the Baker Family Royalty and the Charles Baker Royalty were valid and preserved. 1803 also asked the court to declare the Total Baker Royalty is an undivided ¼ part of the lease royalty and that 1803 is the lawful owner of at least an undivided 85% interest of the Total Baker Royalty, which is an undivided 21.26% royalty interest in the property. 1803 sought a judicial declaration that it is entitled to receive its share of the Total Baker Royalty under the applicable leases corresponding with its interests in the property.

{¶19} 1803 also filed a quiet title claim seeking the court to quiet title to the Total Baker Royalty in its favor. 1803 also asserted a breach of contract and accounting claim against Gulfport. This claim contends Gulfport drilled on the respective property and retained proceeds from the sale of oil and gas produced from the Baker interests. 1803 contends it is entitled to certain proceeds based on the applicable lease agreements. 1803 requested an accounting from Gulfport and contract damages corresponding with the oil and gas royalties. (August 14, 2023 First Amended Complaint.)

{¶20} The McBrides filed an answer, counterclaim, and cross-claim denying the allegations in the first amended complaint. In their counterclaim against 1803, the McBrides claimed their title is superior. The McBrides sought declaratory judgment that they are the lawful owner of a 50% ownership interest in the parcel subject to a nonparticipating 1/32 royalty interest held by the Charles Baker heirs.

{¶21} The McBrides also alleged that any royalty interest greater than the 1/32 Charles Baker Royalty has been extinguished via the MTA. The McBrides sought quiet title that they are the owners of a 50% oil and gas interest underlying their surface estate.

{¶22} As for their cross-claim against the Guy Appellants, the McBrides sought declaratory judgment regarding the parties' respective ownership rights and the application and operation of the MTA to those interests. The McBrides asked the court to quiet title in their favor to the royalty interest. (August 24, 2023 McBride Answer, Counterclaim, & Cross-Claim.)

{¶23} Gulfport filed its answer, counterclaim, and cross-claim. Gulfport sought declaratory judgment that the Charles Baker Royalty was extinguished via the MTA. Gulfport also asked the court to determine the claims and interests in the suit and that the Charles Baker and the Baker Family Royalties were both limited to gas well rentals. Last, Gulfport sought declaratory judgment that if these interests were a fractional share of gas production, then each was limited to 1/64 of the production from the property. (August 25, 2023 Answer.)

{¶24} The parties filed an agreed confidentiality and protective order. After discovery, the parties filed competing motions for summary judgment.

Chain of Title

{¶25} The documents in the chain of title include the following. The April 17, 1922 warranty deed is the severance deed. It conveys the property to Juletta Burkhead from the five Baker heirs and contains the two original exceptions. This deed is numbered 47317. The exceptions state:

> In addition . . . , the grantor, Charles H. Baker, reserves and excepts from this conveyance, an undivided 1/8 part of all the royalty in oil and gas in and underlying said premises, the same to be the 1/64 part of all the oil produced and saved there-from, and the 1/8 part of all moneys received as rental for gas from gas wells now on or hereafter drilled thereon.
>
> And the grantors, Charles H. Baker, Everett Baker, Maudie Moore, Opal Leach and Elizabeth E. Baker, reserve and except from this conveyance an additional undivided 1/8 part of all the royalty in oil and gas in and underlying said premises, the same to be the 1/64 part of all the oil produced and saved therefrom, and the 1/8 part of all moneys received as rental for gas from gas wells now on, or hereafter drilled thereon.

{¶26} The May 26, 1923 warranty deed conveying the property from Juletta Burkhead to Vernon Burkhead, numbered 48791, includes the following reservations. It states:

> In addition . . . the grantor reserves unto Charles H. Baker, his heirs and assigns from this conveyance an undivided 1/64 part of all the oil and gas royalty in and underlying said premises, the same to be the 1/64 part of all the oil produced and saved therefrom and the 1/64 part of all moneys

> received as said rental for gas from gas wells now on or hereafter drilled thereon.
>
> And the grantor reserves unto Charles H. Baker, Everett Baker[,] Maude Moore, Opal Leach, and Elizabeth E. Baker the 1/64 part of all the oil and gas royalty in and underlying said premises, the same to be the 1/64 part of all the oil produced and saved therefrom and the 1/8 part of all the moneys received as rental for gas from gas wells on or hereafter drilled thereon.

(Emphasis sic.)

{¶27} The December 20, 1928 administrator's or executor's deed conveying the property from Vernon Burkhead, as administrator for the estate of Edith Burkhead, to Edgar Gibbons references the Baker interests. This conveyances states:

> In addition . . ., the grantor reserves unto Charles H. Baker, his heirs and assigns, from this conveyance an undivided 1/64 part of all the oil and gas royalty in and underlying said premises, the same to be the 1/64 part of all the oil produced and saved therefrom and the 1/64 part of all moneys received as rental for gas from gas well[s] now on or hereafter drilled thereon. And the grantor reserves unto Charles H. Baker, Everett Baker, Maude Moore, Opal Leach, and Elizabeth E. Baker the 1/64 part of all the royalty of the oil and gas in and underlying said premises the same to be the 1/64 part of all the oil produced and saved therefrom and the 1/8 of all moneys received as rental for gas from gas wells now on or hereafter drilled thereon.

{¶28} The February 20, 1933 warranty deed recorded March 2, 1933 numbered 60492 states the property is being conveyed from Edgar Gibbons to Wayne W. Frum. This deed states in part:

> the grantor reserves unto Charles H. Baker, his heirs and assigns from this conveyance an undivided 1/64 part of all the oil and gas royalty in and underlying said premises, the same to be the 1/64 part of all the oil produced and saved therefrom and the 1/64 part of all monies received as rental for gas from gas well[s] now on or hereafter drilled thereon. And the grantor reserves unto Charles H. Baker, Everett Baker, Maude Moore, Opal Leach and Elizabeth E. Baker, the 1/64 part of all the royalty of the oil and gas in

> and underlying said premises the same to be the 1/64 part of all the oil produced and saved therefrom and the 1/64 part of all the oil produced and saved therefrom and the 1/64 part of all monies received as rental for gas from gas wells now on or hereafter drilled thereon.

{¶29} The alleged root of title is a warranty deed recorded June 2, 1934 conveying the property from Wayne and Virginia Frum to Henry and Tillie Coffey. This deed references both the Charles Baker Royalty as well as the Baker Family Royalty. This warranty deed states in part:

> In addition to the royalties, reservations, the grantor reserved unto Charles E. Baker, his heirs and assigns, from this conveyance, an undivided 1/64 part of all the oil and gas royalty in and underlying said premises, the same to be the 1/64 part of all the oil produced and saved therefrom and the 1/64 part of all moneys received as rental for gas from gas well[s] now on or hereafter drilled thereon. And the grantor reserves unto Charles H. Baker, Everett Baker, Maude Moore, Opal Leach and Elizabeth E. Baker, the 1/64 part of all the royalty of the oil and gas in and underlying said premises, the same to be the 1/64 part of all the oil produced and saved therefrom, and the 1/64 part of all the moneys received as rental for gas from gas wells now on or hereafter drilled thereon.

{¶30} It is undisputed that the alleged root of title identifies the Charles Baker interest by name and the Baker Family interest by name, but it does not accurately recite either consistent with the original exceptions in the severance deed.

Deposition Testimony

{¶31} Phillip Guerra testified during his deposition that 1803 is an LLC owned by Guerra and Mike Ritz. Ritz runs title on prospective properties to determine if reservations are still valid. When deciding whether to pursue an interest, the company considers the size of the interest, the number of heirs involved, and whether the property is being drilled.

{¶32} 1803 currently owns about 18 different interests. Four of its interests are in litigation, seven are being paid, and about seven more are pending. Guerra said 1803 has attempted to acquire surface interests. They have also been contacted by mineral owners interested in selling their interests. (Guerra Depo.)

{¶33} Guerra said the interests 1803 seek to acquire were created decades before. He said 1803 identified the Baker interests by looking through the deed books in

the recorder's office. 1803 generally seeks to purchase reserved mineral interests because fewer of the owners would have been contacted before, so there is less competition. This is unlike dealing with surface owners, who are usually unwilling to speak with them since surface owners have repeatedly been asked to sell their interests. 1803 generally sends two to three letters before an interest owner will speak with them. He said that people think their correspondence is "junk mail." When speaking with owners, he warns them about the risks, including that an estate may need to be opened and sometimes a lawsuit will need to be filed. (Guerra Depo.)

{¶34} Guerra also testified that he and Mike "spent a good year going to the courthouse, going through the deed books, and tracking these reservations down." Guerra said he identified the reservations and "Mike would run the title." Guerra tracked down the heirs. When Mike advised him to track down the heirs, Guerra agreed he understood this to mean the interest or reservation was still valid. They looked for oil and gas reservations in the chain of title. They have also purchased rights from people who have called about selling their oil and gas interests. (Guerra Depo.)

{¶35} Upon acquiring an interest, 1803 first records it and then contacts the operator or driller to ask if they will recognize it as a valid interest. Some operators require 1803 to take curative efforts, such as reopening estates, whereas others require an action to quiet title. Guerra said he has spoken with about 500 owners about acquiring their interests, and most of them did not know they own oil and gas interests. However, some of them have already been approached by 1803's competitors. (Guerra Depo.)

{¶36} Regarding the Baker interest, Guerra said 1803 acquired its interests mostly via limited warranty deeds and one quit claim deed. He does not think any of the owners knew about their interests before 1803 contacted them. (Guerra Depo.)

{¶37} Guerra acknowledged advising sellers that a lawsuit would be filed in the next month or so. He explained this was not intended as a threat but as notice about what to expect and when. He said it was not uncommon to advise sellers they could be named in a lawsuit if they did not sell their interests. Guerra agreed that the interest holders', who did not sell their interest and who were eventually named in a lawsuit to quiet title, claims would be aligned with those made by 1803. (Guerra Depo.)

{¶38} 1803 approached Gulfport in May of 2021 with the deeds it acquired regarding the Baker interest. 1803 tried to avoid the lawsuit for 1.5 to two years. Gulfport advised Guerra that its title opinions did not recognize 1803's claims as a valid interest.

He said Gulfport is the only operator that is forcing 1803 to file suit to "get paid." Other operators made 1803 re-open estates, whereas some only required affidavits. (Guerra Depo.)

{¶39} 1803 focused on acquiring interests in Monroe County because the reservation language in that county tend to be unique since there are a lot of "royalty only interests," unlike other counties. 1803 felt these royalty-only interests were attractive to purchase since 1803 wanted to avoid litigation. He contrasted these interests to others that require trespass litigation, which "gets ugly." Ritz explained a royalty only-interest is less lucrative but usually can be "cleaned up" in probate court. Ritz acknowledged his company has had most of Monroe County's records on an external hard drive since approximately 2018. Ritz believes Guerra obtained it from one of his industry contacts. (Ritz Depo.)

Competing Summary Judgment Motions

{¶40} Bounty's motion contends there are no claims against its interest in the property and that it is not a necessary party to the litigation. Bounty asked the court to grant it a "take nothing judgment." (July 18, 2024 Bounty MSJ.)

{¶41} Three motions for summary judgment were filed on July 19, 2024, Lineback's motion, 1803's motion, and Gulfport's motion.

{¶42} Lineback's motion claimed she is entitled to judgment in her favor on 1803's claims. For cause, Lineback alleged 1803 lacked standing to assert its claims since its alleged ownership interests were extinguished via the MTA and abandoned under common law. As a result, Lineback claimed the Baker reservation vested in the surface owners. Lineback also claimed 1803 lacked standing since its alleged acquisition of the Baker interest was void under the doctrines of champerty and maintenance. (July 19, 2024 Lineback MSJ.)

{¶43} Like Lineback, Gulfport also argued 1803 lacked standing since its alleged ownership is void under the doctrines of champerty and maintenance. Gulfport also claimed it was entitled to summary judgment on its claims since the Charles Baker interest was extinguished via the MTA and since neither of the Baker interests included a share of the revenue for natural gas. Instead, Gulfport alleged the Baker interests were limited to 1/64 of the gas produced from the property. (July 19, 2024 Gulfport MSJ.)

{¶44} Gulfport alleged there are no specific references to the Charles Baker interest or specific identification of a recorded title transaction during the 40-year period

after the recording of the June 4, 1934 root of title warranty deed. Gulfport claimed because the language from the severance deed was never repeated, and the description of the interest is inconsistent throughout the chain of title, the references in the chain of title fail the test set forth by *Blackstone v. Moore,* 2018-Ohio-4959. Gulfport additionally argued that neither the root of title nor any subsequent deeds specifically identify the severance deed. (July 19, 2024 Gulfport MSJ.)

{¶45} Gulfport also claimed summary judgment was warranted in its favor on the breach of contract and accounting claims since, if the Baker interests were valid, Gulfport alleged the interest was limited to "gas well rentals." Assuming there was an ambiguity in the language, Gulfport urged that it must be construed against 1803, who was standing in the shoes of the grantor. In the alternative, Gulfport argued if the court did apply the oil portion of the Baker interests to natural gas production, those interests should be found to be limited to 1/64 of the gas produced from the property. This argument is based on caselaw interpreting double fractions in the oil and gas context. (July 19, 2024 Gulfport MSJ.)

{¶46} Consistent with the allegations in its complaint, 1803's motion claimed the Baker interests were preserved by operation of law. 1803 raised two ways the interest was preserved. First, it claims the interest was subject to two title transactions in the Monroe County public records during the 40 years after the recording of the root of title. Second, 1803 urged the court to find the interests were "inherent in the muniments" of title via specific identifications of the Baker royalties. 1803 stated in part "[a]lthough there is a discrepancy between the total royalty reserved, it is undisputed that the owners of the Baker Royalty are named in the Frum Deed. This is also true for all the subsequent deeds in the chain of title." 1803 contended the Baker royalty is an undivided ¼ royalty in gas produced from the property despite the use of "rental language." 1803 argued the use of the word rental was "meant to reflect the source of income from gas wells common at that time." Thus, 1803 sought summary judgment in its favor and a determination that the Charles Baker Royalty and the Baker Family Royalty are each 1/8 royalty interests in the oil and gas produced from the property. (July 19, 2024 1803 MSJ.)

{¶47} The Guy Appellants opposed Gulfport's and Lineback's motions. The Guy Appellants contended they own part of the Baker Family Royalty, but have no interest in the Charles Baker Royalty (unlike 1803). Thus, they point out the focus of the Gulfport motion for summary judgment was the invalidity of the Charles Baker Royalty under the

MTA, not the Baker Family Royalty. As a result, any finding of extinguishment under the MTA does not affect their interests.

{¶48} The Guy Appellants claimed their interest was specifically identified in the record chain of title by both the type of interest created and to whom the interest was created, and as such, the Baker Family Royalty was preserved under *Blackstone*. (August 20, 2024 Guy Defendants' Response in Opposition to Summary Judgment.)

{¶49} The Guy Appellants also emphasized that every title holder of the property between 1922 and 2003 has had direct notice that the property conveyance was subject to the Baker Family Royalty. They assert their interest was recited by name in every conveyance through 2003 before it was "picked up again 12 years later." The Guy Appellants urged the trial court to find that the recitation of an incorrect fractional interest in a subsequent deed's property description does not affect marketability and is of no consequence if *Blackstone* is satisfied.

{¶50} They further point out that even the deed upon which Gulfport relies for its fracking operations on the property recognizes and includes both the Charles H. Baker interest and the Baker Family interest, and this 2013 deed includes the volume, page number, and date of the severance deed creating these interests. The Guy Appellants urged the court to find the Baker Family interest is a 1/8 interest in the oil and gas and to reject Lineback's argument that it is only a 1/64 reservation of production.

{¶51} The Guy Appellants additionally urged the court to find the Baker Family interest reserves a royalty in oil and gas production despite the use of rental language. Last, they urged the court to reject Lineback's argument that they abandoned their interest. (August 20, 2024 Response in Opposition to Gulfport & Lineback.)

{¶52} In support of their opposition, the Guy Appellants attached the affidavit of Barbara Guy, a named defendant and successor and heir of part of the Baker Family interest. Guy states Gulfport's contention that none of the Baker heirs knew about the Baker interests until 1803 contacted them is false and she "knew of the royalty interest from an early age." Guy avers in her affidavit that she was told by her grandmother while growing up that her grandmother "owned a gas and oil royalty interest that had come down through her family." Guy further states she and her co-defendant aunts rejected 1803's offers to purchase their respective interests because they believed their "grandmother would have preferred that we keep what we had inherited from her." Guy

also stated it was not her grandmother's intent to abandon the interest. (August 20, 2024 Response in Opposition to Gulfport & Lineback, Affidavit of Barbara Guy.)

{¶53} Bounty Minerals' reply in opposition to summary judgment claimed because 1803 had not opposed Bounty's summary judgment motion, it should be granted in Bounty's favor, and the court should deem it the owner of an undivided 50% interest in the mineral rights. (September 3, 2024 Bounty Reply.)

{¶54} 1803's reply in support of its motion asserted it did not seek to litigate this matter until Gulfport made it clear that it would not recognize the Baker interests. 1803 reasserted its prior arguments and sought a judicial declaration that the Total Baker Royalty constitutes a ¼ royalty interest in the oil and gas produced from the property. 1803 also disputed the claims that its gas interest was not a royalty. (September 3, 2024 1803's Reply in Support of MSJ.)

{¶55} Gulfport's reply in support of its motion for summary judgment focused on the alleged improper nature of 1803's conduct regarding otherwise dormant minerals. Gulfport relied on the inference that 1803's source of information was improperly acquired via one of 1803's founders from a prior employer, an oil and gas company. Gulfport claimed this is circumstantial evidence that the information was illegally acquired. Thus, Gulfport claimed the Charles Baker Royalty was extinguished. (August 30, 2024 Gulfport Reply.)

{¶56} Gulfport claimed 1803 pressured the Baker heirs into selling the otherwise severed interests under threat of being named as defendants in a lawsuit. It alleged 1803 is a "litigation speculator." Furthermore, Gulfport claimed the Baker interests do not include "any interest" in the share of the gas produced. Alternatively, Gulfport claimed that if anything, the Bakers own 1/64 of gas produced from the property, not 1/8 of lease royalty, citing double fraction cases to reach this contention. (August 30, 2024 Gulfport Reply.)

Trial Court Decision

{¶57} The trial court granted summary judgment in favor of all defendants and against 1803 on all of its claims, finding 1803 has no standing to assert any claim to the mineral interests in this case.

{¶58} The court noted that 1803 was formed in 2018 by Guerra and Ritz. Guerra had performed work for Turner Oil & Gas, which performed work for Antero Resources, which was the original lessor of the McBride oil and gas lease. The trial court found there

were conflicting statements by Guerra and Ritz about how they located the interests they sought to acquire. The court emphasized Guerra said they spent a year in the recorder's office "going through books at random." Whereas Ritz stated that Guerra had given him an external hard drive containing the Monroe County deeds, yet Ritz did not know the source of the hard drive.

{¶59} The trial court emphasized 1803's "persistent efforts" to purchase an interest, noting that on some occasions the company sent 15 to 20 letters and even appeared at one owner's residence. The trial court emphasized that none of the Baker heirs "knew anything about the Baker Interests before 1803 Resources contacted them." The trial court also noted how 1803 focused its efforts "on property that has already been included in a drilling unit." The court emphasized 1803 "used this lawsuit to convince [some Baker heirs] to sell" their respective interests. (November 7, 2024 Judgment.)

{¶60} The trial court found this case was "virtually identical to" C*ardinal Minerals, LLC v. Miller*, 2024-Ohio-2133 (7th Dist.), in that case, 1803 "scouted" for oil and gas interests to purchase by searching the public records and then locating heirs of interests that were severed decades prior. The court then explained 1803 identified the "stale interests" that are already included in a drilling unit. 1803 then persistently pursued the owners of the interest, who did not know it existed, until the company was able to acquire it. (November 7, 2024 Judgment.) The trial court concluded 1803's "conduct" disturbs "the status quo" and stirs "up strife and contention where there otherwise would be none." The court condemned the conduct as violative of the doctrines of champerty and maintenance and found 1803 lacked standing to pursue its claims as a result. The court stated it was granting judgment against 1803 on all claims and in favor of defendants based on 1803's lack of standing. (November 7, 2024 Judgment.)

{¶61} Additionally, the trial court granted summary judgment in favor of Gulfport on all claims against 1803, as well as in Gulfport's favor on the Guy Appellants' claims against it. The court applied the MTA and held the Charles Baker Royalty was extinguished under the Marketable Title Act and none of the Baker interests include a share of the revenue for gas produced from the property. The court applied the *Blackstone* test and concluded "neither the 'Root of Title' nor any of the subject instruments in the forty years thereafter accurately describe the Charles Baker Interest. . . . The language from the severance deed is never repeated. Moreover, the description of the interest is inconsistent throughout the chain of title. As a result, . . . the references

in the chain of title fail the first prong of the *Blackstone* test." The trial court also concluded the third prong of *Blackstone* was not satisfied, and as such, the "Charles Baker Interest is not 'inherent in the muniments' of the chain of title."

{¶62} The court likewise held that the January 1956 affidavit of transfer does not constitute a title transaction under the MTA since it does not "transfer, encumber, or [otherwise] affect" title to the Charles Baker interest. Citing the Ohio Supreme Court's decision in *Peppertree Farms, L.L.C. v. Thonen*, 2022-Ohio-395, the court also noted that a will is not a title transaction when it does "not contain a specific devise" of the at-issue interest.

{¶63} The trial court did not explicitly rule on or address the MTA arguments regarding the Baker Family Royalty. The court did not rule on 1803's argument that the Baker Family Royalty was preserved from extinguishment under the MTA. Gulfport did not challenge the validity of the Baker Family Royalty in its summary judgment motion. The judgment stated it was a final judgment and found there was no just cause for delay.

{¶64} Last, regarding the arguments about the natural gas reservation language concerning both interests, the court concluded the grantors only reserved a portion of the "moneys received as rental" for gas wells drilled. It found based on the plain language of the Baker interests, there was no reservation of a share of the natural gas produced from the property. The court explained the Baker interests were a "fraction of a well rental for gas wells" and that the Baker interests do <u>not</u> constitute a collective 25% of all the gas produced from the property.

{¶65} The court concluded its judgment by stating that judgment was rendered in favor of Gulfport on all claims raised in the Guy Appellants' cross-claim and all claims raised by Gulfport in its counterclaim and cross-claim. (November 7, 2024 Judgment.)

{¶66} 1803 appealed this decision, and the Guy Appellants filed a cross-appeal. We consolidated their appeals.

{¶67} Mineral Development, Inc., amicus curiae, filed a brief in support of 1803's arguments. It urges reversal and remand. Mineral Development urges us to distinguish this case from *Cardinal Minerals* because the surface owner in this case never attempted to abandon the underlying minerals via the Dormant Mineral Act, and there is no recorded abandonment of the mineral interest. Moreover, 1803 claims it did not purchase the ownership rights to file suit here, unlike those in *Cardinal* where a suit was almost immediately filed. Mineral Development claims the trial court's decision results in the

unlawful restraint on the alienation of land and violates the fundamental right to buy and sell property.

Summary Judgment Standard of Review

{¶68} We review awards of summary judgment de novo. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105 (1996). Pursuant to Civil Rule 56(C), summary judgment is proper if:

> (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; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party.

Temple v. Wean United, Inc., 50 Ohio St.2d 317, 327 (1977).

{¶69} The party moving for summary judgment bears the initial burden of demonstrating the absence of genuine issues of material facts concerning the essential elements of the non-moving party's case. *Dresher v. Burt*, 75 Ohio St.3d 280, 292 (1996). The moving party must support the motion by pointing to some evidence in the record of the type listed in Civil Rule 56(C). *Id.* at 292-293. If the moving party satisfies its burden, the non-moving party has the reciprocal burden to demonstrate that a genuine issue of fact remains for trial. *Id.* at 293. The non-moving party may not rest on allegations or denials in her pleadings, but must point to or submit evidence of the type specified in Civil Rule 56(C). *Id.*; Civ.R. 56(E).

{¶70} "Trial courts should award summary judgment with caution, being careful to resolve doubts and construe evidence in favor of the nonmoving party." *Welco Industries, Inc. v. Applied Cos.,* 67 Ohio St.3d 344, 346 (1993). Doubts are to be resolved in favor of the non-movant. *Leibreich v. A.J. Refrig., Inc.*, 67 Ohio St.3d 266, 269 (1993). A court "may not weigh the proof or choose among reasonable inferences." *Dupler v. Mansfield Journal Co.*, 64 Ohio St.2d 116, 121 (1980).

Marketable Title Act

{¶71} As stated, the trial court applied the MTA and held the Charles Baker interest was extinguished under the MTA and that neither Baker interest includes a share of the revenue for gas produced from the property.

{¶72} The trial court did not explicitly rule on or address the MTA arguments regarding the Baker Family Royalty. The court did not rule on 1803's argument that the Baker Family Royalty was preserved from extinguishment under the MTA. Gulfport did not challenge the validity of the Baker Family Royalty in its summary judgment motion.

{¶73} 1803's MTA Arguments. 1803 raises one general assignment of error comprised of multiple issues for review. 1803's sole assigned error asserts: "The trial court erred as a matter of law when it denied summary judgment to Appellant and granted summary judgment in Appellees' favor."

{¶74} The MTA provides a "marketable record title" to an individual who has an unbroken chain of title of record to any interest in land for at least 40 years to that interest. R.C. 5301.48. With limited exceptions delineated in R.C. 5301.49, a marketable record title "operates to extinguish" all interests and claims that existed prior to the effective date of the root of title, and those pre-existing interests are "null and void." R.C. 5301.47(A); R.C. 5301.50.

{¶75} The MTA extinguishes property interests by operation of law after 40 years from the effective date of the root of title unless a saving event has occurred. *Id.* An interest extinguished by operation of the MTA cannot be revived. R.C. 5301.49(D).

{¶76} The MTA was enacted in 1961 with the legislative purpose of simplifying and facilitating land title transactions by allowing persons to rely on a record chain of title. *Corban v. Chesapeake Exploration, L.L.C.*, 2016-Ohio-5796, ¶ 17. "Balanced against the desire to facilitate title transactions is the need to protect interests that predate the root of title." *Blackstone v. Moore*, 2018-Ohio-4959, ¶ 8.

{¶77} The "root of title" is "that conveyance or other title transaction in the chain of title of a person . . . which was the most recent to be recorded as of a date forty years prior to the time when marketability is being determined." R.C. 5301.47(E).

{¶78} R.C. 5301.49 identifies exceptions from extinguishment, which the Ohio Supreme Court refers to as "saving events." *Corban*, 2016-Ohio-5796, ¶ 18. There are three primary saving events or ways a prior interest is preserved in the chain of title under the MTA:

> (1) the preexisting interest is specifically identified in the muniments that form the record chain of title; (2) the holder of the preexisting interest has recorded a notice claiming the interest, in accordance with R.C. 5301.51; or

> (3) the preexisting interest arose out of a title transaction that was recorded subsequent to the effective date of the root of title.

West v. Bode, 2020-Ohio-5473, ¶ 16, citing R.C. 5301.49(A), (B) and (D).

{¶79} Here, the defendants alleged and the trial court agreed that "there is an unbroken chain of title for forty years after the root of title [a warranty deed dated April 11, 1934] as to the remaining . . . (31/32) royalty interest." (April 25, 2023 Vine's Answer & Counterclaim.) The defendants alleged there is an unbroken chain of title for forty years after the root of title to the remaining 31/32 royalty interest in the oil and gas produced and saved from the property. The defendants claim the remaining 31/32 interest was extinguished under the MTA, relying on the 1934 Frum deed as the root of title.

{¶80} 1803 raises three distinct sub-arguments arising under the MTA. It challenges the trial court's decision finding the Charles Baker Royalty was extinguished via the MTA. 1803 likewise urges us to find that the Baker Family Royalty was not extinguished via the MTA.

{¶81} 1803 contends two title transactions occurred during the forty years after the root of title deed, i.e., the affidavit for transfer/record of real estate recorded on January 24, 1956 after Charles Baker died intestate and the July 20, 1973 probating of the will of Everett C. Baker. 1803 contends that both of these constitute title transactions that preserve the interests under R.C. 5301.49(D). Thus, 1803 urges us to find the interests were not extinguished by the MTA.

{¶82} 1803's first two sub-arguments allege the Baker interests were preserved by these title transactions. The trial court found the affidavit for transfer was not a title transaction. It did not address whether the filing of the will of Everett C. Baker was a saving event.

{¶83} R.C. 5301.49(D), Limitations on record marketable title, states in part:

> Such record marketable title shall be subject to: . . . [a]ny interest arising out of a title transaction which has been recorded subsequent to the effective date of the root of title from which the unbroken chain of title or record is started; provided that such recording shall not revive or give validity to any interest which has been extinguished prior to the time of the recording by the operation of section 5301.50 of the Revised Code.

{¶84} 1803's first MTA sub-argument concerns the Charles Baker Royalty and asserts the court erred by finding the 1956 affidavit of transfer was not a title transaction

that preserved the Charles Baker Royalty. The court found in part this transfer involved a "different Property" than that at issue in this case, and as such, the transfer did not "transfer, encumber or affect title" to the Charles Baker Royalty. 1803 directs us to the definition of a title transaction as including transactions "by will or descent." R.C. 5301.47(F).

{¶85} The MTA defines a "title transaction" as "any transaction affecting title to any interest in land, *including title by will or descent*, title by tax deed, or by trustee's, assignee's, guardian's, executor's, administrator's, or sheriff's deed, or decree of any court, as well as warranty deed, quit claim deed, or mortgage." (Emphasis added.) R.C. 5301.47(F). "Recording, in the context of R.C. 5301.49(D), includes filing in the probate court. R.C. 5301.47(B), (C)." *Claugus Family Farm & Forests, L.P. v. Piatt*, 2025-Ohio-291, ¶ 31.

{¶86} 1803 also claims because the affidavit of transfer expressly states that an original reservationist, Charles Baker, died intestate, any interest he owned necessarily passed to his heirs pursuant to the laws of descent and distribution, regardless of the fact that the interest was not identified in the instrument.

{¶87} In *Claugus v. Piatt,* 2025-Ohio-291, the appellant argued the Piatt interest was extinguished by the MTA because no title transaction referencing the Piatt royalty interest had occurred since 1909, and no estate had been filed in Monroe County for M.F. Piatt. The appellant argued the wills did not constitute recorded title transactions that prevented extinguishment by operation of the MTA. *Id*. at ¶ 24. We disagreed and found "the residuary clauses in the two wills at issue in this appeal constitute recorded title transactions, which transferred title to the . . . royalty interest and prevented extinguishment of the pre-root interest by the MTA." *Id*. at ¶ 4.

{¶88} We also concluded that unlike R.C. 5301.49(A), "R.C. 5301.49(D) contains no specificity language" or requirement. *Id*. at ¶ 41. We further relied on the Ohio Supreme Court's decision in *Heifner v. Bradford*, 4 Ohio St.3d 49, (1983), paragraph two of the syllabus, which opined: "Given the plain statutory language and the differences in kind in muniments of title versus title transaction, we find no reason to read the specificity requirement in R.C. 5301.49(A) into R.C. 5301.49(D)." *Id.*

{¶89} Notwithstanding, and as pointed out by Gulfport, this court has held that the filing of an affidavit of transfer does not transfer anything. *Hutchins v. Baker*, 2020-Ohio-1108, ¶ 25-26. Instead, it describes and memorializes a prior title transaction, but an

affidavit of transfer itself is not a title transaction. *Id.* Consequently, in light of this distinction, we find the affidavit of transfer does not prevent extinguishment. This aspect of 1803's argument lacks merit.

{¶90} 1803's second MTA sub-argument asserts the Baker Family Royalty was preserved and not extinguished due to the filing of the will of Everett Baker on January 10, 1973 in the Monroe County Probate Court during the 40 years after the recording of the Frum deed. 1803 claims the filing of the will containing a residuary clause conveying the remainder of the estate to his wife constitutes a title transaction and savings event.

{¶91} In *Warner v. Palmer,* 2019-Ohio-4078 (7th Dist.), we found a general residuary clause passing rights to mineral interests in the estate of one of the original reservationist was a title transaction even though the interests were not specifically identified. Thus, we found the heirs were holders, and "[b]ecause there was a title transaction during the 40 years following Appellants' root of title, Appellees' oil and gas interest has been saved rather than extinguished." *Id.* at ¶ 24-25.

{¶92} The Lineback Appellees counter that the will of Everett Baker only constitutes a recorded title transaction regarding his share of the Baker interest, not the entire Baker Family royalty. They claim that unlike the recorded will and title transaction in *Claugus v. Piatt,* which affected and preserved the entire interest, the will of Everett Baker only preserved his portion of the Baker Family interest. And thus, the remaining interest was extinguished. Gulfport does not explicitly address this argument and does not argue that the Baker Family Royalty was extinguished under the MTA.

{¶93} As stated, the trial court did not expressly rule on the viability of the Baker Family Royalty or this argument, and as such, we choose not to do so for the first time on appeal. Our review is limited to issues actually decided by the trial court. *Blakeman v. Cline*, 2025-Ohio-381, ¶ 40 (7th Dist.), citing *Lycan v. Cleveland*, 2016-Ohio-422, ¶ 21 (reversing the Eighth Appellate District's decision addressing res judicata on the merits for the first time on appeal).

{¶94} 1803's final MTA sub-argument challenges the trial court's conclusion that references to the Charles Baker interest in the chain of title fail the test set forth by the Ohio Supreme Court in *Blackstone v. Moore*, 2018-Ohio-4959.

{¶95} As stated, the trial court applied the MTA and held the Charles Baker interest was extinguished under the Marketable Title Act and that neither Baker interest includes a share of the revenue for gas produced from the property. The court applied

the *Blackstone* test and concluded "neither the 'Root of Title' nor any of the subject instruments in the forty years thereafter accurately describe the Charles Baker Interest. . . . The language from the severance deed is never repeated. Moreover, the description of the interest is inconsistent throughout the chain of title. As a result, . . . the references in the chain of title fail the first prong of the *Blackstone* test." The trial court also concluded the second and third prongs of the Blackstone test were not satisfied, and as such, the "Charles Baker Interest is not 'inherent in the muniments' of the chain of title." (November 7, 2024 Judgment.)

{¶96} Guy Appellants' MTA Arguments. The Guy Appellants contend the Baker Family Royalty was not extinguished by the MTA. They claim the trial court did not address the Lineback Appellees' argument that the Baker Family Royalty was extinguished via the MTA. Instead, the Guy Appellants claim the court impliedly overruled the argument, and thus, found the Baker Family Royalty was not extinguished. The Guy Appellants also emphasize that Gulfport did not assert the Baker Family Royalty was extinguished.

{¶97} In light of the Lineback Appellants' arguments that the Baker Family Royalty was extinguished, the Guy Appellants and 1803 ask us to determine that upon applying *Blackstone* to the Baker Family Royalty, it shows that interest is preserved and not extinguished under the MTA. For the following reasons, we agree.

{¶98} The language in the 1915 severance deed in *Blackstone* stated in part: "Except Nick Kuhn and Flora Kuhn, their heirs and assigns reserve one half interest in oil and gas royalty in the above described Sixty (60) acres." *Id*. at ¶ 3. The language at issue on appeal, which was recited in a subsequent 1969 deed in the chain of title was: "Excepting the one-half interest in oil and gas royalty previously excepted by Nick Kuhn, their [sic] heirs and assigns in the above described sixty acres." *Id*. The trial court found this was sufficient to preserve the interest from extinguishment.

{¶99} On appeal, the Ohio Supreme Court set forth a three-step inquiry to determine whether a reference to a prior interest was preserved under the MTA: "(1) Is there an interest described within the chain of title? (2) If so, is the reference to *that interest* a "general reference"? (3) If the answers to the first two questions are yes, does the general reference contain a specific identification of a recorded title transaction?" (Emphasis added.) *Blackstone v. Moore*, 2018-Ohio-4959, ¶ 12. The court defined the terms general and specific, stating:

> "General" is defined as "marked by broad overall character without being limited, modified, or checked by narrow precise considerations: concerned with main elements, major matters rather than limited details, or universals rather than particulars: approximate rather than strictly accurate." *Webster's Third New International Dictionary 944 (2002).*
>
> Our caselaw distinguishes between a general reference and a specific reference: if a reference is specific, it is not a general reference. *See Toth,* 6 Ohio St.3d at 341, 453 N.E.2d 639. "Specific" is defined as "characterized by precise formulation or accurate restriction (as in stating, describing, defining, reserving): free from such ambiguity as results from careless lack of precision or from omission of pertinent matter." *Webster's Third New International Dictionary* at 2187.

Id. at ¶ 13-14.

{¶100} The test set forth in *Blackstone* was an effort to explain the savings event delineated in R.C. 5301.49(A). This provision states that record marketable title shall be subject to or limited by:

> All interests and defects which are inherent in the muniments of which such chain of record title is formed; provided that a general reference in such muniments, or any of them, to easements, use restrictions, or other interests created prior to the root of title shall not be sufficient to preserve them, *unless specific identification be made therein of a recorded title transaction which creates such* easement, use restriction, or other *interest;* and provided that possibilities of reverter, and rights of entry or powers of termination for breach of condition subsequent, which interests are inherent in the muniments of which such chain of record title is formed and which have existed for forty years or more, *shall be preserved and kept effective* only in the manner provided in section 5301.51 of the Revised Code.

(Emphasis added.) R.C. 5301.49(A).

{¶101} Upon analyzing whether the language "Excepting the one-half interest in oil and gas royalty previously excepted by Nick Kuhn, their [sic] heirs and assigns in the above described sixty acres" was sufficiently specific, the court found it was. It noted "[t]he reference to the Kuhn royalty interest includes details and particulars about the interest in question." *Id*. at ¶ 15. It also emphasized the exception in the 1969 deed

included information about the type of interest created and it specified by whom the interest was originally reserved. Thus, it found the answer to the second question in *Blackstone* was no, and thus, there was no need to proceed to the third step of the test. *Id.* The Supreme Court also held, "nowhere does the Marketable Title Act require reference to the volume and page number or the date that the interest was recorded." *Id*. at ¶ 17.

{¶102} This court applied the *Blackstone* test in *RL Clark, LLC v. Hammond*, 2024-Ohio-5051 (7th Dist.). In *Hammond*, the exception that was repeated in the subsequent deeds in the chain of title stated: "excepting ... all oil and gas reserved by the Grantors' predecessors in title." *Id*. at ¶ 6-9. We concluded the subsequent conveyances containing this language were only a general reference because it did not identify the name of the former grantors, "meaning that a search of all prior records of all former grantors is necessary, and even then, the search might not uncover any reserved prior royalty interest." *Id*. at ¶ 30. Thus, in *Hammond*, the answer to the second question in *Blackstone* was yes.

{¶103} This court in *Hammond* also found the subsequent conveyances did not contain a reference to the amount of the original exception or interest. We found the phrasing used in the later deeds was "boilerplate, generic, vague, and different than the original description of the property interest." *Id*. at ¶ 35. And because the conveyances likewise did not reference the volume or page number of the severance deed, the language did not satisfy the third step of the *Blackstone* test, i.e., whether the general reference mentioned a prior recorded title transaction. *Id*. at ¶ 43-44.

{¶104} In the instant case, the documents in the chain of title and the language contained in each is undisputed. However, the parties' competing analyses under *Blackstone* and the effect of the language is disputed.

{¶105} The April 17, 1922 warranty deed conveying the property to Burkhead from the five Baker heirs created the interests and is the severance deed. This deed is numbered 47317, and the exception language states:

> In addition to the above royalty reservation, the grantor, Charles H. Baker, reserves and excepts from this conveyance, an undivided 1/8 part of all the royalty in oil and gas in and underlying said premises, the same to be the 1/64 part of all the oil produced and saved there-from, and the 1/8

> part of all moneys received as rental for gas from gas wells now on or hereafter drilled thereon.
>
> And the grantors, Charles H. Baker, Everett Baker, Maudie Moore, Opal Leach and Elizabeth E. Baker, reserve and except from this conveyance an additional undivided 1/8 part of all the royalty in oil and gas in and underlying said premises, the same to be the 1/64 part of all the oil produced and saved therefrom, and the 1/8 part of all moneys received as rental for gas from gas wells now on, or hereafter drilled thereon.

{¶106} The trial court found the root of title is a June 2, 1934 warranty deed numbered 51786, conveying the property from Wayne and Virginia Frum to Henry and Tillie Coffey. This deed references both the Charles Baker Royalty as well as the Baker Family Royalty. This warranty deed states in part:

> In addition to the royalties, reservations, the grantor reserved unto Charles E. Baker, his heirs and assigns, from this conveyance, an undivided 1/64 part of all the oil and gas royalty in and underlying said premises, the same to be the 1/64 part of all the oil produced and saved therefrom and the 1/64 part of all moneys received as rental for gas from gas well[s] now on or hereafter drilled thereon. And the grantor reserves unto Charles H. Baker, Everett Baker, Maude Moore, Opal Leach and Elizabeth E. Baker, the 1/64 part of all the royalty of the oil and gas in and underlying said premises, the same to be the 1/64 part of all the oil produced and saved therefrom, and the 1/64 part of all the moneys received as rental for gas from gas wells now on or hereafter drilled thereon.

{¶107} No one disputes that this June 2, 1934 warranty deed is the root of title. The "root of title" deed must account for the interest the person is claiming to have record marketable title to and not be the severance deed. *Miller v. Rice Drilling D LLC*, 2023-Ohio-3588, ¶ 62 (7th Dist.). The parties likewise agree that the root of title contains errors—both exceptions recited in the root of title lack the language "an undivided 1/8 part of all the royalty in oil and gas in and underlying said premises" that is included in both exceptions in the 1922 severance deed.

{¶108} Like 1803, the Guy Appellants contend the Frum deed itself specifically identifies the Baker Family Royalty thereby satisfying the second *Blackstone* step and the specificity requirement in R.C. 5301.49(A). They claim the Frum deed identifies both the

type of interest reserved, i.e., oil and gas royalty, as well as to whom the interest was reserved by name. They urge us to find that an error in the repetition of the fraction or share of the amount reserved or excepted in subsequent deeds is of no consequence.

{¶109} The Guy Appellants urge us to find that errors in a description in the chain of title do not impair marketability unless when considering all the circumstances, the description falls below the minimal requirement of sufficiency and definiteness.

{¶110} The trial court in this case found the answers to the first and second prongs of the *Blackstone* test were yes. It concluded the references to the exceptions in the chain of title are not specific, explaining the "description of the interest is inconsistent throughout the chain of title." The court also found the references were general because the interests were not accurately described in the references in the chain of title. Last, the court found the last prong of *Blackstone* was not satisfied since none of the documents in the record chain of title identify the severance deed by referencing its volume or page number in the Monroe County records.

{¶111} 1803 contends like *Blackstone* and unlike *Hammond*, Charles Baker and the other Baker heirs are identified by name in the Frum deed (root of title), such that any title examiner would quickly identify that both interests existed and be capable of identifying the severance deed where they are named to secure the exact language creating the interests. Thus, 1803 claims both interests are inherent in the muniments of title. We agree.

{¶112} 1803 argues the trial court's *Blackstone* analysis is erroneous and the court erred by holding the volume and page number of the severed interest must be identified to act as a savings event. We agree.

{¶113} Upon applying *Blackstone*, we conclude the answer to the first question is yes. We find the answer to the second question is no. The description is specific as it uses the precise names of the grantors and the multiple unique Baker names from the original exceptions contained in the 1922 deed. The description also uses precise figures to describe the amount of the exceptions, not just a vague or ambiguous statement such as "preserving all prior mineral reservations." The fact that the amount of the exceptions or interests reserved were inaccurately recited in the chain of title during the forty years after the severance deed is not determinative. Moreover, the subsequent recitations of the exceptions sufficiently describe the type of reservations created, i.e., oil and gas.

{¶114} Thus, we need not proceed to the third prong of *Blackstone*. The errors in the subsequent deeds about the extent or amount of the interests excepted do not preclude a reasonable title examiner from locating the severance deed. Accordingly, the subsequent references to the Charles Baker Royalty and the Baker Family Royalty in the chain of title are sufficiently specific and identified such that the interests are preserved under the MTA, not extinguished by it. R.C. 5301.49(A). Thus, we reverse the trial court's decision in this regard.

Standing & Champerty

{¶115} 1803's first argument under its only assigned error challenges the court's decision finding it lacked standing to pursue its claims. This sub-argument asserts: "The purchase of severed mineral interests that have never been subject to a prior Dormant Mineral Act abandonment attempt or filing an action to quiet title to the said mineral interests, does not implicate the doctrines of champerty and maintenance, and the purchaser has standing to pursue its claims."

{¶116} Standing presents a threshold issue. A party must have a personal stake in the outcome of the controversy to make a legal claim or seek judicial enforcement of a duty or right. *Moore v. Middletown*, 2012-Ohio-3897, ¶ 21. A plaintiff must demonstrate he suffered an injury caused by the defendant or traceable to the alleged conduct of the defendant, and the injury should have a legal or equitable remedy. *Id.* at ¶ 22, citing *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 560-561 (1992). Whether established facts confer standing to assert a claim is a question of law, which we review de novo. *Portage Cty. Bd. of Commrs. v. Akron*, 2006-Ohio-954, ¶ 90.

{¶117} Standing does not turn on the merits of the plaintiffs' claims but rather on "whether the plaintiffs have alleged such a personal stake in the outcome of the controversy that they are entitled to have a court hear their case." *ProgressOhio.org, Inc. v. JobsOhio*, 2014-Ohio-2382, ¶ 7.

{¶118} As stated, the trial court found this case was "virtually identical to" C*ardinal Minerals, LLC v. Miller*, 2024-Ohio-2133 (7th Dist.), in that 1803 "scouted" for oil and gas interests to purchase by searching the public records and then locating heirs of interests that were severed decades prior. 1803 identified the "stale interests" that are already included in a drilling unit. 1803 then persistently pursued the owners of the interest, who did not know it existed, until the company was able to acquire it. The trial court concluded that 1803's "conduct" disturbs "the status quo" and stirs "up strife and contention where

there otherwise would be none." The court condemned the conduct as violative of the doctrines of champerty and maintenance and found 1803 lacked standing to pursue is claims herein as a result. (November 7, 2024 Judgment.)

{¶119} First, 1803 asserts the record chain of title in this case does not include a public record notice of abandonment, like that of record in the *Cardinal Minerals* case showing the interest was terminated. Instead, 1803 claims it acquired interests with no known title defects such that it had standing and the *Cardinal Mineral* decisions are distinguishable and inapplicable. We agree.

{¶120} In *Cardinal Minerals,* we relied on the doctrines of champerty and maintenance, in addition to R.C. 5301.56(H). We found Cardinal sought out the property interests for the purpose of pursuing litigation despite the fact that abandonment was evident from the public record. We distinguished cases in which the mineral holders first sought a judicial declaration that the mineral interest had not properly been abandoned before there was a purported record transfer. *Cardinal Minerals*, at ¶ 32. Because Cardinal had accepted transfers of interests which did not exist in the public record, it did not acquire an interest and could not constitute a holder as that term is defined. Consequently, we found Cardinal Minerals suffered no injury. *Id*. at ¶ 39-41.

{¶121} In *Cardinal Minerals* we found that when Cardinal accepted the deeds, the recorded deed had a marginal notation indicating the severed mineral interest was abandoned and no longer effective. Thus, when Cardinal accepted its deeds, it did so while its source instrument revealed Cardinal was not acquiring a legally recognized interest. The same cannot be said about the instruments here.

{¶122} Extinguishment under the MTA does not involve or require anything to be filed of record. No action is required by a surface owner to trigger the MTA. Instead, extinguishment happens as a matter of law upon the passage of time and does not require the surface owner to file anything of record to either commence and or conclude extinguishment under the MTA. R.C. 5301.48. A marketable record title operates to extinguish all interest and claims that existed prior to the effective date of the root of title. R.C. 5301.47(A).

{¶123} Thus, we differentiate *Cardinal Minerals* from the instant case. In this case, the royalty interests were not extinguished under the MTA, and because this case involves the application of the MTA, there was no record notice of abandonment of record. Further, the mandate relied on in *Cardinal Minerals* set forth in R.C. 5301.56(H)(2)(c) is

wholly inapplicable. *Cardinal Minerals,* at ¶ 29 (applying R.C. 5301.56(H)(2)(c) and finding no interest in real property was conveyed to Cardinal since the heirs did not own anything of record).

{¶124} In *Cardinal Minerals* we also applied R.C. 5301.56, "Abandonment and preservation of mineral interests," which states in part:

> Immediately after the notice of failure to file a mineral interest is recorded, the mineral interest shall vest in the owner of the surface of the lands formerly subject to the interest, and the record of the mineral interest shall cease to be notice to the public of the existence of the mineral interest or of any rights under it. In addition, the record shall not be received as evidence in any court in this state on behalf of the former holder or the former holder's successors or assignees against the owner of the surface of the lands formerly subject to the interest.

R.C. 5301.56(H)(2)(c). Because this aspect of this assigned error has merit, we end our analysis here. 1803 has standing to pursue its claims because neither the Charles Baker Royalty nor the Baker Family Royalty were extinguished by the MTA such that the severed interests were not reunited with the surface estate. Thus, unlike the interest in *Cardinal Minerals*, 1803 acquired a valid royalty interest. The trial court erred in this regard.

{¶125} This assigned error has merit, and we reverse this aspect of the trial court's decision.

Interpretation & Construction of the 1922 Warranty Deed

{¶126} Both 1803 and the Guy Appellants challenge the trial court's interpretation of their gas interests as erroneous and contrary to the plain language of the 1922 severance deed.

{¶127} 1803 claims the trial court erred by concluding the original grantors under the Baker deed did not except or reserve any interest in a share of the natural gas produced from the property. Instead, the court found Charles Baker and the other Baker Family members only excepted a "fraction of a well rental for gas wells."

{¶128} 1803 states Gulfport and the trial court essentially found that the Baker reservations were limited to receiving part of the payment of rental required under a subsequent deed. 1803 claims this conclusion is contrary to the plain language of the reservation, which reserves 1/8 part of all the royalty, as well as states that it was

reserving "the 1/8 part of all moneys received as rental for gas" for wells now on or hereafter drilled on the property. 1803 claims the court's reading of these provisions wholly disregards the first clause of the reservation in favor of the third one.

{¶129} 1803 urges us to find that the use of the word "rental" was "meant to reflect the source of income from gas wells common at that time." Thus, 1803 sought summary judgment in its favor and a determination that Charles Baker Royalty and the Baker Family Royalty are each 1/4 royalty interests in the gas produced from the property. 1803 argues the clause "and the 1/8 all moneys received as rental for gas from gas wells now on, or hereafter drilled thereon" modifies and defines the amount of gas reserved and that, when drafted, the terms royalty and rental were used interchangeably. (July 19, 2024 1803 MSJ.)

The Guy Appellants' sole assignment of error asserts:

"The Trial Court erred in its construction of the deed creating the Baker Family Interest. By ignoring the plain meaning of the words included in the oil and gas reservation, it came to a construction that ignored and eliminated the first clause of that reservation as it related to gas."

{¶130} They contend the Baker Family Royalty and the Charles Baker Royalty are each a separate 1/64 interest in the royalty from oil and gas produced from the property (1/8 of 1/8). They claim the Baker Family Royalty and the Charles Baker Royalty total a 1/32 nonparticipating royalty interest.

{¶131} The Guy Appellants argue the trial court's interpretation of the reservation language as a whole eliminates the grantors' express stated intent that they were reserving and excepting an "undivided 1/8 part of all the royalty in oil and gas in and underlying said premises." The Guy Appellants argue the trial court's reading is nonsensical. The court concluded the words "and the 1/8 part of all moneys received as rental for gas from gas wells now on or hereafter drilled thereon" modify the independent clause that states: "the grantors . . . reserve and except from this conveyance an additional undivided 1/8 part of all the royalty in oil and gas in and underlying said premises." The Guy Appellants claim the court's interpretation essentially erases the 1/8 reservation of gas set forth in the first clause of the same sentence.

{¶132} On the other hand, Gulfport and the Lineback Appellees urge us to affirm the trial court's interpretation. They assert that upon reading the exception language in the 1922 deed as a whole, both the Charles Baker interest and the Baker Family interest

only reserved "1/8 of *rentals* in the gas, for a flat amount paid annually." Consistent with the trial court's holding, they claim both Baker interests were written stating they excepted "1/64th interest in oil, and 1/8 of any rental payment for gas, including a flat rate paid per annum."

{¶133} The language being dissected here is that creating the Charles Baker and the Baker Family reservations included in the April 18, 1922 warranty deed conveying approximately 60 acres to Juletta Burkhead from the Bakers.

{¶134} After describing the property being conveyed, this 1922 warranty deed repeats an existing reservation in favor of Henry and Ella Burk. The reference to the Burk reservation in the April 18,1922 warranty deed states:

> Also excepting and reserving the ½ of all the oil and gas royalty, being the 1/16 of all the oil in and under said premises heretofore reserved by Henry Burk and Ella M. Burk by deed dated the 3d day of October, 1907, and recorded in Vol. 70, at pages 484-485 of the Deed Records of Monroe County, Ohio, and to which reference is here made for a more specific description of said reservation of said oil and gas royalty.

{¶135} According to 1803, the Burk reservation created a life estate in favor of Henry and Ella Burk. This is not an issue on appeal. The Baker reservations that are at issue were set forth after the Burk reservation in the 1922 deed and state:

> In addition to the above royalty reservation, the grantor, Charles H. Baker, reserves and excepts from this conveyance, an undivided 1/8 part of all the royalty in oil and gas in and underlying said premises, the same to be the 1/64 part of all the oil produced and saved there-from, **and the 1/8 part of all moneys received as rental for gas from gas wells now on or hereafter drilled thereon.**
>
> And the grantors, Charles H. Baker, Everett Baker, Maudie Moore, Opal Leach and Elizabeth E. Baker, reserve and except from this conveyance an additional undivided 1/8 part of all the royalty in oil and gas in and underlying said premises, the same to be the 1/64 part of all the oil produced and saved therefrom**, and the 1/8 part of all moneys received as rental for gas from gas wells now on, or hereafter drilled thereon**.

(Emphasis added.)

{¶136} As stated, the trial court found there was no reservation of a share of the natural gas produced from the property. Instead, the court concluded the grantors, Charles Baker and the other four Baker heirs, reserved only a portion of the "moneys received as rental" for gas wells drilled. The court stated the Baker interests were a "fraction of a well rental for gas wells" and thus, the Baker interests do *not* constitute a collective 25% of all the gas produced from the property. The court adopted the analysis proffered by Gulfport and explained:

> More specifically, the first clause of the reservation deed language defines the interest as "an undivided 1/8 part of all the royalty in oil and gas in and underlying said premises." The very next clause explains how that interest is to be quantified with respect to both oil and gas, respectively. As to oil, "1/8 part of all the royalty" is further defined as "the 1/64 part of all of the oil produced and saved therefrom." This clearly means 1/64 of all of the oil produced and saved which was 1/8 of the landowner's royalty. As to gas, "1/8 part of all the royalty" is defined as "the 1/8 part of all moneys received as rental for gas from gas wells now on or hereafter drilled thereon." It is clear from this specific language that the "rental for gas" was the landowner's share and the grantor was reserving 1/8 of that share.

(November 7, 2024 Judgment.) For the following reasons, we disagree with the trial court's interpretation.

{¶137} The interpretation of deeds is generally a question of law for the court to decide. And courts should employ contract construction rules to interpret deeds, guided by a plain reading of the words in the four corners of the document. *McGiffin v. Skurich*, 2021-Ohio-2741, ¶ 20 (7th Dist.), citing *Long Beach Assn., Inc. v. Jones*, 82 Ohio St.3d 574, 576 (1998), and *LRC Realty, Inc. v. B.E.B. Properties*, 2020-Ohio-3196, ¶ 17.

{¶138} Further, and although not always explicitly referenced, the rules of grammar are elemental whenever reading and understanding a writing. *Oliveri v. OsteoStrong*, 2021-Ohio-1694, ¶ 21 (11th Dist.), citing 17A C.J.S. Contracts § 406; *Gahanna v. Ohio Mun. Joint Self-Ins. Pool*, 2021-Ohio-445, ¶ 12 (10th Dist.).

{¶139} We must read the applicable writing in its entirety, give effect to each provision, and ascertain the intent of the parties from considering it as a whole. *Saunders v. Mortensen*, 2004-Ohio-24, ¶ 16. "Courts should attempt to harmonize provisions and

words so that every word is given effect." *Christe v. GMS Mgt. Co.,* 124 Ohio App.3d 84, 88 (9th Dist.1997).

{¶140} "To construe or interpret what is already plain is not interpretation" and is not our function when a writing is unambiguous. *Lake Hosp. Sys., Inc. v. Ohio Ins. Guar. Assn.*, 69 Ohio St.3d 521, 524 (1994), quoting *Iddings v. Bd. of Edn. of Jefferson Cty. School Dist.*, 155 Ohio St. 287, 290 (1951) (addressing statutory construction). Absent an ambiguity, courts must apply a writing "as written and conduct no further investigation." *State v. Hurd*, 89 Ohio St.3d 616, citing *State ex rel. Herman v. Klopfleisch*, 72 Ohio St.3d 581, 584 (1995) (addressing statutory language).

{¶141} Where the terms of a written instrument are clear and unambiguous, a court cannot look beyond the plain language of the agreement to determine the rights and obligations of the parties. *Aultman Hospital Ass'n v. Community Mut. Ins. Co.*, 46 Ohio St.3d 51, 53 (1989). However, if a writing is reasonably susceptible to more than one meaning, then it is ambiguous and extrinsic evidence of reasonableness or intent can be employed. *City of Steubenville v. Jefferson Cty.,* 2008-Ohio-5053, ¶ 22 (7th Dist.).

{¶142} A severed estate is when the surface land and the mineral rights are separately owned. A severed mineral estate is comprised of a collection of legal rights, which is often referred to as a "bundle of sticks." A royalty interest is one of the five sticks in the bundle. *Kemp v. Rice Drilling D, LLC*, 2023-Ohio-4732, ¶ 29 (7th Dist.). The five attributes (or "sticks") of a severed mineral estate include the following: "right to develop (with ingress and egress), right to receive bonus payments, right to receive delay rentals, right to receive royalty payments, and right to lease (known as the executive right)." *Id.*, quoting *Eisenbarth v. Reusser*, 2014-Ohio-3792, ¶ 60 (7th Dist.).

{¶143} A royalty has been defined as the landowner's share of production, free of the expenses of production. "'A royalty interest is a smaller interest in a mineral estate which is a share of the product or proceeds reserved to the owner for permitting another to develop or use the property.'" *Kemp,* at ¶ 33, quoting 1 Williams & Meyers, Oil & Gas Law § 301 (1990); 8 Williams & Meyers, at p. 564.

{¶144} The right to receive payment for delay rentals or rental is a separate stick in the bundle. *Kemp*, at ¶ 29. Rental payments, often called delay rentals, are payments made to an owner of mineral rights to maintain a lease in active status until production starts. Rental is "the consideration paid by the lessee to the lessor in return for permission to delay drilling or production." *Corban v. Chesapeake Expl., L.L.C.*, 2016-Ohio-5796, ¶

37, quoting *Antelope Prod. Co. v. Shriners Hosp. for Crippled Children,* 464 N.W.2d 159 (Neb. 1991). Rental payments are usually annual payments that cease when production begins, and at that point, rental payments are typically replaced by royalty payments. *See Corban v. Chesapeake Exploration, L.L.C.*, 2016-Ohio-5796; *Texas Co. v. Davis*, 254 S.W. 304 (Texas 1923); *Oxford Oil Co. v. West*, 2016-Ohio-5684, ¶ 3, 18 (7th Dist.)*;* § 24:32. Delay rentals, 5 Mertens Law of Fed. Income Tax'n § 24:32. Rental and royalty are commonly reserved as separate interests by grantors conveying the surface. *See Pure Oil Co. v. Kindall,* 116 Ohio St. 188, 191 (1927), and *Talbot v. Ward,* 2017-Ohio-9213, ¶ 67 (7th Dist.).

{¶145} Words in a property conveyance that reserve or except an interest carve out an interest and generally set such interest aside in favor of the grantors. The reservations at issue here are comprised of three clauses. The first we refer to as the lead clause or the first clause.

{¶146} The lead clause is an independent clause, which states: "the grantor, . . . reserves and excepts from this conveyance, an undivided 1/8 part of all the royalty in oil and gas in and underlying said premises."

{¶147} Here, a plain reading of the Baker reservations runs contrary to the trial court's interpretation. The words in the lead independent clause, "the grantor, Charles H. Baker, reserves and excepts from this conveyance, an undivided 1/8 part of all the royalty in oil and gas in and underlying said premises" make it clear that the reservations reserve both oil *and* gas interests. There is no ambiguity that the reservation includes a gas reservation. The court's decision finding there is no gas reservation runs contrary to the plain language of the lead clause and fails to give all terms contained in the deed a meaning. We must apply the words as written and determine what the terms mean while affording all terms meaning.

{¶148} The second clause is a subordinate clause, which states: "the same to be the 1/64 part of all the oil produced and saved there-from."

{¶149} As the trial court held, the phrase "the same to be the 1/64 part of all the oil produced and saved there-from" is a subordinate clause. Subordinate clauses are dependent clauses that cannot stand alone and that modify or help to define or explain the independent clause it modifies. *Keller v. Foster Wheel Energy Corp.*, 2005-Ohio-4821, ¶ 14 (10th Dist.), citing *Bryan Chamber of Commerce v. Bd. of Tax Appeals*, 5 Ohio App.2d 195, 200 (1966). A plain reading of the independent clause "an undivided 1/8 part

of all the *royalty* in oil *and gas* in and underlying said premises" makes it clear that the grantors were reserving both oil and gas royalties.

{¶150} The second clause in both reservations modifies the first clause and helps to explain it. This second clause sets forth the scope or amount of the oil reservation and states, "the same to be the 1/64 part of all the oil produced and saved there-from." This interpretation is evident based on the drafter's use of the words "the same to be." Thus, both the Charles Baker reservation and the Baker Family reservation reserved 1/8 oil royalty of the grantor's fractional mineral interest. Thus, both are 1/64 oil reservations.

{¶151} The third clause in the reservation provides: "and the 1/8 part of all moneys received as rental for gas from gas wells now on, or hereafter drilled thereon."

{¶152} There are three proffered interpretations for the third clause. The trial court found the inclusion of the words, "and the 1/8 part of all moneys received as rental for gas from gas wells now on, or hereafter drilled thereon" modifies and explains the amount of the grantors' gas reservations. The court found this third clause reserved part of a flat fee made for delay rentals and thus did not reserve a gas royalty.

{¶153} We disagree. This interpretation conflicts and essentially eliminates words contained in the lead clause. The language in the third clause must be construed in conjunction with the lead statement that "the grantor . . . reserves and excepts from this conveyance, an undivided 1/8 part of all the royalty in oil and gas in and underlying said premises." Because the court's interpretation fails to give all terms contained in the reservation meaning, we disagree with its interpretation.

{¶154} As pointed out by the Guy Appellants, it does not make sense that the Baker family members, as grantors, intended to erase the gas reservation set forth in the first clause by language included in the third. It is illogical to conclude that the grantors drafted the reservation as reserving an 1/8 royalty in gas simply to eliminate that same interest by defining it as the right to receive money for rentals by language included in the same sentence. To the extent the trial court found that neither the Charles Baker reservation nor the Baker Family reservation contains a gas interest or reservation, we find error and reverse. This aspect of the parties' arguments has merit.

{¶155} One interpretation of this third clause is advanced by 1803. 1803 urges us to conclude that the drafter's use of the words "*undivided* 1/8 part of *all the royalty* in oil and gas *in and underlying said premises*" shows their intent to reserve an entire 1/8 interest—not just the surface owner's fractional interest as suggested. Further, according

to 1803, the words "royalty" and "rental" were used interchangeably in the past, and as such, the third clause defines the scope of the gas reservation as 1/8 of all the money received as royalty for wells now on or hereafter drilled on the property.

{¶156} 1803 directs us to two older cases and one West Virginia statute as demonstrating the terms rent and royalty were interchangeable in the early 1900s.

{¶157} Gulfport also acknowledges that historically oil and gas leases also provided for rental payments in a fixed amount per producing well instead of a fractional share of the gas produced. Gulfport agrees this was distinct from delay rentals. Nevertheless, Gulfport urges us to find that the lease in existence at the time the Baker reservations were created provided for an annual payment of $200 for producing wells, not a gas royalty. Thus, Gulfport claims the third clause reserved just part of an annual payment, if any, not a portion of the gas produced.

{¶158} As urged by the Guy Appellants, we agree the third clause is an independent reservation of rental payments. The words "and the 1/8 part of all moneys received as rental for gas from gas wells now on, or hereafter drilled thereon" is a separate reservation.

{¶159} As stated, royalty and rental are two separate "sticks" or aspects of mineral rights, which are commonly reserved as distinct rights when a property is conveyed. This fact, coupled with the drafter's inclusion of the comma before the conjunction "and" show the third clause does not modify the first independent clause.

{¶160} Instead, the third clause was written to stand alone. The use of the comma shows the second and third clauses are separate and should not be construed together. Consequently, the words "the same to be" only apply to the second clause and not the third.

{¶161} And unlike the second clause, the third clause does not include the words "the same to be" or language similarly showing the third clause was intended to modify or identify the scope of the gas reservation set forth in the first. A plain reading of the reservations convey the rental reservation is in addition to the oil and gas royalties. Had the drafter intended otherwise, the drafter could have either not used a comma or repeated the phrase "the same to be" before the final clause.

{¶162} Upon removing the second clause from the sentence, the reservation provides: "the grantor . . . reserves and excepts from this conveyance, an undivided 1/8 part of all the royalty in oil and gas in and underlying said premises . . . and the 1/8 part

of all moneys received as rental for gas from gas wells now on, or hereafter drilled thereon."

{¶163} "In the construction of a contract courts should give effect, if possible, to every provision therein contained, and if one construction of a doubtful condition written in a contract would make that condition meaningless, and it is possible to give it another construction that would give it meaning and purpose, then the latter construction must obtain." *Shops at Boardman Park, L.L.C. v. Target Corp.*, 2016-Ohio-7283, ¶ 12 (7th Dist.), quoting *Farmers' Nat. Bank v. Delaware Ins. Co.*, 83 Ohio St. 309 (1911), paragraph six of the syllabus.

{¶164} In light of the foregoing, we find the final clause is separate and was intended to stand on its own. Upon construing the writing as a whole, this reading affords all terms meaning and shows a reasonable interpretation is ascertainable. A court's construction of a written instrument should attempt to harmonize all the provisions of the document "rather than to produce conflict in them." *Summitcrest, Inc. v. Eric Petroleum Corp.*, 2016-Ohio-888, ¶ 35 (7th Dist.).

{¶165} We conclude that the Charles Baker reservation and the Baker Family reservations are unambiguous as to the amount of the oil reservations. Both reserve 1/8 part of the oil and gas "the same to be the 1/64 part of all the oil produced and saved therefrom." Thus, each reserves 1/64th of all the oil for a total of 1/32 royalty interests.

{¶166} As stated under the summary judgment section, Gulfport alternatively claimed that if the court did apply the oil portion of the Baker interests to natural gas production, those interests should be found to be limited to 1/64 of the gas produced from the property. This argument is based on caselaw interpreting double fractions in the oil and gas context.

{¶167} However, the limiting language in the second clause does not by its terms apply to the gas reservation, which reserves "an undivided 1/8 part of all the royalty in oil and gas in and underlying said premises" with no limiting or modifying language. As a result, 1803 urges us to find that both the Charles Baker Royalty as well as the Baker Family Royalty are a 1/8 interest in the entirety of the gas in and underlying the property. The plain language coupled with a lack of a second fraction or other limiting language shows the gas reservations are what the writing states—a 1/8 interest.

{¶168} However, because the trial court has not yet reached this remaining issue, we decline to do so for the first time on appeal. *See Fullum v. Columbiana Cnty. Coroner*,

2014-Ohio-5512, ¶ 2 (7th Dist.) (declining to address issues raised in summary judgment proceedings that were not addressed by the trial court). On remand, the trial court should consider the parties' competing arguments about the scope or amount of the Baker gas reservations in light of our determination that the third clause in the reservations does not modify or limit the gas interest. With this conclusion in mind, the trial court must determine the scope of the Baker gas reservations.

Conclusion

{¶169} For the foregoing reasons, we reverse the trial court's decision finding the Charles Baker reservation was extinguished under the MTA. The Charles Baker interest was not extinguished.

{¶170} Based on the facts present here, we also conclude the trial court erred by finding 1803 lacks standing to pursue its claims based on the doctrines of champerty and maintenance.

{¶171} Additionally, we find that both the Charles Baker interest and the Baker Family interest reserve a royalty in the oil and gas, and the trial court erred by concluding there was no gas royalty reserved. On remand, we direct the trial court to determine the extent or amount of the Charles Baker and Baker Family gas reservations. Thus, we reverse the trial court's judgment and remand for further proceedings.

Hanni, J., concurs.

Dickey, J., concurs.

For the reasons stated in the Opinion rendered herein, the final judgment and order of this Court, is to reverse the trial court's decision finding the Charles Baker reservation was extinguished under the Marketable Title Act. The Charles Baker interest was not extinguished. We hereby remand this matter to the trial court for further proceedings to determine the extent or amount of the Charles Baker and the Baker Family gas reservations according to law and consistent with this Court's Opinion. Costs to be taxed equally against Appellee, Gulfport Appalachia, LLC, and the Lineback Appellees, Adrienne Lineback, Donald McBride, Jane McBride, & Vine Royalty, L.P.

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.