[Cite as *Marty v. ODMA Resources, L.L.C.*, 2026-Ohio-4273.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MONROE COUNTY

BRENT E. MARTY ET AL.,

Plaintiffs-Appellants,

v.

ODMA RESOURCES, LLC, ET AL.,

Defendants-Appellees.

OPINION AND JUDGMENT ENTRY
Case No. 26 MO 0001

Civil Appeal from the
Court of Common Pleas of Monroe County, Ohio
Case No. 2023-170

BEFORE:
Cheryl L. Waite, Carol Ann Robb, Mark A. Hanni, Judges.

JUDGMENT:
Affirmed.
Remanded.

Atty. Sara E. Fanning, *Atty. Timothy B. Pettorini*, Roetzel & Andress, LPA, for Plaintffs-Appellants and

Atty. Katherine M. K. Kimble, *Atty. Nichole D. Hamsher*, Knight Miller Law, Ltd.; *Atty. Thomas D. Whit*e, *Atty. Austin T. Warehime*, Eques Law Group, for Defendants-Appellees Ward Heirs and

Atty. David K. Schaffner, Schaffner Law Offices Co., LPA, for Defendant-Appellee ODMA Resources, LLC and

*Atty. Joseph Durbi*n, Johnson & Johnson Law Firm, for Defendants-Appellees Judith Bogaard, Patricia Komar and Timothy Daniel and

Atty. Paul N. Garinger, A*tty. Kristopher J. Armstrong*, Barnes & Thornburg, LLP, for Defendant-Appellee Expand Appalachia LLC f.k.a. SWN Production Company, LLC

Dated: October 27, 2026

WAITE, P.J.

{¶1} Appellants, surface owners and partial royalty owners of 98.062 acres in Monroe County, appeal the decision to grant summary judgment to Appellees, royalty owners and the lessee of oil and gas leases on the property, regarding the interpretation of a royalty interest in a 1921 deed. Appellants contended the royalty interest was a fixed 1/16 royalty, but the trial court held that the royalty interest was a floating one-half royalty. Appellants also had claims regarding whether the leases prohibited the oil company lessee from receiving a refund from previously overpaid royalties, and whether the leases were breached due to the failure to promptly put unpaid royalties into escrow accounts. The trial court held that the leases did prohibit refunds of royalties, but that the oil company did not demand any refunds and Appellants were not required to make any refunds. The trial court also held that the oil company did not commit an actionable breach when it withheld royalties but later placed the money in an interest-bearing escrow account.

{¶2} Appellants argue that the royalty reservation in the 1921 deed is a fixed 1/16 interest, but the trial court correctly held that the interpretation which gives meaning to all parts of the reservation is that it is a floating one-half interest. Appellants' argument that

the lessee improperly obtained a refund is not supported by either the meaning of the word "refund" or the facts of this case. Finally, Appellants argument that they should have been awarded court costs and attorney fees as damages for breach of contract due to the lessee's failure to immediately put unpaid royalties in escrow is unpersuasive because Appellants did not demonstrate they incurred any damages, and damages must be established to prove breach of contract.

{¶3} Appellee ODMA filed a separate cross-appeal arguing that its counterclaim was not fully adjudicated by the trial court, or was wrongly decided. Since the reason used by the trial for dismissing ODMA's counterclaim does not actually dispose of the counterclaim, we remand the case for the trial court to fully consider the counterclaim and to make a separate ruling on the counterclaim. The trial court judgment is affirmed in all aspects except for the issue of ODMA's counterclaim, and the case is remanded solely on that issue.

Facts and Procedural History

{¶4} This case involves a royalty interest underlying several parcels in Adams Township, Monroe County, Ohio ("the Property). On October 31, 1916, 197.81 acres were conveyed to F.H. Ward and H.L. Ward. In a warranty deed dated July 14, 1921 and recorded on August 5, 1921, F.H. Ward (and his wife Clara) conveyed their one-half interest in the property to H.L. Ward (hereinafter "the 1921 Ward Deed" or simply "the Ward Deed"), but they included a reservation of certain royalty interests to themselves (hereinafter, "the Ward Reservation Interest"). The royalty interest states:

> The grantors for themselves, their heirs and assigns, reserves and except from this conveyance all the one-half part of all the royalty in oil and

> gas in and underlying all the premises above described. Said royalty interest reserved to be the one-sixteenth part of all the oil produced and saved from said premises, and the one-half part of any and all moneys received as rental for gas from gas wells drilled thereon; and the one-half part of any and all moneys received from sale of gasoline derived therefrom.

(7/27/23 Complaint, Exhibit 3, 1921 Deed.)

{¶5} Appellants are surface owners of approximately 98.062 acres of the 197.81 acres to which the Ward Reservation Interest applies. They also own part of the royalty rights to the oil and gas. Through various conveyances the current surface owners are:

1. Plaintiff Co-trustees of the Marty Family Revocable Trust ("Marty Trust"), 67.092 acres.

2. Plaintiff Russell C. Knowlton ("Knowlton"), 24.891 acres.

3. Plaintiff Zachary S. Marty and Halli Marty ("Martys"), 3.69 acres.

4. Plaintiff Lewis W. Matz, Jr. and Lisa A. Matz ("Matzes"), 2.389 acres. The Matzes owned the property until May 12, 2023, and thereafter it was owned by LOP Investments, LLC.

{¶6} On December 8, 2012 the Marty Trust and the other Plaintiffs/Appellants leased their interests in the oil and gas to Eclipse Resources I, L.P. (The Leases). Eclipse Resources I, L.P. was later to be called SWN Production (Ohio), LLC (SWN), and is now known as Expand Energy Corporation (hereinafter collectively referred to as SWN).

These leases provided for 20% royalties (aka 1/5 royalty) rather than the standard 1/8 (12.5%) royalty. Between 2015 and 2022, the property was pooled into the Sawyers Unit, the Crawford C Unit, and the Rotherbuehler A Unit. The property was placed in production and continues to produce.

{¶7} On May 24, 2022 SWN sent letters to each of the Appellants informing them that SWN had overpaid royalties based on a reinterpretation of the Ward Reservation Interest as a floating one-half royalty.

{¶8} On July 27, 2023 Appellants Brent E. Marty and Belinda G. Marty, Co-trustees of the Marty Family Revocable Trust (Marty Trust), along with Russell C. Knowlton, Zachari S. Marty, Halli Marty, Lewis W. Matz, Jr., Lisa A. Matz, filed a declaratory judgment action against 49 defendants, including the Ward Heirs, as well as against Appellees ODMA Resources, LLC (ODMA) and SWN Production (Ohio), LLC (SWN). The defendants were those thought to be holding the rights to the Ward Reservation Interest, as well the company that held leasing rights to the property. The Ward Heirs are the heirs of F.H. Ward and Clara Ward and claim to be the owners of part of the oil and gas royalties underlying the Property. Various Ward Heirs conveyed part of their interest in the Ward Reservation Interest to ODMA in 2016. The Ward Heirs and ODMA are the collective owners of the Ward Reservation Interest.

{¶9} The complaint sought a judgment declaring that the Ward Reservation Interest provides for a fixed one-sixteenth royalty for oil, one-half of any gas well rental payments, and a floating one-half royalty for gasoline. The complaint also sought judgment that Appellants are the owners of the full royalties for the production of natural gas on their respective parcels. In addition, the complaint asked for judgment that

Appellants' oil and gas leases forbade SWN from obtaining refunds of previously paid money. Finally, Appellants asked the court to declare that SWN breached the leases, giving Appellants the right to an accounting of all production and funds in suspense for production, and damages.

{¶10} The Ward Heirs filed an answer on September 27, 2023. SWN filed its answer on September 29, 2023.

{¶11} ODMA filed an answer, counterclaim, and crossclaim on October 10, 2023. The counterclaim against Appellants alleged that ODMA holds an undivided royalty interest in the gas and oil, that its interest is subject to Appellants' leases, that ODMA's title to their property has been slandered by Appellants, that SWN paid bonuses and royalties to Appellants, that Appellants have not forwarded ODMA's share of bonuses and royalties, that Appellants have improperly suspended royalty payments to ODMA, and that ODMA suffered damages. ODMA sought costs and attorney fees. The cross-claim was filed against SWN and alleged SWN improperly suspended royalty payments to ODMA, and that ODMA suffered damages. ODMA asked for an accounting of all oil and gas produced, an order requiring SWN to show proof that unpaid royalties were being held in an interest-bearing escrow account, that prior and ongoing royalty payments be paid, and costs and attorney fees.

{¶12} The Ward Heirs filed a counterclaim on October 25, 2023 seeking a declaration that the Ward Reservation Interest is a floating one-half royalty interest.

{¶13} From October through December of 2025, all the parties filed motions for summary judgment and responses to Appellants' claims and the various crossclaims and counterclaims. Appellants and SWN filed their motions for summary judgment on October

27, 2025. ODMA also filed its motion for summary judgment on October 27, 2025. Although ODMA's motion contains the word "counterclaim" in the caption, it does not ask for summary judgment on its counterclaim. Instead, ODMA only sought summary judgment on the issues contained in Appellants' complaint.

{¶14} On March 9, 2026 the trial court issued its judgment, incorporating its findings of fact and conclusions of law. The court found that the Ward Reservation Interest was a floating one-half royalty in oil and gas. The court granted the Ward Heirs' counterclaim and denied the first claim in Appellants' complaint. While the court held that the summary judgment motion of ODMA and defendant Daniel Siblings aligned with that of the Ward Heirs, no further judgment was issued on their motions.

{¶15} Regarding Appellants' second and third claims against SWN, the court found that on May 24, 2022, SWN sent letters to Appellants stating that it had determined it had overpaid royalties to Appellants based on its new interpretation that the Ward Reservation Interest was a 50% royalty interest rather than a 6.25% interest. SWN told Appellants that it would correct the overpayments by deducting them from future royalty payments. The court interpreted SWN's action as treating past overpayments as an advance on future royalties. The court held that SWN did not seek a refund of payments and did not breach the lease. Count two of Appellants' complaint was denied. The court also found that SWN did not breach the leases by suspending royalty payments, that SWN placed the suspended royalties in in an interest-bearing escrow account, that interest was paid from the time SWN suspended payments, and that SWN is calculating interest at the statutory rate. Count three of Appellants' complaint was denied.

{¶16} The court also ruled on ODMA's cross-claim and denied it in full based on the lack of privity of contract between ODMA and SWN. The court purported to rule on ODMA's counterclaims against Appellants, but nothing in the judgment entry actually consists of a ruling on most of ODMA's claims. The court did state that "the Summary Judgment Motions of Defendant ODMA Resources and Defendant Daniel Siblings align with and mirror the Motion for Summary Judgment of Defendant Ward Heirs. They too urged the Court to interpret the Ward Reservation as a floating Royalty Interest." (3/9/26 J.E., 13.) ODMA's motion for summary judgment did not request summary judgment on its counterclaim (despite the caption of the motion including the word counterclaim).

{¶17} Appellants filed their appeal on April 6, 2026. ODMA filed its cross-appeal on April 13, 2026.

{¶18} There are four Appellee briefs on appeal. Brief I is from SWN and addresses issues one and two of the appeal. Brief II is from ODMA and addresses issues one and two of the appeal and the cross-appeal. Brief III is from Bogaard and addresses issue three of the appeal. Brief IV is from Ward and addresses issue three of the appeal. In Appellants' reply brief they address ODMA's cross-appeal.

Summary Judgment Standard of Review

{¶19} An appellate court conducts a de novo review of a trial court's decision to grant summary judgment, using the same standards as the trial court set forth in Civ.R. 56(C). *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105 (1996). Before summary judgment can be granted, the trial court must determine that: (1) no genuine issue as to any material fact remains to be litigated, (2) the moving party is entitled to judgment as a matter of law, (3) it appears from the evidence that reasonable minds can come to but

one conclusion, and viewing the evidence most favorably in favor of the party against whom the motion for summary judgment is made, the conclusion is adverse to that party. *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317, 327 (1977). Whether a fact is "material" depends on the substantive law of the claim being litigated. *Hoyt, Inc. v. Gordon & Assoc., Inc.*, 104 Ohio App.3d 598, 603 (8th Dist. 1995).

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

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

ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED AS A MATTER OF LAW WHEN IT GRANTED SUMMARY JUDGMENT IN APPELLEES' FAVOR AND DENIED SUMMARY JUDGMENT TO APPELLANTS.

{¶22} Appellants' single assignment of error raises three sub-issues:

1. Did SWN breach the leases by demanding a refund of previously paid royalties?

2. Did SWN breach the leases by refusing to place Appellants' royalties in an interest-bearing escrow account?

3. Does the Ward interest consist of: a) a fixed 1/16 oil royalty; b) a 1/2 gas well rental; and c) 1/2 gasoline royalty; and d) no royalty on dry natural gas.

Issue One: Whether SWN breached the leases by demanding a refund of previously paid royalties.

{¶23} Appellants provide that the Title provisions in the leases that each Appellant signed with SWN contain the following language: "All advance delay rental payments, royalty payments, shut in payments and any other payments made to Lessor under this Lease are non-refundable." (10/27/25 Plaintiffs' MSJ, Exs. A-9 to A-12.) Appellants argue that, under the reasoning of *Cardinal Minerals, LLC v. Blatt*, 2025-Ohio-1159 (7th Dist.), an identical lease provision was held to disallow SWN from obtaining a refund or to recoup previously paid money. Appellants claim that the following line from the *Cardinal Minerals* case establishes that SWN could not adjust future royalties to account

for prior overpayments: "Thus, to the extent the trial court concluded the lease authorized SWN/IOG to recoup or recover a refund of lease payments already made, we disagree." *Id.* at ¶ 97.

{¶24} Appellants argue that SWN sent a letter to Appellants on May 24, 2022 stating that it had overpaid royalties based on calculations made by SWN's predecessor, and that SWN would start making adjustments to future royalty payments to account for the overpayments. The trial court interpreted this as SWN treating the past overpayments as advancements on future royalties, and not as taking refunds. (3/9/26 J.E., p. 15.) Appellants, in contrast, argue that SWN's action is the equivalent of taking refunds of amounts already paid, that this is a breach of the lease, and that Appellants were entitled to summary judgment as to these claims against SWN. Appellants' argument is essentially that any overpayment, advance payment, or even scrivener's error in the accounting by SWN is a windfall for Appellants, and cannot be adjusted in SWN's accounts because any such adjustment must be characterized as a "refund."

{¶25} Appellee SWN also relies on the *Cardinal Minerals* case, as did the trial court. They contend that, although the language cited by Appellants does indeed prevent SWN from seeking a refund, SWN has not asked for or obtained any refund, and its actions do not constitute the request for a refund. SWN correctly argues that a lease is a contract, subject to contract law and interpretation, and that the intent of the parties to a contract is contained in the words used in the contract. *State ex rel. Petro v. R.J. Reynolds Tobacco Co.*, 2004-Ohio-7102, ¶ 23. Common undefined words in a contract are given their ordinary meanings unless manifest absurdity results. *Beverage Holdings, L.L.C. v. 5701 Lombardo, L.L.C.*, 2019-Ohio-4716, ¶ 13. SWN contends that the verb "to

refund" is a transitive verb (in the context of Appellants' leases) meaning to give back, send back, put back, or bring back to a former proper place. *Black's Law Dictionary* (12th ed. 2024); https://merriam-webster.com/dictionary/return (accessed June 24, 2026). SWN, and the trial court, conclude that there has been no request for Appellants to give back, send back, put back, or bring back any funds that SWN transferred to them.

{¶26} The trial court's analysis of this Court's *Cardinal Minerals'* opinion is instructive, because the trial judge in *Cardinal Minerals* is also the trial judge in the instant case. The judge noted that this Court's dicta discussion of whether SWN could recoup royalties misrepresented what had actually occurred in the case. *Id.* at ¶ 96-97. The trial judge held that SWN may seek a recoupment of the portion of royalties paid but not owed. *Id.* at ¶ 95. The lease provisions do not discuss recoupment. The parties in the instant case agree that the lease provisions here are the same as in *Cardinal Minerals.* We held in that case:

> However, this aspect of the trial court's analysis was made while addressing the argument that SWN/IOG breached the lease agreement by withholding 100% of the royalties, instead of the 50% contested. SWN/IOG argued it was withholding all the royalties in an effort to avoid overpaying, in the event Cardinal was successful in its attempt to quiet title to the disputed mineral interests in its favor. Thus, the trial court's statements addressing SWN/IOG's right to a refund or to recoup royalties erroneously paid, is dicta. The court was attempting to explain why the lease permitted SWN/IOG to suspend all royalty payments during litigation.

Id. at ¶ 96

{¶27} In addressing the trial court's dicta, we stated:

> As the Binegar Heirs argue, the Lease Addendum states that all payments made to the lessor are nonrefundable. Further, the Lease Addendum explicitly provides that its provisions are controlling over any conflicts between the Addendum and the Lease. Thus, to the extent the trial court concluded the lease authorized SWN/IOG to recoup or recover a refund of lease payments already made, we disagree. However, because SWN/IOG did not assert a claim for a refund or for recoupment, any error in this regard is of no consequence.

Id. at ¶ 97.

{¶28} It unclear how the words "recoup" or "recoupment" first entered the discussion in *Cardinal Minerals*, because that word in not found in the lease provisions under review (just as the idea of recoupment is not under review in this case). What is absolutely clear is that an appellate court's discussion of a trial court's dicta is also dicta. The reason this is important is that the legal issue being discussed in dicta has not been tested, either by the trial court or the appellate court. It is not part of the actual litigation between the parties, and therefore, may not reflect an accurate look at the facts, the oil and gas contracts, the law, or the actual dispute between the parties. Dicta based on dicta is not law.

{¶29} As much as Appellants would like the lease to provide that SWN cannot recoup its advanced royalty payments, the lease does not contain any language to that

effect. It simply says royalty payments are non-refundable. *Cardinal Minerals* does not help us in this analysis because we concluded that the trial court statement about SWN seeking a recoupment was of "no consequence." *Id.* ¶ 97.

{¶30} In the instant case, the trial court concluded that no refund has been sought or taken and Appellants' second claim in their complaint was properly denied. Hence, we are now directly confronted with the question of whether SWN's accounting for advanced or overpaid royalties through deduction from future royalties constitutes a refund.

{¶31} The fundamentals of contract law are not disputed by the parties. To successfully prove a breach of contract, one must show the existence of a contract, performance by the plaintiff, breach by the defendant, and damage or loss to the plaintiff. *Crockett Homes, Inc. v. Tracy*, 2024-Ohio-1464, ¶ 116 (7th Dist.). Oil and gas leases are contracts, subject to the rules of contract interpretation. *Lutz v. Chesapeake Appalachia, L.L.C.*, 2016-Ohio-7549, ¶ 11. The rights and remedies of the parties to an oil and gas lease are determined by the terms of the written instrument. *Swallie v. Rousenberg*, 2010-Ohio-4573, ¶ 61 (7th Dist.). When construing a contract, a court's principle objective is to ascertain and give effect to the intent of the parties. *Hamilton Ins. Servs., Inc. v. Nationwide Ins. Cos.*, 86 Ohio St.3d 270, 273 (1999). The intent of the parties to a contract is presumed to reside in the language they chose to employ in their agreement. *Kelly v. Med. Life Ins. Co.*, 31 Ohio St.3d 130 (1987), paragraph one of the syllabus. A contract must be read as a whole, and the intent of each part will be gathered from a consideration of the whole. *Foster Wheeler Enviresponse, Inc. v. Franklin Cty. Convention Facilities Auth.*, 78 Ohio St.3d 353, 361 (1997). "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).

{¶32} Appellants urge us to project meaning into the word "refund" that is not part of its common definition. Appellants have not cited to anything in the leases preventing SWN from accounting for the royalties it is paying, balancing its books, or even recouping overpayments, as long as they do not seek a refund. Obviously, when any person advances funds for any purchase, they expect the funds to be applied to the purchase. A non-refundable deposit can be applied to the object of the deposit without it being considered as a refund. A non-refundable deposit, payment, or advance simply means the payor of the funds cannot demand that the payee reach into its own funds and directly return the money. A refund is the act of the payee returning funds. That did not happen here, and SWN did not ask or demand for Appellants to return funds from their own accounts. The trial court's interpretation of the contract is correct, and Appellants have never been required to refund monies, in breach of their contract.

Issue Two: Whether SWN breached the leases by refusing to place Appellants' royalties in an interest-bearing escrow account.

{¶33} This issue is addressed in Appellants' brief and Appellee Brief I (SWN), and involves an interpretation of the following provision of the leases entered into between Appellants and SWN:

> [I]f any question, claim or controversy is asserted that is materially inconsistent with all or a part of Lessor's right, title, interest or ownership on this Lease, the oil and gas, and all other rights herein granted, then Lessee

> may, at its sole discretion, immediately withhold any payments due hereunder and deposit them into an interest-bearing escrow account until a final nonappealable judicial determination has been made regarding such question, claim or controversy, whereupon Lessee shall distribute the withheld payments among those judicially determined to be entitled to such payments.

(10/27/25 SWN MSJ, Title provision of leases, Exh. B.)

{¶34} Appellants' argument has two parts. First, they believe SWN did not have the right to "recoup" money that was advanced for royalty payments based on SWN's reliance on its predecessor's faulty interpretation of the Ward Reservation Interest. Appellants contend that all the money that was adjusted from future royalties to account for prior overpayments should have been deposited in an interest-bearing escrow account from the time that the accounting correction began to be made. This argument fails based on our discussion and holding in Appellants' first sub-issue argued earlier.

{¶35} Appellants' second argument, here, is that SWN failed to immediately deposit all suspended royalties into an interest-bearing escrow account when it made the decision to withhold all royalties during the pendency of the dispute between the parties. Appellants argue that SWN failed to deposit money from the Sawyers Unit ($117,675. 84) into an account from the date of suspending the royalties until June 13, 2025. They also contend SWN failed to deposit money from the Crawford Unit ($40,030.20) and the Rothenbuhler Unit ($10,082.17) from the date of suspending royalty payments until mid-way through the dispositive motions process, but do not specify the dates.

{¶36} Appellees argue that the trial court determined there was no breach of contract damages caused by any delay in depositing these funds because SWN deposited them into an escrow account, along with back interest, while this litigation was taking place. Appellants respond by saying that even if this was true, they did have damages because they were required to expend funds to file a lawsuit to force SWN to conform to the Leases, and at minimum their damages were court costs. Appellants posit that damages for breach of contract should put the injured party in the same position as he or she would have been in without the breach. *Crockett Homes, Inc. v. Tracy*, 2024-Ohio-1464, ¶ 116 (7th Dist.). The expenditure of their court costs means Appellants will be in a worse position than before the breach. Appellants cite no caselaw to support their claim that the cost of filing a lawsuit, in and of itself, constitutes damages in a breach of contract case, even if the court finds there are no other damages in the case.

{¶37} Appellee SWN argues that: 1) a question, claim, or controversy arose concerning the scope of Appellants' ownership interest in the royalties; 2) SWN properly suspended royalties according to the Title provision of the Leases; 3) SWN deposited all properly due suspended royalty payments into an interest-bearing escrow; 4) SWN continues to deposit royalty payments as they accrue; and 5) when SWN made the initial deposits, it calculated back interest and put that money into the escrow accounts. SWN concludes that Appellants have suffered no damages and that the trial court was correct in granting SWN summary judgment on this issue.

{¶38} This same issue arose in the *Cardinal Minerals* case, cited earlier. The leases contain the same language as in this appeal. The plaintiffs argued that SWN was required to continue paying royalties associated with undisputed portions of the mineral

interests. We held that the Title section of the lease was written broadly and authorized the lessee (SWN) to withhold any payments due until the controversy was finally decided. *Cardinal Minerals*, 2025-Ohio-1159, at ¶ 87. SWN failed to immediately place the withheld funds in an interest-bearing escrow account. *Id.* at ¶ 91. SWN kept track of the owed funds by using an account ledger, instead. *Id.* When SWN did put the funds into an interest-bearing escrow account, it included back interest from the date it started withholding payments. *Id.* at ¶ 92. We held there was no breach of contract because there were no damages, a necessary element in a breach of contract case. *Id.* We came to this conclusion even though SWN did not place the funds in an interest-bearing escrow account until after the plaintiffs filed a lawsuit and filed a preliminary injunction seeking for SWN to move the funds. *Id.*

{¶39} SWN argues that court costs are not damages in a breach of contract case unless the contract itself contains provisions defining court costs as damages. Any breach of contract case that is denied for lack of damages necessarily entails court costs for the plaintiffs, and yet, these cases are regularly affirmed on appeal due to the absence of damages. *See, e.g., Brock v. Servpro*, 2022-Ohio-158, ¶ 35 (12th Dist.) ("Nothing that [the defendant] did or failed to do cost [the plaintiff] any money.")

{¶40} Further, Civ.R. 54(D) presumes the prevailing party will be awarded court costs, which means the plaintiff must have already proven its breach of contract case prior to the court deciding who will pay court costs. If court costs cannot be awarded until after the question of breach of contract has concluded, court costs are not one of the elements of the breach of contract claim. If the plaintiff has not proven the damages element (before the issue of court costs arises), it is not the prevailing party. Even if the

plaintiff proves damages and is the prevailing party, the decision whether to award court costs remains discretionary with the trial judge. *Vance v. Roedersheimer*, 64 Ohio St.3d 552, 555 (1992). In the instant case, Appellants were not the prevailing parties, and thus were not presumed to be entitled to court costs.

{¶41} SWN also argues that the issue of when it placed money in an escrow account did not cause the Appellants to incur court costs. SWN argues that count one of Appellants' complaint has nothing to do with when SWN placed the funds in the escrow account. Count one is about the scope and meaning of the Ward Reservation Interest. SWN argues that Appellants incurred the same court costs whether or not counts two and three were part of the complaint. Even if "damages" could be construed to include court costs, for a party to recover more than nominal damages, the amount of damages must be a direct result of the breach and would not have occurred but for the breach. *Claris, Ltd. v. Hotel Dev. Services, LLC*, 2018-Ohio-2602, ¶ 28 (10th Dist.). "Damages are not awarded for a mere breach of contract; the amount of damages awarded must correspond to injuries resulting from the breach." *Textron Fin. Corp. v. Nationwide Mut. Ins. Co.*, 115 Ohio App.3d 137, 144 (9th Dist. 1996).

{¶42} There is no error in the trial court's decision to assess court courts equally between Appellants and ODMA, or in its determination that Appellants did not suffer damages from SWN's alleged breach. Appellants' second sub-issue has no merit.

Issue Three: Whether the Ward interest consists of: a) a fixed 1/16 oil royalty; b) a 1/2 gas well rental; and c) 1/2 gasoline royalty; and d) no royalty on dry natural gas.

{¶43} This issue is addressed by Appellants' Brief and Appellee Briefs III (Bogaard) and IV (Ward).

{¶44} Appellants' argument, here, involves a judicial determination of the meaning of the Ward Reservation Interest: "reserves and except from this conveyance all the one-half part of all the royalty in oil and gas in and underlying all the premises above described. Said royalty interest reserved to be the one-sixteenth part of all the oil produced and saved from said premises, and the one-half part of any and all moneys received as rental for gas from gas wells drilled thereon; and the one-half part of any and all moneys received from sale of gasoline derived derived therefrom." (7/27/23 Complaint, Exhibit 3, 1921 Deed.) Appellants believe that the second sentence prevails and that the royalty interest is a one-sixteenth fixed interest that does not vary from lease to lease. Appellees, in contrast, believe that the first sentence prevails, or at least should be given its own separate meaning, and that the interest is a floating one-half royalty interest. Appellees contend that both sentences can be reconciled and be given meaning, and that forcing the second sentence to prevail essentially causes the first sentence to be a nullity.

{¶45} We have interpreted the meaning of royalty clauses, reservations, and assignments in many recent cases. *Moore Family Tr. v. Jeffers*, 2023-Ohio-3653 (7th Dist.); *1803 Resources, LLC v. Lineback*, 2025-Ohio-3271 (7th Dist.); *Mineral Dev. Inc. v. SWN Prod. (Ohio), LLC*, 2023-Ohio-4749 (7th Dist.); *Crum v. Mooney*, 2023-Ohio-4451 (7th Dist.).

{¶46} "[A] royalty interest is a right to be compensated for a fractional part of any oil and gas that has been removed from the ground or may be removed in the future, and may be a right associated with existing leases or may be a perpetual right that attaches

to future leases as well." *Moore Family Tr.* at ¶ 27. A royalty interest that has no other rights other than to receive a royalty is called a nonparticipating royalty interest, or NPRI. "The distinguishing characteristics of a 'non-participating royalty interest' are: (1) Such share of production is not chargeable with any of the costs of discovery and production; (2) the owner has no right to do any act or thing to discover and produce the oil and gas; (3) the owner has no right to grant leases; and (4) the owner has no right to receive bonuses or delay rentals." *Crum* at ¶ 22. This is a general description of an NPRI, and obviously the specific language of the deed or royalty reservation may alter these elements. We have described two broad types of NPRI: a fixed fractional NPRI or a floating fractional NPRI. *Moore Family Tr.* at ¶ 37. The distinction is as follows: "[A] fixed, also known as 'fractional,' interest that does not change from lease to lease; and a floating, also known as 'fraction of,' interest that varies depending on the amount of the landowner's royalty set forth in each specific lease." *Crum* at ¶ 23.

{¶47} In all of our recent interpretations of royalty reservations we have tried to apply and balance the same basic principles of contract interpretation, such as ascertaining and giving effect to the intent of the parties, giving effect to all parts of the contract and reading the contract as whole, and harmonizing sections of a contract to give meaning to each part. *Moore Family Tr.* at ¶ 38; *Crum* at ¶ 35; *1803 Resources* at ¶ 139.

{¶48} There is no dispute that the Ward Reservation Interest contains two key sentences. The lead first sentence reserves "all the one-half part of all the royalty in oil and gas in and underlying all the premises above described." Appellants concede that "[h]ad the reservation stopped there, the trial court's holding as to the interpretation of the

Ward Interest as a floating one-half interest would be correct." (Appellants' brief, p. 16.) Thus, Appellants have already agreed with Appellees as to the meaning of this first sentence.

{¶49} Appellants state, as if it were a foregone conclusion, that the first clause of the next sentence ("one-sixteenth part of oil produced") takes precedence over the previous lead sentence and must be interpretated as a fixed amount, essentially nullifying the language contained in the first sentence.

{¶50} Appellants also try to nullify other aspects of the first sentence by arguing that the references to gas and gasoline in the next two clauses exclude any royalty for natural gas. Appellants argues that natural gas is in a gaseous state at standard temperature and pressure, but gasoline must be a liquid. Why this has any bearing on the interpretation of the Ward Reservation Interest is not clear, and why Appellants are even discussing "natural" gas is even more unclear. The Ward Reservation Interest is "all the one-half part of all the royalty in oil and gas." It does not carve out an exception for natural gas, and certainly makes no distinction between gas as it exists in the ground versus at the surface. Nevertheless, Appellants believe that there is no reservation for gas if the gas is in a gaseous state.

{¶51} Appellants' interpretation is directly opposite of the law they cite. Appellants correctly cite that "each and every part of the deed must be considered in relation to each other part. No portion of the deed in question may be disregarded or treated as surplusage . . . ." *Church of God v. Glann*, 93 Ohio App. 337, 340 (6th Dist. 1952). Appellants also agree that: "[W]hen possible, a court's construction of a contract should attempt to harmonize all the provisions of the document rather than to produce conflict in

them." *Mineral Dev. Inc. v. SWN Prod. (Ohio), LLC*, 2023-Ohio-4749, ¶ 30-31 (7th Dist.), quoting *Summitcrest, Inc. v. Eric Petroleum Corp.*, 2016-Ohio-888, ¶ 35 (7th Dist.). Yet, Appellants' interpretation of the deed nullifies the first sentence of the reservation, a reservation that is as broad a reservation as could be formulated, using the word "all" three times to make its meaning clear: "*all* the one-half part of *all* the royalty in oil and gas in and underlying *all* the premises above described." (Emphasis added.) Interpretations that nullify some provisions over others are the type courts make every effort to avoid.

{¶52} Appellants rely on the *Moore Family Tr.* case to support their interpretation. In that case, the reservation stated:

> [D]o hereby grant, bargain, sell and convey to the said J.M. Jeffers and S.D. Griffith their heirs and assigns forever full equal one sixteenth (1/16) of all the petroleum oil and gas in and under the premises hereinafter described, that may hereafter be produced from said premises, under and by virtue of a certain oil and gas lease entered into the 30 day of November 1894 to one S.D. Griffith or to any other party or partys [sic] to whom said premises may hereafter be leased, for oil and gas purposes * * * said 1/16 interest being the one half part of the royalty to be set apart to me free of charge into tanks or pipe lines receiving said oil which is hereby conveyed to the grantee and to be reserved to them in any contract of lease hereinafter to be entered by us or our assigns, heirs, executors or administrators.

Moore Family Tr. at ¶ 4.

{¶53} The *Moore Family Tr.* royalty assignment is quite different than the Ward Reservation Interest, but does merit some comparisons. We held that the royalty assignment, created in 1896, included both a fixed aspect and a floating aspect. The fixed aspect was a 1/16 royalty on an existing lease from 1894. The floating aspect was a one-half royalty on any future leases. Because the separate clauses actually defined two different interests, it made sense to describe them differently in the assignment, but that did not mean that one or the other had no meaning. The fixed 1/16 royalty was actually shorthand for a one-half royalty on a typical 1/8 royalty, and a 1/8 royalty was "ubiquitous" at the time. *Id.* at ¶ 39. Thus, we were tasked to reconcile two very different royalty assignment provisions and make sense of both by concluding one part referred to a floating royalty and the other to a fixed royalty.

{¶54} The Ward Reservation Interest does not refer to an existing lease, so the lynchpin of the *Moore Family Tr.* reasoning is not applicable. Nevertheless, the other interpretative principles of *Moore Family Tr.* are very relevant. The future aspect of the reservation in *Moore Family Tr.* was the part that was interpreted as a floating royalty. Since there is no past or current lease described in the Ward Reservation Interest, the *Moore Family Tr.* reasoning leads us to conclude that all the references to royalties refer to floating royalties.

{¶55} Looking more closely at the second sentence of the Ward Reservation Interest, there are three very specific and quite distinct interests described:

1. one-sixteenth part of all the oil produced and saved from said premises.

2. one-half part of any and all moneys received as rental for gas from gas wells drilled thereon.

3. one-half part of any and all moneys received from sale of gasoline derived derived therefrom.

{¶56} Each one of these interests is, to some degree, different from the general broad reservation in the first sentence, and yet the second sentence begins with a phrase that indicates some type of equivalence between the two sentences: "Said royalty interest reserved *to be* . . ." (Emphasis added.) The first clause of the second sentence refers to the oil produced (rather than a royalty on the oil), does not mention gas, and refers only to oil that is "produced and saved." This is different from the first sentence that reserves one-half part of "all the royalty in oil and gas in and underlying all the premises." Thus, the first clause of the second sentence adds to the broad lead sentence, and does not diminish it.

{¶57} The second clause does not refer to royalty, but to money. The reservation is for the money received for rental for gas from gas wells drilled. As mentioned earlier, a NPRI does not usually include rental money, *Crum* at ¶ 22, but this can be modified in any written instrument. In this case, one-half royalty does include rental fees, but only rental for gas wells actually drilled, rather than delay rentals (which occur before wells are drilled). Whether or not it was common in 1921 for a royalty interest to include rental fees is unknown, but in this case, the reservation itself is clear that certain kinds of rentals are included in the reservation.

{¶58} The third clause adds something that might not be obvious at all if it were not specifically added. It specifies that one-half of all money received from gasoline sales is included in the idea of "all the royalty in oil and gas in and underlying all the premises." Gasoline is a refined product, and thus, is not the raw product that is removed from the ground. Again, this is not simply a repetition of the reservation described in the first sentence. It is a modification and addition to that reservation. Therefore, the best way to describe the relationship of the two sentences is that the first sentence describes a broad reservation of a one-half royalty in oil and gas, and the second sentence defines certain things that are included in the reservation that might not be clearly understood without the clarifying language. None of this clarifying language, though, expresses or implies that the entire reservation refers to a fixed rather than a floating royalty.

{¶59} The Bogaard brief points out that there is a parallel format to the first and second sentences that also supports that the designation of 1/16 part of oil produced signifies a floating royalty. The lead first sentence and the second and third clauses of the second sentence all refer to "one-half": one-half part of all the royalty; one-half part of any and all moneys received as rental for gas; and one-half part of any and all moneys received from the sale of gasoline. This could indicate that "one-sixteenth part of all the oil produced and saved" also refers to half of something: half of what is actually received from the lessee as royalty.

{¶60} Each case that requires a court to interpret a multi-part oil and gas reservation may not present a clear path to reconcile all of the different provisions. For example, in the *Crum* case we were asked to reconcile two parts of an assignment of an oil and gas reservation where the grantor did "hereby grant and convey unto C.L. Norris

and F.L. Mooney, the one-half (1/2) part of his royalty Being 1/16 part of all the oil and gas in and under the following described premises[.]" *Crum* at ¶ 8. *Crum* noted that for many years landowners assumed that a lease royalty would be 1/8 and would use that fraction as a synonym for "royalty" or "royalty interest," "with no intent to convey a fixed fraction of gross production." *Id.* at ¶ 25. In support of this reasoning *Crum* cited *U.S. Shale Energy II, LLC v. Laborde Properties, L.P.*, 551 S.W.3d 148 (Tex. 2018), in which the Texas Supreme Court held that a reservation described as both an undivided one-half interest and a 1/16 conveyed a floating, rather than a fixed interest. In spite of this, *Crum* held that the 1898 royalty assignment under review was a fixed 1/16 interest, primarily because it referred to one specific interest ("his" interest rather than "any" or "all"), did not include future interests, and the second sentence containing the 1/16 fraction was not subordinate and should be given equal weight in the interpretation. In other words, the second sentence defined what "his interest" actually was. It also made a difference that there were only two items to reconcile: "one-half (1/2) part of his royalty" and "1/16 part of all the oil and gas in and under the . . . premises." The instant case involves a more complicated reconciliation than in *Crum*.

{¶61} *1803 Resources, LLC, Moore Family Tr.*, and *Crum* are all helpful, here. The first sentence of the Ward Reservation Interest is broad, inclusive, unlimited, and uses the word "all" three times. Any interpretation of the second sentence must take this into account. *1803 Resources, LLC* at ¶ 146-147. The lead clause or sentence in a royalty reservation is often independent and may grant broader rights than the sentences or clauses that follow. *Id.* at ¶ 149-150. The content of a second clause or sentence may not be meant as a limitation on the leading sentence, but rather, may be there to add

additional information that clarifies certain items included in the broader reservation. That is the situation here. The two sentences are distinct but related, and they can be reconciled by recognizing that the floating one-half royalty in the leading clause must necessarily include one-half of a standard 1/8 production royalty (along the lines of the cases cited in *Crum*), as well as one-half of the money from gas well rental and one-half of the money from gasoline refined from the wells (which may not be obvious just looking at the first lead sentence). "All the one-half part of all the royalty in oil and gas" means more than just the items in the second sentence, but also necessarily includes the second sentence. And just as in *Moore*, there is no specific lease being discussed in the Ward Royalty Reservation, so there is no reason to presume that the lead sentence or the second sentence refer to an existing fixed royalty that has already been negotiated.

{¶62} We are not blind to the reality that the controversy in this case is based on the fact that the 2012 oil and gas leases are 20% royalty leases rather than standard 12.5% (1/8) leases. Appellants obviously wish to reap the windfall of the larger royalty by their interpretation that Appellees receive 6.25% while they retain 13.75%. If the leases were less than standard, say 10% instead of 12.5%, Appellants would undoubtedly be arguing in the opposite fashion they argue here, namely, that the Ward Reservation Interest is floating and Appellees should only get a 5% royalty (half of 10%). Our interpretation cannot be based on these economic realities, but instead on the parties' actual intent expressed in the language of 1921 Deed.

{¶63} Appellants' third sub-issue is not persuasive and is rejected. Because none of Appellants' three arguments under their assignment of error have merit, Appellants' sole assignment of error is overruled.

CROSS-APPEAL ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED WHEN IT FAILED TO GRANT ODMA'S MOTION FOR SUMMARY JUDGMENT AGAINST APPELLANTS ON THE ISSUE OF RENTAL/LEASE BONUS. THE TRIAL COURT ONLY ADDRESSED THIS ISSUE AS IT RELATED TO SWN AND NOT APPELLANTS.

{¶64} The cross-appeal is only addressed in Appellee/Cross-Appellant ODMA's brief and in two paragraphs of Appellants' reply brief. ODMA contends that the trial court failed to rule on its counterclaim, which contained a variety of claims against Appellants including: ODMA holds an undivided interest in the gas and oil; its interest is subject to Appellants' leases; ODMA's title to its property has been slandered by Appellants; SWN paid bonuses and royalties to Appellants and Appellants have not forwarded ODMA's share of bonuses and royalties; Appellants have improperly suspended royalty payments to ODMA; and ODMA suffered damages. ODMA also sought costs and attorney fees. In the alternative, ODMA argues that the trial court erroneously ruled it was not entitled to a portion of the lease bonus payments made to Appellants. The trial court ruled that ODMA was not entitled to reimbursement from SWN (which was the subject of ODMA's cross claim) because it was not in privity of contract with SWN. ODMA argues that it also has a counterclaim against Appellants for one-half of the lease bonuses.

{¶65} Although the court dismissed ODMA's cross-claim against SWN for lack of privity, this argument does not apply to ODMA's claim against Appellants, who are in privity because both of their interests arise from the 1921 Deed. Appellants assert that

there is no claim for lease bonuses because the section of the Ward Reservation Interest ODMA relies on does not discuss bonuses, but rather, rentals: "the one-half part of any and all moneys received as rental for gas from gas wells drilled thereon." It is clear that rentals (such as delay rentals) and bonuses are part of the bundle of rights in a severed mineral estate, and that ODMA, as partial owner of the mineral estate, could have claims to those aspects of the mineral estate. *Eisenbarth v. Reusser*, 2014-Ohio-3792, ¶ 60 (7th Dist.). Whether something labeled as a "bonus" in a lease could overlap or coincide with the right to "rental" payments is an unanswered question. The IRS treats bonus payments for natural resources such as oil and gas as rental income, and it is not inconceivable that a lease may, also. *See* IRS Form 1040, Schedule E; https://www.irs.gov/pub/irs-news/FS-13-06.pdf. As the trial court has not addressed this issue, we do not address the merits of the counterclaim except to say that, based on the record and limited arguments now before us, we cannot conclude that ODMA's counterclaim is barred as a matter of law.

{¶66} Although the trial court designated the May 9, 2026 judgment as final and stated that there was "no just reason for delay" pursuant to Civ.R. 54(B), it does not state that all claims and issues against all parties have been determined. It appears ODMA's counterclaim is still active on the trial court's docket. Even if it is not, it is clear the trial court has not considered the full merits of ODMA's counterclaim, and we cannot consider it for the first time on appeal. This is particularly true since the merits of the counterclaim have not been fully briefed by the parties. The case must be remanded for the parties to fully adjudicate any remaining issues contained in the counterclaim, including ODMA's claim for one-half of any lease bonus payments made to Appellants.

{¶67} ODMA's assignment of error in its cross-appeal has merit, and is sustained.

Conclusion

{¶68} Appellants appeal the decision to grant summary judgment to Appellees as to the interpretation of the Ward Royalty Reservation in the 1921 Ward Deed, and the trial court's resolution of royalty payments and alleged breach of oil and gas leases. The Ward Royalty Reservation included language that referred both to a one-half royalty and a 1/16 royalty. Although Appellants argue the reservation is a fixed 1/16 royalty, the only interpretation that reconciles all parts of the reservation is that it is a floating one-half royalty. Appellants also argue that SWN, the lessee of numerous oil and gas leases, improperly sought a refund of previously paid royalties when the leases prohibit refunds. Appellants' argument is not persuasive because the lessee neither asked for nor secured any refund. Appellants claim they should have been awarded court costs because they were forced to file a lawsuit to get SWN to deposit withheld royalties in an interest-bearing escrow account. SWN did eventually deposit the withheld royalties, along with back interest, as permitted by the leases. Appellants did not demonstrate they incurred damages from any alleged breach by SWN, and damages are an essential element of a breach of contract claim. Further, court costs are not part of what a plaintiff must prove as damages. Appellants' sole assignment of error is overruled.

{¶69} Appellee ODMA filed a separate cross-appeal arguing that its counterclaim against Appellants was not fully adjudicated by the trial court. The record reflects that aspects of the counterclaim remain to be litigated. The trial court judgment is affirmed, but the case is remanded to resolve ODMA's counterclaim.

Robb, J., concurs
Hanni, J., concurs

For the reasons stated in the Opinion rendered herein, Appellants' assignment of error is overruled and Appellee ODMA's cross-assignment of error is sustained. It is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Monroe County, Ohio, is affirmed. However, because we sustained Appellee ODMA's cross-assignment of error, this matter is remanded to the trial court for further proceedings according to law and consistent with this Court's Opinion. Costs to be taxed against the Appellants.

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.