



Kemp v. Rice Drilling D, LLC: When 'Royalty' Ruins the Party

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In *Kemp v. Rice Drilling D, LLC*,^[1] Ohio's Seventh District Court of Appeals applied the Marketable Title Act (R.C. 5301.47–55) (the "MTA") to the following title scenario:

- 1917 deed (original severance): "The said Grantors hereby reserve one half interest in all oil and gas underlying said premises."
- 1975 deed (root of title deed): "ALSO RESERVING one-half of the oil and gas royalty as heretofore reserved."
- 1992 deed: This deed specifically referenced the 1975 deed, Volume 524, Page 171, and provided "ALSO RESERVING one-half of the oil and gas royalty as heretofore reserved."
- 1999 deed: "EXCEPTING from the above described TRACT ONE and TRACT TWO all the previously excepted and reserved, sold and conveyed coal and oil and gas and mining rights" and "TRACT ONE and TRACT TWO being UNDER AND SUBJECT to any and all exceptions, reservations, restrictions, easements, rights of way, estates, covenants and conditions apparent on the premises or shown by instruments of record."^[2]

The question under the MTA, as usual, was whether the interest created by the 1917 deed (the "Moore Interest") was specifically referenced in the "muniments of title" beginning with the root of title (1975 deed).

Trial court held: Yes, it was preserved because the 1975 deed was not a root of title.

The Seventh District reversed, holding that:

- In light of *Senterra Ltd. v. Windland*,^[3] the 1975 deed was a proper root of title notwithstanding the recital of prior royalty reservation language because it still purported to convey mineral interest claimed; and
- A royalty interest is not the same thing as a fee mineral interest, and as such, the 1975, 1992, and 1999 deeds'

reference to a prior reservation of a royalty interest was not a specific reference to the Moore Interest (i.e., it was a general reference, meaning it was not preserved).

On this last point, the Seventh District discussed the argument that the word “royalty” could mean a fee mineral interest itself, but, after discussing recent jurisprudence acknowledging that a royalty can be an interest in real property,^[4] the appeals court rejected it as irrelevant because the Moore Interest doesn’t mention “royalty.”^[5]

Was *Kemp* correctly decided? Yes. A recital of a prior interest in a royalty is not the same thing as a fee mineral interest and, by force of logic, cannot be a specific reference.

For more information, please contact the author or any attorney with Frost Brown Todd’s [Oil, Gas & Minerals](#) team.

^[1] 7th Dist. Belmont No. 22 BE 0059, 2023–Ohio–4732. A copy of the opinion can be found [here](#).

^[2] *Kemp* at ¶¶ 6–8.

^[3] 2019–Ohio–4387 (7th Dist. 2019).

^[4] *Kemp* at ¶ 30–33 (discussing *Peppertree Farms L.L.C. v. Thonen*, 167 Ohio St.3d 52, 2022–Ohio–395.

^[5] Interestingly, the Seventh District noted that *Peppertree* overruled many prior opinions holding that a royalty can only be a personal property right. *Id.* at ¶ 33 (Referencing the following decisions as being overruled: *Pollock v. Mooney*, 7th Dist. Monroe No. 13 MO 9, 2014–Ohio–4435, ¶ 16; *Buegel v. Amos*, 7th Dist. Monroe No. 577, 1984 WL 7725; *Marquette ORRI Holdings, LLC v. Ascent Resources–Utica, LLC*, 7th Dist. No. 21 BE 0035, 2022–Ohio–3786, 199 N.E.3d 199, ¶ 17; *Rochus v. Thompson*, 7th Dist. Noble No. 16 NO 0430, 2017–Ohio–4138, ¶ 15.”

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