



RL Clark, LLC v. Gladys Hammond et al.: Ohio Seventh District's Decision May Haunt NPRI Owners

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On October 18, 2024, the Ohio Court of Appeals for the Seventh District, Belmont County, issued its opinion in *RL Clark LLC v. Gladys Hammond et al.*, 2024-Ohio-5051 (7th Dist.).^[1] *RL Clark* asked the court to determine whether an exception of “one half (1/2) of the oil and gas royalty” (the “Wise ½ Royalty”) in a 1902 deed of 21 acres in Belmont County (the “Wise Deed”) was extinguished under the Ohio Marketable Title Act, R.C. 5301.47–55 (the “MTA”). Ruling on motions for summary judgment, the Belmont County Court of Common Pleas previously held the interest was extinguished. On appeal, the Seventh District affirmed.

While the opinion touches upon several common issues in MTA litigation, including whether a severed royalty interest recited in the root of title was preserved (it wasn't), and which deed is the proper root of title, it is the Seventh District's response to the appellant's third argument—i.e., whether the Wise ½ Royalty was the subject of a title transaction—that seems most salient.

There, the Seventh District addresses, and rejects, the appellant's argument that the multiple oil and gas leases entered into by the surface owners during the 40-year period after the 1956 root of title constituted title transactions as to the Wise ½ Royalty, a seemingly logical position given the absence of any executory rights incident to the Wise ½ Royalty. The court acknowledges the Wise ½ Royalty is a non-participating royalty interest (“NPRI”), but nevertheless denies that the leases are title transactions for the NPRI:

Appellants are attempting to preserve the right to receive non-participating oil and gas royalties by virtue of title transactions (oil and gas leases) in which they had no right to participate, and that did not mention or affect non-participating royalties in any way. Royalties are distinct from the right to drill for oil and gas. *White Revocable Tr. v. Kemp*,

2023-Ohio-4513, ¶ 29 (7th Dist.) Royalties are the right to share in the profit made from oil and gas drilling, free from the expenses of production. *Id.* Royalties are a smaller and distinct part of the entire mineral estate. *Id.* at ¶ 33. Non-participating royalties are an even smaller part of the bundle of rights contained in a mineral estate. If a party is trying to prove that a non-participating royalty interest is preserved in the chain of title, a description of that interest must appear in the recorded documents. *Id.* The leases on which Appellants rely do preserve the right to drill for oil and gas, and if that was the right Appellants were claiming their argument might be well-taken. However, Appellants are trying to preserve a completely different right, i.e., a non-participating royalty, that is not affected by the surface owner entering into a drilling lease.[\[2\]](#)

The court's premise is that an oil and gas lease has no bearing or relation to a NPRI. In other words, every stick in the bundle comprising the severed mineral estate must be independently preserved from forfeiture under the MTA.

In a 2023 decision, the Seventh District addressed the nature of a royalty assignment and, quoting its prior decision in *Buegel v. Amos*, 7th Dist. Monroe No. 577, 1984 WL 7725, described the characteristics of a 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.[\[3\]](#)

And while the nature of an interest in future/unaccrued royalties has been reclassified as a real property interest and not a personal property interest,[\[4\]](#) these characteristics of the NPRI have otherwise not changed.

Thus, the very essence of a NPRI is the *inability* to affirmatively contract such interest for production and payment; instead, the

NPRI owner must rely upon the fee mineral owner(s) (often the surface owner) for that. In this sense, the actions of the fee mineral owner carry the burdens of the NPRI owner; there simply is no independent process available to the NPRI owner. However, *RL Clark LLC* makes clear that this logical and practical connection between leasing and NPRI interests does not equate to a title transaction under the MTA absent some express reference in the lease, which is exceedingly unlikely. As such, NPRI owners must utilize some affirmative and independent means of preserving their interests, such as recording affidavits of preservation or other conveyances, even where there is no production and thus no right to receive actual royalties.

The MTA's goal is to simplify title, but the companion of nuance is litigation, and Ohio's maturing oil and gas play is courting both. For more information, please contact the author or any attorney with the firm's [Oil, Gas & Minerals](#) team.

[1] A copy of this opinion can be found [here](#).

[2] *Id.*, ¶ 57.

[3] *Moore Family Tr. v. Jeffers*, 7th Dist. No. 22 MO 0013, 2023-Ohio-3653, 225 N.E.3d 548, ¶ 25.

[4] See *Kemp v. Rice Drilling D, LLC*, 7th Dist. No. 22 BE 0059, 2023-Ohio-4732, 232 N.E.3d 233, ¶ 32, *appeal not allowed sub nom. Kemp v. Rice Drilling, L.L.C.*, 173 Ohio St.3d 1457, 2024-Ohio-1386, 231 N.E.3d 1169, ¶ 32 (noting that *Peppertree Farms, L.L.C. v. Thonen*, 167 Ohio St.3d 52, 2022-Ohio-395, 188 N.E.3d 1061 overruled several decisions holding unaccrued royalties were personal property, including *Buegel v. Amos*).

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