

Texas Justices Say Eagle Ford Deed Conveys Floating Royalty

By Jess Krochtengel

Law360 (June 29, 2018, 10:51 PM EDT) -- In an Eagle Ford Shale royalty dispute, the Texas Supreme Court on Friday interpreted a deed to mean the initial property owners have the right to half of whatever royalties are paid on oil and gas produced from the land, rather than a fixed one-sixteenth royalty interest.

In a 6-3 decision, the court said the deed in question reserved "a floating one-half interest in the royalty in all oil, gas or other minerals" produced from a property in Karnes County, Texas. Floating royalties fluctuate depending on the oil and gas lease in effect at any given time, while a fixed royalty remains static no matter whether a property owner is able to secure more favorable terms in a subsequent oil and gas lease.

The case involves a Karnes County property sold by the Bryan family in 1951 through a deed that reserved a non-participating royalty interest in the minerals underlying the property. The deed language reserves "an undivided one-half interest" in the oil and gas royalties, "the same being equal to one-sixteenth of the production."

The dispute is whether that language means the Bryan heirs and successors have a fixed one-sixteenth royalty interest or whether they have a floating interest of half of whatever royalty is in effect.

"Construing the deed to reserve a floating royalty interest properly harmonizes the deed's pertinent language," Justice Debra Lehrmann wrote. "Under this interpretation, neither clause of the reservation is nugatory because both are given proper grammatical and practical effect. We therefore hold that the Bryan deed reserved a floating one-half royalty interest."

At the time the Bryan deed was signed, the standard royalty for oil and gas leases across Texas was one-eighth, so a one-half interest was assumed to equal one-sixteenth. But terms have since become more favorable for property owners across the state.

In 2010, when Laborde Properties LP bought the Karnes County tract in question, the Bryan successors were being paid half of a one-fifth royalty, for a total of one-tenth of production. Laborde contested the one-tenth payment, arguing that the deed language had created a "fixed" royalty of one-sixteenth of production.

A trial court sided with the Bryan successors, but the Fourth Court of Appeals in San Antonio in 2016

reversed the decision, saying the language "the same being equal to one-sixteenth of the production" had shown an intent to reserve a fixed royalty interest.

In a dissent, Justice Jeff Boyd said the San Antonio appeals court got it right. He said that at the time the Bryans signed the deed, they believed they were reserving a royalty interest of half the standard one-eighth royalty at the time.

The deed explicitly mentioned one-sixteenth of production, and that language is necessary context for the "undivided one-half" language, he said. He said no other language in the deed indicates the Bryans intended the reserved amount to change if a future lease provided for a different royalty, so the royalty should be considered fixed at one-sixteenth.

Corey Wehmeyer of Santoyo Moore Wehmeyer PC, an attorney for the Bryan successors, said Friday that "this is an important case that will give further guidance to oil and gas title examiners, trial judges and litigators in interpreting and giving effect to deeds."

Wehmeyer said his clients were pleased with the trial court's ruling and "thankful the Texas Supreme Court granted review and spent time writing on this issue to correct the court of appeals' error."

Counsel for Laborde did not immediately respond to a request for comment Friday.

Justices Debra Lehrmann wrote for the majority, joined by Chief Justice Nathan Hecht and Justices Paul Green, Eva Guzman, John Devine and Jeff Brown. Justice Jeff Boyd dissented, joined by Justices Phil Johnson and Jimmy Blacklock.

The Bryan successors are represented by Corey F. Wehmeyer, Katy Pier Moore, Benjamin Robertson and Nicole Sears of Santoyo Moore Wehmeyer PC and Jeff Small of Law Office of Jeff Small.

Laborde is represented by Andy Kerr, Teo Seger and Mike Maloney of Clark Hill Strasburger.

The case is U.S. Shale Energy II LLC et al. v. Laborde Properties LP et al., case number 17-0111, in the Supreme Court of Texas.

--Editing by Peter Rozovsky.