

[Cite as *In re Ball*, 2016-Ohio-4917.]

STATE OF OHIO, BELMONT COUNTY
IN THE COURT OF APPEALS
SEVENTH DISTRICT

IN THE MATTER OF THE ESTATE OF)
RUSSELL A. BALL, DECEASED)

CASE NO. 15 BE 0004

OPINION

CHARACTER OF PROCEEDINGS:

Civil Appeal from Probate Court of
Belmont County, Ohio
Case No. 14 ES 197

JUDGMENT:

Reversed

APPEARANCES:

For Plaintiff-Appellee

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JUDGES:

Hon. Gene Donofrio
Hon. Cheryl L. Waite
Hon. Mary DeGenaro

Dated: June 13, 2016

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DONOFRIO, P.J.

{¶1} Appellant, Amanda Brown, appeals from a Belmont County Probate Court judgment overruling her Exception to Report of Newly Discovered Asset, wherein she took issue with the inclusion of oil and gas rights set forth in a lease in Russell Ball's Estate.

{¶2} Appellee Martha Ralston is appellant Amanda Brown's mother. Russell Ball was Martha's father and Brown's grandfather. Russell owned certain farm property in Barnesville consisting of approximately 70 acres. Brown owns the adjoining property.

{¶3} On July 26, 2006, Russell created the Russell A. Ball Trust. Russell named himself as trustee. At that time, Russell placed his farm property into the trust. Martha is the sole beneficiary of the trust.

{¶4} On May 8, 2008, Russell transferred the farm property out of the trust and to himself personally. That same day, Russell executed a general warranty deed naming Brown as the transfer-on-death beneficiary for the farm property.

{¶5} On March 25, 2009, Russell signed an oil and gas lease (the Lease) with The Oxford Oil Company (now Eclipse Resources) for the farm property. The Lease was for a five-year term commencing that day and was to continue so long "as oil and gas are produced from said land in paying quantities or the lease is otherwise maintained[.]"

{¶6} On August 7, 2009, Russell executed a power-of-attorney naming Martha as his attorney-in-fact. Russell also executed his last will and testament that day. The will devised all of Russell's farm machinery to Brown. The will devised the residue of Russell's property to Martha.

{¶7} Martha recorded the power-of-attorney on March 8, 2012. Also on March 8, Martha, acting as Russell's attorney-in-fact, revoked the transfer-on-death designation made to Brown and named herself, personally, as the transfer-on-death beneficiary of the farm. Also on March 8, Martha, acting as Russell's attorney-in-fact, then transferred the farm to the Russell A. Ball Trust.

{¶8} On September 17, 2012, Martha, acting as trustee of the Russell A. Ball

Trust, executed a quitclaim deed conveying the farm to herself and her husband David Ralston.

{¶19} Russell passed away on March 8, 2013.

{¶10} On December 2, 2013, Brown filed a complaint in common pleas court against the Ralstons raising a claim for intentional interference with an expectancy of inheritance, among other claims.

{¶11} Martha filed an application in probate court to probate Russell's will on May 13, 2014. The probate court approved the submitted inventory and appraisal on September 23, 2014. In this case, Martha is proceeding in her capacity as executrix of Russell's estate. The inventory Martha submitted made no mention of the Lease or the oil and gas rights.

{¶12} On October 8, 2014, the common pleas court granted summary judgment in Brown's favor, finding her to be the rightful owner of the farm. The court declared as null and void the transfer-on-death designation and the quitclaim deed executed by Martha as Russell's attorney-in-fact. It issued a writ of possession to put Brown in possession of the farm property.

{¶13} Two weeks later, on October 22, 2014, Martha, as executrix, filed a report of newly discovered assets in the probate court listing the oil and gas rights as newly discovered assets.

{¶14} Brown filed an exception to the report of newly discovered assets, a motion to remove Martha as executrix, and a motion to disqualify counsel for Russell's estate. Brown stated that the common pleas court had just determined that the farm property belonged to her when it granted summary judgment on her claim for intentional interference with an expected inheritance and ordered Martha and her husband to execute a deed conveying the farm property to her.

{¶15} Sometime while these matters were pending, both Martha and Brown ratified the Lease, thus extending its term.

{¶16} The probate court held a hearing on the matter. The court stated that the ownership of the real estate was not an issue in this case, as that matter was

decided by the common pleas court. The court found that Russell had full ownership of the property in question until his death in 2013. It stated that while Russell or the Russell A. Ball Trust was still the owner of the real estate, he or it had the full power to control, lease, or otherwise transfer the oil and gas rights as he or it saw fit. The court determined that the report of newly discovered assets would be allowed and made the Lease an estate asset. The court also overruled Brown's motions to remove Martha as executrix and to disqualify counsel for Russell's estate.

{¶17} Brown then filed a motion to clarify the judgment asking the court which asset it meant to include in Russell's estate, Russell's interest in the oil and gas lease or the ownership of the oil and gas underlying the farm. The probate court responded to Brown's motion by entering a judgment stating its decision was unambiguous in that it stated that the Lease was an estate asset. Therefore, "the lease executed by Russell A. Ball and ratified by Ralston and Brown and all rights flowing therefrom is an asset of the decedent's estate."

{¶18} Consequently, Brown filed a timely notice of appeal on January 20, 2015.

{¶19} Brown now raises a single assignment of error stating:

THE PROBATE COURT ERRED IN OVERRULING MS. BROWN'S EXCEPTION TO THE REPORT OF NEWLY DISCOVERED ASSET AND DETERMINING THAT THE OIL AND GAS INTERESTS WERE AN ESTATE ASSET.

{¶20} Brown asserts that the probate court incorrectly determined the oil and gas interest to be an estate asset.

{¶21} On appeal, we review a trial court's ruling on a party's exceptions to an inventory filing under an abuse of discretion standard. *In re Buckner*, 12th Dist. No. CA2008-07-074, 2009-Ohio-2447, ¶ 23; *In re Estate of Workman*, 4th Dist. No. 07CA39, 2008-Ohio-3351, ¶ 13. Abuse of discretion connotes more than an error of law or judgment; it implies the trial court's attitude was arbitrary, unconscionable, or

unreasonable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶22} Brown makes several arguments in support of her assignment of error.

{¶23} First, Brown argues that Ohio law is clear that oil and gas underlying the farm transferred along with the surface. Citing, R.C. 5301.02. Brown asserts that when Russell conveyed the farm to himself with Brown as the transfer-on-death beneficiary, he conveyed the entire interest in the farm that he could convey. He did not except any oil and gas rights. He did, however, except “all coal and mining rights heretofore sold and conveyed.” Therefore, Brown argues, when Russell died, the entire interest that he owned, including the oil and gas rights, passed to Brown.

{¶24} Brown also asserts this court has recognized that a transfer without an exception transfers the minerals underlying the surface. Citing, *Eisenbarth v. Reusser*, 7th Dist. No. 13 MO 10, 2014-Ohio-3792, ¶ 30, currently pending in the Ohio Supreme Court. She also asserts that we have applied the same principle to free gas rights that accompany an oil and gas lease.

{¶25} Next, Brown argues the Lease that Russell signed did not affect the ownership of the oil and gas as between her and Russell. She again relies on *Eisenbarth*, where we stated that an oil and gas lease is like a mortgage in that the subsequent owner takes the property subject to the lease. *Eisenbarth*, at ¶ 29-30. Brown asserts the Lease assigned the right to drill for oil and gas but did not grant outright the oil and gas in the ground. Thus, she claims the Lease had no effect on the transfer of the farm and the oil and gas beneath the surface from Russell to her.

{¶26} Pursuant to R.C. 5301.02 every grant or conveyance of lands shall convey the entire interest which the grantor could lawfully grant or convey “unless it clearly appears by the deed, mortgage, or instrument that the grantor intended to convey or mortgage a less estate.”

{¶27} Moreover, “[a] transfer on death beneficiary takes only the interest that the deceased owner or owners of the interest held on the date of death, subject to all encumbrances, reservations, and exceptions.” R.C. 5302.23(B)(7)(a). If less than

the entire interest in the real property is to be transferred on death, the transfer-on-death affidavit shall include a statement of the specific interest or part of the interest in the real property that is to be so transferred. R.C. 5302.22(D)(2).

{¶28} These statutes make several points clear. First, a grant of land conveys the grantor's *entire* interest in the land unless the grantor makes clear in the granting instrument that some part of his or her interest is not granted. Second, a transfer-on-death beneficiary takes the identical interest that the deceased grantor held on the date he or she died. And third, if the grantor intends to transfer to a transfer-on-death beneficiary an interest that is less than the grantor's entire interest, the transfer-on-death affidavit must so state.

{¶29} We must examine the pertinent documents in light of these statutes.

{¶30} On May 8, 2008, Russell, by way of general warranty deed, transferred the farm property out of the Russell A. Ball Trust and to himself personally. The deed contained no exceptions or reservations whatsoever.

{¶31} That same day, Russell executed a second general warranty deed naming Brown as the transfer-on-death beneficiary for the farm property. This deed contained a single exception: "EXCEPTING all coal and mining rights heretofore sold and conveyed."

{¶32} Thus, at that time, Russell owned the entire surface estate and all of the oil and gas and mineral estate except for the coal and mining rights he sold and conveyed.

{¶33} On March 25, 2009, Russell signed the Lease with The Oxford Oil Company for the oil and gas on the farm property. The Lease was for a five-year term commencing that day and was to continue so long "as oil and gas are produced from said land in paying quantities or the lease is otherwise maintained[.]"

{¶34} The Lease was still in effect when Russell died on March 8, 2013. On that date, Russell's entire interest in the farm property passed to Brown. The question then becomes, what interest did Russell hold in the farm property on the day he died?

{¶35} The Ohio Supreme Court's recent decision in *Chesapeake Expl., L.L.C. v. Buell*, 144 Ohio St.3d 490, 2015-Ohio-4551, 45 N.E.3d 185, answers that question. In *Buell*, the Court was asked to answer two certified questions regarding whether a recorded oil and gas lease is a "title transaction" under Ohio's Dormant Mineral Act and whether the expiration of the lease and the reversion of the rights granted under the lease is a title transaction that restarts the 24-year forfeiture clock. *Id.* at ¶ 14. In answering these questions, the Court conducted a thorough examination of the nature of recorded oil and gas leases.

{¶36} The Court began by noting the general consensus among the states that an oil and gas interest is a property interest. *Id.* at ¶ 42. But it pointed out that some states have held that it is a fee simple determinable where the lessee enjoys title to all of the oil, gas, and other minerals for the life of the lease while other states have concluded that it is an incorporeal interest in the minerals where the lessee enjoys the exclusive right to take all of the oil, gas, and other minerals. *Id.*

{¶37} The Court went on to cite this court's *Eisenbarth* decision. It noted that in *Eisenbarth*, we analogized an oil and gas lease to a mortgage, which is one of the enumerated examples of a title transaction in the statutory definition, even though it does not transfer title. *Id.* at ¶ 50, citing *Eisenbarth* at ¶ 29-30. The Court further pointed out that we held a recorded oil and gas lease affects title in a manner similar to a mortgage because it is an encumbrance on the title that "remains with the realty if title is transferred during its terms." *Id.*, citing *Eisenbarth* at ¶ 30.

{¶38} The Court then cited to *Kramer v. PAC Drilling Oil & Gas, L.L.C.*, 197 Ohio App.3d 554, 2011-Ohio-6750, 968 N.E.2d 64 (9th Dist.) and *Bender v. Morgan*, Columbiana C.P. No. 2012-CV-378 (Mar. 20, 2013), wherein the courts characterized oil and gas leases as conveying a fee simple determinable interest in the severed mineral rights subject to a reverter on the conditions described in the lease. *Id.* at ¶ 51-52. The Court agreed with this characterization. *Id.* at ¶ 61.

{¶39} Next, the Court pointed out that the rights and privileges granted under an oil and gas lease, although limited to the purposes of the lease, "are sufficiently

vast to affect the possession and custody of the mineral estate, even if not its ownership.” *Id.* at ¶ 60. And the Court noted that because the lessee also enjoys reasonable use of the surface estate to accomplish the lease’s purposes, the lease also affects the surface estate. *Id.* Therefore, the Court concluded the lease affects the possession and custody of both the mineral and surface estates. *Id.*

{¶40} These characteristics of the lease led the Court to agree with this court in stating that “[e]ven if the lessor conveys title to the surface or mineral estates during the lifetime of the lease to a third party, the lease is binding on those successors and is therefore an encumbrance that remains with the realty.” *Id.* at ¶ 61, citing *Eisenbarth*, 2014-Ohio-3792, ¶ 30. It then concluded, “[a] purchaser would take either estate subject to the lease and the vested right of the lessee.” *Id.*

{¶41} The Court explained:

During the lease, the lessor effectively relinquishes his or her ownership interest in the oil and gas underlying the property in favor of the lessee's exclusive right to those resources. In lieu of an ownership interest, the lessor typically maintains only a royalty interest in the oil and gas as negotiated in the terms of the instrument, along with a reversionary interest if the lease does not continue past the primary term by the happening of some enumerated condition. Although the lessor may continue to own the mineral estate on paper, the vast and exclusive rights conveyed by the lease grant to the lessee the custody and use of the mineral estate and any oil and gas therein. Thus, during the lease, the lessor and mineral estate owner relinquishes all but an interest in the bonus, delay rental, and royalty payments provided for in the lease.

* * *

[T]he lease also affects the transferability of the surface and mineral estates and the right of the lessor to use the surface and mineral estates without restriction, and ultimately, grants title in the oil and gas

underlying the property to the lessee during the term of the lease. This effect on ownership, possession, and custody is an inherent attribute of an oil and gas lease.

Id. at ¶ 62, 64.

{¶42} Pursuant to *Buell*, when Russell died, The Oxford Oil Company held a fee simple determinable interest in the oil and gas subject to a reverter and Russell owned the surface rights and the right to reversion in the oil and gas upon expiration of the Lease. Moreover, because a recorded oil and gas lease affects title in a manner similar to a mortgage, the Lease is an encumbrance on the title that “remains with the realty if title is transferred during its terms.” So in this case, the Lease remained with the farm property even though title to the farm transferred from Russell to Brown. Brown now owns Russell’s interest in the farm property subject to the Lease.

{¶43} Based on the above, we conclude that the trial court abused its discretion in overruling Brown’s exception to the report of a newly discovered asset. The Lease is not an estate asset. Brown’s assignment of error has merit.

{¶44} For the reasons stated above, the trial court’s judgment is hereby reversed. Brown’s exception to the report of a newly discovered asset is granted.

Waite, J., concurs.

DeGenaro, J., concurs.