[Cite as *Senterra, Ltd. v. Winland*, 2019-Ohio-5458.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
BELMONT COUNTY

SENTERRA LTD.,

Plaintiff- Appellee,

v.

ALAN T. WINLAND et al.,

Defendants-Appellants.

OPINION AND JUDGMENT ENTRY
Case No. 18 BE 0051

Application for Reconsideration

BEFORE:
Carol Ann Robb, Cheryl L. Waite, David A. D'Apolito, Judges.

JUDGMENT:
Reconsideration Granted;
Judgement of the Trial Court is Reversed and Remanded.

Atty. Gregory W. Watts, *Atty Matthew W. Onest, Atty Wayne A. Boyer*, Krugliak, Wilkins, Griffiths & Dougherty Co., L.P.A., 4775 Munson Street N.W., P.O. Box 36963, Canton, Ohio 44735 for Plaintiff-Appellee and

Atty. Thomas D. White, *Atty. Katherine M.K. Kimble,* The White Law Office Co., 209 N. Washington Street, Millersburg, Ohio 44654 for Defendants-Appellants.

Dated: December 16, 2019

PER CURIAM.

{¶1} On October 21, 2019, Appellee Senterra Ltd. filed an application for reconsideration from our October 11, 2019 decision in *Senterra Ltd. v. Winland*, 7th Dist. Belmont No. 18 BE 0051, 2019-Ohio-4387. Appellants Alan T. Winland, Laura J. Winland, Linda Godek, Clarence Winland, Frances Faulkner, Norman Winland, Teresa WInland, John D. McBrayer, Brenda S. Langkopf, Amy Kay Fahner, Jeff Fahner, Lori Jo Podsobinski, Charles Patterson, Cathy Patterson, Debra Saunders, Bill Saunder, Diane McBrayer Andersen, Brian Andersen, Dan Pobsobinski, Tracey Pobsobinski, Linda Dollison, and Larry Pobsobinski filed a motion in opposition to the application.

{¶2} The application for reconsideration was timely filed pursuant to App.R. 26(A). Appellants filed a motion for leave to file an opposition motion instanter; that motion will be considered by this court in deciding the application.

{¶3} Although App.R. 26(A) does not set forth the test to be used in determining whether to reconsider a decision, the test generally applied by this court and other courts is whether the motion for reconsideration calls to the attention of the court an obvious error in its decision or raises an issue for our consideration that was either not considered or not fully considered in the appeal. *Deutsche Bank Natl. Trust Co. v. Knox*, 7th Dist. Belmont No. 09-BE-4, 2011-Ohio-421, 2011 WL 334508, ¶ 2, citing *Matthews v. Matthews*, 5 Ohio App.3d 140, 143, 450 N.E.2d 278 (10th Dist.1981). An application for reconsideration is not designed for use in instances where a party simply disagrees with the conclusions reached and the logic used by an appellate court. *Deutsche Bank* at ¶ 2, citing *State v. Owens*, 112 Ohio App.3d 334, 336, 678 N.E.2d 956 (11th Dist.1996). Rather, it provides a mechanism to prevent the possible miscarriage of justice that may arise where an appellate court makes an obvious error. *Deutsche Bank*, citing *Owens.*

{¶4} Appellee asserts this court should reconsider its resolution of assignment of error number three entering judgment for Appellants on that issue. Appellee argues our resolution of assignment of error number three holding the trial court should not have applied the *Talbot/Duhig* rule to Reservation 5 and instead should have applied the MTA and should have determined the MTA preserved the interest, revives its claim that

Reservation 5 was abandoned under the DMA. They specifically ask for this court to remand the matter to the trial court for a determination of whether "Oil and Gas Reservation 5 was abandoned under the 2006 DMA."

{¶5} In the trial court's grant of summary judgment to Appellee, it stated its resolution of the claims rendered Appellee's DMA abandonment claims moot. Our determination that the *Duhig/Talbot* Rule was inapplicable and that the MTA applied and under the MTA the interest described in Reservation 5 was preserved, effectively revives the claim that the interest described in Reservation 5 was abandoned under the DMA. Accordingly, Appellee is correct, this court should have remanded the matter to the trial court to review the 2006 DMA claim as it pertains to Reservation 5. Therefore, in order to prevent a manifest miscarriage of justice and to ensure the trial court considers the DMA claim as it pertains to the interest described in Reservation 5 we will reconsider our decision. Instead of entering judgment for Appellants on the third assignment of error, we reverse the trial court's decision on that issue and remand for further proceedings.

{¶6} Consequently, the third paragraph of our decision should state:

> For the reasons expressed below, the trial court's decision is affirmed in part, reversed in part, and remanded for further proceedings. The MTA is applicable. The trial court correctly determined the root of title for Reservations 1 through 4 and that those interests were extinguished under the MTA. As to Reservation 5, the trial court was incorrect in its determination that the *Duhig Rule* applied. The MTA is applicable to this reservation and under the MTA George Russell's (his heirs and assigns) 1/4 reservation is preserved through specific repetitions of that reservation through the deed chain. That said, the matter is remanded for determination of whether that 1/4 reservation was abandoned under the DMA.

{¶7} The last paragraph of our opinion, ¶ 99, should read:

> The first and second assignments of error lack merit. The third assignment of error has merit. Appellee has record marketable title to the interest described in Reservations 1 through 4; Appellee has record marketable title to all oil and gas interests under the 48.19 acre tract that was originally part

of the 110 acre tract of land and record marketable title to 3/4 oil and gas interest underlying the 86 acre tract of land. As to Reservation 5, the 1/4 oil and gas interest for George Russell, his heir, and assigns was preserved under the MTA. This resolution revives any moot claim regarding the DMA and the interest described in Reservation 5. Thus, the matter is remanded to the trial court for further proceedings on Reservation 5 to determine if the interest was abandoned under the DMA. If the interest was not abandoned, George Russell, his heir and/or assigns has title to 1/4 oil and gas interest. The trial court's decision is affirmed in part, reversed in part, and remanded for further proceedings in accordance with the above.

{¶8} Accordingly, we grant the application for reconsideration and modify our decision as stated above.

JUDGE CAROL ANN ROBB

JUDGE CHERYL L. WAITE

JUDGE DAVID A. D'APOLITO

NOTICE TO COUNSEL

This document constitutes a final judgment entry.