

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

KENNETH J. DAY and NADINE C. DAY, husband and	:	
wife; WILLIAM E. DAY and LINDA D. DAY, husband	:	
and wife; and ROBERT F. DAY,	:	
Plaintiffs	:	DOCKET NO. 10-02455
	:	CIVIL ACTION – LAW
vs.	:	
	:	
DENNIS C. MEYER and GENEVIEVE MEYER, husband	:	
and wife; TOMMY F. GREGORY and MARY D.	:	
GREGORY, husband and wife; ANADARKO E&P	:	
COMPANY, LP; CHESAPEAKE APPALACHIA, L.L.C.;	:	
and STATOIL USA ONSHORE PROPERTIES, INC.,	:	
Defendants	:	

**OPINION AND ORDER**

AND NOW, this 30<sup>th</sup> day of December, 2011, following oral argument on Defendants’ and Plaintiffs’ Motions for Judgment on the Pleadings, it is hereby ORDERED and DIRECTED that Defendants’ motion is GRANTED, that Plaintiffs’ motion is DENIED, and that Plaintiffs’ Complaint is DISMISSED. Judgment is GRANTED in favor of Defendants. Defendants Dennis C. Meyer, Genevieve Meyer, Tommy F. Gregory, and Mary D. Gregory are the sole owners of the gas rights on the contested Premises and have the right to enter into and lease these gas rights. Plaintiffs and their successors, heirs, and assigns are barred from asserting any right, title, or interest in the gas rights pertaining to the Premises in a matter that is inconsistent with the interest of Defendants.

This matter comes before this Court on Plaintiffs’ and Defendants’ cross Motions for Judgment on the Pleadings. The underlying issue in this matter is the ownership of the natural gas rights underlying two parcels of land located in Cogan House Township, Lycoming County, Pennsylvania, known as tax parcel numbers 8-277-101 and 8-227-101-B (tax parcel B) (collectively the “Premises”). All parties are in agreement to the factual

findings and the applicable law in this matter; the parties agree that the resolution of this issue hinges upon this Court's interpretation of the long-standing property rule articulated by our Supreme Court in *Dunham v. Kirkpatrick*, 101 Pa. 36 (1882).

Brief Procedural History:

1. On November 10, 2010, Plaintiffs' commenced this action. On January 13, 2011, Plaintiffs' filed an Amended Complaint. On February 4, 2011, Plaintiffs' filed a Second Amended Complaint.
2. On October 12, 2011, Plaintiffs' filed a Motion for Judgment on the Pleadings.
3. In response, on October 12, 2011, Individual Defendants filed a cross Motion for Judgment on the Pleadings.
4. On October 20, 2011, Anadarko joined Individual Defendants' Motion for Judgment on the Pleadings. Additionally, on this date, Anadarko filed its Opposition to Plaintiffs' Motion for Judgment on the Pleadings.
5. On October 28, 2011, Chesapeake and Statoil joined Individual Defendants' Motion for Judgment on the Pleadings. Additionally, on this date, Chesapeake and Statoil filed a Response in Opposition to Plaintiffs' Motion for Judgment on the Pleadings.
6. On December 5, 2011, this Court heard oral argument on these cross motions.

Factual Findings:

1. Plaintiffs brought this action to determine the ownership of the natural gas rights underlying two parcels of land situated in Cogan House Township, Lycoming County, Pennsylvania. These two parcels are identified as tax parcels 8-227-101 and

8-227-101-B (collectively the “Premises”). In total, the Premises measures approximately 110 acres. A complete legal description of the Premises appears in a deed from Mattie Helper Ringler (Ms. Ringler) to Dennis C. Meyer and Genevieve Meyer (collectively the “Meyer Defendants”), dated June 6, 1958, recorded in Lycoming County Deed Book 441 at page 81 (the “Meyer Deed”).

2. The Meyer Defendants acquired title to the Premises by the Meyer Deed.
3. Tommy F. Gregory and Mary D. Gregory (collectively the “Gregory Defendants”) acquired title to tax parcel B by virtue of a deed from the Meyer Defendants, dated March 22, 1988 and recorded in Lycoming County Record Book 1245, page 208.
4. This controversy arises out of the exception and reservation of minerals in the Meyer Deed. The exception and reservation in the Meyer Deed states:

EXCEPTING and RESERVING, however, from the above described land, a lot of land conveyed unto CLARENCE ENGLISH by Deed of ERNEST R. RINGLER, et ux, dated September 21, 1957 and recorded in Deed Book 433 at page 303.

ALSO, all the right, title and interest of Grantor in all *oil and mineral* rights, situated on said land including specifically the rights of Grantor in a lease given by E.R. RINGLER, et ux to GODFREY L. CABOT, INC., dated September 6, 1948 and recorded in Deed Book 363 at page 7.

Meyer Deed, 1 (emphasis added).

5. The Meyer Deed cites to a conveyance made by the Ringlers in September of 1957. On September 21, 1957, Ernest R. Ringler and Mattie H. Ringler, his wife, conveyed land to Clarence M. English (the “English Deed”). In this deed, the Ringlers reserved certain rights. In particular, the English deed provides that “[g]rantors reserve unto themselves all *gas, oil, minerals, coals, uranium, etc., rights.*” English Deed, 1 (emphasis added).

6. The Meyer Deed also cites to a lease given by the Ringlers to Godfrey L. Cabot, Inc. (the “Cabot Lease”). On December 6, 1948, the Ringlers entered into the Cabot Lease for mining and operating for the production of oil and gas. In particular, this lease provided:

the sole and only purpose and with the exclusive right of mining and operating thereon for the production of *oil and gas*, with the right of way over and across said premises to the place or places of mining and operating, together with the right of way to lay pipe lines to places of operation on these premises for the purpose of carrying oil and gas in pipe lines, of constructing drips, and of building tanks, stations, telephone telegraph, and electric power lines, and houses for gates, meters and regulators, with all other rights, privileges, appliances,, and structures necessary, incident or convenient for the operation of these premises...

Cabot Lease, 1 (emphasis added).

7. The Cabot Lease ran for ten years as long as the land was used for the search and/or production of oil and gas. Therefore, the lease was to be terminated on December 6, 1958, provided that the Ringlers did not grant an extension to Cabot, Inc. Cabot Lease, 1.
8. Any interest that Ms. Ringler excepted and reserved from the conveyance of the Premises to the Meyers eventually passed to Plaintiffs.
  - a. Initially, Ms. Ringler’s interest passed to Joseph K. Day, Ms. Ringler’s only child, on or around May 5, 1967 because Ms. Ringler was not survived by any spouse.
  - b. Joseph K. Day married Mary P. Day during his lifetime. The interest that Joseph K. Day acquired from Ms. Ringler passed to Mary P. Day upon Joseph K. Day’s death on January 8, 1970.

- c. Joseph K. Day and Mary P. Day had three children, i.e. Plaintiffs. Plaintiffs' acquired Mary P. Day's interest in the Premises upon her death on September 24, 2002.
9. After conveying the Premises to the Meyer Defendants, neither Ms. Ringler nor her heirs ever granted any interest in the gas rights of the Premises or entered into any gas lease for the Premises.
10. After Ms. Ringler conveyed the Premises to the Meyer Defendants, the Meyer Defendants consistently entered into gas leases with respect to the Premises.
  - a. On or around October 22, 1958, the Meyer Defendants entered into a lease for the gas on the Premises with Federal Oil and Gas Company. On or around December 23, 1960, this lease was assigned to Shell Oil Company.
  - b. On or around January 11, 1972, the Meyer Defendants entered into a lease for the gas on the Premises with Texaco, Inc., which was recorded in Lycoming County Deed Book 597, page 218.
  - c. On or around November 7, 2002, the Meyer Defendants entered into a Geophysical Permit and Option to Lease with Wevco Production, Inc., granting the company the exclusive right to explore for gas on, over, and under the Premises, which was recorded in Lycoming County Record Book 4371, page 263.
  - d. On or around November 6, 2003, the Meyer Defendants entered into an Oil and Gas Lease with Wevco Production, Inc., which granted the company the exclusive lease of the gas constituents in and under tax parcel B, which was recorded in Lycoming County Record Book 5463, page 286.

11. After the Meyer Defendants conveyed tax parcel B to the Gregory Defendants, the Gregory Defendants entered into a gas lease with respect to their premises. In particular, on or around June 15, 2008, the Gregory Defendants entered into an oil and gas lease with East Resources, Inc., recorded as Instrument No. 200800016078 and dated June 15, 2008.

Conclusions of Law:

1. Pursuant to Pa. R.C.P. 1034 “[a]fter the relevant pleadings are closed, but within such time as not to unreasonably delay the trial, any party may move for judgment on the pleadings.”
2. A motion for judgment on the pleadings may be entered by this Court “when there are no disputed issues of fact and the moving party is entitled to judgment as a matter of law,” similar to a demurrer. *Mellon Bank, N.A., v. Nat’l Union Inc.*, 768 A.2d 865, 868 (Pa. Super. Ct. 2001) (citations omitted).
3. When there is an exception or reservation of “minerals” in a conveyance of land without any specific language that includes oil or natural gas in the exception or reservation, the rule articulated in *Dunham v. Kirkpatrick*, 101 Pa. 36 (1882) applies.
4. The *Dunham* rule provides that “if, in connection with a conveyance of land, there is a reservation or an exception of ‘minerals’ without any specific mention of natural gas or oil, a presumption, rebuttable in nature, arises that the word ‘minerals’ was not intended by the parties to include natural gas or oil.” *Highland v. Commonwealth*, 161 A.2d 390, 398 (Pa. 1960). *See Dunham*, 101 Pa. 36, 44 (1882) (holding that the *Dunham* rule applies to oil), and *Silver v. Bush*, 62 A. 832, 833 (Pa. 1906) (holding

that the *Dunham* rule applies to natural gas). *See also Bundy v. Myer*, 94 A.2d 724 (Pa. 1953).

5. In order to rebut the presumption, clear and convincing evidence must be provided to the Court to establish that the parties intended the conveyance included natural gas or oil within the word “minerals.” *Highland*, 161 A.2d at 399.
6. In the absence of clear and convincing evidence, “the long recognized rule of property that presumes that natural gas is not a ‘mineral, whether the word ‘mineral’ appears in a reservation, an exception or a grant, must control.” *Id.* at 400.
7. A “reservation in a deed is to be construed most strongly against the grantor.” *Bundy*, 94 A.2d at 725. *See also Sheffield Water Co. v. Elk Tanning Co.*, 74 A. 742 (Pa. 1909).
8. Plaintiffs have failed to produce clear and convincing evidence to rebut the *Dunham* presumption.

Discussion:

In this matter, it is undisputed that the phrase “natural gas” does not appear in the exception and reservation in the Meyer Deed. Therefore, the rebuttable presumption of *Dunham* applies, and this Court must initially interpret the Meyer Deed’s exception and reservation as not including gas rights. *See generally Silver v. Bush*, 62 A. 832 (Pa. 1906).

Next, this Court must decide if clear and convincing evidence exists to overcome *Dunham*’s rebuttable presumption. Plaintiffs argue that clear and convincing evidence exists that illustrates Ms. Ringler’s intent for the Meyer Deed’s exception and reservation include gas. In particular, Plaintiffs argue that the exception and reservation in the Meyer

Deed expressly reserves Ms. Ringler's rights under the Cabot Lease and, therefore, expressly reserves Ms. Ringler's right to the gas and oil on her property. Plaintiffs argue that this lease, accompanied by the Meyer Deed, provides clear and convincing evidence that Ms. Ringler intended to except and reserve the oil rights in the Meyer Deed.

This Court does not agree with Plaintiffs' argument and holds that clear and convincing evidence does not exist in this case to rebut the *Dunham* presumption. Initially, this Court notes the language of the two agreements. The Meyer Deed's exception and reservation includes all *oil* and *mineral* rights and the rights pursuant to the Cabot Lease. The Cabot Lease includes the exclusive rights of mining and operating on the Premises for the production of *oil* and *gas*. This Court questions why Ms. Ringler found it necessary to include in the Meyer Deed's reservation oil rights if these oil rights were secured to her in the Cabot Lease. This Court believes that if Ms. Ringler truly intended for the Meyer Deed's reservation to include the oil and gas rights in the Cabot Lease that she would not have expressly reserved oil in the Meyer Deed. Therefore, this Court does not believe that clear and convincing evidence exists that Ms. Ringler intended that the exception and reservation verbiage to include the oil and gas rights outlined in the Cabot Lease.

Additionally, this Court believes that the English Deed further illustrates that Ms. Ringler did not intend her exception and reservation in the Meyer Deed to include gas rights. The Meyer Deed's exception and reservation includes the land conveyed to Clarence M. English on September 21, 1957. The Ringlers included a reservation of rights in the English Deed. In particular, the English Deed provides "[g]rantors reserve unto themselves all *gas*, *oil*, *minerals*, *coals*, *uranium*, etc., rights." English Deed, 1 (emphasis added). In the English Deed, the Ringlers expressly reserved their rights to the gas in the underlying



property. The Ringlers entered into the English Deed on September 21, 1957; they entered into the Meyer Deed on June 6, 1958. In 1957, the Ringlers expressly reserved their rights to gas underlying the property they conveyed to Mr. English; however, less than a year later, Ms. Ringler did not expressly reserve her rights to gas underlying the property that she conveyed to the Meyers. This Court believes that Ms. Ringler’s omission of the word “gas” from the Meyer Deed, coupled with her express reservation of gas in the English Deed, indicates that Ms. Ringler intended to convey the gas rights in the Meyer Deed. *See Highland*, 161 A.2d at 400.

In short, this Court holds that the exception and reservation in the Meyer Deed does not include gas rights. This Court holds that Plaintiffs have not provided clear and convincing evidence that Ms. Ringler intended for gas rights to be included in this reservation; evidence supports the contrary conclusion. In so holding, this Court will uphold two settled property principles: 1) the rebuttable *Dunham* presumption, and 2) the rule of construction that land conveyances must be strongly construed against the grantor.

BY THE COURT,

\_\_\_\_\_  
Date

\_\_\_\_\_  
Richard A. Gray, J.

RAG/abn

cc: John A. Shoemaker, Esquire  
Patrick J. O’Connor, Esquire and Andrea E. Hammel, Esquire  
Cozen O’Conner, 200 Four Falls Corporate Center, Ste. 400,  
West Conshohocken, PA 19428

Jared D. Bayer, Esquire

1900 Market Street, Philadelphia, PA 19103

Kevin C. Abbott, Esquire and Nicolle R. Snyder Bagnell, Esquire

Reed Smith, LLP, 225 Fifth Avenue, Pittsburgh, PA 15222

Ann S. Pepperman, Esquire

Gary L. Weber, Esquire