

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

BLACK WOLF ROD & GUN CLUB, INC.,	:	DOCKET NO. 15-00,411
Plaintiff,	:	
	:	CIVIL ACTION - QUIET TITLE
vs.	:	
INTERNATIONAL DEVELOPMENT	:	
CORPORATION, PENNLYCO, LTD.,	:	1972 MDA 2015
SOUTHWESTERN ENERGY PRODUCTION	:	
COMPANY, <sup>1</sup> AND VIRGINIA ENERGY	:	
CONSULTANTS, LLC,	:	
Defendants	:	APPEAL / 1925 (b)

**OPINION AND ORDER**  
**Issued Pursuant to Pennsylvania Rule of Appellate Procedure 1925(a)**

This Court issues the following Opinion and Order pursuant to P.R.A.P. 1925(a).

Appellant Black Wolf Rod & Gun Club (Black Wolf) appeals this Court's Opinion and Order entered October 19, 2015 (Opinion) granting the defendants' demurrer. The reasons for the Court's Order are stated in its Opinion. In addition, the Court respectfully submits the following in support of affirmance. In its concise statement of matters complained of on appeal, Black Wolf raises errors of law and/or abuses of discretion as to the interpretation of the 1925 Deed.<sup>2</sup>

The Court will summarize and discuss the issues in the order in which they were raised in the concise statement. In ¶ 1a, a (i) and a (ii) of the concise statement, Black Wolf states that no intent to except and reserve the subsurface estate arises from the copying of language in the 1893 Deed because the rights conveyed under the 1893 Deed had been extinguished. In ¶ 1b, Black Wolf states that the Court erred in reasoning that -since the language in the 1893 Deed effectuated a severance of the subsurface rights in 1893, the same language in the 1925 Deed also effectuated a severance - where the language referenced a subsurface severance

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<sup>1</sup> Effective November 24, 2014, Southwestern Energy Production Company became SWN Production Company, LLC and is referred to in this Opinion as SWN.

<sup>2</sup> Black Wolf's concise statement consists of 3 numbered parts, and 9 single spaced subparts, which are summarized and restated for discussion in this Opinion.

which had been extinguished by a subsequent tax sale. In ¶ 1c, Black Wolf states the Court erred in reasoning that a deed could except and reserve subsurface rights by referencing another deed in which the subsurface rights were reserved but later extinguished.

As to those issues, the Court concluded that by excepting and reserving subsurface rights “as fully as” they were excepted and reserved in the 1893 Deed, Central Pennsylvania Lumbar Company (CPLC) reserved subsurface rights in the same manner as reserved for the estate of Samuel P. Davidge, et. ux., et. al, by the 1893 Deed. The 1893 Deed horizontally severed the surface and subsurface rights. Subsequently, tax sales in 1894, 1906, and 1908 extinguished the horizontal severance, merging the subsurface and surface rights to the property. By 1920, CPLC owned the merged estate. The Court concluded from the language of the Deed that CPLC executed the 1925 Deed to once again horizontally sever the surface and subsurface estate in the same manner that it was done in 1893.

Another issue is raised in ¶ 1 (d) of the statement. In that paragraph, Black Wolf contends that the Court failed to properly consider and apply Herder Spring Hunting Club v. Keller, 93 A.3d 465 (Pa. Super. 2013), *allocator granted* 108 A.3d 1279. This Court’s Order is in accordance with Herder Springs. In Herder Springs, subsurface and surface rights to property merged by tax sale. The deed at issue conveyed the merged property from the Herr estate to Herder Springs. That deed made mention of the "conveyance being subject to all exceptions and reservations as are contained in the chain of title.” Since the tax sale extinguished the exceptions and reservations in the chain of title as to the subsurface rights, the Superior Court concluded that no rights were reserved. The language in the deed did not revive the rights to the party (Keller) whose rights had been extinguished by the tax sale.

In the present case, like Herder Springs, the subsurface and surface rights merged by tax sale. The merged property was then subject to a conveyance by the 1925 Deed at issue. Unlike

the deed in Herder Springs, the 1925 Deed reserved the subsurface rights “as fully as” they had been reserved by the 1893 Deed. The Court concluded that the language in the 1925 Deed effectuated a reservation of subsurface rights on behalf of the party conveying property by the deed in the same manner that the 1893 Deed did. Just as the language in the 1893 Deed was effective to reserve rights to the estate conveying the property, so too was the language effective to reserve rights to the estate conveying the property by the 1925 Deed. The language in the deed did not revive extinguished subsurface rights; rather it reserved subsurface rights in the same manner as was done previously. The party (or successors to that party) who retained subsurface rights under the 1893 Deed (Samual P. Davidge et. ux., et. al.) did not have the extinguished rights revived by the 1925 Deed. Rather, the Court concluded that CPLC reserved the subsurface rights to itself in the same manner that Samual P. Davidge et. ux., et. al. did for itself.

As to the errors stated in ¶ 1 e (i) and (ii) of the concise statement, the Court notes the following. The Court construed the plain meaning of the 1925 Deed to undoubtedly reserve subsurface rights; it did not construe a doubtful reservation. As to ¶ 1 e (ii), the Court’s construction of the 1925 Deed gave full effect to the language identified by Black Wolf. The language was discussed at page 10 of the Opinion. Based upon the language, the Court essentially concluded that, while CPLC intended to reserve subsurface rights in the same manner as was done by the 1893 Deed, it further intended, by contrast, to reserve easements such as wagon roads, sled roads, etc., in a different manner than was done by the 1893 Deed. The construction of the 1925 Deed urged by Black Wolf, by contrast, would fail to give any effect to the language of the 1925 Deed as to the reservation of subsurface rights.

Lastly, the issues raised in ¶¶ 2-3 of the concise statement were not raised before the trial court. “Issues not raised in the lower court are waived and cannot be raised for the first

time on appeal.” Pa. R.A.P. 302. In ¶ 2, Black Wolf contends that the Court erred or abused its discretion by failing to conclude that the 1893 Deed required factual development to resolve ambiguity. In ¶ 3, Black Wolf contends that evidence was required to interpret the word “gases” in the 1925 Deed. Nowhere in Black Wolf’s brief in opposition to preliminary objections filed on May 20, 2015 did Black Wolf discuss the interpretation of the word “gases” or contend that further proceedings were needed to develop facts to interpret the 1925 Deed.

For these reasons and for those stated in the Opinion dated October 19, 2015, this Court respectfully submits that the Court’s Order entered October 19, 2015 be affirmed.

BY THE COURT,

January 7, 2016  
Date

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Richard A. Gray, J.

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