

SUPREME COURT OF TEXAS

J. Hiram Moore, Ltd. v. Mary Greer

J. Hiram Moore · No. 02-0455 · Decided December 31, 2004

SUMMARY

This document is a dissenting opinion in a Texas Supreme Court case concerning the construction of a royalty deed. The dissent argues that the deed unambiguously conveyed all of the grantor’s royalty and overriding royalty interests in Wharton County, despite an inaccurate specific property description, and criticizes the Court for treating the deed as ambiguous.

CASE DETAILS

COURT	Supreme Court of Texas
WRITING FOR THE COURT	Priscilla R. Owen; Justice Medina
JURISDICTION	Texas
DECIDED	December 31, 2004
DOCKET	02-0455
DISPOSITION	other
PROCEDURAL POSTURE	Petition for review from the Court of Appeals for the Thirteenth District of Texas; the opinion text is a dissent from the Texas Supreme Court’s disposition concerning the construction of a royalty deed.
STANDARD OF REVIEW	De novo construction of an unambiguous deed as a matter of law.
PRECEDENTIAL VALUE	Dissenting opinion; nonbinding
PARTIES	J. Hiram Moore, Ltd. v. Mary Greer

TOPICS

- minerals
- oil and gas
- deeds
- title disputes
- real estate

PRACTICE AREAS

- Real estate law
- Oil and gas law
- Mineral rights
- Deed construction

QUESTIONS PRESENTED

1. Whether the royalty deed's specific and general granting clauses are ambiguous when the grantor does not own the interest identified in the specific description.
2. Whether the deed's general geographic grant should be enforced to convey all of the grantor's royalty interests in Wharton County.
3. Whether *Smith v. Allison* controls when the specific and general grants concern estates of the same character.

KEY QUOTATIONS

“Because the Court does not give effect to a direct, unambiguous grant, I dissent.”

“There is no occasion to determine which shall prevail, the particular or the general description, unless there is a conflict or repugnance.”

FACTUAL BACKGROUND

The disputed royalty deed specifically described a section of the AB 801 Survey and purported to convey royalty interests in that property. The deed also contained a broad geographic grant conveying all of the grantor's royalty and overriding royalty interests in oil, gas, and other minerals in Wharton County, whether or not properly described. Greer did not own the royalty interest covered by the specific description, but she did own royalty interests in Wharton County that fell within the general grant.

PROCEDURAL HISTORY

The case reached the Supreme Court of Texas on petition for review from the Thirteenth Court of Appeals. The dissent criticizes the Court's conclusion that the deed was ambiguous because a specific grant failed while a general geographic grant purported to convey all of Greer's royalty interests in Wharton County.

DISPOSITION

other

CASES CITED

- *Smith v. Westall*, 13 S.W. 540 (Tex. 1890)
- *Wit v. Harlan*, 2 S.W. 41 (Tex. 1886)
- *Holloway's Unknown Heirs v. Whatley*, 131 S.W.2d 89 (Tex. 1939)
- *Sun Oil Co. v. Burns*, 84 S.W.2d 442 (Tex. 1935)
- *Tex. Consol. Oils v. Bartels*, 270 S.W.2d 708 (Tex. Civ. App.—Eastland 1954, writ ref'd)
- *Smith v. Allison*, 301 S.W.2d 608 (Tex. 1957)
- *Lauchheimer v. Saunders*, 65 S.W. 500 (Tex. Civ. App. 1901, no writ)
- *Sun Oil Co. v. Bennett*, 84 S.W.2d 447 (Tex. 1935)
- *Gulf Production Co. v. Spear*, 84 S.W.2d 452 (Tex. 1935)
- *Jones v. Colle*, 727 S.W.2d 262 (Tex. 1987)

- Texas Co. v. Daugherty

OPINION

PER CURIAM.

IN THE SUPREME COURT OF TEXAS IN THE SUPREME COURT OF TEXAS
===== No. 02-0455 ===== J. Hiram Moore, Ltd., Petitioner, v. Mary
Greer, Respondent

===== On
Petition for Review from the Court of Appeals for the Thirteenth District of Texas
=====

Argued October 29, 2003 Justice Owen, joined by Justice Medina, dissenting.

The granting clause of the royalty deed at issue says that it conveys: all of the oil royalty, gas royalty, overriding royalty and royalty in casinghead gas, gasoline, and royalty in other minerals... that may be produced from the following described lands situated in the County of Wharton, State of Texas, to wit: All of that tract of land out of the AB 801 SEC 14/W M BARNARD #14 SURVEY, Wharton County, Texas known as the MEDALLION OIL B SIXS FRELS UNIT.

Grantor agrees to execute any supplemental instrument requested by Grantee for a more complete or accurate description of said land. Reference is made to this unit(s) for descriptive purposes only and shall not limit this conveyance to any particular depths or wellbores.

In addition to the above described lands, it is the intent of this instrument to convey, and this conveyance does so include, all of grantors [sic] royalty and overriding royalty interest in all oil, gas and other minerals in the above named county or counties, whether actually or properly described herein or not, and all of said lands are covered and included herein as fully, in all respects, as if the same had been actually and properly described herein.

This grant is unambiguous. It purports to grant Greer's interest in a specific section of a specific survey, and it also purports to grant all of Greer's royalty interests in Wharton County, whether described in the deed or not.

As it turns out, Greer does not own what she purported to convey in the specific grant. But she does own royalty interests in Wharton County, and she unequivocally conveyed all those royalty interests in the general granting section of this deed. I would give effect to this grant unless and until the deed is reformed or rescinded.

The Court's reasoning for failing to enforce the deed as written boils down to this and only this: "The deed in effect states that Greer conveys nothing, and that she conveys everything. We cannot construe this deed as a matter of law." [1] But the deed itself contemplated that the specific grant might not "actually and properly describe[]" the royalty interests that Greer owned in Wharton

County, and therefore, the deed expressly provided that Greer was conveying all her royalty interests in Wharton County “whether actually or properly described herein or not, and all of said lands are covered and included herein as fully, in all respects, as if the same had been actually and properly described herein.” If the Court were to faithfully apply our precedent C which is considerable[2] C it would give effect to what the written words unmistakably say in this royalty deed.

This Court’s decision in Smith v. Allison[3] does not support the result reached today. The general clause in Smith v. Allison purported to convey fee simple title to all land adjoining the parcels specifically described, while the specific descriptions as well as the habendum clause and warranty clause limited the conveyance to minerals only.[4] The general grant was therefore in conflict with and repugnant to the specific grant, and we have long held that when that occurs, the specific grant “will ordinarily control.”[5] I have several questions for the Court: Would the Court hold that the deed in this case, including the general grant of all royalty interests in Wharton County, is ambiguous if: 1) a metes and bounds description of the land in which royalty interests were conveyed had been used as the specific description, but the description did not close; 2) there were three tracts of land specifically described in which royalty interests were granted, and all were effective, but there was one other royalty interest in Wharton County, not specifically described, that Greer owned; 3) there were three tracts of land specifically described in which royalty interests were granted, but one failed because Greer owned no interest in that one tract; 4) there were 100 tracts of land specifically described in which royalty interests were granted, but one failed because Greer owned no interest in that one tract; or 5) there were 100 tracts of land specifically described in which royalty interests were granted, and all were effective, but there were three other royalty interests in Wharton County, not specifically described, that Greer owned?

What principle of law does the Court announce today that will give stability and predictability in construing deeds, wills, oil and gas leases, liens, and deeds of trust? I can discern none. We are told only that when there is at least one specific grant and it fails, an unambiguous general grant is rendered ambiguous.

Accordingly, there will be trials, sometimes years after the grantors and grantees have passed on, to determine what a conveyance meant. We have received a number of amicus briefs in this case. [6] The Texas Oil & Gas Association, the Texas Civil Justice League, the law firm of Scott, Douglass & McConnico, L.L.P., on behalf of its client titleX.com, and David Kundysek tell us that the failure to give effect to the plain meaning of the deed before us will lead to severe adverse consequences including the failure of previously certain titles and security interests and a proliferation of litigation that can only be resolved by a trial to determine the meaning of “ambiguous” instruments.

I fear that these amici are correct in their assessment of the damage today's decision will inflict on the stability and predictability of titles. Geographic grants are commonly used in large acquisitions as well as small, personal transactions in which individuals cannot afford to have deed records scoured and legal descriptions prepared and reviewed by lawyers.

But all lay people know what they mean when they say, "I intend to convey all the royalty interests I own in Wharton County." Because the Court does not give effect to the intent that is plainly and directly expressed in the deed before us, I dissent. I Our jurisprudence has given effect to geographic grants for more than 100 years.

In 1890, this Court construed a deed that granted all "'land by me inherited... from my deceased parents'" as well as "'all right that I now have... to any estate or property... in this county or State.'"[7] We concluded that the latter phrase "was intended to enlarge, rather than to limit, the grant. It was not intended as a more particular designation of the property." [8] Similarly, this Court gave full effect to a conveyance of all leases and royalties "'located anywhere within the United States, most of which are located within the States of New Mexico, Kansas, Oklahoma, Louisiana and Texas.'" [9] As early as 1886, this Court held in *Witt v. Harlan* that a general geographic grant would be given effect even though there were other tracts specifically described. [10] The general granting language of the deed said "[d]o hereby bargain, sell, alien, and convey unto the said Harlan, his heirs and assigns, forever, the entire and undivided one-half of all my lands in Texas." [11] The deed then said "[s]ome of which are described as follows," and several tracts were specifically described. [12] Following the specific descriptions, the deed said, "[a]s well as all my lands, or right to lands, of every kind and description, whether legal or equitable, in the state of Texas, or in any of the counties of said state." [13] We held that the grantor's one-half interest in all lands, not just those specifically described, was conveyed.

We also held that the phrase following the specific descriptions, when read in context, conveyed a one-half interest in all lands, but not a 100 percent interest in all lands. [14] The decision in *Holloway's Unknown Heirs v. Whatley* [15] perhaps gives us the most guidance in construing the deed at issue today. *Holloway* had conveyed fee simple title in three tracts in Liberty County, reserving an undivided one-half mineral interest.

Subsequently, *Holloway* conveyed fee simple title in three other tracts in Liberty County to another purchaser, *Baldwin*, specifically describing the tracts. In the paragraph describing the third tract, there appeared a general granting clause: AThird tract being 30 acres a part of the Moses Donohoe League, being all that part of said league the title to which now stands in my name.

If there is any other land owned by me in Liberty County, Texas, or any land, the title to which stands in my name, it is hereby conveyed, the intention of this instrument being to convey all land owned by me in said County." [16] After *Holloway* and *Baldwin* had died, a dispute erupted over whether the one-half undivided mineral interest in the three tracts that were the subject of

Holloway's first deed had passed to Baldwin under the general granting clause of the second deed, even though neither the mineral interest nor the three tracts in which Holloway had retained the one-half mineral interest were specifically referenced in the second deed.

First, this Court rejected the argument that a conveyance of "land" should exclude a previously severed mineral interest unless the severed mineral estate was clearly identified as a mineral estate. [17] We then examined the general granting clause, which said, "[i]f there is any other land owned by me in Liberty, County, Texas, or any land, the title to which stands in my name, it is hereby conveyed, the intention of this instrument being to convey all land owned by me in said County." [18] Greer's deed in the case before us today similarly says: "In addition to the above described lands, it is the intent of this instrument to convey, and this conveyance does so include, all of grantors [sic] royalty and overriding royalty interest in all oil, gas and other minerals in the above named county or counties, whether actually or properly described herein or not, and all of said lands are covered and included herein as fully, in all respects, as if the same had been actually and properly described herein." [19] This Court held in Holloway that the general grant conveyed the one-half mineral interest. [20] We reasoned that the general geographic grant "has no restrictive effect with respect to the quantum of land intended to be conveyed.

Unless its purpose is to enlarge the grant described in the immediately preceding language, it has no purpose at all." [21] The same is true of Greer's deed. It says "[i]n addition" to the specifically described property, she intended to convey all her royalty interest in Wharton County. It is also significant in analyzing Greer's deed that this Court said in Holloway that if there were any uncertainty in what was to be conveyed, the general granting language rendered the meaning certain: If it should be admitted that there is any uncertainty inhering in any portion of the language employed by Holloway to describe the land intended to be conveyed, the language in its entirety is rendered certain by the concluding statement of the description that it was the grantor's intention to convey all of the land owned by him in Liberty County. [22] In Greer's deed, she did not own what was specifically described, but any uncertainty about her intent to convey all her royalty interest in Wharton County was removed by the geographic grant.

In refusing to give effect to the geographic grant in Greer's deed, the Court relies heavily on *Smith v. Allison*. [23] But that decision is consistent with Holloway, even though the Holloway decision is not cited in *Smith*. *Smith* presented the reverse of the situation in Holloway because in *Smith*, all the specific grants were limited to mineral interests while the general grant purported to convey fee simple interests not only in the specifically described tracts, but in adjoining tracts as well.

Holloway stands for the well-settled proposition that a general grant of "land and interests in land" includes mineral interests [24] and that it can enlarge another specific grant of land and interests in land. But the reverse is not necessarily true; a general grant of fee simple interests does not necessarily enlarge specific grants of nothing more than mineral interests.

Smith stands for the proposition that a deed which otherwise clearly indicates that only mineral interests are being conveyed is rendered ambiguous by the inclusion of a general grant purporting to convey fee simple interests.

We have no such conflict in the Greer deed. Throughout, it consistently reflects Greer's intent to convey only royalty interests. The Smith deed specifically described an undivided one-half interest in the oil, gas, and other minerals in the southeast 1/4th and the northwest 1/4th of Section 124, Block 25.[25] In addition to the specific conveyances of the mineral interests in these two parcels, the deed said "The parties however intend this deed to include and the same is hereby made to cover and include not only the above described land, but also any and all other land and interest in land owned or claimed by the Grantor in said survey or surveys in which the above described land is situated or in [sic] adjoining the above described land."

Should the foregoing particular description for any reason prove incorrect or inadequate to cover the land intended to be conveyed as above specified grantor agrees to execute such instrument or instruments that may be necessary to correct such particular description." [26] The grantor also owned the northeast 1/4th of Section 124, as well as all of Sections 123 and 145, which adjoined section 124, but none of those interests were specifically described in the Smith deed.[27] This Court held that the Smith deed was ambiguous because the specific granting clause, the habendum clause, and the warranty clause all referred only to mineral interests, while the general granting language purported to convey not only mineral interests, but fee simple title to the tracts specifically described as well as the fee simple interest in tracts that were not specifically described.[28] We said the deed was ambiguous for two reasons: (1) To adopt the contention of the petitioners-respondents, Allison and others, the deed, even though they now only claim an undivided 2 of the minerals in the northeast 1/4 of Section 124, would convey the full fee simple title to Mrs. Neely.

(2) Even though the petitioners-respondents, Allison and others, assert they are not claiming any interest in Sections 123 and 145, the fact remains that the general description does not limit the conveyance to minerals in Section 124, but conveys the land.

The granting clause, the habendum clause, and the warranty clause refer only to minerals.[29] We concluded that "the deed under question contains material inconsistent provisions that render it uncertain as to the property conveyed." [30] This did not, however, constitute a holding that a general grant renders a specific grant ambiguous when both deal with estates of the same character.

Importantly, the Smith decision discusses and approves of the holding in *Lauchheimer v. Saunders*. [31] In *Saunders*, a deed of trust described "certain parcels and tracts of land" and also had a general clause that said "it was the intention of Saunders to convey all of his real estate in Coryell county, whether described or not, except his homestead." [32] The court of appeals gave effect to

this geographic grant, and in *Smith*, this Court agreed “that there was no repugnancy” between the specific and the general grants at issue in *Lauchheimer*.^[33] We recognized “the grantor’s evident intention to convey the particular tracts mentioned, and also all other lands.”^[34] The *Smith* decision then explained, once again, the reason for the repugnancy in the *Smith* deed: “In the present case we are unable to reconcile recitations of a conveyance of fee simple title to land by general description with a conveyance of only the minerals in the land particularly described.”^[35] The rationale of *Smith* does not support the Court’s conclusion today that when a specific grant of a mineral interest fails because the owner did not own what she purported to own, the general grant of a mineral interest is rendered ambiguous.

This Court explained in *Sun Oil Co. v. Burns* when there is a conflict between general and specific grants and when there is not.^[36] A conflict can exist when the “general description and the particular description were repugnant when they were applied to the ground.”^[37] But, we explained, there is no conflict between the general and the specific when a conveyance clearly shows the grantor intended to grant “not only the land particularly described, but also other land coming within the terms of the general description”: There is no occasion to determine which shall prevail, the particular or the general description, unless there is a conflict or repugnance.

And, of course, there is no conflict or repugnance between the general and the particular description if the deed or lease clearly shows, as does the lease here, the intention of the grantor or lessor to grant or lease, not only the land particularly described, but also other land coming within the terms of the general description.^[38] An oil and gas form lease was at issue in *Sun Oil Co. v. Burns*.

A typewritten metes and bounds description of about 100 acres was included, followed by a pre-printed general grant: AlIt being the intention, however, of lessor to include within the terms of this lease not only the above described land, but also any and all other land owned or claimed by lessor in said survey or surveys in which the above described land is situated or in adjoining surveys and adjoining the above described land.”^[39] We held that this general grant included a 3.736-acre tract that adjoined the specifically described acreage.

In *Sun Oil Co. v. Bennett*, decided the same day, the same printed-form lease contained a typewritten metes-and-bounds description of two tracts, one 34 acres and the other 42 acres.^[40] Following the pre-printed language just quoted above, typewritten language excepted from the general grant two other tracts of 50 acres and 72 acres “now under lease.”^[41] We held that the general grant included in the lease a 2.59-acre tract adjoining the specifically described 42-acre tract.^[42] In *Gulf Production Co. v. Spear*, decided two weeks after *Burns* and *Bennett*, the lease contained a typewritten metes-and-bounds description of a four-sided tract said to contain six acres, but the description omitted the course of the boundary on one side.^[43] The lessor argued that the description did not include an adjoining 1.81-acre tract; the lessee argued that it did, or

else that the tract was embraced by this general language: “it being the intention to include all land owned or claimed by Lessor in said survey or surveys.”[44] We held that the specific description was unclear, and that the general language was less clear than the general grants in Burns and Bennett because it did not use their “not only... but also” construction.[45] But we nevertheless held that the general grant included the tract adjoining the one specifically described in the lease.[46] The Greer deed says “[i]n addition to the above described lands, it is the intent of this instrument to convey” all royalty interests in Wharton County.

That grant should be given effect, just as this Court gave effect to the general grants in Holloway, Burns, Bennett, and Spears, and other cases cited above. The court of appeals concluded that *Jones v. Colle*[47] controls this case.[48] In *Jones v. Colle*, Winifred Curry owned a 68.72-acre tract and a 28.84-acre mineral interest in it. He also owned an adjoining 49.34-acre tract and 20.7-acre mineral interest in that tract.

He accordingly owned a total of 49.54 mineral acres in the two adjoining tracts.[49] Jack Colle knew about both tracts but prepared a receivership lease for court approval to himself specifically describing “[a]n undivided 49.54 mineral acres out of 68.72 mineral acres” without mentioning the 49.34-acre tract.[50] The lease also contained the following general grant: AThis lease also covers and includes, in addition to that above described, all land, if any, contiguous or adjacent to or adjoining the land above described and (a) owned or claimed by lessor by limitation, prescription, possession, reversion or unrecorded instrument or (b) as to which lessor has a preference right of acquisition.”[51] The Court rejected Colle’s claim that the lease covered Curry’s mineral interest in both tracts, stating that in *Smith v. Allison* the court held that a Mother Hubbard clause would only serve to cover property not described in the deed when that other property consists of small unleased pieces or strips of land which may exist without the knowledge of one or both of the parties.

We hold that is a correct statement of the law which controls the situation in this case. Our holding in *Smith* precludes Colle from using the Mother Hubbard clause to secure title to the minerals in the 49.34 acre adjoining tract, the existence of which was known to both parties at the time the lease was executed.[52] This characterization of *Smith*, which held only that a particular deed before the Court was ambiguous, is plainly wrong.

Further, the rationale in *Jones v. Colle* was unnecessary, given that Colle did not contend that Curry owned or claimed the second tract only by limitation, prescription, possession, reversion, unrecorded instrument, or preference right of acquisition.

The general grant, read literally, did not lease any interest in the 49.34-acre tract to Colle. With respect to the inaccuracy of the specific description, which referred to a larger mineral interest in the 68.72-acre tract than Curry owned, the Court seems to have been influenced by the fact that Colle knew of both tracts when he prepared the lease and yet referred only to the one.

Jones relied solely on Smith, and while it misread that case, the result was not inconsistent with a correct reading of Smith or any other decision of this Court. Under these circumstances, dicta in Jones cannot fairly be read to change the consistent rule applied by Texas courts for a century.

In any event, this Court construed the lease in Jones v. Colle as a matter of law. The Court did not find the lease ambiguous. * * * * * Because the Court does not give effect to a direct, unambiguous grant, I dissent. _____ Priscilla R. Owen Justice
OPINION DELIVERED: December 31, 2004 [1] __ S.W.3d at __.

[2] Smith v. Westall, 13 S.W. 540 (Tex. 1890); Wit v. Harlan, 2 S.W. 41 (Tex. 1886); Holloway's Unknown Heirs v. Whatley, 131 S.W.2d 89 (Tex. 1939); Sun Oil Co. v. Burns, 84 S.W.2d 442 (Tex. 1935); Tex. Consol. Oils v. Bartels, 270 S.W.2d 708 (Tex. Civ. App. BEastland 1954, writ ref'd).

[3] 301 S.W.2d 608 (Tex. 1957). [4] Id. at 610. [5] Burns, 84 S.W.2d at 446. [6] Amicus briefs have been submitted by CSM Partners, L.C. and others; David L. Kundysek, pro se; Mauritz & Couey, a Texas Partnership; the law firm of Schoenbaum, Curphy & Scanlan, P.C.; the Texas Civil Justice League; the Texas Oil & Gas Association; and the law firm of Scott, Douglass & McConnico, L.L.P., on behalf of titleX.com.

[7] Smith, 13 S.W. at 540. [8] Id. [9] Tex. Consol. Oils v. Bartels, 270 S.W.2d 708, 710 (Tex. Civ. App. BEastland 1954, writ ref'd). [10] 2 S.W. 41, 41-42 (Tex. 1886). [11] Id. at 41. [12] Id. [13] Id. [14] Id. at 42.

[15] 131 S.W.2d 89 (Tex. 1939). [16] Id. at 90 (emphasis in original). [17] Id. at 91. [18] Id. [19] Emphasis added. [20] 131 S.W.2d at 92. [21] Id. at 91. [22] Id. at 92. [23] 301 S.W.2d 608 (Tex. 1956). [24] 131 S.W.2d at 92 (holding that to construe the grant of land and interests in land to exclude severed mineral interests would be tantamount to holding that a mineral estate, when constructively severed from the surface by apt words of description, is not 'land.' Such a holding would be in the teeth of such cases as Texas Company v. Daugherty....").

[25] 301 S.W.2d at 610. [26] Id. [27] Id. at 611. [28] Id. [29] Id. [30] Id. at 612. [31] 65 S.W. 500, 501 (Tex. Civ. App. 1901, no writ). [32] Id. [33] Smith, 301 S.W.2d at 612. [34] Id. (quoting Lauchheimer, 65 S.W. at 501).

[35] Id. [36] 84 S.W.2d 442, 446-47 (Tex. 1935). [37] Id. at 446. [38] Id. at 447. [39] Id. at 443. [40] 84 S.W.2d 447, 448 (Tex. 1935). [41] Id. [42] Id. at 449. [43] 84 S.W.2d 452, 453-54 (Tex. 1935). [44] Id. [45] Id. at 454-55.

[46] Id. at 457. [47] 727 S.W.2d 262 (Tex. 1987). [48] 72 S.W.3d at 440. [49] Jones, 727 S.W.2d at 262. [50] Id. at 262-63. [51] Id. [52] Id. at 263.

