

OHIO COURT OF APPEALS, SEVENTH APPELLATE DISTRICT, BELMONT COUNTY

Sutherly v. Theaker

2026-Ohio-444 · No. 25 BE 0003 · Decided February 11, 2026

SUMMARY

The Seventh District Court of Appeals of Ohio denied Laura Sutherly’s applications for reconsideration and en banc consideration of the court’s prior decision concerning ownership of gas royalty interests transferred through transfer-on-death designations. The court held that Sutherly identified neither an obvious error nor an intradistrict conflict warranting further consideration.

CASE DETAILS

COURT	Ohio Court of Appeals, Seventh Appellate District, Belmont County
WRITING FOR THE COURT	Per Curiam; Carol Ann Robb; Cheryl L. Waite; Mark A. Hanni
JURISDICTION	Ohio Court of Appeals, Seventh Appellate District, Belmont County
DECIDED	February 11, 2026
DOCKET	25 BE 0003
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff-appellant sought reconsideration and en banc consideration of the court's prior appellate opinion. The court denied both applications.
STANDARD OF REVIEW	An application for reconsideration is evaluated under whether the applicant identifies an obvious error in the decision or raises an issue that the court failed to consider or failed to fully consider when it should have. En banc consideration requires a determination that two or more decisions of the district conflict on a dispositive issue and that en banc review is necessary to secure or maintain uniformity.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Laura Sutherly v. Richard M. Theaker, II, et al.

TOPICS

- appellate procedure
- probate procedure
- minerals
- trusts
- res judicata

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Sutherly identified an obvious error or an overlooked issue warranting reconsideration of the court's prior decision.
2. Whether the prior decision conflicted with decisions of the Seventh District on a dispositive legal issue so as to require en banc consideration.

HOLDINGS

1. Reconsideration was not warranted because Sutherly merely reiterated arguments made on appeal and identified neither an obvious error nor an issue that the court had failed to consider or fully consider.
2. En banc consideration was not warranted because Sutherly failed to identify an intradistrict conflict concerning a dispositive issue and failed to show that en banc review was necessary to maintain uniformity within the district.

KEY QUOTATIONS

“Because the royalty rights vested automatically in Theaker II in his personal capacity upon the decedent's death, Theaker II's efforts to convey the same pursuant to the decedent's will and/or trust by Theaker II in his fiduciary capacity were of no legal consequence.” (¶ 5)

“The test generally applied to reconsiderations is whether the applicant identifies “an obvious error in [the] decision or raises an issue for our consideration that was either not considered at all or was not fully considered by us when it should have been.”” (¶ 3)

FACTUAL BACKGROUND

The dispute concerns ownership of half of a gas royalty or mineral interest associated with property connected to the decedent's estate or trust. The probate court's proceedings were stayed after Sutherly initiated a declaratory-judgment action against Theaker individually and as trustee. The prior appellate decision held that the royalty rights vested automatically in Theaker in his personal capacity upon the decedent's death and that his attempted conveyance of those rights in a fiduciary capacity had no legal consequence.

PROCEDURAL HISTORY

Sutherly previously appealed a trial-court decision concerning ownership of gas royalty or mineral interests. In the prior appeal, the court rejected the trial court's res judicata analysis but held that Theaker, acting in a representative capacity, lacked authority to transfer the royalty interest because the property did not belong to the decedent or his trust. Sutherly then sought reconsideration and en banc consideration, asserting obvious error and an intradistrict conflict; both applications were denied.

DISPOSITION

other

CASES CITED

- Sutherly v. Theaker, 2025-Ohio-5208 (7th Dist.)
- State v. Burke, 2006-Ohio-1026, ¶ 2 (10th Dist.)
- State v. Owens, 112 Ohio App.3d 334, 336 (11th Dist. 1996)
- State v. Wellington, 2015-Ohio-2095, ¶ 9 (7th Dist.)
- Electronic Classroom of Tomorrow v. State Bd. of Edn., 2019-Ohio-1540, ¶ 3 (10th Dist.)
- Electronic Classroom of Tomorrow v. State Bd. of Edn., 2021-Ohio-3445
- State v. Carosiello, 2018-Ohio-860, ¶ 12 (7th Dist.)
- State v. Forrest, 2013-Ohio-2409, ¶ 8
- In re Estate of Montgomery, 2014-Ohio-1401 (7th Dist.)

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