

SUPREME COURT OF APPEALS OF WEST VIRGINIA

West Virginia Department of Transportation, Division of Highways v. Douglas R. Veach, et al.

Veach · No. No. 16-0326 · Decided April 17, 2017

SUMMARY

This document is a concurring opinion by Justice Ketchum of the Supreme Court of Appeals of West Virginia in West Virginia Department of Transportation, Division of Highways v. Douglas R. Veach. The concurrence addresses the meaning of “mineral” in instruments conveying or reserving interests in land, advocating a broad definition based on the parties’ general intent to sever the mineral estate from the surface estate. It also discusses the respective rights and duties of mineral-estate and surface-estate owners, while noting that the mineral-definition issue was not reached by the majority because it had been stipulated and was not preserved for appeal.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Justice Ketchum
JURISDICTION	West Virginia
DECIDED	April 17, 2017
DOCKET	No. 16-0326
DISPOSITION	other
PROCEDURAL POSTURE	Justice Ketchum wrote a concurrence addressing a mineral-definition issue that the majority did not reach because the Department of Transportation's trial counsel stipulated that limestone was a mineral and failed to preserve the issue for appeal.
PRECEDENTIAL VALUE	The mineral-definition discussion is nonbinding concurring commentary; the concurrence states that the majority declined to reach the issue because it was not preserved.
PARTIES	West Virginia Department of Transportation, Division of Highways v. Douglas R. Veach, et al.

TOPICS

[minerals](#)[mineral rights](#)[real estate](#)[preservation of error](#)[appellate procedure](#)

PRACTICE AREAS

Real estate

Mineral rights

Appellate procedure

QUESTIONS PRESENTED

1. What legal meaning should be given to the word "mineral" when used in a deed, will, contract, or other instrument conveying or reserving an interest in land?
2. Whether a general grant or reservation of all minerals, without clear qualifying language, should be construed to sever the entire mineral estate from the surface estate and include substances presently or prospectively valuable through development of the arts and sciences.

HOLDINGS

1. The concurrence proposes that when a deed, will, or other conveyance contains a general grant or reservation of all minerals without clear qualifying language, courts should reasonably assume that the parties intended to sever the entire mineral estate from the surface estate. The mineral estate should include all substances presently valuable in themselves, whether known or unknown at the time of conveyance, and all substances that become valuable through development of the arts and sciences.
2. The majority properly did not decide the Department's argument concerning the legal meaning of mineral because trial counsel stipulated that limestone was a mineral and failed to preserve the issue for appeal.

KEY QUOTATIONS

"The controlling factor in the interpretation of deeds, wills and contracts is the intention of the parties[.]" (at 1)

"The word "surface," when used in an instrument of conveyance, generally means the exposed area of land, improvements on the land, and any part of the underground actually used by a surface owner as an adjunct to surface use" (at 3)

"When a deed, will or other conveyance includes a general grant or reservation of all minerals without clear qualifying language, a court should reasonably assume that the parties to the writing intended to sever the entire mineral estate from the surface estate." (at 11-12)

FACTUAL BACKGROUND

The case involved the meaning of the term "mineral" in a conveyance of an interest in land, with limestone identified as the substance at issue. The Department of Transportation's trial counsel stipulated that limestone was a mineral, while appellate counsel later argued that limestone should not legally qualify as a mineral. The concurrence discusses the relationship between severed surface and mineral estates and the parties' general intent when conveying or reserving minerals.

PROCEDURAL HISTORY

The Department of Transportation appealed after its trial counsel stipulated that limestone was a mineral. The concurrence states that the majority properly declined to consider appellate counsel's argument that limestone is not a mineral because the issue was not preserved. The provided text does not state the judgment entered below or the majority's ultimate disposition.

DISPOSITION

other

CASES CITED

- Murphy v. Van Voorhis, 94 W.Va. 475, 477, 119 S.E. 297, 298 (1923)
- State by Department of Natural Resources v. Cooper, 152 W.Va. 309, 315, 162 S.E.2d 281, 284 (1968)
- Faith United Methodist Church & Cemetery of Terra Alta v. Morgan, 231 W.Va. 423, 429-31, 745 S.E.2d 461, 467-69 (2013)
- West Virginia Department of Transportation v. Newton, 235 W.Va. 267, 773 S.E.2d 371 (2015)
- West Virginia Department of Transportation v. Newton, No. 16-0325 (W.Va. Mar. 7, 2017)
- Waugh v. Thompson Land & Coal Co., 103 W.Va. 567, 571-73, 137 S.E. 895, 897 (1927)
- Robinson v. Wheeling Steel & Iron Co., 99 W.Va. 435, 129 S.E. 311, 312 (1925)
- Horse Creek Land & Mineral Co. v. Midkiff, 81 W.Va. 616, 95 S.E. 26, 27 (1918)
- Faith United Methodist Church & Cemetery of Terra Alta v. Morgan, 231 W.Va. 423, 425, 745 S.E.2d 461, 463 (2013)
- W.Va. Department of Highways v. Farmer, 159 W.Va. 823, 226 S.E.2d 717 (1976)
- Dunham v. Kirkpatrick, 101 Pa. 36 (1882)
- Butler v. Charles Powers Estate ex rel. Warren, 65 A.3d 885 (Pa. 2013)
- Besing v. Ohio Valley Coal Co. of Kentucky, 293 N.E.2d 510, 512 (Ind. App. 1973)
- Carson v. Missouri Pacific Railroad Co., 209 S.W.2d 97, 99 (Ark. 1948)
- Deer Lake Co. v. Michigan Land & Iron Co., 50 N.W. 807, 809 (Mich. 1891)
- Dawson v. Meike, 508 P.2d 15, 18 (Wyo. 1973)
- Rock House Fork Land Co. v. Raleigh Brick & Tile Co., 83 W.Va. 20, 97 S.E. 684 (1918)
- Sult v. A. Hochstetter Oil Co., 63 W.Va. 317, 61 S.E. 307, 310 (1908)
- Monon Coal Co. v. Riggs, 56 N.E.2d 672, 674 (Ind. App. 1944)
- Stowers v. Huntington Development & Gas Co., 72 F.2d 969, 972-73 (4th Cir. 1934)
- Moser v. U.S. Steel Corp., 676 S.W.2d 99, 102 (Tex. 1984)