

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-19-00776-CV

CKD Homes Direct, Ltd., Appellant

v.

Glen Hegar, Comptroller of Public Accounts of the State of Texas, Appellee

**FROM THE 261ST DISTRICT COURT OF TRAVIS COUNTY
NO. D-1-GN-16-005189, THE HONORABLE DARLENE BYRNE, JUDGE PRESIDING**

MEMORANDUM OPINION

CKD Homes Direct Ltd. (CKD Homes) filed suit in Travis County district court to appeal the denial of its claim to \$296,422.29 in unclaimed royalty payments that had been sent to Glenn Hegar, Comptroller of Public Accounts of the State of Texas (the Comptroller) by Enterprise Crude Oil, Ltd., the operator of mineral producing property in Andrews County, Texas. *See* Tex. Prop. Code § 74.506 (permitting person aggrieved by Comptroller's decision on claim to unclaimed property to appeal decision by filing suit against Comptroller in Travis County district court). After CKD Homes and the Comptroller filed competing motions for summary judgment, the trial court granted the Comptroller's motion, denied CKD Homes's, and rendered judgment that CKD Homes did not own the property claimed. On appeal, CKD Homes asserts that the trial court erred by concluding that it did not own the unclaimed royalty payments. We will affirm the trial court's judgment.

BACKGROUND

The Suspended Royalty Payments

Enterprise Crude Oil Ltd. produced minerals from a tract of land in Andrews County, Texas. By February 29, 2012, Enterprise had accumulated \$296,422.29 in royalties from mineral production on the tract that was owed to the owners of a 0.116016 royalty interest in the tract (the 0.116016 Royalty Interest). Unable to identify or locate the owner or owners of the 0.116016 Royalty Interest (the Unknown Owners), Enterprise held the money belonging to them in suspense as permitted by the Texas Natural Resources Code. *See* Tex. Nat. Res. Code § 91.402(b) (providing that under certain circumstances “payor” may withhold without interest payment of proceeds derived from sale of oil or gas production from well located in Texas to “payee” beyond time limits proscribed by statute).¹ The money held in suspense was the Unknown Owners’ share of proceeds derived from mineral production through February 29, 2012.

The Foreclosure Sale

In May 2013, three Andrews County taxing districts filed suit against the Unknown Owners alleging that taxes imposed on the 0.116016 Royalty Interest were delinquent and owing. The taxing districts sought a judgment that the Unknown Owners were liable for the delinquent taxes and sought foreclosure of their tax lien on the 0.116016 Royalty Interest.² On March 31,

¹ The Texas Natural Resources Code defines a “payor” as “the party who undertakes to distribute oil and gas proceeds to the payee” and a “payee” as “any person legally entitled to payment from the proceeds derived from the sale of oil or gas from an oil or gas well located in this state.” Tex. Nat. Res. Code § 91.401(1), (2). In the present case, Enterprise was the “payor” and the Unknown Owners were the “payee” with respect to the proceeds derived from the sale of 2012 production from the Andrews County tract.

² A royalty interest is an interest in land that is a part of the total mineral estate. *Luckel v. White*, 819 S.W.2d 459, 463 (Tex. 1991). Thus, a royalty interest is a property interest that is one of the rights and attributes comprising the mineral estate. *Id.*

2015, the Andrews County district court rendered judgment in favor of the taxing authorities on their claims for payment of delinquent taxes, plus penalties and interest, in the amount of \$26,678.16. The court further decreed that a tax lien against the 0.116016 Royalty Interest secured payment of the taxes, penalties, and interest and ordered the royalty interest sold to satisfy the amounts secured by the tax lien. Pursuant to the court's order, in July 2015 the Andrews County district clerk issued an order of sale commanding the sheriff or constable to seize and sell the 0.116016 Royalty Interest to the highest bidder.³ The sheriff's sale was held on September 1, 2015, and the 0.116016 Royalty Interest was sold to CKD Homes. On September 10, 2015, the Andrews County sheriff executed a Sheriff's Deed that conveyed to CKD Homes:

all the estate, title, interest and claim which the [unknown royalty interest owners] had on the 3rd of March 2015, or at any time afterwards, in and to the premises described in said Order of Sale; viz; the lot, tract or parcel of land lying and situated in ANDREWS County, Texas and described as follows, to wit:

TRACT 1: GEO: 000000083127
A 0.116016 Royalty Interest in Section Two (2), Block A42, PSL Survey,
Andrews County, Texas: Cities Well, Sandridge Exploration – Operator

Thus, as of September 10, 2015, CKD Homes became the owner of whatever title or claim to the property interest described as a "0.116016 Royalty Interest in Section Two (2), Block A43, PSL Survey, Andrews County, Texas: Cities Well, Sandridge Exploration – Operator" that the Unknown Owners held as of March 3, 2015.⁴

³ Although both the judgment and the order of sale in places use the term "tract of land," the property to be sold is specifically described in both as "Tract 1: A 0.116016 Royalty Interest in Section Two (2), Block A42, PSL Survey, Andrews County, Texas; Cities Well, Sandridge Exploration – Operator."

⁴ Put differently, in the event the Unknown Owners had sold, conveyed, or otherwise divested themselves of any portion of the property interest described as a "0.116016 Royalty

Delivery of Suspended Royalty Payments to the Comptroller as Abandoned Property

Around the same time as, but unrelated to, the foreclosure and order of sale of the 0.116016 Royalty Interest, Enterprise complied with its statutory obligation to deliver to the Comptroller the unclaimed suspended royalty payments it had held for the Unknown Owners since February 2012. *See* Tex. Prop. Code §§ 74.001-.712. Chapter 74 of the Property Code generally provides for the reporting and delivery of unclaimed personal property to the State of Texas. The purpose of this and related portions of the Property Code is to remove abandoned property from the possession of the current holder, relieve that holder of any further liability with regard to such property, put it in the hands of the State, and provide a means for the absent owner to reclaim the abandoned property. *See id.* § 74.304; *Melton v. State*, 993 S.W.2d 95, 100 (Tex. 1999) (“The intent underlying Chapter 74 is to return abandoned property to its rightful owner.”). To this end, the Property Code requires a holder of property presumed to be abandoned to annually file a report with the Comptroller. *See* Tex. Prop. Code §§ 74.001, .101, .301. The report must describe and provide certain information about any abandoned property the reporting party holds on March 1 of the report year. *Id.* § 74.101. The report, along with the abandoned property, must be delivered to the Comptroller no later than the following July 1. *Id.* § 74.301.⁵

Property is presumed abandoned if the existence and location of the owner has been unknown to the holder for longer than three years and, according to the holder’s knowledge and records, neither a claim nor an act of ownership has been asserted over or exercised against

Interest” prior to March 3, 2015, the sheriff’s deed conveyed to CKD Homes only the portion of 0.116016 Royalty Interest the Unknown Owners retained as of that date.

⁵ Sections 72.101 and 72.102 of the Texas Property Code provide certain exceptions to the above procedures that are not relevant to the issues presented in this case. *See* Tex. Prop. Code §§ 72.101, .102.

the property. *Id.* § 72.101. On March 1, 2015, Enterprise had held the \$296,422.29 in royalty payments for three years without knowing the identity or location of the Unknown Owners and without the Unknown Owners having asserted any claim to or act of ownership of the money. Thus, on March 1, 2015, the funds were presumed to be abandoned under the Property Code. *Id.* Enterprise delivered the unclaimed and presumptively abandoned funds to the Comptroller on June 30, 2015, in compliance with the Property Code. *Id.* § 74.301. The Comptroller assumed custody of the property and the responsibility for its safekeeping. *Id.* § 74.304. The Comptroller “essentially step[ped] into the shoes of the absent owner.” *See Melton*, 993 S.W.2d at 102.

When a claim to abandoned property is filed with the Comptroller, he must review the validity of that claim and, if he determines the claim is valid, must approve it. Tex. Prop. Code § 74.501(a), (b). The Comptroller is authorized to approve the claim of a “reported owner” or, if the reported owner has died, the appropriate legal beneficiaries, an executor holding current letters testamentary, or the reported owner’s legal heirs. *Id.* § 74.501(d)(1)-(4). The Comptroller “may not pay” a claim to “a creditor, a judgment creditor, a lienholder, or an assignee of the reported owner or of the owner’s heirs.” *Id.* § 74.501(e)(1). This ensures that the Comptroller carries out the purpose of the statute, which is to “return abandoned property to its rightful owner.” *Melton*, 993 S.W.2d at 100.

CKD Homes Files Claim to the Abandoned Property

In June 2016, approximately one year after purchasing the 0.116016 Royalty Interest at the foreclosure sale, CKD Homes filed a Texas Unclaimed Property Business Owner Claim Form with the Comptroller in which it asserted a claim to the \$296,422.29 in unclaimed royalty payments that Enterprise had delivered to the Comptroller in March 2015. After reviewing the claim, the Comptroller sent a letter to CKD Homes stating:

The claims review process involves comparing the supporting documentation you provide with information provided to us by the reporting institution to determine rightful ownership. We have carefully reviewed your claim and determined that it must be suspended or denied for the following reasons:

1. The date of last activity [February 29, 2012] is prior to the effective date of the Order of Sale and Division Order⁶ you provided from Enterprise Crude Oil LLC.

Thus, the Comptroller informed CKD Homes that, because it acquired the 0.116016 Royalty Interest after the last date of production from which the unclaimed royalty money was derived, i.e., after February 29, 2012, CKD Homes was not the “reported owner” of the unclaimed property.

CKD Homes then filed suit in Travis County district court. *See* Tex. Prop. Code § 74.506 (person aggrieved by decision of claim filed under subchapter F may appeal decision before 61st day after day on which it was rendered). The Comptroller filed a motion for summary judgment asserting that, as a matter of law, CKD Homes was not entitled to money constituting royalty payments belonging to the Unknown Owners for production that preceded CKD Homes’s acquisition of the 0.116016 Royalty Interest. The Comptroller asserted that all that CKD Homes acquired at the foreclosure sale was the 0.116016 Royalty Interest, a property interest that gave it a right to receive proceeds from production from the date of acquisition forward, but not a right to collect money constituting payments to the previous royalty interest owners for production in the past. Alternatively, the Comptroller argued that even if CKD Homes *had* somehow acquired an interest in past royalty payments by purchasing the 0.116016 Royalty Interest at the foreclosure sale, the Comptroller was prohibited from delivering the unclaimed property to CKD Homes because it was, at most, an assignee of either the Unknown Owners or the Andrews County Sheriff

⁶ Division orders provide a procedure for distributing the proceeds from the sale of oil and gas. They authorize and direct to whom and in what proportion to distribute funds from the sale of oil and gas. *Gavenda v. Strata Energy, Inc.*, 705 S.W.2d 690, 691 (Tex. 1986).

who executed the Sheriff's Deed and not the "reported owner." See Tex. Prop. Code § 74.501(d) (Comptroller may approve claim of "the reported owner" of unclaimed property), (e) (Comptroller may not pay claim to unclaimed property to "assignee of the reported owner or of the owner's heirs").

CKD Homes filed a cross-motion for summary judgment asserting that it acquired at the foreclosure sale not only the 0.116016 Royalty Interest, a property interest, but also the Unknown Owners' "claim" to the money held in suspense by Enterprise due to its inability to locate those Unknown Owners. CKD Homes pointed to the language of the Sheriff's Deed that conveys to CKD Homes "all the estate, right, title, interest and claim which the [Unknown Owners] had on the 3rd day of March 2015, or at any time afterwards, in and to the premises described in said Order of Sale." CKD Homes reasons that because the Unknown Owners had a "claim" to the royalty money held in suspense on March 3, 2015, that claim transferred to CKD Homes upon execution of the Sheriff's Deed.

After a hearing, the trial court granted the Comptroller's motion for summary judgment without stating the grounds. The court denied CKD Homes's motion and rendered judgment that "CKD Homes Direct Ltd. does not own the property claimed, and [] takes nothing from its appeal of the Comptroller's denial of [CKD Homes's] claim for \$296,422.29." This appeal followed.

DISCUSSION

The trial court resolved this case on the parties' cross-motions for summary judgment. "When we review cross-motions for summary judgment, we consider both motions and render the judgment that the trial court should have rendered." *Coastal Liquids Transp., L.P. v. Harris Cty. Appraisal Dist.*, 46 S.W.3d 880, 884 (Tex. 2001) (citing *Commissioners Ct. v. Agan*,

940 S.W.2d 77, 81 (Tex. 1997); *Jones v. Strauss*, 745 S.W.2d 898, 900 (Tex. 1988)). Each party bears the burden of establishing that it is entitled to judgment as a matter of law. *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 356 (Tex. 2000).

CKD Homes challenges the trial court’s conclusion that it did not own the unclaimed royalty payments held by the Comptroller. CKD Homes argues that it is entitled to those unclaimed royalty payments because the Sheriff’s Deed conveyed to it “all the estate, right, title, interest, and claim which the [Unknown Owners] had on the 3rd day of March 2015, or at any time afterwards, in and to the premises described in said Order of Sale.” CKD Homes maintains that the Sheriff’s Deed conveyed both the 0.116016 Royalty Interest *and* the funds attributable to that royalty interest for production through February 2012 that were held in suspense and ultimately delivered to the Comptroller. To resolve whether CKD Homes owns the unclaimed royalty payments currently held by the Comptroller, we must determine the nature of the interest CKD Homes acquired through the foreclosure sale and, more specifically, whether the interest conveyed in the Sheriff’s Deed included the unclaimed royalty payments derived from oil and gas production that occurred through February 2012, three years before the sale.

We construe unambiguous deeds—like any other legal instrument—as a matter of law. *Luckel v. White*, 819 S.W.2d 459, 461 (Tex. 1991). We “ascertain the intent of the parties from all of the language within the four corners of the deed.” *Wenske v. Ealy*, 521 S.W.3d 791, 794 (Tex. 2017). The Sheriff’s Deed conveyed to CKD Homes the Unknown Owners’ “right, title, interest, and claim” to the “premises described” in the Andrews County District Clerk’s Order of Sale. The Order of Sale describes the property to be sold as “A 0.116016 Royalty Interest in Section Two (2), Block A42, PSL Survey, Andrews County Texas; Cities Well, Sandridge Exploration – Operator.” Thus, the Sheriff’s Deed conveyed to CKD Homes a royalty interest;

specifically, the royalty interest that the Unknown Owners held in “Section Two (2), Block A42” in Andrews County. A royalty interest is an interest in land that is a part of the total mineral estate. *State Nat’l Bank v. Morgan*, 143 S.W.2d 757, 760 (Tex. 1940). “The royalty interest is a property interest that is one of the rights and attributes comprising the mineral estate[.]” *Luckel*, 819 S.W.2d at 463.⁷ A royalty interest derives from the grantor’s mineral interest and is a non-possessory interest in minerals that may be separately alienated. *Id.* Although a royalty interest entitles its owner to a share of the proceeds of production from the mineral estate burdened by the royalty interest, *see Plainsmen Trading Co. v. Crews*, 898 S.W.2d 786, 789 (Tex. 1995), the proceeds of production and the royalty interest itself are not the same thing. The royalty interest is an interest in real property and the proceeds are personal property. *See Humble Oil & Refining Co. v. West*, 508 S.W.2d 812, 817 (Tex. 1974) (holding that oil and gas are realty when in place but, once produced, constitute personalty). Therefore, by its terms, the conveyance was limited to the royalty interest itself, and did not transfer any interest in the unclaimed royalty payments.

Moreover, *if* the language of the Sheriff’s Deed were interpreted as attempting to convey personal property—the accumulated royalty proceeds held in suspense and ultimately delivered to the Comptroller—the conveyance would be void to that extent because it would exceed the scope of the judgment and order of sale. *See Johnson v. Enerlex, Inc.*, No. 03-96-00401-CV, 1997 WL 562017, at *2 (Tex. App.—Austin Sept. 11, 1997, pet. denied) (mem. op., not designated for publication) (sheriff’s deed that conveys property in excess of judgment and order of sale is void). It is axiomatic that a foreclosure sale purchaser cannot acquire an interest

⁷ The mineral estate is composed of five severable rights: “1) the right to develop, 2) the right to lease, 3) the right to receive bonus payments, 4) the right to receive delay rentals, and 5) the right to receive royalty payments.” *French v. Chevron, U.S.A., Inc.*, 896 S.W.2d 795, 797 (Tex. 1995).

greater than that described in the judgment of foreclosure and order of sale. *See Adams v. Duncan*, 215 S.W.2d 599, 604 (Tex. 1948) (sheriff powerless to pass title to property not described in judgment and order of sale); *Mills v. Pitts*, 48 S.W.2d 941, 942 (Tex. 1932) (“Nothing is better settled than that the authority of the sheriff to pass the judgment defendant’s title at a sale under foreclosure by decree of court rests upon the decree and the order of sale. . . . If the decree and the order of sale fail to authorize such a sale as the sheriff undertook to make, no title passes thereby.”). Therefore, the interest CKD Homes acquired is limited to the interest that was foreclosed on by the taxing authorities. The taxing authorities foreclosed on a lien created by Chapter 32 of the Texas Tax Code. *See* Tex. Tax Code §§ 32.01-.07. This statute creates a lien on property to secure payment of taxes imposed for the year on the property. *Id.* § 32.01(a). A royalty interest is an interest in land to which a lien can attach. *Luckel*, 819 S.W.2d at 463 (royalty interest is interest in land that is part of mineral estate); *Humble Oil & Refining Co.*, 508 S.W.2d at 817 (oil and gas are realty when in place); *see also* Tex. Tax Code § 1.04(2) (“real property” includes “a mineral in place”). Once produced, however, oil and gas are personalty. *Humble Oil & Refining Co.*, 508 S.W.2d at 817. The Tax Code does not grant the state or county a lien on personal property until it has been seized or levied upon. *See* Tex. Tax Code §§ 1.04(4) (“personal property” means property that is not “real property”), 33.21 (providing circumstance under which personal property is subject to seizure for payment of delinquent tax owed on property). Because under Texas law minerals in place are realty and minerals once produced are personalty, and because the Tax Code establishes a lien for taxes against realty but not personalty, the lien as created and defined in chapter 32 does not attach to minerals once they have been produced or sold and are no longer in place. *Hill v. Enerlex*, 969 S.W.2d 120, 122 (Tex. App.—Eastland 1998, pet. denied) (holding that ad valorem tax lien on royalty interest did not attach to proceeds from production attributable

to royalty interest that were held in suspense account). Thus, the Andrews County taxing authorities' tax lien did not attach to the unclaimed royalty payments that were held in a suspense account and ultimately delivered to the Comptroller.

Since the tax lien did not attach to the unclaimed royalty proceeds, the Sheriff's Deed resulting from the judicial foreclosure of the royalty interest, i.e., the minerals in place, could not convey title to any proceeds or minerals that had been previously removed from the land. *See Hill*, 969 S.W.2d at 122; *Johnson*, 1997 WL 562017, at *2 (holding sheriff had no power to convey \$26,000 in accumulated royalties because accumulated royalties were personal property and judgment that ordered sheriff to levy upon and sell royalty interest to satisfy tax lien limited execution to real property). Consequently, CKD Homes did not, by virtue of purchasing the 0.116016 Royalty Interest at the foreclosure sale, acquire a right or title to the unclaimed royalty payments.

To obtain abandoned property held by the State, a person must file a claim with the Comptroller who "shall review the validity of each claim filed." Tex. Prop. Code § 74.501(a). On receipt of a claim form and all necessary documentation, the Comptroller may approve the claim of "the reported owner of the property." *Id.* § 74.501(d)(1). The Comptroller "may not pay" a claim to "a creditor, a judgment creditor, a lienholder, or an assignee of the reported owner or of the owner's heirs." *Id.* § 74.501(e)(1). "Reported owner" is not defined in the unclaimed property provisions, but this Court has previously held that the term refers to "the person believed by the holder to be the property owner—the person who 'from the records of the holder of the property, appears to be the owner of the property' or 'any person who is entitled to the property.'" *Enerlex, Inc. v. Hegar*, No. 03-18-00238-CV, 2019 WL 3680134, at *2 (Tex. App.—Austin Aug. 7, 2019, pet. denied) (mem. op.). CKD Homes is the owner of and entitled to receive royalty payments

attributable to production of oil and gas taking place from the date it acquired the 0.116016 Royalty Interest forward. CKD Homes's acquisition of the royalty interest does not, however, entitle it to royalties attributable to production that took place prior to the date it acquired the royalty interest. *Id.* at *3 (royalties already paid and unclaimed by their owner are not "obligations to pay" and purchaser of royalty interest is considered to be owner only of "the right to royalties as those 'obligations to pay' arise"). The persons entitled to the unclaimed royalty payments at issue in this case are the Unknown Owners and they are, for purposes of the unclaimed property provisions, the "reported owner" to whom the Comptroller may deliver the unclaimed royalty payments from oil and gas production before February 2012. The Comptroller correctly denied CKD Homes's claim to the abandoned property.

In its brief on appeal, CKD Homes relies on this Court's opinion in *Enerlex v. Hegar* to support its contention that it is the owner of the unclaimed royalty payments. *See id.* at *3. According to CKD Homes, because the Texas Property Code defines "mineral proceeds" to include "royalties," the Comptroller was obligated to approve CKD Homes's claim to the "mineral proceeds" because it acquired the 0.116016 Royalty Interest before Enterprise delivered the unclaimed royalty payments to the Comptroller. However, in *Enerlex*, this Court refused to include within the definition of "mineral proceeds" royalty payments associated with production occurring before the date of a transfer of ownership of a royalty interest. *Id.* The Court distinguished "royalties already paid by the mineral producer and unclaimed" by the royalty interest owner from "obligations to pay resulting from the production and sale of minerals." *Id.* The Court held that only the latter met the statutory definition of "mineral proceeds." *Id.* Thus, a claimant that proves to the Comptroller that it has purchased or otherwise acquired "mineral proceeds" (including a royalty interest) "will be considered the owner of the right to royalties as

those ‘obligations to pay’ arise,” that is, as minerals are produced and sold from the date the claimant acquired the royalty interest forward. *Id.* The Comptroller correctly denied CKD Homes’s claim to the abandoned property. We conclude that the trial court did not err in granting the Comptroller’s motion for summary judgment and denying CKD Homes’s cross-motion for summary judgment.

CONCLUSION

CKD Homes did not acquire at the foreclosure sale any right to the unclaimed royalty payments Enterprise had delivered to the Comptroller as abandoned property. Because CKD Homes was not the owner of the unclaimed property, the Comptroller properly denied CKD Homes’s abandoned property claim. The trial court did not err in granting the Comptroller’s motion for summary judgment and denying CKD Homes’s cross-motion for summary judgment. The trial court’s judgment is affirmed.

Chari L. Kelly, Justice

Before Justices Goodwin, Kelly, and Smith

Affirmed

Filed: June 26, 2020