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## Oklahoma

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# ONE J

*Oil and Gas, Natural Resources, and Energy Journal*

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## OKLAHOMA



*Matt Schlensker & Justin Fisher\**

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### *I. Introduction*

The Oklahoma legislature amended a law to allow for increased drilling in non-shale reservoirs; Oklahoma courts addressed deed reformation and how the statutory Pugh clause interacts with the Unitization Act; and the Western District of Oklahoma heard a case concerning the Oklahoma Wind Energy Development Act.

### *II. Regulatory Developments*

Effective August 25, 2017, the Oklahoma Corporation Commission (the “OCC”) may now authorize spacing units covering multiple sections in any type of formation, as opposed to only shale formations. The Oklahoma Energy Jobs Act of 2017 amended the 2011 Shale Reservoir Development Act to allow for an increase to spacing units for horizontal wells from 640 acres to 1,280 acres and allow for extended lateral drilling.<sup>1</sup> The Act removed the word “shale” from the previous legislation to allow the OCC to establish these larger spacing units for shale and non-shale reservoirs.<sup>2</sup> As always, the OCC must find such units prevent waste, protect correlative rights, and foster a greater recovery than may otherwise be achieved.<sup>3</sup> The order creating such a unit must, *inter alia*, approve and adopt the plan of development for the unit, including any special allocation of costs, production and proceeds from the unit resulting from existing and subsequent wells.

The horizontal lateral must be at least 7,500 feet to receive a spacing unit larger than 640 acres, unless reasonable cause is shown.<sup>4</sup> Further, absent special circumstances, for an *initial* well in a multiunit horizontal spacing unit, the completed portion of the lateral must be at least 10,560 feet.<sup>5</sup>

“The Oklahoma Tax Commission estimates the Act will generate an additional \$19 million in gross production tax collections for fiscal year 2018.”<sup>6</sup>

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1. Oklahoma Energy Jobs Act of 2017, S.B. 287, 56th Leg., Reg. Sess., § 2(f) (2017), available at [http://webserver1.lsb.state.ok.us/cf\\_pdf/2017-18%20ENR/SB/SB867%20ENR.PDF](http://webserver1.lsb.state.ok.us/cf_pdf/2017-18%20ENR/SB/SB867%20ENR.PDF).

2. *Id.* at § 3.

3. *Id.* at § 4.

4. *Id.* at § 2(f)(3).

5. *Id.* at § 2(f)(4).

6. Oklahoma Oil and Gas Ass’n., OKOGA Praises Final Passage of the Oklahoma Energy Jobs Act (May 25, 2017), <http://okoga.com/wp-content/uploads/2017/05/5.25.17-OKOGA-Praises-Final-Passage-of-the-Oklahoma-Energy-Jobs-Act.pdf>.

### III. Judicial Developments

#### A. State Cases

##### *Scott v. Peters*

In *Scott v. Peters*, the Supreme Court of Oklahoma held the statute of limitations for reformation of a deed begins to run upon the grantor by the filing of a deed with the county clerk.<sup>7</sup>

In 1997, Steven Boyd Scott (the “Grantor”) conveyed to Martin and Tammy Peters (the “Grantees”) 120 acres in the NE/4 of Section 5, Township 13 North, Range 6 West in Canadian County, Oklahoma.<sup>8</sup> This deed stated that it was “subject to easements, restrictions, and mineral reservations and conveyances of record. Less and except all oil, gas and other minerals not previously reserved of record.”<sup>9</sup> The Grantor argued he intended to reserve all of the mineral estate in this 1997 deed.<sup>10</sup>

In 2000, the Grantor conveyed to the Grantees the remaining 40 acres out of the NE/4 of Section 5 without reserving any minerals.<sup>11</sup> Then in 2001, the Grantor conveyed all of the NE/4 of Section 5 to Larry Russell (“Grantee 2”), who conveyed the same to a Revocable Trust a few months later.<sup>12</sup> Neither 2001 conveyance contained a mineral reservation.<sup>13</sup>

In 2002, the Grantees discovered the 2001 deeds executed by the Grantor, and obtained a quitclaim deed from the Trust as to all of the NE/4.<sup>14</sup> Then in 2008, the Grantees leased the NE/4 to a Corporation.<sup>15</sup>

In 2014, the Grantor sued the Grantees to quiet title to the mineral estate in the NE/4.<sup>16</sup> The Grantees argued that the “less and except” language in the 1997 deed was insufficient to reserve any minerals.<sup>17</sup> And in any case, even if the 1997 deed reserved any minerals, the Grantor conveyed the same to Grantee 2 and then to the Trust in 2001; the Grantees subsequently acquired that in 2002.<sup>18</sup> Therefore, the Grantees emphasized the irrelevancy

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7. *Scott v. Peters*, 2016 OK 108, 388 P.3d 699 (2016).

8. *Id.* ¶ 2, 388 P.3d 700.

9. *Id.* ¶ 2 n.2.

10. *Id.* ¶ 5.

11. *Id.* ¶ 2.

12. *Id.* ¶ 3.

13. *Id.*

14. *Id.* ¶ 4.

15. *Id.*

16. *Id.* ¶ 5.

17. *See id.* ¶ 2 & n.1.

18. *Id.* ¶ 7, 388 P.3d at 701.

of the purported mineral interest of the 1997 in his argument because it obtained any interest the Grantor alleged to have reserved anyway.<sup>19</sup>

The Grantor conceded the five-year statute of limitations for reforming the 2000 deed had expired; however, it argued that the limitation period on the 1997 deed should be tolled because, as a layman, the Grantor could not be expected to understand how his purported mineral reservation could be insufficient.<sup>20</sup> The Grantor relied on a 15-year limitation period for adverse possession claims.<sup>21</sup>

The trial court granted summary judgment for the Grantees, and the Grantor appealed.<sup>22</sup> The Oklahoma Supreme Court affirmed the trial court.<sup>23</sup> The Grantor executed both the 1997 deed to the Grantees and the 2001 deed to Grantee 2; therefore, the Grantor was on actual notice of the contents of the deeds and the statute of limitations for reformation of same began to run once the deeds were filed with the county clerk.<sup>24</sup>

In rejecting the Grantor's arguments, the Supreme Court of Oklahoma agreed with the Grantees' in that even if the 1997 deed reserved any minerals, the 2001 deed certainly did not do so and that the Grantor missed its opportunity to have the 2001 deed reformed by waiting until 2014 to file suit.<sup>25</sup> The Court pointed out "there exists a statutory presumption that a recorded signed document relating to title to real estate is genuine and was properly executed."<sup>26</sup> The Grantor had notice of both the 1997 deed and the 2001 deed; therefore, the five year statute of limitation for deed reformation could not be tolled.

#### *Calvert v. Swinford*

In another dispute involving notice, a statute of limitations, and a discovery rule, the Supreme Court of Oklahoma ruled that a statute of limitations barred a claim alleging negligence in preparation of a deed because the Grantors readily discovered the alleged negligence.<sup>27</sup>

In 2000, Lisa Calvert and Teresa Roper (the "Grantors"), acting as Attorneys-in-Fact for their father, Allen Dwayne Downy, executed a

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19. *Id.*

20. *Id.* ¶ 9, 388 P.3d at 701.

21. *Id.* ¶ 9; OKLA. STAT. tit. 12, § 93 et seq. (West 2011).

22. *Scott*, 2016 OK 108, ¶ 10, 388 P.3d at 701.

23. *See id.* ¶ 19, 388 P.3d at 704.

24. *Id.*

25. *See id.* ¶¶ 13-19, 388 P.3d at 702-03.

26. *Id.* ¶ 19, 399 P.3d at 704; OKLA. STAT. tit. 16, § 53 et seq. (West 2011).

27. *Calvert v. Swinford*, 2016 OK 100, 382 P.3d 1028 (2016).

contract to convey land in Noble County, Oklahoma to Wayland and Dawn Swinford (the “Grantees”).<sup>28</sup> The Grantors hired an attorney to prepare the documents and an abstract company to assist in the closing of the property.<sup>29</sup> The contract indicated that the Grantors would “retain the mineral rights on the property for a period of thirty-five (35) years or for as long as oil and gas are being produced from the property. At the end of such time the mineral rights shall revert to the then surface owner.”<sup>30</sup>

The transaction was not completed until 2002, and the deed did not include a mineral reservation. The Grantors alleged the attorney assured them that he would correct the deeds to reserve the minerals.<sup>31</sup> Only the abstract company and one Grantee were actually present at the closing; the Grantors claimed that they never received a copy of the filed deed.<sup>32</sup>

In 2014, the Grantors sued to retain their mineral rights; similarly, the abstract company moved for summary judgment, arguing that the statute of limitations had run because the deed had been filed for record for 12 years.<sup>33</sup> The Grantors argued limitations did not begin to run until they mistakenly did not reserve the minerals in 2013, when they learned that the Grantees were leasing the minerals.<sup>34</sup> The Grantors also argued:

[T]he only purpose in filing a deed is to put third parties on notice of the deeds, not to put grantors on notice as to whether the deed comports with that they intended to convey [and] the grantors were not under any duty to check the record to ensure they were correct.<sup>35</sup>

The trial court granted the abstract company’s motion for summary judgment, and the Court of Civil Appeals affirmed.<sup>36</sup> The Oklahoma Supreme Court affirmed and held, as in *Scott v. Peters*, that the statute of limitations begins to accrue when the deed is filed with the county clerk.<sup>37</sup>

The Court indicated that it must determine whether the discovery rule can apply to toll the statute of limitations when the Grantors allege they

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28. *Id.* ¶ 2, 382 P.3d 1030.

29. *Id.*

30. *Id.* ¶ 3.

31. *Id.* ¶ 4.

32. *Id.*

33. *Id.* ¶ 5, 382 P.3d at 1031.

34. *Id.*

35. *Id.* ¶ 6.

36. *Id.* ¶¶ 7-8, 382 P.3d at 1031-32.

37. *Id.* ¶ 11, 382 P.3d at 1033.

were unaware of a mistake until 12 years after the fact, despite the Grantors having signed the deed.<sup>38</sup> The Court referenced a statute providing that “a recorded deed serves as constructive notice of its contents as to subsequent purchasers, mortgagees, encumbrancers, or creditors.”<sup>39</sup> In a potentially brilliant piece of mental gymnastics, the Grantors countered that the statute does not mention “grantors.”<sup>40</sup>

As a negligence action, for the discovery rule to apply, the Court acknowledged that the alleged negligence must not be readily discoverable by the plaintiff, be hidden from the plaintiff, or even that something prevented the plaintiff from knowing of the negligence.<sup>41</sup> Although the Grantors claimed no notice of the deed’s contents, despite having signed it, they could not show that anyone concealed the alleged negligence. In its ruling, the Court emphatically rejected the Grantors’ claim:

Here, the sisters signed the deed. They had the opportunity and obligation to read or at least inquire as to what they were signing. The deed clearly did not reserve any mineral interests whatsoever. The deed was filed in the public land records office of the county clerk where the property was located. The deed was readily available to anyone who wanted a copy of it. A reasonable person would have read the deed before signing it, or at the very least, asked for a copy of it after it is signed and filed and then read it. Now, a copy of the filed deed can be secured anytime from one’s computer in the comfort of their own home.<sup>42</sup>

The Grantors did not allege any fraud or concealment of facts; rather, they signed the deed and could have read it at the time, but did not. Additionally, the Grantors could have requested a copy of the recorded deed and read it then and discovered the mistake, but did not. Because the Grantors did neither, the Oklahoma Supreme Court ruled that they missed an opportunity to have the deed reformed by waiting more than ten years after filing it with the county clerk.

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38. *See id.* ¶ 12.

39. *Id.*; OKLA. STAT. tit. 16, § 16 et seq. (West 2011).

40. *See Calvert*, 2016 OK 100, ¶ 13, 382 P.3d at 1033-34.

41. *Id.* ¶ 15.

42. *Id.* ¶ 17, 382 P.3d at 1035.

*Stephens Production Company v. Tripco, Inc.*

The Oklahoma Court of Civil Appeals ruled that the statutory Pugh Clause does not apply to secondary recovery units created under the Unitization Act.<sup>43</sup>

In 1996, Tripco, Inc. (“Tripco”) recorded a lease covering the SE/4 of Section 31, Township 18 North, Range 2 West in Logan County, Oklahoma.<sup>44</sup> In 2013, Stephens Production Company and Eagle Oil & Gas Co. (“Plaintiffs”) obtained three oil and gas leases also covering the SE/4.<sup>45</sup> Stephens held two leases to the E/2 SE/4 and the SW/4 SE/4, while Eagle held a lease to the NW/4 SE/4, the NE/4 SE/4 and the S/2 SE/4 of Section 31.<sup>46</sup> In November of 2013, Tripco requested Plaintiffs release their leases but the Plaintiffs refused.<sup>47</sup>

Plaintiffs filed a petition in 2014, trying to cancel the Tripco lease outside of the NW/4 SE/4.<sup>48</sup> Plaintiffs argued the only production attributable to the Tripco lease came from the NW/4 SE/4, and the statutory Pugh Clause had terminated the lease as to the remainder of the SE/4.<sup>49</sup> Tripco argued the NW/4 SE/4 was subject to the Northwest Lawrie Oswego Unit (“NLOU”), originally established by the Oklahoma Corporation Commission (“OCC”) under the Unitization Act.<sup>50</sup> Since the Tripco lease did not include a Pugh Clause or a depth severance provision, Tripco argued that (1) production from the NLOU maintained the lease on the entire SE/4 and that (2) the statutory Pugh Clause did not apply to secondary recovery units.<sup>51</sup>

The Pugh Clause reads: “In case of a spacing unit of one hundred sixty (160) acres or more, no oil and/or gas leasehold interest outside the spacing unit involved may be held by production from the spacing unit more than ninety (90) days beyond the expiration of the primary term of the lease.”<sup>52</sup>

Since the Tripco lease exceeds 90 days beyond its primary term, Plaintiffs argued that the lease expired because of nonproductive acreage.<sup>53</sup>

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43. *Stephens Prod. Co. v. Tripco, Inc.*, 2016 OK CIV APP 80, 389 P.3d 365 (2016).

44. *Id.* ¶ 2, 389 P.3d 366.

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.* ¶ 3.

49. *Id.*

50. *Id.*

51. *Id.* ¶ 1.

52. *Id.* n.1, (citing OKLA. STAT. tit. 52, § 87.1(b) et seq. (West 2011)).

53. *See id.* ¶¶ 3-4, 389 P.3d 366-67.



Tripco countered that the NLOU is not a spacing unit as the term is used in the Pugh Clause, arguing that spacing rules do not apply to field-wide enhanced recovery units.<sup>54</sup> The trial court agreed and granted Tripco's motion for summary judgment.<sup>55</sup>

The Appellate Court noted the Pugh Clause and the Unitization Act address different issues concerning oil and gas development. The Pugh Clause deals with spacing and drilling units for common sources of supply.<sup>56</sup> The Unitization Act specifically applies to secondary recovery because the Order establishing the NLOU determined the necessity of unitization to achieve a greater recovery of oil and gas than may otherwise be reached.<sup>57</sup> The Court also acknowledged that applying the Pugh Clause to a unitized area may contravene provisions of the Unitization Act, since operations pursuant to a unitization order shall be "regarded and considered as a fulfillment of and compliance with all of the provisions, covenants, and conditions, express or implied, of the several oil and gas mining leases."<sup>58</sup> This included "wells drilled on any part of the unit area no matter where located shall for all purposes be regarded as wells drilled on each separately-owned tract within such unit area."<sup>59</sup> In other words, severance of part of the acreage covered by a lease included in the NLOU would be contrary to the order creating the unitized field. Therefore, the Court of Civil Appeals affirmed the trial court and ruled the Pugh Clause does not apply to secondary recovery units created under the Unitization Act.

### *B. Federal Cases*

#### *Scenic Prairie Preservation Association v. NextEra Energy Resources, LLC*

The United States District Court for the Western District of Oklahoma held that the Oklahoma Corporation Commission (the "OCC") does not have exclusive jurisdiction to enforce compliance with the Oklahoma Wind Energy Development Act (the "Act").<sup>60</sup>

The Scenic Prairie Preservation Association (the "Non-profit") sought declaratory and injunctive relief against NextEra Energy Resources (the

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54. *Id.* ¶ 5.

55. *Id.* ¶¶ 7-9, 389 P.3d at 368-69.

56. *Id.* ¶ 13.

57. *Id.* ¶ 16, 389 P.3d at 369.

58. *Id.* ¶ 17, 389 P.3d at 370 (internal quotations and citation omitted).

59. *Id.* (internal quotations and citation omitted).

60. *Scenic Prairie Preservation Assoc. v. NextEra Energy Res., LLC*, No. CIV-17-151-HE, 2017 WL 2414932 (W.D. Okla. June 2, 2017).

“Supplier”), alleging that the Supplier had violated the notice and public information requirements of the Act.<sup>61</sup> The Supplier filed a motion to dismiss, claiming the court lacked subject matter jurisdiction to hear the case.<sup>62</sup>

The Supplier argued that the only penalty for not complying with provisions of the Act is an administrative penalty to be levied by the OCC.<sup>63</sup> The Non-profit countered by arguing that the OCC may only administer penalties in the case of failure to submit required information to the OCC.<sup>64</sup> If a party fails to comply with the public notice requirements of the Act, then its facility may not be built.<sup>65</sup> Additionally, the Non-profit argued that if the Oklahoma legislature intended to create exclusive jurisdiction in the OCC, it would do so explicitly.<sup>66</sup>

§160.21(D) of the Act reads:

The owner of a wind energy facility shall not commence construction on the facility until the notification and public meeting requirements of this section have been met. If an owner of a wind energy facility fails to submit the information with the Commission as required in this section, the owner shall be subject to an administrative penalty not to exceed One Thousand Five Hundred Dollars (\$1,500.00) per day.<sup>67</sup>

Therefore, the court noted the administrative penalty applies when the owner fails to submit the required information to the OCC.<sup>68</sup> However, if the public meeting requirements are not met, the owner may not build their facility.<sup>69</sup> The court noted that the legislature could have drafted the Act so that the administrative penalty could apply to failure to comply with all of the requirements of the Act, but it chose to impose separate penalties for separate acts of noncompliance.<sup>70</sup>

The Act also provides that “disputes arising under this section shall fall under the exclusive jurisdiction of the district courts.”<sup>71</sup> Ultimately, the

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61. *Id.* at \*1.

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.* at \*2 (citing OKLA. STAT. tit. 17, § 160.21(A), (B), and (C) (West 2011)).

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

Court ruled it had subject matter jurisdiction to proceed with the case and denied defendant's motion to dismiss.