Fourth Court of Appeals
San Antonio, Texas

OPINION

No. 04-19-00771-CV

Kent B. **HOFFMAN**, Susan Hoffman Binieck, E. Peter Hoffman Jr., and Marni H. Cooney, Appellants

v.

Andrew M. **THOMSON**; CDG Peeler Family Limited Partnership; Cynthia L. Littlefield; The Dick Family Irrevocable Trust; Gordon G. Thomson; Jane Elizabeth Erzen; Larry Wayne McCarty; Linda M. Ball; Michael David Dick; North Thomson Oil and Gas LP; Patricia P. Fleming; Paul W. Peeler Family Limited Partnership; Sandra Shannon Collins; Shannon Family Trust; Thomson Oil & Gas Investments LP; Coconut Point ST, LLC; Coconut Point OE, LLC; Colonial Villa Estates, LLC; Lazy Daze KLA, LLC; Whispering Pines Mobile Home Park, Ltd.; and R&H Paul, Inc., Appellees

From the 343rd Judicial District Court, McMullen County, Texas
Trial Court No. M-17-0008-CV-C, Consolidated M-17-0034-CV-B
Honorable Janna K. Whatley, Judge Presiding

Opinion by: Patricia O. Alvarez, Justice

Sitting: Rebeca C. Martinez, Chief Justice
Patricia O. Alvarez, Justice
Liza A. Rodriguez, Justice

Delivered and Filed: March 10, 2021

REVERSED, RENDERED IN PART, REMANDED

In this oil and gas deed construction case, the parties dispute whether the deed reserved a fixed or floating nonparticipating royalty interest (NPRI). Neither party challenges the existence or validity of the deed, but they offer opposing constructions of the interest reserved. Both parties moved for traditional summary judgment. The trial court construed the deed as reserving a fixed 3/32 NPRI, granted Appellees' motion, denied Appellants' motion, and this appeal ensued. We

reverse the trial court's judgment in its entirety, render judgment that the deed conveyed a floating NPRI, and remand this cause for a determination of any costs and attorney's fees.

BACKGROUND

In a September 6, 1956 deed, Peter Hoffman and his wife Marion B. Hoffman conveyed to Graves Peeler a 1,070-acre tract but reserved "an undivided three thirty-second's (3/32's) interest (same being three-fourths (3/4's) of the usual one-eighth (l/8th) royalty) in and to all of the oil, gas and other minerals, in to and under or that may be produced from the land herein conveyed."

We will refer to the current owners of the interest reserved as the Hoffmans, and the current owners of the interests conveyed as the Peelers.

A. Interpleader, Declaratory Judgment Actions

After a dispute arose over the proper allocation of royalties on oil and gas production under a lease, the lessee filed a petition in interpleader. The Hoffmans sought a declaratory judgment to construe the deed, and the Peelers answered. In their pleadings, the Hoffmans and the Peelers each argued the deed was unambiguous, and the trial court could decide as a matter of law whether the deed reserved a fixed or floating NPRI. The Hoffmans argued the 1956 Deed reserved an undivided 3/4 fraction of (floating) royalty interest in oil, gas, and other minerals produced from the property. The Peelers argued the 1956 Deed reserved only a fixed 3/32 nonparticipating royalty interest in the oil, gas, and other minerals.

B. Competing Motions for Partial Summary Judgment

The Hoffmans and Peelers each asserted there were no facts at issue, and each moved for partial traditional summary judgment on the declaratory judgment claims. *See* TEX. R. CIV. P. 166a(c). The trial court considered the motions and responses, and it determined the 1956 Deed reserved a fixed 3/32 nonparticipating royalty interest. The trial court granted partial summary judgment for the Peelers, which effectively denied the Hoffmans' motion.

C. Final Judgment, Appeal

The Peelers sought costs of court and attorney's fees, which they supported with affidavits, and they moved the trial court to render a final judgment. In its final judgment, the trial court decreed that the 1956 Deed reserved "a fixed 3/32 nonparticipating royalty interest," and it awarded costs and attorney's fees to the Peelers.

The Hoffmans appeal, arguing that they, not the Peelers, were entitled to judgment as a matter of law. We begin with the applicable standard of review for competing traditional motions for summary judgment.

STANDARD OF REVIEW

A trial court may render summary judgment when "there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law on the issues [presented]." TEX. R. CIV. P. 166a(c); *accord Lightning Oil Co. v. Anadarko E&P Onshore, LLC*, 520 S.W.3d 39, 45 (Tex. 2017); *Provident Life & Acc. Ins. Co. v. Knott*, 128 S.W.3d 211, 215–16 (Tex. 2003). We review a trial court's summary judgment de novo. *Lightning Oil*, 520 S.W.3d at 45; *Merriman v. XTO Energy, Inc.*, 407 S.W.3d 244, 248 (Tex. 2013). "[W]e take as true all evidence favorable to the nonmovant, and we indulge every reasonable inference and resolve any doubts in the nonmovant's favor." *ConocoPhillips Co. v. Koopmann*, 547 S.W.3d 858, 865 (Tex. 2018); *accord Valence Operating Co. v. Dorsett*, 164 S.W.3d 656, 661 (Tex. 2005).

"When both parties move for summary judgment and the trial court grants one motion and denies the other, we review all the summary judgment evidence, determine all issues presented, and render the judgment the trial court should have." *Merriman*, 407 S.W.3d at 248; *accord Valence Operating*, 164 S.W.3d at 661.

DEED CONSTRUCTION

Whether an oil and gas deed is ambiguous is a question of law for the court. *Koopmann*, 547 S.W.3d at 874; *Heritage Res., Inc. v. NationsBank*, 939 S.W.2d 118, 121 (Tex. 1996). "The construction of an unambiguous deed is [also] a question of law for the court." *Wenske v. Ealy*, 521 S.W.3d 791, 794 (Tex. 2017) (quoting *Luckel v. White*, 819 S.W.2d 459, 461 (Tex. 1991)).

"The primary duty of a court when construing such a deed is to ascertain the intent of the parties from all of the language in the deed by a fundamental rule of construction known as the 'four corners' rule." *Luckel*, 819 S.W.2d at 461; *accord Wenske*, 521 S.W.3d at 794. We must "(1) . . . focus on the intent of the parties, expressed by the language within the four corners of the deed, and (2) harmoniz[e] all parts of an instrument, even if particular parts appear contradictory or inconsistent." *Wenske*, 521 S.W.3d at 795; *see Altman v. Blake*, 712 S.W.2d 117, 118 (Tex. 1986).

In cases where "we can ascertain the parties' intent . . . by careful examination of the entire deed, [a]pplying default rules or other mechanical rules of construction to determine the deed's meaning is . . . both unnecessary and improper." *Wenske*, 521 S.W.3d at 796; *accord Hysaw v. Dawkins*, 483 S.W.3d 1, 13 (Tex. 2016) (reiterating that a proper analysis is "a holistic approach aimed at ascertaining intent from all words and all parts of the conveying instrument").

"If [a deed] is so worded that it can be given a certain or definite legal meaning or interpretation, then it is not ambiguous and [we] will construe the [deed] as a matter of law." *See Coker v. Coker*, 650 S.W.2d 391, 393 (Tex. 1983); *accord Wenske*, 521 S.W.3d at 794.

DISCUSSION

The parties do not dispute the existence or validity of the deed, the description of the acreage, or the proper parties, heirs, or assigns. Their disagreement is limited to whether the 1956 Deed reserved a fixed NPRI—meaning a fixed fraction of total production—or a floating NPRI—

meaning a fraction of the total royalty interest that varies (or floats) depending on the royalty percentage the mineral estate owner negotiates. *See Hysaw*, 483 S.W.3d at 9 (differentiating fractional (fixed) and fraction of (floating) royalties); *Medina Interests, Ltd. v. Trial*, 469 S.W.3d 619, 622–23 (Tex. App.—San Antonio 2015, pet. denied) (same); *Coghill v. Griffith*, 358 S.W.3d 834, 838 (Tex. App.—Tyler 2012, pet. denied) (same).

To resolve the matter, we conduct a holistic review "to ascertain the intent of the parties from all of the language within the four corners of the [instrument]." *U.S. Shale Energy II, LLC v. Laborde Properties, L.P.*, 551 S.W.3d 148, 151 (Tex. 2018) (quoting *Wenske*, 521 S.W.3d at 794). We begin by reciting the portions of the 1956 Deed that address the reservation.

A. Deed Language

The 1956 Deed begins by identifying the grantors, the grantee, the consideration, and the description of the property being conveyed. After it conveys the surface and mineral estates, the deed contains these two paragraphs:

> SAVE AND EXCEPT HOWEVER, and there is hereby expressly reserved and retained unto the grantor, Peter Hoffman, herein, his heirs or assigns, an undivided three thirty-second's (3/32's) interest (same being three-fourths (3/4's) of the usual one-eighth (l/8th) royalty) in and to all of the oil, gas and other minerals, in to and under or that may be produced from the land herein conveyed, the same to be paid or delivered unto the grantor herein, his heirs or assigns, as his own property free of cost from royalty oil, gas and/or other minerals, together with the right of ingress or egress at all times for the purpose of storing, treating, marketing and removing the same therefrom. Said interest in and to said oil, gas and/or other minerals hereby reserved is a nonparticipating royalty interest, and the grantors herein, their heirs or assigns shall not participate in the bonus paid for any future oil, gas and/or mineral lease covering said land, nor shall they participate in the money rentals which may be paid to extend the time within which a well may be begun under the terms of any future lease covering said land, nor shall it be necessary for the grantors herein, their heirs or assigns to join in the execution of any future oil, gas or mineral lease covering said land.
>
> PROVIDED HOWEVER, that in the event oil, gas and/or other minerals are produced from said land then the grantor herein, Peter Hoffman, his heirs or assigns shall receive a full three thirty-second's (3/32's) portion thereof as his own property, to be paid or delivered to him, free and clear of all operating and

> development costs; and it is the intention of the grantors and grantee that the grantor, Peter Hoffman, shall own and be entitled to receive three thirty-second's (3/32's) of the gross production of all oil, gas and other minerals produced and saved from the properties hereinbefore described.

In their pleadings and motions in the trial court, and in their briefs on appeal, the parties focus on these two paragraphs. Having reviewed the entire deed, we agree that these two paragraphs define the type of interest reserved; no other paragraphs shed light on the parties' intent with respect to the NPRI. *Cf. U.S. Shale Energy II*, 551 S.W.3d at 153 (noting that "no other provisions in the . . . deed contain language that might shed light on the parties' intent" regarding the NPRI).

B. Plain Language Review

Before we examine the plain language, we note the deed was written in 1956—a time when a one-eighth royalty was "standard and customary." *See Hysaw*, 483 S.W.3d at 9 ("Instruments employing double fractions to convey or reserve mineral interests almost invariably involve multiples of 1/8, a royalty rate so pervasive that, for decades, courts took judicial notice of it as the standard and customary royalty."); *cf. Garrett v. Dils Co.*, 299 S.W.2d 904, 907 (Tex. 1957) ("The court takes judicial knowledge of the fact that the usual royalty provided in mineral leases is one-eighth."). With that understanding in mind, we examine the two paragraphs that describe the reserved interest, with particular focus on the three clauses that expressly address the reserved interest. *Cf. U.S. Shale Energy II*, 551 S.W.3d at 153 (focusing on operative language).

1. First Clause

The first clause reads as follows:

> "[T]here is hereby expressly reserved . . . an undivided three thirty-second's (3/32's) interest (same being three-fourths (3/4's) of the usual one-eighth (l/8th) royalty) in and to all of the oil, gas and other minerals . . . ."

The clause identifies a specific fraction, three thirty-seconds, and then describes how the fraction is calculated, the "same being three-fourths (3/4's) of the usual one-eighth (l/8th) royalty."

This fraction of "the usual one-eighth (l/8th) royalty" language typically indicates an intent to reserve a floating interest. *Cf. id.* ("[W]e conclude the only reasonable way to reconcile these clauses is to read the second clause, 'the same being equal to one-sixteenth (1/16) of the production,' to clarify, as an incidental factual matter, what a 1/2 interest in the royalty amounted to when the deed was executed."); *Medina Interests*, 469 S.W.3d at 623 (recognizing that the language "[o]ne-half of the usual one-eighth royalty" was an example of a fraction of, or floating, royalty).

Following *U.S. Shale Energy II* and the "usual one-eighth" line of cases, we tentatively conclude that the first clause's use of the "same being three-fourths (3/4's) of the usual one-eighth (1/8) royalty" shows an intent to reserve "[three-quarters] of such royalty as may be reserved in any oil, gas or mineral lease which may be executed." *See U.S. Shale Energy II*, 551 S.W.3d at 153.

2. Second, Third Clauses

The second and third clauses read, respectively, as follows:

> "Hoffman . . . shall receive a full three thirty-second's (3/32's) portion thereof as his own property . . . ."
>
> "Hoffman, shall own and be entitled to receive three thirty-second's (3/32's) of the gross production of all oil, gas and other minerals produced and saved . . . ."

Neither the second nor the third clause contains a double fraction, and neither defines the reserved interest as a floating percentage. *Cf. Hysaw*, 483 S.W.3d at 9 ("Discerning the nature of a particular royalty interest may be a simple matter when an instrument consistently uses single fractions to describe the interest."). To the contrary, if read in isolation from the *entire* first clause,

the second and third clauses could indicate an intent to reserve a fixed interest. *Cf. Garrett*, 299 S.W.2d at 906 (recognizing that a single fraction, if considered in isolation, would indicate a fixed interest). And if one simply ignores the "same being three-fourths (3/4's) of the usual one-eighth (1/8th) royalty" language, then the three instances of 3/32 would be consistent and indicate an intent to reserve a fixed interest.

3. Harmonizing All Language

But we must give effect to, and harmonize, *all* the language, even if the second and third clauses might initially appear inconsistent or contradictory to the entire first clause. *See Wenske*, 521 S.W.3d at 795 ("[O]ur rules for deed construction have moved even more decisively toward (1) a focus on the intent of the parties, expressed by the language within the four corners of the deed, and (2) harmonizing all parts of an instrument, even if particular parts appear contradictory or inconsistent."); *Hysaw*, 483 S.W.3d at 13; *Luckel*, 819 S.W.2d at 462 ("Even if different parts of the deed appear contradictory or inconsistent, the court must strive to harmonize all of the parts, construing the instrument to give effect to all of its provisions.").

C. Discerning Intent from Document Structure

Having read the entire 1956 Deed and examined the three clauses, we can also consider the document's structure for indications of intent. *Cf. U.S. Shale Energy II*, 551 S.W.3d at 153 ("We therefore must harmonize the language in the reservation based on the structure of the provision itself."). We begin with the Save and Except paragraph.

1. Save and Except Paragraph

In examining the Save and Except paragraph as a whole, we note its pattern of introducing a term and following it with a definition.

For example, the deed defines the interest conveyed as "an undivided three thirty-second's (3/32's) interest" and then defines that 3/32 interest as the "same being three-fourths (3/4's) of the

usual one-eighth (1/8th) royalty." Then, the nature of the 3/32 interest is expressly defined as "a nonparticipating royalty interest." Finally, the grantors' NPRI is further defined by stating the grantors shall not participate in bonus or delay rentals, nor will they need to join in execution of any future lease.

These three examples show a pattern of an introduction followed by a definition.

2. Provided However Paragraph

The Provided However paragraph is shorter, and it has no such pattern. But notably, nothing in its structure contradicts or negates the Save and Except paragraph's pattern.

The 1956 Deed's pattern of introducing a term and then defining it does not, in and of itself, determine whether the reserved interest is fixed or floating, but the pattern gives us more insight into the parties' intent. *Cf. id.* at 153 (considering the "structure of the provision itself" in determining the interest's type).

D. Harmonizing All the Language

Having considered the entire deed, including the usual royalty when it was drafted, the operative clauses' plain language, and the pattern of introduction then definition, we turn to harmonizing all the deed's parts. *See id.*; *Wenske*, 521 S.W.3d at 795 (harmonizing all parts); *Hysaw*, 483 S.W.3d at 14 ("[B]efore ascribing any particular meaning to double-fraction language in a conveying instrument, all the other language in the document must be considered to deduce intent."). To determine whether a fixed or floating construct best harmonizes all the deeds' parts, we will test each construct's effects as applied in the three defining clauses. *Cf. Hysaw*, 483 S.W.3d at 13 ("[A]pparent inconsistencies or contradictions must be harmonized, to the extent possible, by construing the document as a whole.").

E. Floating Construct

We begin by applying a floating construct to the three clauses. *Cf. Hysaw*, 483 S.W.3d at 13 ("[C]onsidering whether inconsistencies might exist and how they may be harmonized is part of the process for determining intent."). "We [will] examine the entire [instrument] and seek to harmonize and give effect to all [its] provisions so that none will be meaningless." *U.S. Shale Energy II*, 551 S.W.3d at 151 (second alteration in original) (quoting *Gilbert Tex. Const., L.P. v. Underwriters at Lloyd's London*, 327 S.W.3d 118, 126 (Tex. 2010)).

1. First Clause

The first clause reads as follows: "[T]here is hereby expressly reserved . . . an undivided three thirty-second's (3/32's) interest (same being three-fourths (3/4's) of the usual one-eighth (l/8th) royalty) in and to all of the oil, gas and other minerals . . . ."

To give full effect to all the language in the first clause, we read the "undivided three thirty-seconds (3/32's) interest" together with its succeeding definition: the "same being three-fourths (3/4's) of the usual one-eighth (1/8) royalty." This language is consistent with deeds of that era that had a usual 1/8 royalty, *see Hysaw*, 483 S.W.3d at 9; *Garrett*, 299 S.W.2d at 907, and thus we can read the clause as reserving a 3/32 interest—which is defined as three-fourths of the royalty.

The 3/32 term is a product of the reserved percentage (3/4) and the then-usual royalty (1/8). *Cf. U.S. Shale Energy II*, 551 S.W.3d at 153–54 (noting that the 1/16 product was used "to clarify, as an incidental factual matter, what a [reserved percentage] interest in the royalty amounted to when the deed was executed").

Reading the 3/32 term and its definition together, and then noting the 3/32 term's use in the second and third clauses, we see that the 3/32 term is used as a placeholder or shorthand for its full definition: the same being three-fourths of the royalty. *Cf. U.S. Shale Energy II*, 551 S.W.3d at 153–54 ("[W]e conclude the only reasonable way to reconcile these clauses is to read the second

clause, 'the same being equal to one-sixteenth (1/16) of the production,' to clarify, as an incidental factual matter, what a 1/2 interest in the royalty amounted to when the deed was executed.").

Thus, applying this floating construct, we conclude the first clause reserves three-fourths of the royalty. Applying a floating construct to the first clause gives full effect to all its language and does not create any conflicts or render any provision meaningless. *See U.S. Shale Energy II*, 551 S.W.3d at 151 (quoting *Gilbert Tex. Const.*, 327 S.W.3d at 126). If this floating construct is consistent with the deed's parties' intent, then substituting the floating definition—three-fourths of the royalty—in place of the 3/32 shorthand term in the second and third clauses will likewise not create any conflicts or render any provision meaningless. *See id.*; *Hysaw*, 483 S.W.3d at 15 (recognizing that the testator "used 'one-eighth royalty' as shorthand for the entire royalty interest a lessor could retain under a mineral lease").

2. Second Clause

To evaluate the second clause with a floating construct, we will substitute the definition—three-fourths of the royalty—for the shorthand 3/32 term. Unmodified, the second clause reads as follows: "Hoffman . . . shall receive a full three thirty-second's (3/32's) portion thereof as his own property . . . ." If we substitute the floating definition, it reads "Hoffman . . . shall receive a full [three-fourths of the royalty] thereof as his own property." This substitution gives full effect to the language in all three clauses and does not create any conflicts or render any provision meaningless. *See U.S. Shale Energy II*, 551 S.W.3d at 151 (quoting *Gilbert Tex. Const.*, 327 S.W.3d at 126).

3. Third Clause

To evaluate the third clause with a floating construct, we will substitute the definition—three-fourths of the royalty—for the 3/32 term. Unmodified, the third clause reads as follows: "Hoffman . . . shall own and be entitled to receive three thirty-second's (3/32's) of the gross

production of all oil, gas and other minerals produced and saved . . . ." If we substitute the floating definition, it reads "Hoffman . . . shall . . . receive [three-fourths of the royalty] of the gross production of all oil, gas and other minerals produced and saved." This substitution also gives full effect to the language in all three clauses and does not create any conflicts or render any provision meaningless. *See id.*

Applying the floating construct to all three clauses gives meaning to all the language in all three clauses and does not create any conflicts or render any provision meaningless. *Cf. id.* at 154 ("So construed, neither clause is rendered meaningless because both continue to be given effect in the face of leases departing from what was once a 'ubiquitous' 1/8 royalty.").

F. Fixed Construct

To test a fixed interest construct, we will assume that the deed reserves a fixed 3/32 interest. *Cf. Hysaw*, 483 S.W.3d at 13 ("[C]onsidering whether inconsistencies might exist and how they may be harmonized is part of the process for determining intent."). "We [will again] examine the entire [instrument] and seek to harmonize and give effect to all [its] provisions so that none will be meaningless." *U.S. Shale Energy II*, 551 S.W.3d at 151 (second alteration in original) (quoting *Gilbert Tex. Const.*, 327 S.W.3d at 126).

If we temporarily set aside the first clause's "same being three-fourths (3/4's) of the usual one-eighth (l/8th) royalty) in and to all of the oil, gas and other minerals" language, then all three clauses' uses of a 3/32 interest term are consistent. *Cf. Hysaw*, 483 S.W.3d at 9 ("Discerning the nature of a particular royalty interest may be a simple matter when an instrument consistently uses single fractions to describe the interest."). For this fixed interest construct, there would be no ambiguity or conflict resulting from a change in a future lease's royalty percentage. *See id.*

But to ascertain the parties' intent, we cannot simply pretend the "same being three-fourths . . . of the usual one-eighth . . . royalty" language does not exist. *See Wenske*, 521 S.W.3d at 794

("When construing an unambiguous deed, our primary duty is to ascertain the intent of the parties from *all* of the language within the four corners of the deed." (emphasis added)); *Hysaw*, 483 S.W.3d at 14 ("[B]efore ascribing any particular meaning to double-fraction language in a conveying instrument, *all* the other language in the document must be considered to deduce intent." (emphasis added)).

None of the deed's language must be rendered meaningless. *See U.S. Shale Energy II*, 551 S.W.3d at 151 (quoting *Gilbert Tex. Const.*, 327 S.W.3d at 126) ("We [must] examine the entire [instrument] and seek to harmonize and give effect to all [its] provisions so that none will be meaningless." (second alteration in original)).

If we include, as we must, the "same being three-fourths . . . of the usual one-eighth . . . royalty" language, the clauses become inconsistent if a lease is negotiated with something other than a one-eighth royalty. A new lease royalty (not equal to one-eighth) multiplied by three-fourths would not yield "an undivided three thirty-seconds . . . interest," and it would make the first clause internally inconsistent.

We cannot harmonize a fixed construct because it improperly "fails to accord any significance to the use of double fractions in lieu of a single fraction," *see Hysaw*, 483 S.W.3d at 12, and thus fails to give effect to all the deed's provisions, *contra U.S. Shale Energy II*, 551 S.W.3d at 151.

G. Floating Construct Harmonizes All Language

We have reviewed the 1956 Deed in its entirety, noted the customary royalty when it was drafted, examined the operative language, applied the appropriate case law, and tested both floating and fixed constructs to see which can be harmonized. *See Wenske*, 521 S.W.3d at 795; *Hysaw*, 483 S.W.3d at 13.

A fixed construct cannot be harmonized because it renders the "same being three-fourths" language meaningless, at best, and introduces conflict in the first clause for a lease with anything other than a 1/8 royalty. *Cf. U.S. Shale Energy II*, 551 S.W.3d at 155 (rejecting a fixed interest construction because "it allows one clause of the reservation to render the other meaningless").

On the other hand, a floating construct can be readily harmonized; it gives effect to all the language and does not create any conflicts or render any provision meaningless. *Cf. id.* at 154.

We hold that there is only one reasonable interpretation for the reservation: the 1956 Deed reserved a floating three-fourths of the royalty NPRI. *See Wenske*, 521 S.W.3d at 794, 795–96; *Luckel v. White*, 819 S.W.2d 459, 461 (Tex. 1991).

CONCLUSION

Having considered the 1956 Deed in its entirety, its era, its plain language, the provisions' structure, and the case law, we conclude the only reasonable interpretation of the reservation that harmonizes all the words and renders none meaningless is that the interest reserved is a floating NPRI. The trial court erred when it construed the reservation as a fixed NPRI and awarded attorney's fees. We reverse the trial court's judgment in its entirety; render judgment that the 1956 Deed reserved a nonparticipating royalty interest consisting of three-quarters of any royalty that may be reserved in any oil, gas, or mineral lease that may be executed (a floating NPRI); and remand this cause for the trial court to exercise its discretion in awarding costs and any reasonable and necessary attorney's fees.

Patricia O. Alvarez, Justice