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What does the term "oil well rights" mean when used in a will?

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Cases Considered:

Wernicke v Quirk, 2011 SKCA 95

The moral of this story might well be "don't mess with terms you don't understand"; and if you want to make a specific devise of surface rentals from gas wells on your property you might wish to do so explicitly and not use a term like "oil well rights".

At his death, T, a resident of Saskatchewan, owned a freehold mineral title in Alberta (which had never produced and was of only nominal value) and a farming property in Saskatchewan (surface title only). There were gas operations on the Saskatchewan farm - and surface leases and rentals associated with those operations. T's will contained specific devises in favour of his two sons for a sum of money and "One-half (1/2) of all my oil well rights". Other clauses of the will afforded the two sons an interest in the farming property which was to be held in trust for 10 years to be operated by one of the sons and a grandson of T. On an application to interpret the term "oil well rights" (and specifically whether this was a reference to the Alberta freehold mineral property or also included the surface rentals) the trial judge in oral unreported reasons held that it referred to the freehold mineral title. The trial judge had admitted evidence from: (1) T's accountant, (2) an employee (Dueck) of the Mennonite trust who had drafted the will, and (3) from a lawyer (Nimegeers) with expertise in oil and gas matters and surface rights.

T's accountant testified that he had queried T about the use of the term "oil well rights" and that T responded that the surface rentals for the gas wells were to go to his two sons. Dueck testified that T had the same intention, that T had no interest in anything that could strictly be categorized as an oil well but that the Mennonite Trust Ltd used the term to include surface rentals. Nimegeers testified as to the distinction between the rights associated with surface ownership and the rights associated with mineral ownership.

On appeal the Saskatchewan Court of Appeal confirmed the interpretation of the trial judge that the term "oil well rights" referred to the freehold mineral rights in Alberta and not to the surface rentals associated with the Saskatchewan property. The Court began with the plain and ordinary meaning of the term (rights relating to oil and oil wells) but since T had "no rights in any oil wells" (at para 13) that hardly served to advance the matter. In proceeding further the Court took the view that "direct evidence" of T's intentions could only be considered if there were equivocation (i.e. the words of the will could apply equally well to two or more things or persons (at para 15)). There was no equivocation here (at para 16):

> The meaning of mines and minerals as an asset is well established in law. The meaning of surface lease rentals is perhaps less so and more technical in nature. Resort can be had to the testimony of Nimegeers so as to assist the court in determining the characteristics of each asset. With this testimony in mind, of the two possible assets which "oil well rights" could denote (*i.e.* the mines and minerals in the Alberta property and the surface rentals in Saskatchewan), the term is more aptly encompassed by the mines and minerals because these indeed include oil (well) rights whereas surface leases do not. The phrase is therefore not equally ambiguous with respect to mines and minerals and the surface rentals.

Since there was merely ambiguity and not equivocation "only indirect evidence can be used to clarify the meaning of the phrase used in the will". That evidence, taken together with the overall structure of T's bequests suggested that T wanted to keep the farm intact as a unit and that that unit included the surface rentals attributable to the gas wells on the surface of his Saskatchewan property. The indirect evidence established that T knew he had no oil wells, that the gas wells as producing assets were not his, and that surface rentals were attributable to the loss of use of the surface of the land. All of this confirmed that (at para 20) "in the context of the Will the phrase …. must refer to the Alberta property and not the surface rentals."