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OIL AND GAS—CAN A "SUBJECT TO" CLAUSE BE A VALID EXCEPTION IN A MINERAL DEED?

Miller v. Lowry,

468 So. 2d 865 (Miss. 1985)

FACTS

The Mississippi Supreme Court in *Miller v. Lowry*[1] was asked to construe the effect of a clause in a mineral deed as a reservation or exception to the mineral rights conveyed. The property in question was traced back to the defendant, Sarah Miller, who acquired the property in 1960. In 1977, Miller conveyed fee simple title to Luke Pace and his wife by warranty deed, and two years later Miller executed a quitclaim deed to Luke Pace and his wife. Both the 1977 warranty deed and the quitclaim deed contained a clause which read, "[s]ubject to the reservation of all oil, gas and other minerals in, on and under the above described land by prior grantors."[2] There had been no reservation in any prior grantors. Luke Pace and his wife then conveyed the property, by warranty deed, to Jerry Lynn Pace and his wife in 1979. James Lowry and his wife then took fee simple title to the land by warranty deed from Jerry Lynn Pace and his wife in 1980. Both the Pace-Pace and the Pace-Lowry deeds contained clauses which stated that the conveyance was made subject to the prior reservation of all the oil, gas and other minerals in, on or under the land.

The dispute over title to the minerals arose in 1980 and 1982, when both parties attempted to lease the mineral rights to the property. Sarah Miller executed a lease of the mineral rights to Sabine Oil Company in November, 1980, and the Lowrys executed a lease of the mineral rights to Vernon Lindsay and his wife in February, 1981. At this point the Lowrys filed suit to remove the cloud from their title to the mineral rights. The chancellor found that the Miller-Sabine Oil Company lease was invalid and thus there was a cloud on the Lowrys' title because Sarah Miller had not reserved any or all of the mineral rights by her deed to Luke Pace and his wife. The mineral rights had become vested in James Lowry and wife. The Mississippi Supreme Court upheld the ruling of the chancellor, holding that the Lowrys were the owners of the mineral rights in the property in question. The

1. 468 So. 2d 865 (Miss. 1985).

2. *Id.* at 866.

court enunciated the rule that a "subject-to" clause, without any prior reservations, could never act as a valid reservation, but was only a protection of the warranty given by the grantor.[3]

BACKGROUND AND HISTORY

I.

THE LAW IN MISSISSIPPI

Before dealing with the cases in Mississippi and other states which have a direct bearing on the use of "subject-to" clauses as attempted reservations, some general rules of construction should be noted. Today, there is no longer any distinction between a reservation and an exception in its effect on a grant.[4] Instead, the courts try to determine the actual intent of the parties to decide if the grantor has retained some interest in the property conveyed.[5] The language used to except or reserve an interest in the grantor should, however, be definite enough for the court to be able to construe the clause as the parties intended.[6] If the court is unable to determine the intent, then the usual rules of construction and admissibility of evidence will be applied.[7] The Mississippi Supreme Court has followed these general rules and added another which states that the construction placed upon a deed by the parties, when ambiguous, will be used to determine the intent of the parties.[8]

With these principles in mind, several cases should be discussed to show the construction placed on reservation and exception clauses by the court. In an early case dealing with the construction of an exception clause,[9] the court considered a clause in which the grantors, Cook and his wife, recited that the minerals were to be reserved in their son and included a promise later to convey the minerals to the son.[10] This clause was not sufficient to vest any title to the minerals in the son, but it did show a clear intent

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3. The court, in denying reformation of the deed to reflect the intention of the parties to reserve the minerals, stated that the required notice for reformation was not satisfied. The court, citing Lamar v. Lane, 170 Miss. 260, 154 So. 709 (1934), held that reformation was not a proper remedy in this case. *Id.* at 867.

4. Ewing, *Reservation and Exception of Minerals in Mississippi Conveyancing*, 39 Miss.L.J. 39, 41-42 (1967). The courts have changed from the common law distinction because the basic principles of exceptions and reservations are the same. Thus, the modern approach is to merely attempt to interpret the intentions of the parties.

5. *Id.*

6. *Id.* at 45-48.

7. *Id.* at 48-50.

8. *See* Richardson v. Moore, 198 Miss. 741, 22 So. 2d 494 (1945); Harris v. Griffith, 210 So. 2d 629 (Miss. 1968).

9. Cook v. Farley, 195 Miss. 638, 15 So. 2d 352 (1943).

10. *Id.* at 648, 15 So. 2d at 354.

by the grantors to except the minerals from the conveyance.[11] Thus, the court held that a valid reservation had been made and set out the rule that it is not the reason for the exception but the intent of the parties that controls the construction of the reservation clause.[12]

In *Wilson v. Gerard*,[13] the grantor, Gerard, conveyed a parcel of real estate to Wilson with a clause which purported to reserve from the grant a one-half mineral interest in the property. The clause stated that the grant was made "subject-to" a prior grant of the subject one-half mineral interest to William Henderson.[14] It was then shown at trial that there was no William Henderson in existence and that Gerard had later reconveyed these mineral rights to himself and his wife from William Henderson.[15] The issue then became whether the fraudulent reservation acted as a valid reservation in the Wilson-Gerard deed. Wilson argued that because the reservation was fraudulent, the minerals passed to him and were not reserved by the grantor.[16] The court ruled that even though a prior grant may have been ineffective, a reservation made subject-to this grant did not allow that which was reserved to pass to the grantee.[17]

In a third case dealing with a false reason given for the exception,[18] the court again relied on the intent of the grantor and not the reason given for the reservation. The grantors recited that all of the minerals were to be reserved from the grant, even though they were not owners of any of the mineral rights.[19] However, it was shown that the grantors had received a portion of the mineral rights due to the expiration of a term interest that had been previously reserved in a prior grantor.[20] The court, upholding the reservation as saving from the grant all of the mineral rights, stated that:

> [T]he reservation by the Arringtons (grantors) was not ambiguous and clearly stated that all oil, gas and other minerals [sic] rights appurtenant to said lands were reserved and excepted from the conveyance. . . . If the statement or representations of non-ownership of the minerals had been true, the grantee would not have received any interest in the minerals.[21]

Thus the court reaffirmed the rule that it is the intent of the gran-

11. *Id.* at 653, 15 So. 2d at 355.
12. *Id.* at 653, 15 So. 2d at 355-56.
13. 213 Miss. 177, 56 So. 2d 471 (1952).
14. *Id.* at 180, 56 So. 2d at 471.
15. *Id.* at 182, 56 So. 2d at 472.
16. *Id.*
17. *Id.* at 186-87, 56 So. 2d at 473.
18. West v. Arrington, 183 So. 2d at 473.
19. *Id.* at 825.
20. *Id.* at 825-26.
21. *Id.* at 826.

tor that controls and not the reason he gives for the reservation.

In *Oldham v. Fortner*,[22] the amount of the interest in the minerals that was conveyed was left blank in the deed from J.M. Oldham to his grantees.[23] In all subsequent deeds, including the deed going to Fortner, the reservation clause read "excepting all minerals and mineral rights heretofore sold and conveyed."[24] In the deed given to Fortner, there was also a clause which set out the earlier conveyance from J.M. Oldham to Samuel E. Oldham and John C. Oldham with great specificity, including the recording data of the deed.[25] The court held that all of the exceptions as recited in the subsequent deed coming from Samuel E. and John C. Oldham were void due to indefiniteness.[26] The court reiterated that the validity of the subsequent reservations was controlled by the intent in the specific deed and did not depend on the validity of the original attempt to transfer all of the mineral rights.[27] Also, a grantee takes subject to all prior reservations and grants of which he has notice.[28] In conclusion, the court, citing *Wilson v. Gerard*,[29] affirmed the rule that "in general a grantor who makes a reservation or an exception in his deed does not part with the title to that which is thus excepted or reserved, and where not already outstanding in another necessarily remains with the grantor."[30]

Finally, the court in *Pfisterer v. Noble*,[31] was faced with a clause very similar to the one found in the instant case. The clause stated that "[t]his conveyance and warranty herein are made subject to prior reservations and conveyances of all the oil, gas and other minerals in, on and under said lands."[32] The main difference between this case and the instant case is that there had been prior conveyances of the entire mineral interest by Pfisterer's grantor, Magee. The court, in construing the deed, stressed the importance of the word "all" in the exception clause to hold that the entire mineral interest had been reserved, no matter who owned the interests or the amount that had been previously conveyed.[33]

Thus, the law in Mississippi prior to *Miller* was that as long

22. 221 Miss. 732, 74 So. 2d 824 (1954).
23. *Id.* at 735, 74 So. 2d at 825.
24. *Id.* at 737, 74 So. 2d at 826.
25. *Id.*
26. *Id.* at 739, 74 So. 2d at 827.
27. *Id.* at 741, 74 So. 2d at 828.
28. *Id.* at 743, 74 So. 2d at 828.
29. 213 Miss. 177, 56 So. 2d 471 (1952).
30. *Oldham*, 221 Miss. at 743, 74 So. 2d at 829.
31. 320 So. 2d 383 (Miss. 1975).
32. *Id.* at 383.
33. *Id.* at 384.

as the intent of the parties is clear from the wording of the reservation, the court will not place any importance on the reason given for the reservation.[34] Also, the actual amount of the prior reservations or conveyances is not important if the language is clear that all or a definite part of the minerals are to be excepted or reserved.[35]

II.

THE LAW IN TEXAS AND OTHER STATES

Due to the dearth of authority on this question in Mississippi, and the heavy reliance that courts place upon the decisions of other leading oil producing states when they face a new or difficult issue, it will be helpful to discuss cases from other states which deal with similar clauses and issues as in the instant case.[36]

A. Texas

The Supreme Court of Texas dealt with a clause which began "[l]ess, however, and subject to" in *Averyt v. Grande, Inc.*[37] In defining the term "subject to", the court held that it is a term of qualification to the estate granted and that it served both to protect the warranty and to limit the grant, but does not affect the description of the land.[38] The court added to the effect of the clause, holding that the clause was valid as limiting the grant or conveyance of the mineral interest.[39] However, while the court did not place much importance on the use of the word "less", it would seem to be important in the construction of the reservation clause in this case, since this added to the intent of the parties to reserve the minerals from the grant.

The Texas Supreme Court was faced with a complicated set of facts in *Bass v. Harper.*[40] The grantor, Bass, was the owner of an 8/14 interest in the royalty, with the remaining 6/14 outstanding in others not parties to the action. Bass conveyed to Harper a one-half interest in the property in question, and then limited the grant by making it "subject to" the 6/14 interest outstanding,

34. West v. Arrington, 183 So. 2d 824 (1966); Wilson v. Gerard, 213 Miss. 177, 56 So. 2d 471 (1952); Cook v. Farley, 195 Miss. 638, 15 So. 2d 352 (1943).

35. Pfisterer v. Noble, 320 So. 2d 383 (Miss. 1975); Oldham v. Fortner, 221 Miss. 732, 74 So. 2d 824 (1954).

36. Unfortunately, none of the other major oil producing states, such as Louisiana, have dealt with the question of the validity of "subject to" as a reservation in mineral deeds.

37. 717 S.W.2d 891 (Tex. 1986).

38. *Id.* at 894.

39. *Id.*

40. 441 S.W.2d 825 (Tex. 1969).

listing the previous deeds in the reservation clause.[41] Bass argued that he had conveyed to Harper a 7/14 interest in the royalty, limited by the 6/14 interest outstanding, thus leaving Harper with a 1/14 interest.[42] Harper, on the other hand, argued that the language concerning the outstanding 6/14 interest was protection to the warranty, and that Bass conveyed 1/2 of his 8/14 interest, or 4/14.[43] The court held that the "subject to" language was tied to the grant, and not the warranty, and thus acted as a limit on the amount conveyed to Harper.[44] Thus, by conveying an undivided 1/2 interest in the royalty (7/14), and making this subject to a 6/14 outstanding interest, the grantee only received a 1/14 interest in the minerals.[45] By this holding, the Texas Supreme Court accepted the rule that the words "subject to" act to limit the grant, and thus can be used to form a valid reservation or exception clause when the intent of the parties is clear from the language contained therein.

The deeds in the case of *Pich v. Lankford*,[46] had on their faces excepted 3/4 of the minerals with clauses which reflected that these interests had been previously granted and were not owned by Pich, the grantor.[47] At trial, it was shown that Pich did own part of the 3/4 mineral interest and also that parts of the 3/4 mineral interest had not been previously reserved.[48] Lankford, the grantee, argued that since the previous deeds in the chain of title had reserved only 3/4 of the royalty interest (1/8), then this inconsistency served to pass the 3/4 mineral interest to the grantee.[49] The Texas Supreme Court, however, held differently: "[t]he giving of a false reason for an exception from a grant does not operate to alter or cut down the interest or estate excepted, nor does it operate to pass the excepted interest or estate to the grantee."[50] Thus, the Texas Supreme Court utilized the rule followed by the Mississippi Supreme Court as earlier discussed.[51]

41. *Id.* at 826.
42. *Id.* at 825.
43. *Id.* at 825-26.
44. *Id.* at 827.
45. *Id.* at 828.
46. 157 Tex. 335, 302 S.W.2d 645 (1957).
47. *Id.* at 337-38, 302 S.W.2d at 646-47.
48. *Id.* at 337-38, 302 S.W.2d at 647.
49. *Id.* at 339, 302 S.W.2d at 648.
50. *Id.* at 340, 302 S.W.2d at 648.
51. *See supra* note 22 and accompanying text.

B. Nebraska

In the case of *Bulger v. McCover*,[52] the reservation clause stated, at the end of the granting clause, "subject to ONE-HALF OF ALL OIL AND MINERAL RIGHTS."[53] The court put great weight on the fact that this wording was in the granting clause. They disregarded the argument that this clause was merely a limitation on the warranty, stating that "it is evident to us that in the Seybolt-Petri deed there was a reservation of one-half of all oil and mineral rights."[54] Thus, the court upheld the use of the words "subject to" as a valid reservation of the amount of the minerals stated in the clause. In direct support of this, the court stated that "[i]t seems apparent to us that the ordinary person would readily interpret the conveyance as a retention by the grantor of one-half of all oil and mineral rights."[55]

C. North Dakota

The Supreme Court of North Dakota has dealt with a similar issue as in *Miller* in two cases. In the first of these,[56] the reservation clause stated that the grant was "subject to the reservation of 50% of all oil or minerals."[57] There had been a prior reservation in a person not a party to the action of 50% of the minerals.[58] In attempting to construe this language, the court held that this clause created an ambiguity in the deed, and because of this the court admitted extrinsic evidence to determine the effect of the clause.[59] In viewing the evidence that this language had been previously used in a deed in the chain of title as a protection of the warranty and not a reservation, the court refused to construe the clause as a reservation of 50% of the minerals in the grantor.[60] Instead, it held that this clause was a mere recital of the fact that 50% of the minerals had been previously conveyed - a protection of the grantor's warranty and not a reservation of any minerals in the grantor.[61]

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52. 179 Neb. 316, 138 N.W.2d 18 (1965).
53. *Id.* at 317, 138 N.W.2d at 20.
54. *Id.* at 320, 138 N.W.2d at 22.
55. *Id.*
56. Stracka v. Peterson, 377 N.W.2d 580 (N.D. 1985).
57. *Id.* at 581.
58. *Id.*
59. *Id.* at 582.
60. *Id.* at 584.
61. *Id.*

The North Dakota Supreme Court then decided in the case of *Monson v. Dwyer,*[62] that the words "subject to" could not act as a valid reservation. The court there followed *Stracka*[63] in holding that the term "subject to" merely acts as a limitation on the warranty.[64] The court, in distinguishing *Bulger v. McCourt,*[65] relied on the fact that in the instant case there had been a prior reservation in the chain of title, and thus the "subject to" language could only apply to the warranty, since the same amount was in the reservation clause as had been previously reserved.[66]

D. Alabama

In *Union Oil of California v. Colglazier,*[67] the Alabama Supreme Court had before it a reservation clause which stated that the grant was made "subject to all of the easements, reservations and restrictive covenants, if any, lawfully existing . . . ."[68] The deed went on specifically to donate a reservation of one-half of the mineral interest in G.C. Coggin Company, Inc.[69] However, there had been no actual conveyance of this interest to the G.C. Coggin Company, Inc., and, thus, the grantee argued that the one-half interest should have passed to him.[70] The court disagreed with the grantee, however, and held that the exception was valid, relying strictly on the intent of the parties gleaned from the clause itself and the deed as an entirety.[71] The Alabama court went on to cite *Wilson,*[72] *Oldham,*[73] and *Pich*[74] to support its holding that the court will construe the clause on the basis of the intent of the parties, not the reason for the exception.[75]

E. Oklahoma

Finally, in *Whitman v. Harrison,*[76] the deed in question pur-

62. 378 N.W.2d 865 (N.D. 1985).
63. 377 N.W.2d 580 (N.D. 1985).
64. 378 N.W.2d at 866-67.
65. 176 Neb. 316, 138 N.W.2d 18 (1965).
66. 378 N.W.2d at 867.
67. 360 So. 2d 965 (Ala. 1978).
68. *Id.* at 967.
69. *Id.*
70. *Id.*
71. *Id.*
72. 213 Miss. 177, 56 So. 2d 471 (1952).
73. 221 Miss. 732, 74 So. 2d 824 (1954).
74. 157 Tex. 335, 302 S.W.2d 645 (1957).
75. 360 So. 2d at 968.
76. 327 P.2d 680 (Okla. 1958).

ported to convey to the grantees 80 surface acres of property. There was also a clause which showed that the grantor was "conveying only 5/80ths of the mineral rights . . . subject to . . . 75/80ths of the total oil, gas and mineral rights previously sold . . . ."[77] The grantor also owned a 60 acre reversionary interest in the property in question.[78] The court held the reservation as to the 75/80ths was valid under the "subject to" clause but refused to vest title in the grantor to the 60 acre reversionary interest under this clause.[79] Even though this interest was outstanding in others, no specific mention was made in the reservation clause as to the interest: therefore, it passed to the grantee.[80] Under this analysis, the court would seem to allow the use of a "subject to" clause as a valid reservation but to the extent that only the amount specifically set out in the clause could be reserved.

INSTANT CASE

In reaching its decision in this case, the Mississippi Supreme Court placed great weight on the argument made by the Lowrys.[81] The main thrust of the Lowrys' argument was that since there had been no prior valid reservation in the chain of title, the "subject to" clause could not act as a reservation or exception of any of the minerals.[82] The Millers, on the other hand, based their argument on the three Mississippi cases discussed earlier,[83] *Oldham v. Fortner,*[84] *Wilson v. Gerard,*[85] and *Pfisterer v. Noble.*[86] Relying on *Oldham,*[87] the Millers argued that the clause in question in the instant case was similar to that in *Oldham*, and, thus, the exception could be considered valid. The court, however, distinguished the two cases on the fact that there were no valid or invalid prior reservations in the instant case, so there could not have been anything reserved in the deed to the Lowrys.[88] The Millers next relied on *Wilson,*[89] arguing that the clauses in both the instant case and *Wilson* used the term "subject to", and, therefore,

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77. *Id.* at 681.
78. *Id.* at 682.
79. *Id.* at 683.
80. *Id.*
81. 468 So. 2d 865, 867 (Miss. 1985).
82. *Id.*
83. *Id.* at 866-67.
84. *See supra* note 1 and accompanying text.
85. *See supra* note 10 and accompanying text.
86. *See supra* note 10 and accompanying text.
87. 221 Miss. 732, 74 So. 2d 824 (1962).
88. 468 So. 2d at 867.
89. 213 Miss. 177, 56 So. 2d 471 (1952).

the attempted exception by Sarah Miller was valid, and no minerals were granted to the Lowrys.[90] In disagreeing with this construction of the deed, the court stated that the language in *Wilson* dealt with a specific exception, and since the clause in the instant case was not based on a specific exception, it was not a valid exception of the minerals.[91] Finally, the Millers argued that the court's holding in *Pfisterer*[92] would control in the instant case since the reservation language in the two cases was almost identical.[93] However, the court pointed out that in *Pfisterer*, there had been actual prior reservations.[94] The language in *Miller* was not a valid reservation of any minerals.[95] In reaching its decision in the instant case, the court reasoned that the "subject to" clause here merely acted as a protection of the grantor's warranty and that this language alone had never sufficed as a valid reservation of minerals.[96]

ANALYSIS

The Mississippi Supreme Court could have followed three possible theories in reaching a decision in *Miller*.[97] These theories, if utilized, would have led the court to a different result and, seemingly, would have been more in line with the authority on this point from both Mississippi and other jurisdictions. Under the first of these theories the court would have looked only at the intent of the parties in construing the "subject to" language.[98] In applying this theory, the court could have looked at the language in the deed to James Lowry, the fact that all the deeds in the chain of title had a similar clause relating to the mineral rights, and the fact that all of the owners in the chain understood that the mineral rights had been intended to be reserved in Sarah Miller. In so doing, the court could have come to the conclusion that the mineral rights had been reserved by Sarah Miller in her original conveyance.

The second approach the court could have taken would have been to disregard the fact that no actual effective prior reservation or grant had been made, and merely consider the fact that by the "subject to" clause, the grantor did not wish to pass any

90. 468 So. 2d at 867.

91. *Id.*

92. 320 So. 2d 383 (Miss. 1975).

93. 468 So. 2d at 867.

94. *Id.*

95. *Id.*

96. *Id.*

97. *See supra* notes 13, 19, 24 and accompanying text.

98. *See* West v. Arrington, 183 So. 2d 824 (Miss. 1966); Cook v. Farley, 195 Miss. 638, 15 So. 2d 352 (1943); *see also* Pich v. Lankford, 157 Tex. 335, 302 S.W.2d 645 (1957).

mineral interest to the grantee.[99] Using this approach, the court might have overlooked the fact that there had not been a valid reservation from Sarah Miller to Luke Pace and focused solely on the deed from Jerry Lynn Pace to James Lowry; thus the court might have held that the grantor, Pace, did not wish to pass any interest to the grantee, Lowry, as evidenced by the "subject to" clause and the use of the term "all" in describing the amount reserved.

The third alternative would have been for the court to interpret the term "subject to" as a direct limitation on the grant in the amount of the interest recited in the clause.[100] Thus, relying solely on the language of the deed, the court could have accepted this theory and held that this clause reserved all the mineral rights from the grants in the chain of title, relying solely on the language of the deed.

Seemingly, the weight of authority from both Mississippi and other jurisdictions would support a ruling upholding the use of the "subject to" language to form a valid reservation clause under any of these three theories. While there are two cases from North Dakota which held that the use of the term "subject to" in the reservation clause was only a protection of the warranty given by the grantor,[101] these cases were decided on different factual bases from *Miller*. The court in *Stracka*[102] looked at the extrinsic evidence and found that this language had been used specifically as a limitation on the warranty in a prior deed in the chain of title. Then, without enunciating any other reason, the same court in *Monson*[103] accepted and adopted the *Stracka* ruling that a "subject to" clause can only act as a limitation on the warranty.[104] In *Miller*, there was no evidence offered that this clause had been previously used as a limitation on the warranty.[105] In fact, there was evidence offered at trial which tended to show that the owners subsequent to Sarah Miller understood that the minerals had not passed to them, but had remained vested in Mrs. Miller.[106] Thus, the court

99. *See* Pfisterer v. Noble, 320 So. 2d 383 (Miss. 1975); Oldham v. Fortner, 221 Miss. 732, 74 So. 2d 824 (1954); Wilson v. Gerard, 213 Miss. 177, 56 So. 2d 471 (1952); *see also* Union Oil Co. of California v. Colglazier, 360 So. 2d 965 (Ala. 1978).

100. *See* Bulger v. McCourt, 179 Neb. 316, 138 N.W.2d 18 (1965); Whitman v. Harrison, 327 P.2d 680 (Okla. 1958); Averyt v. Grande, Inc., 717 S.W.2d 891 (Tex. 1986); Bass v. Harper, 441 S.W.2d 825 (Tex. 1969).

101. Monson v. Dwyer, 378 N.W.2d 865 (N.D. 1985); Stracka v. Peterson, 377 N.W.2d 580 (N.D. 1985).

102. 377 N.W.2d at 582.

103. 378 N.W.2d 865 (N.D. 1985).

104. *Id.* at 866-67.

105. 468 So. 2d at 866.

106. *Id.*

in *Miller* seemingly had no real authority to back up the factual distinction it created in its holding, nor did it articulate any reason for the distinction.

CONCLUSION

The court's decision in *Miller*, while not directly supported by any previous authority in Mississippi, is centered on the factual distinction between the present case and the earlier cases in that in *Miller* there was no prior attempt to reserve any of the minerals. However, in making this slight distinction, the court has left open the question of exactly what is necessary for a valid reservation to be made using the "subject to" language. If the opportunity presents itself, the court should draw a clearer distinction between what does and does not constitute a valid reservation. This could be done by announcing that any "subject to" reservation which has any previous actual grant or reservation in the chain of title will be held to be a valid reservation of the amount recited in the questioned clause. It is extremely important to the oil and gas community that this issue be clarified so that the least amount of confusion will arise concerning attempted reservations using the "subject to" language. In the world of property and oil and gas law, certainty is a must, and with this decision, the Mississippi Supreme Court has created nothing but uncertainty.

Kyle Allan Pinkerton