

IN THE SUPREME COURT OF OHIO

Faith Ranch and Farms Fund, Inc.	:	
	:	Case No. 2023-1475
Plaintiff-Appellee,	:	
	:	
v.	:	On Appeal from the Harrison County
	:	Court of Appeals, Seventh Appellate
PNC Bank, N.A., et al.,	:	District
	:	
Defendants-Appellants.	:	Courts of Appeals Consolidated
	:	Case Nos. 23HA1 & 23HA2

MERITS BRIEF OF APPELLEE FAITH RANCH AND FARMS FUND, INC.

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This case is about who owns the oil and gas under a large tract of land (the “Land”) in Harrison County. Appellee Faith Ranch and Farms Fund, Inc. (“Faith Ranch”) has owned the Land for more than 50 years. Prior to Faith Ranch’s ownership, in 1953, C.C. Fay, a coal baron, conveyed the Land to Judson Rosebush, reserving unto himself only the right to “us[e] * * * underground mining methods” to “mine and remove” certain “coal and other minerals of any vein” underlying the Land. While, by this plain text, C.C. Fay reserved the right to mine veins of minerals using underground mining methods, he did not reserve the right to drill for non-minerals, such as oil and gas, that occur in formations or reservoirs rather than veins.

On multiple prior occasions with respect to sales of other parcels, C.C. Fay *had* explicitly reserved oil and gas rights. But the bargain struck here did not include a reservation of those rights and thus did not include oil and gas language. The parties and their successors abided by this plain-language interpretation of the C.C. Fay reservation for well over half a century. Four times over the ensuing decades—including twice while C.C. Fay was still living—Rosebush, and, then, Faith Ranch, leased the oil and gas rights to third parties. As one would expect, given the limited scope of the reservation, neither C.C. Fay nor his heirs raised a peep. In 1969, C.C. Fay conveyed his reserved coal rights to a third party. But, again as one would expect, he did not convey or reference oil and gas rights then or at any other time after he sold the Land, given that he did not own those rights. When C.C. Fay died in 1983, his non-existent oil and gas rights were not listed in the comprehensive schedule of his assets required to probate his will. The same was true when his wife passed away in 1988.

Plain text, C.C. Fay’s past practice of explicitly reserving oil and gas when he so intended, and the parties’ decades-long history of performance make it unmistakably clear that the Fay reservation did not include oil and gas. All were in agreement for nearly seventy years. But then

the fracking boom came to Ohio. With the financial stakes suddenly heightened, Appellants, a host of distant legal heirs of C.C. Fay’s children, inventively argued—contrary to text, the parties’ own past performance, this Court’s precedent, industry practice, and sound public policy—that the C.C. Fay reservation should now be reinterpreted to include oil and gas. The lower courts have uniformly rejected the distant heirs’ specious contentions, and Faith Ranch respectfully asks this Court to do the same.

I. STATEMENT OF THE FACTS

Faith Ranch is an Ohio non-profit that owns and operates a non-denominational Christian retreat in rural Harrison County. (R.1, Compl. at ¶ 2.) The organization’s “mission is to model and encourage a Christ-centered life in a ranch setting[] and to build mentoring relationships by using recreation and ranch activities as tools to aid in sharing Jesus Christ, His Love, and His Word with [the non-profit’s] guests.” Faith Ranch, *Who We Are*, <https://faithranch.org/about/>. Faith Ranch operates for the benefit of Harrison County, the surrounding community, and any member of the public who desires to enjoy its property or participate in the activities it offers. *See id.*

Faith Ranch acquired the Land together with the oil and gas in 1973. (R.1, Compl. at Ex. A, Docs. 86-87.¹) Prior to Faith Ranch’s acquisition, a coal-mining magnate—C.C. Fay—and his wife had conveyed the Land to Judson Rosebush in 1953. (*Id.* at Doc. 83.) C.C. Fay bought and sold many tracts of land throughout his lifetime in connection with his coal operations. (*See, e.g., id.* at Docs. 11, 21-23, 29, 42-44, 82-83, 88-91.) A sophisticated businessman, Fay sometimes also reserved the right to drill for oil and gas and, when he did so, mentioned oil and gas by name and—correctly—did not assume that references to “coal” and “minerals” alone were, without

¹ As used herein, “Ex. A, Doc. #” refers to the specific instrument contained in the abstract title attached to the Complaint as Exhibit A.

more, sufficient to include the separate oil and gas rights. In 1940, for example, C.C. Fay sold an unrelated 61.37-acre parcel of land but reserved for himself “all minerals, coal, [and] oil and gas thereunder.” (*Id.* at Doc. 30.) In 1944, he sold another unrelated parcel. That deed contained the following reservation:

Excepting and reserving coal and mineral rights underlying said premises, with right to remove same, but not through surface area. Reserving, also, the oil and gas rights, for drilling and removing.

(*Id.* at Doc. 43 (emphasis added).) Also in 1944, C.C. Fay sold a third property but “reserve[ed] all the minerals, coal and oil and gas that may underlie the aforesaid premises[.]” (*Id.* at Doc. 56 (emphasis added).)

But in the bargain he struck with Judson Rosebush for sale of the Land at issue here, C.C. Fay did not reserve oil and gas rights. Instead, he reserved only

the coal below the horizon of the No. 8 coal, if any vein exists thereunder, and other minerals, with the right to mine and remove such coal or other minerals of any vein, using any convenient underground mining methods, and to transport coal and minerals from other premises through and under the surface of said lands; and particularly reserving the seam of coal, if any, now being mined at the Nelm’s mine of the Y.&O. Coal Company, near Unionvale, Ohio, with all mining rights necessary or convenient for the mining and removal thereof, and the right to transport other coal of the same vein under said lands.

(*Id.* at Doc. 83. (emphasis added).)

In the decades that followed the sale of the Land, the conduct of Rosebush and Faith Ranch, as well as that of C.C. Fay and his own successors, consistently reaffirmed that the reservation Fay drafted did not include oil and gas rights. For example, by deed dated April 14, 1969, Fay conveyed “All veins of coal below the No. 8 or Pittsburgh vein in and underlying” the Land to the Youghiogheny and Ohio Coal Company (“Y&O”). (*Id.* at Doc. 88.) This coal deed expressed Fay’s intention to convey all rights with respect to the “coal * * * reserved in” the 1953 deed of the Land “to Judson Rosebush.” *Id.* Notably, less than three months later, on July 7, 1969, C.C.

Fay also conveyed the coal underlying a separate piece of property to Y&O. (*Id.* at Doc. 89.)

Unlike with respect to the Land, when it came to this other conveyance, C.C. Fay had reserved oil and gas rights. As a result, this second coal conveyance contained the following provision:

[C.C. Fay], having heretofore reserved all oil and gas under the above described parcels of land with the right to drill for and market the same through the coal above described; the Grantee herein, its successors and assigns, shall have the right to approve the location of the drill holes and Grantor agrees that all necessary safety devices known to the business and as provided by the mining laws of the State of Ohio are to be employed in regard to drilling for or marketing oil and gas, and further that before drilling of any oil and/or gas well is started, a permit from the Department of Mines, State of Ohio, shall be acquired[.]

(*Id.* at Doc. 89.) As one would expect, no similar provision was included in the C.C. Fay deed conveying the coal underlying the Land because C.C. Fay did not own those oil and gas rights.

(*Compare id.* at Doc. 88 with *id.* at Doc. 89.)²

Though he sold the coal rights to the Land in 1969, at no point in the decades that followed the 1953 sale to Rosebush did C.C. Fay or any of his successors purport to convey, lease, or otherwise transact with respect to the oil and gas underlying the Land. (*See generally id.* at Docs. 88-96, 102-106.) On the other hand, Rosebush and his wife leased the oil and gas rights in the Land to E.K. Petroleum Co. on May 1, 1969. (*Id.* at Doc. 102.) Then, in 1979—six years after it purchased the Land—Faith Ranch leased the oil and gas rights to Columbia Gas Transmission Corporation. (*Id.* at Doc. 103.) In 2005, Faith Ranch again leased the oil and gas rights to Oxford Oil Company. (*Id.* at Doc. 104.) And in 2011, Faith Ranch yet again leased the oil and gas rights, this time to Gulfport Energy Corporation. (*Id.* at Doc. 105.)

² Similarly, with respect to the previously mentioned 1940 sale and two 1994 sales in which C.C. Fay had reserved “oil and gas” by name, in 1979, he conveyed “all the oil and gas and no. 8 vein of coal if any” underlying those three parcels to a third party. (R.1, Compl. at Ex. A, Doc. 90 (capitalization omitted).)

C.C. Fay lived for another 30 years after he drafted and executed the 1953 deed to Rosebush. (*Id.* at Doc. 91.) At no point over those three decades did he ever object to the oil and gas leases entered into by Rosebush in 1969 or by Faith Ranch in 1979. (*See generally* R.1, Compl. at Ex. A.) Nor, after C.C. Fay's death in 1983, did either his wife or her successors object at any point during the succeeding 37 years to the subsequent oil and gas leases executed by Faith Ranch. (*See id.*)

After C.C. Fay died testate, his will was probated, and the exhaustive schedule of assets prepared as part of that process did not list any oil and gas rights in the Land. (*Id.* at Doc. 91.) C.C. Fay's widow, the executors of his estate, and the trustee of the trust established by his will, all stated, under oath, that the schedule of assets was complete, and each of the beneficiaries waived a hearing on the inventory, thereby accepting the schedule of assets as true, accurate, and complete. (*Id.*) Likewise, when C.C. Fay's widow, Agnes Fay, died in 1988, her schedule of assets did not list oil and gas rights in the Land. (*Id.* at Doc. 92.) Agnes Fay's executrix and daughter, Virginia Mayer, also affirmed, under oath, that this schedule of assets was comprehensive and complete. (*Id.*) The same held true when the Fays' children, Ms. Mayer and Clyde Fay, passed away. Ms. Mayer was the last to pass away, in 2014. Neither the schedule of assets for Ms. Mayer nor that for Mr. Clyde Fay—both of whom died childless—listed the oil and gas rights relinquished to Rosebush by their father decades earlier. (*Id.* at Docs. 93 and 94.) Ms. Mayer's executrix, none other than Appellant Marilyn Stolz, represented, under oath, to the probate court that the schedule of assets that showed Virginia Fay Mayer owning no real estate and no oil and gas rights was complete. (*Id.* at Doc. 94.) Furthermore, none of the Appellants who are heirs of Virginia Fay Mayer contested the accuracy of the schedule of assets. (*See id.*)

For nearly three-quarters of a century, then, not only the plain text of the Fay reservation, but also the parties' subsequent (and, in C.C. Fay's case, prior) conveyances, leases, and other actions, made it unmistakably plain that the reservation did not include oil and gas rights. All were in agreement. But the coming of the fracking boom to Ohio changed things. The financial stakes were suddenly raised. In March 2021, Faith Ranch signed a new, more lucrative oil and gas lease with EAP Ohio, LLC. (*Id.* at Doc. 106.) Two months later, in May 2021, Appellant Marilyn Stoltz—a distant legal heir of C.C. Fay's daughter—filed an action in probate court to reopen C.C. Fay's estate 38 years after his death. (R. 27, Pl.'s MSJ at Ex. 1.) She then persuaded the probate court to ostensibly transfer the "other minerals" mentioned in the Fay reservation to the distant heirs and proceeded to argue in this action, despite the plain language of the reservation and the unbroken interpretation of all parties and their successors as evidenced by consistent performance over the course of seven decades, that the distant heirs were the true owners of the oil and gas rights associated with the Land. *Id.*

The trial court rejected the distant heirs' specious argument and granted summary judgment in Faith Ranch's favor, concluding that C.C. Fay clearly and unambiguously did not reserve oil and gas rights because the reservation he drafted only contained language conducive to underground mining of coal and nonmigratory minerals. (Appx. at 9 (Judgment Entry, Jan. 9, 2023).) The distant heirs appealed. (R.73-74. The Seventh District noted that "[t]he [r]eservation contained language suggesting that 'other minerals' does not include oil and gas," and cited to the use of the terms "mine" and "mining methods," and the absence of the word "drill," as evidence for this conclusion. *Faith Ranch & Farms Fund, Inc. v. PNC Bank*, 7th Dist. Harrison Nos. 23-HA-1, 23-HA-2, 2023-Ohio-3608, ¶ 16. But relying on its own erroneous precedent, the Seventh District concluded that there was a "presumption that 'other minerals' includes oil and gas." *Id.*

at ¶ 14. This, coupled with the plain text “suggestion[s]” that oil and gas were not included, rendered the phrase “other minerals” ambiguous in the eyes of the Seventh District. *Id.* at ¶ 18. So that court looked to evidence outside the text of the reservation and concluded, correctly, that such evidence proved that C.C. Fay did not intend to reserve the oil and gas. *Id.* at ¶ 20-24. Thus, the Seventh District affirmed the trial court’s judgment in favor of Faith Ranch, albeit on slightly different grounds.

Text, intent, 70 years of party conduct, and two lower courts arrayed against them, the distant heirs asked this Court to accept jurisdiction. The Court agreed to consider the case in terms of a single, relatively narrow proposition of law.

II. ARGUMENT

Appellants’ Erroneous Proposition of Law: *Alexander* requires that common words in a written instrument be given their ordinary meaning unless absurdity results or some other meaning is clearly evidenced from the overall contents of the instrument, and “mine,” “mining,” and “vein” are common words whose ordinary meanings encompass oil and gas exploration.

* * *

The holding that the distant heirs seek from this Court would be unprecedented and disruptive. Their proposition of law begins innocuously enough, asserting, correctly, that, in interpreting a writing, common words should be given their “ordinary meaning” unless applying that meaning would lead to an absurd result or some other meaning is evidenced by the contents of the writing. But from that safe starting point, the distant heirs ask the Court to leap into the abyss and hold that the meanings of the words “mine,” “mining,” and “vein” clearly and unambiguously “encompass oil and gas exploration.” In other words, the distant heirs ask the Court to hold that a writing referencing “minerals” necessarily includes oil and gas if that writing also refers to a “mine,” to “mining,” or to a mineral “vein.” Such a rule would fly in the face of

the very ordinary-meaning canon the distant heirs purport to rely upon. No fluent English speaker would ever refer to an oil “mine” or to gas “mining” in everyday speech. Rather, one drills for oil and gas via an oil and gas well, and oil and gas are found not in veins but in formations or reservoirs. The holding the distant heirs seek would also defy the longstanding precedent of this Court, which states that words such as these indicate an intention to exclude oil and gas. Adopting the distant heirs’ proposed holding and flatly concluding that all conveyances of minerals necessarily include oil and gas even when substantially qualified and restricted by such terms would thus turn much of Ohio’s oil and gas industry, which for 125 years has relied on a common-sense approach to interpretation of such conveyances first enunciated by this Court in *Detlor v. Holland*, upside down. And, as not only text but also decades of consistent performance by the parties show, on the facts of this particular case, such a counterintuitive rule would lead to an outcome precisely the opposite of that intended by the very parties who struck the original 1953 bargain at issue. In short, no matter how you slice it, the distant heirs’ proposed holding lacks merit. It is atextual, contrary to precedent, contrary to the contracting parties’ intent, and industry-destabilizing. Accordingly, Faith Ranch asks the Court to affirm the judgment below.

A. Application of the “Plain and Ordinary Meaning” of the Word “Mineral” Excludes Oil and Gas.

The distant heirs assert that the court of appeals failed to follow the rule of interpretation articulated in *Alexander v. Buckeye Pipeline*. (Memo. ISO Juris. at 3.) This Court said in *Alexander*—as it has said in a slew of other cases—that, unless absurdity would result or “some other meaning is clearly intended from the face or overall contents of the instrument,” “words in a written instrument are to be given their plain and ordinary meaning.” *Alexander v. Buckeye Pipeline Co.*, 53 Ohio St. 2d 241, 245, 374 N.E.2d 146 (1978) (emphasis added). But application

of the plain and ordinary meaning of the word “mineral” here shows that oil and gas are excluded from the Fay reservation.

The distant heirs are apparently aware of this fact and, accordingly, right out of the gate, seek to change the terms of debate, shifting away from the rule of *Alexander*—which prefers “plain and ordinary” over less-common or technical definitions—to a rule of their own creation—which prefers “broad” definitions over “narrow” ones. (Appellants’ Br. at 5 (purporting to contrast “broad, ordinary” meaning with “narrow, technical” meaning).) They assert that “broad” is synonymous with “plain and ordinary” and that “narrow” is synonymous with “technical.” (*Id. See also id.* at 21.) But that is not the case, and accepting this subtle but profound alteration would transform the rule of *Alexander* from a canon of common sense (*i.e.*, words typically maintain their ordinary, everyday meanings) into a “canon of maximum breadth” (*i.e.*, terms in a written instrument should be read as broadly and inclusively as possible).

The reason for the distant heirs’ deviation from the plain-and-ordinary-meaning approach is clear: The plain and ordinary meaning of the word “mineral” excludes oil and gas. In an effort to establish their ordinary/broad versus technical/narrow paradigm, the heirs cite only two sources. First, they rely on Merriam-Webster’s online dictionary to support their “broad” interpretation of the word “mineral” as “*broadly*: any of various naturally occurring homogeneous substances (such as stone, coal, salt, sulfur, sand, petroleum, water, or natural gas) obtained usually from the ground.” (Appellants’ Br. at 5 (quoting *Merriam-Webster.com Dictionary*, <https://www.merriam-webster.com/dictionary/mineral>)). But they neglect to inform the Court that, to reach this definition, they had to skip over the first four, more-common definitions of “mineral” listed in this very dictionary in order to arrive at definition 5(a). *See Merriam-Webster.com Dictionary*, <https://www.merriam-webster.com/dictionary/mineral>. And even then, they had to go further still.

See id. Under entry 5(a) is an inset explicitly noting that the definition proffered by the distant heirs is a “broad[ening]” of the term mineral beyond its typical use. *Id.*

The distant heirs avoid mentioning them, but the leading definitions in this very dictionary—*i.e.*, those definitions that are most “plain and ordinary”—exclude oil and gas. The heirs’ chosen dictionary first defines a mineral as simply an “ore.” *Id.* Of course, neither oil nor gas is an ore. And the second listed definition in their source is “an inorganic substance.” *Id.* Given that oil and gas are organic, they plainly do not fit this ordinary definition either.³

The distant heirs do not cite any other dictionary to establish plain and ordinary meaning, let alone any dictionary published during the era when the Fay reservation was drafted. *See State ex rel. Int’l Ass’n of Fire Fighters v. Sakacs*, 72 Ohio St. 3d 462, 2023-Ohio-2976, 224 N.E.3d 1110, ¶ 18 (“In determining the ordinary meaning of [a] term * * * , we look to dictionary definitions.”); *City of Athens v. McClain*, 163 Ohio St. 3d 61, 2020-Ohio-5146, 168 N.E.3d 411, ¶ 30 (“In determining the ‘common and ordinary meaning’ of words, courts may look to dictionaries”). Webster’s Approved Dictionary, published two years before the Fay reservation, defines “mineral” simply and exclusively as “any inorganic body of definite chemical composition found on the surface of, or in[,] the earth[.]” *Webster’s Approved Dictionary* 620 (1951). This “plain and ordinary” definition excludes organic substances like oil and gas. Webster’s Collegiate Dictionary, published by Merriam-Webster in 1948, defines “mineral,” first, as “[a]ny chemical element or compound occurring naturally as a product of inorganic processes,” and, then, simply as “ore.” *Webster’s Collegiate Dictionary* 635 (5th Ed.1948). Both of these definitions exclude

³ The other source Appellants cite to create their artificial plain/broad and technical/narrow dichotomy is, oddly enough, an online Salt Lake Community College “textbook” on geology. (Appellants’ Br. at 5.) This cherry-picked source is hardly authoritative. And, at any rate, that this single, online “textbook” includes a definition that excludes oil and gas does not necessarily render it “technical” or the definition it offers atypical or uncommon.

oil and gas, given that oil and gas are organic and that “ore” means “[a]ny material containing valuable metallic constituents for the sake of which it is mined and worked[.]” *Id.* at 698. The American Everyday Dictionary, published in 1955, defines mineral, first, as “a substance obtained by mining.” *The American Everyday Dictionary* 229 (1955). One does not mine for oil or gas but, rather, drills for it. (*See infra* at part II.B). The second definition listed in this dictionary is “any of a class of substances occurring in nature, usually comprising inorganic substances.” *Id.* (emphasis added). But once again, both oil and gas are organic. Note as well the underlined phrase: the “usual[.]” meaning of the word “mineral”—that is, the word’s plain and ordinary meaning—is limited to inorganic substances. In other words, the ordinary definition is the narrower option here.⁴

Consistent with everyday usage of the term, these sources show that, while a broader definition certainly does exist, the plain and ordinary meaning of the word “mineral” typically does not include the likes of oil and gas.

B. The “Overall Contents” of the Fay Reservation Further Confirm that it Excludes Oil and Gas.

Alexander provides that a term’s “plain and ordinary meaning” holds sway unless “some other meaning is clearly intended from the face or overall contents of the instrument.”⁵ *Alexander*, 53 Ohio St.2d at 245-46. As just shown, the “plain and ordinary meaning” of “mineral” does not

⁴ As one would expect, dictionaries published in the decades between the Fay reservation and the current online Merriam-Webster dictionary cited by Appellants also, like those sources, typically set forth plain and ordinary definitions of “mineral” that exclude oil and gas. *See, e.g., Merriam-Webster’s Collegiate Dictionary* 740 (10th Ed.1997) (like its current online counterpart, defining “mineral,” first, as “ore” and, second, as “an inorganic substance” (capitalization altered)); *The New Oxford American Dictionary* 1086 (2001) (“mineral” means “a solid inorganic substance of natural occurrence,” “a substance obtained by mining,” or “an inorganic substance needed by the human body for good health”).

⁵ Or unless “manifest absurdity results.” *Alexander*, 53 Ohio St.2d at 245.

encompass oil and gas. But even if this Court were disinclined to that conclusion, still, per *Alexander*, it is clear that the Fay reservation must be read to exclude oil and gas because the “face or overall contents of” the reservation clearly show that intent.

Recall that the Fay reservation does not simply state that the grantor reserved “minerals” but, instead, that the grantor reserved only “the right to [1] mine and remove such coal or other minerals of any [2] vein, using any convenient [3] underground mining methods and to transport coal and minerals [4] from other premises through and under the surface of said lands[.]” (R.1., Compl. at Ex. A, Doc. 83 (emphasis added).) Consideration of this additional text from the reservation makes it pellucidly clear that the Fay reservation does not include oil and gas.

First, the grantor reserved to himself only one method of extraction: “min[ing].” The verb “mine” means “to dig in the earth for the purpose of extracting ores, coal, etc.” or “to extract (ores, coal, etc.) from a mine.” *The American Everyday Dictionary* 298 (1955). One certainly does not “dig” for oil and gas. Nor would one obtain oil or gas from an “oil mine” or “gas mine.” One mines for coal or iron ore. But “mining” for oil is not proper English usage.⁶ *Cornwell v. Buck & Stoddard, Inc.*, 28 Cal.App.2d 333, 338, 82 P.2d 516 (1938) (“the attempt to characterize the process of drilling for oil as ‘mining’ has been frequently challenged by reputable authority, and has not thus far been endorsed by that authority primarily and generally relied upon for the definition of words, namely, accredited dictionaries”); *Carter Oil Co. v. Blair*, 256 Ala. 650, 655, 57 So.2d 64 (1951) (“the word ‘mining’” does not “include the process of extracting oil from beneath the earth’s surface”); *Kreps v. Brady*, 37 Okla. 754, 1912 OK 495, 133 P. 216, ¶ 4 (“Does

⁶ As one might expect, other dictionaries also define the verb “mine” in a way that clearly excludes extraction of (*i.e.*, drilling for) oil and gas. *E.g.*, *Webster’s Collegiate Dictionary* 635 (5th Ed.1948) (“mine” means “[t]o dig a mine” or “to get ore, metals, coal, or precious stones, out of the earth”); *Webster’s Approved Dictionary* 620 (1951) (“mine” means “to carry on mining operations”).

operating a well drill on the surface * * * for the discovery of oil[] meet the popular idea or generally accepted definition of mining? * * * We think not.”); *J.M. Guffey Petroleum Co. v. Murrel*, 127 La. 466, 485, 53 So. 705 (1910) (“We think it absolutely clear that the words ‘mine,’ or ‘mining operation,’ never refer to oil wells or oil production in ordinary parlance.”).⁷

Instead, as any proficient English speaker can attest—and as this Court and others have repeatedly recognized—one does not mine, but rather *drills*, for oil and gas. In *Detlor v. Holland*, 57 Ohio St. 492, 49 N.E. 690 (1898), this Court was asked to determine whether a conveyance of “all the coal of every variety and all the iron ore, fire clay and other valuable minerals in, on, or under” the real property at issue “together with the right * * * of mining and removing such coal, ore or other minerals” operated to convey oil and gas rights. *Id.* at paragraph one of the syllabus

⁷ The distant heirs, as expected, argue otherwise, but their argument lacks merit. In asserting—contrary to everyday usage, common sense, and the dictionary definitions and caselaw cited here—that oil and gas are “mined,” the distant heirs rely on one carefully curated dictionary definition of “mine,” a constitutional provision that (unlike the reservation here) explicitly mentions oil and gas, and a handful of court-of-appeals cases. But the distant heirs misrepresent the holdings in those court-of-appeals cases. For instance, in discussing *Jividen v. New Pittsburg Coal Co.*, the heirs first note that the clause at issue there affirmatively referenced only “mining” and then quote the Fourth District’s conclusion (five paragraphs later) that “[n]o express reservation of the right to drill for oil and gas was necessary,” asserting that this meant the court “found *to mine* compatible with oil and gas exploration.” (Appellants’ Br. at 20.) But in reality, *Jividen*’s statement that “[n]o express reservation of the right to drill for oil and gas was necessary” had nothing to do with the use of the word “mining.” Rather, the court said that the argument that oil and gas rights were not reserved could “[n]ot be maintained by reason” of the deed’s explicit statement that it “convey[ed] the surface only.” *Jividen v. New Pittsburg Coal Co.*, 45 Ohio App. 294, 296, 187 N.E. 124 (4th Dist.1933). The same is true of *Coldwell v. Moore*. There, too, oil and gas rights were reserved not because of anything to do with the word “mine” or “mining” but, instead, because the “surface deeds clearly reflect that they were granted surface rights only, making it impossible for them to also own the oil and gas rights.” *Coldwell v. Moore*, 2014-Ohio-5323, 22 N.E.3d 1097, ¶ 43 (7th Dist.). The distant heirs even go so far as to say that *Sheba v. Kautz*, 2017-Ohio-7699, 97 N.E.3d 893, ¶ 33 (7th Dist.), “explicitly rejected the argument that a reservation’s reference to *mining* was limiting language.” But that is not true either. The court in *Sheba* discussed the word “mine” but ultimately did not take a position: “Even if the word ‘mine’ itself is not dispositive,” still oil and gas were excluded from the at-issue mineral clause because of additional “language that ‘repel[led]’ a construction of the right to use the surface in any manner reasonably necessary for obtaining all minerals.” *Id.* at ¶ 34.

(emphasis added). Just like the Fay reservation, the conveyance in *Detlor* provided for only one method of extraction—“mining.” This Court held that the *Detlor* conveyance did not include oil and gas. In so holding, the Court pointed out that, just as here, the conveyance did not contain any language related to “drilling.” *Id.* at 503. The conveyance instead used language “peculiarly applicable to the mining of minerals in place” and not to “migratory” substances “such as oil and gas.” *Id.* Thus, the presence or absence of “drilling” language is highly indicative of whether oil and gas rights are contemplated within the ambit of a given conveyance or reservation. *See O’Bradovich v. Hess Ohio Developments, LLC*, 2021-Ohio-1287, 170 N.E.3d 1240, ¶ 30 (7th Dist.) (noting *Detlor*’s emphasis “on the absence of the word ‘drilling’” and concluding oil and gas were included in an easement that explicitly conveyed “drilling” rights). *See also Jacobs v. CNG Transmission Corp.*, 565 Pa. 228, 242, 772 A.2d 445 (2001) (distinguishing between “mining operations” and “drill[ing] for oil or gas”); *Hermon Hanson Oil Syndicate v. Bentz*, 77 N.D. 20, 22, 40 N.W.2d 304 (1949) (distinguishing between “drilling for oil and gas” and “mining for coal”); *Ellis v. Beech Creek Coal Co.*, 467 S.W.2d 132, 133 (Ky.1971) (discussing “drill[ing] for oil” and “min[ing] for minerals” as separate concepts (citation and quotation marks omitted)).

Second, and similarly, the Fay reservation is explicitly limited to coal and minerals extracted via “underground mining methods.” That specialized phrase refers to the recognized modes of subterranean (as opposed to surface or strip) mining of coal and ore, including room-and-pillar mining and longwall mining. *See* Department of Natural Resources, Division of Geological Survey, *Ohio Geology Newsletter*, Winter 1983 at 2, <https://perma.cc/VS8F-QHDR> (“Underground mining in the state [of Ohio] has been almost exclusively by the room-and-pillar method * * * . The longwall method of mining, long popular in Europe, is beginning to be used to a small degree in Ohio.”); Ohio Dep’t of Natural Resources Division of Mineral Resources

Management, *Underground Mining Fact Sheet* at 1, <https://perma.cc/2BEJ-BHJU> (“In Ohio, underground mining accounts for about half the coal produced in the state. Coal is produced from underground mines using longwall or room-and-pillar mining technology.”); Hans Hamrin, *Underground Mining Methods and Applications* 3-14 (2001), <https://perma.cc/4L25-XPWC> (describing room-and-pillar, longwall, and related forms of underground mining). Neither now nor, more importantly, in 1953 were oil and gas extracted using “underground mining methods.” *See Detlor*, 57 Ohio St. at 503.

But even setting aside the typical use of the phrase “undergrounding mining methods” within the mining industry, the common meaning of the word “underground” denotes that C.C. Fay would not be permitted to use the surface of the Land to mine and remove the “coal” and “minerals” here reserved. “Underground” means “below the surface of the ground.” *Merriam-Webster.com Dictionary*, <https://www.merriam-webster.com/dictionary/underground>. As such, the parties clearly intended that any mining and removal would be limited to activities conducted exclusively beneath the surface of the ground. Otherwise, the word “underground” is superfluous.

Therefore, the parties to the 1953 clearly intended and agreed that the surface of the Land would not be used for removal of the coal and other minerals. This is very important, given that in 1953 the only means of drilling for oil and gas was directly below from the surface since horizontal drilling—which allows one to drill oil and gas from under Land without using the Land’s surface (instead using the surface of a nearby property)—was not commercially developed, and did not exist at all in Ohio, until decades after the 1953 deed was executed. *Sheba v. Kautz*, 97 N.E.3d 893, 902, 2017-Ohio-7699, ¶ 34 (Ohio App. 7 Dist., 2017); *see also* Appellant Br. at 12) (admitting that a reservation which prohibits damage to the surface of the land “**limits permissible surface uses so as to make conventional oil and gas exploration on the property impossible.**”). As

such, by limiting the method of removal of the coal and other minerals to “underground mining methods” “repels a construction” that the Fay reservation includes the rights to use the surface of the Land. *Id.* Accordingly, the easement language in the Fay reservation is inconsistent with the development of oil and gas. In short, the reservation bars use of the surface for extraction so as to make conventional oil and gas exploration on the property impossible.

Third, and of a piece with the foregoing, the Fay reservation does not reserve any rights to extract any substance from under the Land via use of the Land’s surface. Instead, the only mention of the Land’s surface is in the right to transport the “coal” and “other minerals *from other premises through and under the surface* of said lands[.]” (R.1, Compl. at Ex. A, Doc. 83. (emphasis added).) Thus, this right, commonly known as a “haulage right,” permitted C.C. Fay to haul coal and minerals mined from adjoining property under the Land. Moreover, it only permitted him to transport those resources “through and under the surface”—not over the surface—of the Land.⁸ As such, the express restriction on the use of the surface of the Land demonstrates the parties’ intent that “other minerals” not include oil and gas. Again, the easement language in Fay reservation is inconsistent with the development of oil and gas.

Fourth, the Fay reservation is limited to minerals mined via underground mining methods from “veins.” A “vein” is “a body or stratum of ore, coal, etc.” *The American Everyday Dictionary*

⁸ The word “through,” of course, does not mean “over.” Rather, “through” is “used as a function word to indicate movement into at one side or point and out at another and especially the opposite side of.” *Merriam-Webster.com Dictionary*, <https://www.merriam-webster.com/dictionary/through>). Given that the word is used here in conjunction with the right to “transport” coal and minerals from other properties “under” the surface of the Land, the word “through” here plainly means that C.C. Fay reserved the right to transport coal and minerals “under the surface” of the Land from “one side” of the Land to “the opposite side of” the Land. In other words, C.C. Fay reserved the right to use any tunnels he constructed under the Land not only to mine the coal found there but to transport the coal from adjacent properties as well. The “through and under the surface of” formulation has a long history. *See, e.g., Horning v. Kraus*, 107 A. 695, 696, 264 Pa. 293, 295 (Pa. 1919).

512 (1955). It is “a fissure in rock filled by mineral matter, usually by deposition from solution by underground water,” “a lode,” or “a bed of useful mineral matter.” *Webster’s Collegiate Dictionary* 1110 (1949). In other words, a vein in the everyday geological (as opposed to biological) sense is filled with solid material. “[O]re,” “coal,” minerals “deposit[ed] from solution,” a “lode,” and a mineral “bed” are all solids. And none of these describe oil or, even further removed, gas.⁹ Simply put, “oil and gas are not found in veins.” *Waugh v. Thompson Land & Coal Co.*, 137 S.E. 895, 897 (W.Va. 1927).

C. *Detlor v. Holland* Provides Additional Support for the Conclusion that the Fay Reservation Does Not Include Oil and Gas.

The conclusion that the Fay reservation does not include oil and gas is not only consistent with *Alexander’s* plain-meaning approach, it is also supported by this Court’s controlling precedent, *Detlor v. Holland*, 57 Ohio St. 492, 494, 49 N.E. 690 (1898). In *Detlor*, already briefly discussed in part II.B, above, this Court construed a conveyance that granted:

all the coal of every variety and all the iron ore, fire clay and other valuable minerals in, on, or under the following described premises, * * * together with the right * * * of mining and removing such coal, ore or other minerals, and the [grantee] * * * shall also have the right to the use of so much of the surface of the land as may be necessary for pits, shafts, platforms, drains, railroads, switches, sidetracks, etc., to facilitate the mining and removal of such coal, ore, or other minerals and no more.

Detlor at 492 (emphasis added). At issue was whether the phrases “other minerals” and “other valuable minerals” included oil and gas. The Court held, in this context, that they plainly did not. *Id.* at 504. As discussed in part II.B, the Court reached this decision in part because of the surrounding context of the conveyance. The grant of “other minerals” was, like here, limited to

⁹ Other dictionaries take the same approach. See, e.g., *Merriam-Webster’s Collegiate Dictionary* 1309 (10th Ed.1997) (“vein” in the applicable sense is a “lode” or “bed of useful mineral matter”); *Webster’s Approved Dictionary* 1081 (1951) (“a seam of rock filled with metallic or mineral matter; a lode; a bed”).

“mining” and did not include any drilling or other rights peculiar to oil and gas exploration. *See Detlor* at 503; *supra* at part II.B. But that was not the only reason for *Detlor*’s conclusion that “other minerals” did not include oil and gas. The Court had at least two other broad justifications for this conclusion, both of which support reaching that same conclusion here, namely, that the Fay reservation, like the conveyance at issue in *Detlor*, does not include oil and gas.

1. *Detlor* Established a Rebuttable Presumption that the Phrase “Other Minerals,” Without More, Does Not Include Oil and Gas.

Careful reading of the concise *Detlor* decision shows that the Court also adopted a common-sense presumption that, in the absence of context showing otherwise, the word “minerals” does not include oil and gas. At least three pieces of evidence support this conclusion. First, the Court said “other minerals” did not include oil and gas not only because of the use of “mining” language and the absence of “drilling” language in the at-issue conveyance but also because the plain language of the phrase “other minerals” suggested exclusion of oil and gas. Specifically, the Court said that its conclusion that “other minerals” did not include oil and gas was reached in part by its application of the rule that “[t]erms are to be understood in their plain, ordinary, and popular sense[.]” *Detlor* at 503. *See id.* at 504 (appealing to “the above rule of construction” as reason for concluding that “other minerals” did not include oil and gas). In other words, *Detlor* says that the “plain, ordinary, and popular sense” of the word “minerals” does not, without context suggesting otherwise, include oil and gas.

Second and related, the Court said that oil and gas were excluded from the phrase “other minerals” because there was “nothing to show that” the parties intended to include oil and gas. Thus, something more than just the phrase “other minerals” was necessary to show an intent to include oil and gas. Or, in the Court’s own words, additional “apt words” were needed before that broad reading of the phrase “other minerals” could be adopted.

Third, the Court in *Detlor* also relied “upon the authority of the case of *Dunham & Short v. Kirkpatrick*” to hold that “other minerals” did not include oil and gas. *Dunham & Short* was a watershed decision that preceded *Detlor* by 16 years. In *Dunham*, the Pennsylvania Supreme Court, asked to determine whether a conveyance of “all minerals” included oil, acknowledged “that petroleum [wa]s a mineral” in the broadest sense of the word. 101 Pa. 36, 43 (1882). But that broadest sense was not the everyday sense: The court rejected that broad reading, stating instead that “the best construction is that which is made by viewing the subject of the contract as the mass of mankind would view it.” *Id.* (quoting *Schuylkill Navigation Co. v. Moore*, 2 Whart. 477, 491 (Pa.1837)). The court concluded that “[c]ertainly, in the popular estimation petroleum is not regarded as a mineral substance.” *Id.* at 44. The broad reading—including oil within the term “mineral”—was “not sanctioned by the common understanding of mankind.” *Id.* Thus, *Dunham & Short* established the Pennsylvania rule, which “applies a rebuttable presumption [that] the word ‘minerals’ in a deed * * * [does] not include oil and gas (unless the deed says otherwise).” *Sheba v. Kautz*, 2017-Ohio-7699, 97 N.E.3d 893, ¶ 20 (7th Dist.). Taken together, *Detlor*’s reliance on *Dunham & Short*, its conclusion that the “plain, ordinary, and popular sense” of “mineral” did not include oil and gas, and its statement that additional “apt words” beyond the phrase “other minerals” were necessary to include oil and gas, make it clear that, per this Court’s precedent, in Ohio, like Pennsylvania, the rebuttable presumption is that “minerals,” without more, does not include oil and gas.

This presumption against reading “mineral” to include oil and gas fits hand-in-glove with the plain-meaning analysis of “mineral” discussed in part II.A, above. And this presumption is yet more support for the conclusion that the Fay reservation does not include oil and gas rights. In their brief, the distant heirs cannot avoid acknowledging the importance of *Detlor*, but they seek

to blunt its effects. They make no mention of the presumption that *Detlor* established, instead feebly asserting that *Detlor* found “ambiguity” in the conveyance at issue. (Appellants’ Br. at 8.) They also highlight the statement in *Detlor* that “[t]he words “other minerals,” or “other valuable minerals,” taken in their broadest sense, would include petroleum oil.” (*Id.* at 6 (quoting *Detlor* at 504).) And, just as they did in the section of their brief purporting to apply *Alexander* plain-meaning analysis, they attempt to contrast this broad definition with the “narrower, geological definition” that they say *Detlor* also discussed. (*Id.*) But in fact, *Detlor* makes no mention of a “narrow” or “geological” definition of “mineral.” See generally *Detlor*. And the distant heirs fail to grapple with the fact that, though it acknowledged the existence of a broad definition of minerals, *Detlor* rejected that definition and relied on the “plain, ordinary, and popular sense” (or, as *Dunham & Short* put it, the usual sense of the term as employed by “the mass of mankind,” *id.* at 43) instead, which the Court found excluded oil and gas. *Detlor* at 503. In short, the distant heirs’ attempt to remake *Detlor* into their own image is unpersuasive.

2. *Detlor* Considered the Extent of Oil and Gas Development in the “Vicinity,” and Such a Review Here Supports a Conclusion that the Reservation Does Not Include Oil and Gas Rights.

In addition to the above, *Detlor* construed the conveyance of “other minerals” at issue there “in light of the oil developments as * * * they existed in the vicinity of the lands” at the time the conveyance was executed. *Detlor* at 502-03. Thus, the fact that, at that time, oil “was produced [only] in small quantities within from ten to twenty miles of the lands” was, this Court concluded, a further indication that the use of the phrase “other minerals” in the conveyance did not include oil and gas. *Id.* at 503.

A review of the record in this case shows a complete lack of evidence that oil and gas production was commonplace in the “vicinity” of the Land back in 1953, when the Fay reservation

was drafted. In fact, the record shows that the situation was even clearer than in *Detlor*, given that the record here is devoid of any evidence of oil and gas production in the vicinity of the Land at or before that time. In an attempt to show otherwise, the distant heirs, as part of the summary-judgment proceedings in the trial court, presented “well summary statements” showing that ten oil or gas wells had been drilled in the vicinity of the Land prior to 1953. (Defs.’ MSJ at Exs. 1-10.) But a careful look at these ten well summary statements shows that, in fact, most of the wells were never completed, and the handful that were completed never produced any oil or gas and were abandoned within mere months. And there were not even any attempts at oil and gas development in the three-plus decades preceding the drafting of the Fay reservation in 1953. Specifically, six of the distant heirs’ proffered well statements show that a well was commenced on January 1, 1900, but never completed. (*Id.* at Exs. 1, 4, 5, 7, 9 and 10.) Two of the statements show that wells were completed in 1917 and abandoned that same year. (*Id.* at Exs. 6 and 8.) And the final two show two wells that were completed in 1919 and abandoned within a few months. (*Id.* at Exs. 2 and 3.) Moreover, none of the well summary statements show any production from any of the wells at any time. (*See id.* at Exs. 1-10.)

Based on the distant heirs’ own evidence, then, it is clear that oil and gas production was far from commonplace in the vicinity of the Land in 1953. In fact, it was non-existent. No wells had been drilled in the 34 years preceding the 1953 reservation, and no oil and gas had ever been produced in the vicinity of the Land. Accordingly, even if the Court were to reject the plain-language analysis set forth above, still the Court should reject the distant heirs’ position given that oil and gas development was not commonplace in the vicinity of the Land at the time the reservation was drafted.

D. To the Extent this Court Finds Ambiguity in the 1953 Deed, the Extrinsic Evidence Still Makes It Clear that the Reservation Excludes Oil and Gas.

For all of the reasons already set forth in this brief, the Fay reservation does not include oil and gas. The plain meaning of the word “mineral,” the use of the additional phrases “mine,” “underground mining,” “vein,” and “under the surface,” the presumption established by *Detlor*, and the complete lack of oil and gas development in the vicinity of the Land back in 1953 all support this result. But if, despite all of those considerations, the Court were to conclude that the Fay reservation is still ambiguous, the reservation cannot be properly interpreted to encompass oil and gas, as the available extrinsic evidence plainly manifests an intent by all involved to exclude oil and gas from the reservation.

“Where words used in a contract are susceptible of more than one meaning, and the signatories * * * have[,] by acts done in carrying out the terms thereof[,] placed their own interpretation upon the meaning of the words, courts will adopt the interpretation which the signatories to the contract have themselves made.” *Courtright v. Scrimger*, 110 Ohio St. 547, 547, 144 N.E. 294 (1924). In other words, “when the plain language of the written instruments is ambiguous, then a court can look to parol evidence to resolve the ambiguity and ascertain the parties’ intent.” *Corso v. Miser*, 7th Dist. Jefferson Nos. 19 JE 0018 & 19 JE 0019, 2020-Ohio-5293, ¶ 26 (citing *Illinois Controls, Inc. v. Langham*, 70 Ohio St.3d 512, 521, 639 N.E.2d 771 (1994)). The extrinsic evidence to be considered when interpreting an ambiguous instrument may include “(1) the circumstances surrounding the parties at the time the contract was made; (2) the objectives the parties intended to accomplish by entering into the contract; and (3) any acts by the parties that demonstrate the construction they gave to their agreement.” *East Liverpool v. Owners Insurance Company*, 2021-Ohio-1474, 171 N.E.3d 1207, ¶ 26 (7th Dist.) (citation omitted). In the interpretation of an ambiguous deed, the chain of title—including the deeds, leases, and records

prior and subsequent to the deed in question—is important extrinsic evidence of the parties’ intent. *See Talbot v. Ward*, 2017-Ohio-9213, 102 N.E.3d 544, ¶ 64 (7th Dist.).

Here, the evidence of the parties’ intent as found in the chain of title attached to the complaint as Exhibit A and summarized in part I, above, overwhelmingly supports Faith Ranch’s assertion that the Fay reservation does not include oil and gas rights. First, the three exemplar deeds executed by C.C. Fay as grantor in the years prior to the 1953 deed show that Fay knew how to clearly reserve oil and gas rights when he so intended—namely, by actually mentioning “oil and gas.” Fay used that express language on all three occasions. (*See* R.1., *Compl.* at Ex. A, Docs. 30, 43, 56.) Furthermore, these deeds show that C.C. Fay understood the term “minerals” to be something other than “oil and gas,” because each reservation reserved both “minerals” and “oil and gas” as separate and distinct categories resources. *See, e.g., Wiseman v. Cambria Products Co.*, 61 Ohio App.3d 294, 302, 572 N.E.2d 759 (4th Dist.1989) (Grey, J., concurring in part and dissenting in part) (concurrent deeds involving the grantor are “the most persuasive evidence * * * as to what the parties intended”). Interpreting the term “minerals” as used by C.C. Fay to include “oil and gas” would render the specific mention of “oil and gas” in these exemplars superfluous. Courts should not interpret contracts so as to render terms or phrases superfluous or meaningless. *E.g., Wohl v. Swinney*, 118 Ohio St.3d 277, 2008-Ohio-2334, 888 N.E.2d 1062, ¶ 22 (“When interpreting a contract, we will presume that words are used for a specific purpose and will avoid interpretations that render portions meaningless or unnecessary.”)

Along the same lines, the rule of *expressio unius est exclusio alterius* is applicable here as well and suggests the same interpretation. *Expressio unius* provides that, where a document includes a list of items in an associated group or series, one may draw the “inference that items not mentioned were excluded by deliberate choice, not inadvertence.” *Mercer v. 3M Precision Optics*,

Inc., 181 Ohio App.3d 307, 2009-Ohio-930, 908 N.E.2d 1016, ¶ 13 (12th Dist.). The three earlier exemplar deeds show that C.C. Fay knew how to include language that would have reserved oil and gas rights and did include such language when that was his intent. The absence of such language in the Fay reservation exhibits a clear intention to exclude oil and gas. *See, e.g., Talmadge Crossings, LLC v. Andersons, Inc.*, 6th Dist. Lucas No. L-21-1113, 2022-Ohio-645, ¶ 15 (“Where the drafters showed they knew how to include specific language in one provision, it must be concluded they intended to exclude that from a parallel provision where it is omitted.”).

The coal deeds executed by C.C. Fay after the 1953 Deed are, if possible, even clearer evidence that he interpreted the reservation so as to exclude oil and gas. In the first coal deed to Y&O—the deed that sold the coal under the Land—C.C. Fay expressly conveyed the coal reserved in the 1953 Deed without mentioning either his retention or sale of oil and gas rights with respect to the Land because he knew that he did not own those rights. (R.1., Compl. at Ex. A, Doc. 88.) By contrast, in the second coal deed to Y&O, which covered coal underlying other, unrelated land in which C.C. Fay had reserved oil and gas rights, Fay explicitly noted that he continued to hold those rights and set forth the terms upon which he would compensate Y&O for any damages to its coal as a result of oil and gas operations. (*Id.* at Doc. 89.)

There is a final important extrinsic conveyance to consider. In 1979, C.C. Fay sold all of the oil and gas rights he had retained based on the express oil and gas reservations included in the three pre-1953 exemplar deeds. (*Id.* at Doc. 90.) Fay knew he had retained these rights, and thus he also retained the right to sell them at a later date. But he also knew that he did not retain oil and gas rights with respect to the Land, and so he never attempted to subsequently sell or otherwise convey that which he did not own. Had he believed that he retained the oil and gas underlying the

Land, it is logical that he would have sold it when he divested himself of essentially all of his other holdings in Harrison County in 1979.

Yet probably the most persuasive extrinsic evidence of all is the fact that C.C. Fay never leased the oil and gas rights associated with the Land during his lifetime, while grantee Rosebush and then, Faith Ranch, both did. (*Id.* at Docs. 102 and 103.) In fact, Faith Ranch has continuously leased the oil and gas rights over the past 43 years, first to Columbia Gas Transmission Corporation in 1979, then to Oxford Oil Company in 2005, Gulfport Energy in 2011, and, finally, EAP Ohio, LLC in 2021. (*Id.* at Docs. 103, 104, 105, 106.) Neither C.C. Fay nor any of his heirs or successors had ever purported to lease the oil and gas rights in the Land prior to the filing of this lawsuit.

Finally, the omission of oil and gas rights in the Land from the schedules of assets prepared in conjunction with the probating of the estates of C.C. Fay, his wife Agnes, and his children Clyde Fay and Virginia Mayer, as well as the sworn statements accompanying those schedules (including the sworn statement by Appellant Stolz), are yet further evidence that the Fay reservation did not include oil and gas rights in the Land. In short, there is a mountain of extrinsic evidence supporting what is already evident on the face of the Fay reservation: oil and gas rights were excluded therefrom.

E. To the Extent Ambiguity Exists and that Ambiguity Is Not Resolved by the Extrinsic Evidence, the Fay Reservation Must Be Construed Against the Distant Heirs.

Even if the Court were to disagree with Faith Ranch and conclude both that the Fay reservation is ambiguous and that the extrinsic evidence does not resolve the ambiguity, still it should interpret the reservation to exclude oil and gas rights. That is because Ohio law has long held that, all else being equal, “an exception or reservation in a conveyance is construed in favor of the grantee rather than of the grantor.” *Pure Oil Co. v. Kindall*, 116 Ohio St. 188, 202-03, 156

N.E. 119 (1927). *See also, e.g., Cadle v. D'Amico*, 2016-Ohio-4747, 66 N.E.3d 1184, ¶ 33 (7th Dist.) (“[W]hen parol evidence cannot elucidate the parties’ intent, a court must apply the secondary rule of contract construction whereby the ambiguous language is strictly construed against the drafter.”); *Galambos v. Estep*, 5th Dist. Tuscarawas No. 2016 AP 01, 2016-Ohio-5615, ¶ 15 (“an exception or reservation in a conveyance is construed in favor of the grantee rather than of the grantor.”)) *Muffley, by Double v. M.B. Operating Co., Inc.*, 5th Dist. Stark No. CA-6910, 1986 WL 12348, at *2 (Oct. 27, 1986) (“An ambiguity which exists in the reservation in the deed must be construed most strongly against the grantor who made the reservation.”).

Here, of course, C.C. Fay was the grantor and drafter of the 1953 deed, while Judson Rosebush was the grantee. Faith Ranch is Rosebush’s successor-in-interest, and the distant heirs have purportedly succeeded to C.C. Fay’s interests. Accordingly, per this longstanding rule of construction, the Fay reservation should be construed in Faith Ranch’s favor

F. Public Policy Considerations Weigh Heavily Against the Distant Heirs’ Position.

Finally, recall precisely what the distant heirs have asked this Court to hold, namely, that a reservation of rights to “minerals” necessarily includes oil and gas if that writing also refers to a “mine,” to “mining,” or to a mineral “vein.” In addition to being contrary to the plain meanings of these words, contrary to this Court’s precedent, contrary to a raft of extrinsic evidence, and contrary to the principle that a deed reservation should be construed against the grantor, the distant heirs’ desired holding is radical and faulty for another reason: It would badly disrupt Ohio’s oil and gas industry. *Detlor* has been the law in Ohio for 125 years and for many decades, oil and gas operators and landowners alike have relied on the common-sense approach adopted by *Detlor*. Operators, landowners, and attorneys—faced with the sometimes-difficult task of determining who in fact owns oil and gas rights—rely on the plain language of the conveyance documents they

are required to interpret and, when that fails, lean heavily on chain of title and party practice to determine who in fact owns oil and gas or other rights in realty.

The distant heirs ask the Court to hold that “‘mine,’ ‘mining,’ and ‘vein’ are common words whose ordinary meanings encompass oil and gas exploration.” (Appellants’ Br. at 5 (“Proposition of Law”).) But to hold that terms like “mine,” “underground mining methods,” and “vein” evidence a necessary inclusion of oil and gas—and to so hold not only in defiance of the everyday meaning of those words but also in defiance of chain-of-title evidence and decades of party performance—would create upheaval with respect to oil and gas leases across the state. Developers and landowners who have relied on commonsense interpretation and longstanding practice to ascertain rights would be faced with deep uncertainty, and would-be officious claimants whose would-be claims rest on grounds presently considered specious would be incentivized to assert such claims with new vigor. In short, litigation and uncertainty would increase dramatically.

III. CONCLUSION

For all of these reasons, Appellee Faith Ranch asks the Court to affirm the judgment of the Seventh District Court of Appeals.

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Respectfully submitted,

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