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IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION II

KAY FRANCES BASE and ARLYN JOE JUSTICE, as Trustees of the Eunice S. Justice Amended, Revised and Restated 1990 Revocable Trust Agreement Executed on the 31st Day of January, 2011,

Plaintiffs/Appellants,

vs.

DEVON ENERGY PRODUCTION COMPANY, L.P.,

Defendant/Appellee.

Case No. 119,366

APPEAL FROM THE DISTRICT COURT OF KINGFISHER COUNTY, OKLAHOMA

HONORABLE PAUL WOODWARD, TRIAL JUDGE

AFFIRMED

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For Plaintiffs/Appellants

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For Defendant/Appellee

OPINION BY JANE P. WISEMAN, PRESIDING JUDGE:

¶1 Plaintiffs Kay Frances Base and Arlyn Joe Justice, as Trustees of the Eunice S. Justice Amended, Revised and Restated 1990 Revocable Trust Agreement Executed on the 31st Day of January, 2011, appeal four separate trial court orders (1) granting Defendant Devon Energy Production Company, L.P.'s motion for summary judgment, (2) denying Plaintiffs' motion for leave of court to supplement their response to Defendant's motion for summary judgment, (3) denying Plaintiffs' motion for new trial, and (4) denying Plaintiffs' motion to compel. This appeal proceeds according to Supreme Court Rule 1.36, 12 O.S. Supp. 2020, ch. 15, app. 1., without appellate briefing. After review of the record on appeal, we affirm the trial court's decision granting Defendant's motion for summary judgment and denying Plaintiffs' motion for new trial. Because these issues are dispositive, we affirm the trial court's orders denying Plaintiffs' motion to compel and denying Plaintiffs' motion for leave of court to supplement their response to Defendant's motion for summary judgment.

FACTS AND PROCEDURAL BACKGROUND

¶2 According to the petition, this case involves the declaration and confirmation of oil and gas lease terms covering gas, oil and other minerals from the Bernhardt Wells described as follows:

> The North Half of the Northeast Quarter (N/2 NE/4) in Section 8, Township 15 North, Range 9 West, and

containing 80 acres, more or less in the County of Kingfisher, State of Oklahoma (the "Subject Tract").

¶3 On December 4, 1973, Lena Shawver, the life tenant, and Eunice S. Justice, the remainderman, together as lessors, and the Rodman Corporation, the lessee, entered into an oil and gas lease recorded in Kingfisher County on February 15, 1974, by which Shawver and Justice leased their interests to Rodman for the exploration, development, and extraction of gas, oil, and other minerals. The lease contained a five-year term beginning December 4, 1973, and ending on December 4, 1978, and provided for a 1/8th royalty interest to lessors.

¶4 In June 1977, Shawver conveyed her 1973 lease interest to Eunice S. Justice, and in August 1977, Rodman Corporation conveyed its 1973 lease interest to Partnership Properties Co. Defendant eventually became a successor in interest as lessee of the 1973 lease.

¶5 On July 24, 1978, Eunice S. Justice and Herman O. Justice (her husband) executed an oil and gas lease with Petro-Lewis Funds, Inc., on the property described above. The 1978 lease provides for a 3/16th royalty interest and an effective date of December 4, 1978, when the primary term of the 1973 lease was set to expire.

¶6 On August 21, 1978, the Lena Shawver #1 Well was spud[1] with its first production date being November 24, 1978. Defendant argues spudding the Shawver Well extended the 1973 lease "beyond its five-year primary term and into its secondary term" and the 1973 lease was consequently "held by production and continues to be held by production by virtue of the Shawver Well." Plaintiffs dispute this statement arguing that the Shawver Well "was drilled pursuant to the 1973 Lease, which was either modified or amended by the 1978 Lease or was drilled under the 1978 Lease which novated the 1973 Lease and became effective December 4, 1978." Plaintiff further asserts, "There is no evidence of well costs and expenses and revenue provided to support [Defendant's] claim that the Shawver [W]ell has held the 1973 Lease by production."

¶7 In November 1978, Petro-Lewis Funds, Inc., entered into an "Assignment of Overriding Royalty Interest" in the 1978 lease with Petro-Lewis Agency Corporation. Then in March 1979, Petro-Lewis Funds, Inc., and Petro-Lewis Agency Corporation assigned their entire 1978 lease interest to Partnership Properties Co. As of this time, Partnership Properties, Inc., became the lessee of the 1973 and 1978 leases. Later, Partnership Properties, Inc., assigned the 1973

[1] "To 'spud' means 'to begin to drill (an oil well) by alternatively raising and releasing a spudding bit with the drilling rig.'" *Caltex Oil Venture v. Commissioner of Internal Revenue*, 138 T.C. 18, 28 (2012)(quoting Webster's Third New International Dictionary 2212 (2002)).

lease but did not assign the 1978 lease. It is undisputed that the 1973 lease was assigned at least 56 additional times after 1979.

¶8 Lessor of the 1973 Lease, Eunice S. Justice, executed a Gas Division Order in July 1979 which Defendant argues "guaranteed and certified [] a 1/8th royalty interest consistent with the 1973 Lease." Plaintiffs dispute this is the proper royalty term because the 1978 lease modified or replaced the 1973 lease, making it a 3/16th royalty.

¶9 On May 7, 2019, Plaintiffs filed the present action against Defendant for (1) a decree quieting title and a declaratory judgment, (2) an accounting, and (3) payment of royalties due. As to the quiet title and declaratory judgment action, Plaintiffs allege:

> 23. There can be only one oil and gas lease on a particular tract of land and for the same interests at the same time.
> 24. The Shawver/Rodman OGL has been amended by the Justice/P-LF OGL; or, in the alternative, the Justice/P-LF OGL is a novation of the Shawver/Rodman OGL.
> 25. The Plaintiffs are entitled to have this court declare that the terms of the Shawver/Rodman OGL [have] been supplanted or amended by the terms of the Justice/P-LF OGL, and, in particular, that the proper royalty rate is 3/16ths on all Bernhardt Wells on the Subject Interests as of the date of first production.

Plaintiffs further ask Defendant to provide an accounting on royalties paid on the Bernhardt Wells on the interests at issue. They also complain that because

Defendant "has been underpaying royalties on the Bernhardt Wells . . . since the date of first production," Defendant must make Plaintiffs whole by making up the payment shortage. In response, Defendant filed an answer and amended answer admitting some allegations, denying others and listing affirmative defenses.

¶10 On May 18, 2020, Defendant filed a motion for summary judgment arguing no genuine dispute of material facts exists pertaining to the 15-year statute of limitations, thus precluding Plaintiffs' quiet title action as a matter of law. Defendant contends, "Plaintiffs' remaining claims for declaratory judgment, accounting and payment are contingent" on the time-barred quiet title action.

¶11 In their June 4, 2020 response, Plaintiffs contend that genuine issues of material fact exist precluding summary judgment and dispute that their claims are time-barred thus precluding summary judgment as a matter of law. In its reply, Defendant argued that (1) Plaintiffs' quiet title claim accrued by 1979, (2) the time-barred quiet title claim precludes Plaintiffs' damages claims on Defendant's new wells, (3) the quiet title claim was not revived by the appointment of new trustees, (4) the quiet title claim was not revived by any title opinions, (5) the quiet title claim was not revived by actions of other parties, (6) "[d]ivision [o]rders provided lessors notice of the potential quiet title dispute," (7) Plaintiffs' "merits arguments of merger and novation are barred by the statute of limitations," and (8) "Devon owns an interest."

¶12 On June 16, 2020, Plaintiffs filed a motion to compel Defendant to respond to certain discovery requests regarding title opinions. Specifically, Plaintiffs asked the trial court to compel Defendant to produce the following as to the Bernhardt Wells:

> (1) any and all title reports and/or title opinions, including but not limited to all drilling title opinions and division order title opinions, including supplemental or "referred to" title opinions, (2) a privilege log listing all withheld "title reports and/or title opinions," (3) a copy of the Drilling Title Opinion for Justice 1-8, dated October 13, 2006, prepared by Wright & Associates P.C., (4) the full Bernhardt DOTO 9-27-17, (5) the "2017 Title Emails" listed on Defendant's Privilege Log, (6) if deemed necessary, a directive that such delivery is subject to the existing Agreed Protective Order, and (7) due to the Defendant's continuing failure to cooperate in discovery, an award of attorney fees and expenses to the Plaintiffs, and for all other relief this Court deems just and equitable.

Plaintiffs further maintain that Defendant's failure to produce the relevant documents prevents them from adequately responding to Defendant's motion for summary judgment.

¶13 Defendant countered the motion to compel by arguing the attorney-client privilege protects the title opinions, the "[a]greed [p]rotective [o]rder does not cover title opinions," and Plaintiffs have enough information from the amended privilege log to assess that it is covered by the attorney-client privilege. Alternatively, Defendant argues that should the trial court determine the title

opinions may be helpful in interpreting the oil and gas leases at issue, it asks the trial court to review them *in camera*. Plaintiffs then replied arguing that the title opinions in question are not subject to attorney-client privilege or work product because Defendant cannot establish they "were prepared in anticipation of this litigation."

¶14 On June 18, 2020, Plaintiffs sought leave of court to supplement their response to Defendant's motion for summary judgment pursuant to 12 O.S. § 2015, governing supplementing pleadings. In essence, Plaintiffs request that, if their motion to compel is granted, the trial court allow them to supplement their response to the motion for summary judgment to include arguments about documents received in discovery.

¶15 In response, Defendant asserted that because Plaintiffs' quiet title action expired by virtue of the statute of limitations, "[n]o amount of briefing, exhibits, and argument can revive that expired claim." Defendant contends Plaintiffs' request for leave to supplement their response "with 21 more exhibits and 155 more pages is entirely unnecessary, improper, and should be denied." Defendant urged the trial court to deny and/or strike Plaintiffs' motion, stating that Plaintiffs have no legal support for their motion to supplement because the statute they rely on—12 O.S. § 2015(D)—applies only to pleadings, not motions. Even if this statute did apply, Defendant argues Plaintiffs have failed to meet its requirements.

Defendant further contends that Plaintiffs' supplement is prejudicial and a waste of judicial resources.

¶16 Plaintiffs replied admitting 12 O.S. § 2015 is not the proper vehicle for supplementing the response to Defendant's motion for summary judgment, but is instead 12 O.S. § 2056(F) and Rule 13(d) of the Rules for District Courts. Pursuant to these provisions, Plaintiffs attached an affidavit from counsel "attesting to the need for the documents requested and Plaintiffs' inability to obtain said documents."

¶17 During the July 15, 2020 hearing, the trial court heard arguments on (1) Defendant's motion for summary judgment, (2) Plaintiffs' motion for leave to supplement their response to Defendant's motion for summary judgment, and (3) Plaintiffs' motion to compel. The trial court denied Plaintiffs' motion to compel and Plaintiffs' motion for leave to supplement. The trial court then granted Defendant's motion for summary judgment finding that "the '78 lease was a top lease[2] that never took effect because the '73 lease remained in force by production and that the [P]laintiffs' claims are barred by the statute of limitations." The trial court also found that a title opinion is protected by attorney-client privilege.

[2] "A top lease is where the lease taken is subject to a pre-existing lease that has not expired when the second lease was taken." *Voiles v. Santa Fe Minerals, Inc.*, 1996 OK 13, ¶ 11, 911 P.2d 1205.

¶18 In three separate orders filed October 14, 2020, the trial court denied Plaintiffs' motion for leave of court to supplement their response to Defendant's motion for summary judgment, denied Plaintiffs' motion to compel, and granted Defendant's motion for summary judgment. In the order denying Plaintiffs' motion to compel, the trial court also found that "Defendant's title opinions are protected from disclosure by the attorney-client privilege." In the order granting Defendant's motion for summary judgment, the trial court determined, "The applicable statute of limitations for Plaintiff's claims has expired" and "This Order disposes [of] all claims in the litigation and constitutes a final judgment pursuant to 12 Okla. Stat. § 953."

¶19 On October 23, 2020, Plaintiffs filed a motion for new trial pursuant to 12 O.S. § 651 urging the trial court to vacate its three orders and "grant a new trial to correct its errors of law and due to 'issues of material fact.'" Defendant responded arguing that Plaintiffs mostly reassert arguments previously made but do pursue a new argument including the application of a five-year statute of limitations. In an order filed January 25, 2021, the trial court denied Plaintiffs' motion for new trial.

¶20 Plaintiffs appeal the three orders filed October 14, 2020, and the order denying a new trial filed January 25, 2021.

STANDARD OF REVIEW

¶21 "Summary judgment settles only questions of law, therefore, we review *de*

novo the grant thereof." *Toch, LLC v. City of Tulsa*, 2020 OK 81, ¶ 15, 474 P.3d 859. "In a de novo review, we have plenary, independent and non-deferential authority to determine whether the trial court erred in its application of the law and whether there is any genuine issue of material fact." *Payne v. Kerns*, 2020 OK 31, ¶ 10, 467 P.3d 659. "Like the trial court, we examine the pleadings and summary judgment evidentiary materials submitted by the parties to determine if there is a genuine issue of material fact." *Id.* "We view the facts and all reasonable inferences arising therefrom in the light most favorable to the non-moving party." *Id.*

¶22 "A trial court's denial of a motion for new trial is reviewed for abuse of discretion." *Reeds v. Walker*, 2006 OK 43, ¶ 9, 157 P.3d 100. "Where, as here, our assessment of the trial court's exercise of discretion in denying [Plaintiffs] a new trial rests on the propriety of the underlying grant of summary judgment, the abuse-of-discretion question is settled by our *de novo* review of the summary adjudication's correctness." *Id.*

ANALYSIS

¶23 Plaintiffs allege in their petition in error that substantive facts remain in controversy and the trial court erred as a matter of law on several issues including the determination that their claims are barred by the statute of limitations. We will address these issues first.

¶24 Plaintiffs have brought a quiet title claim "for which the statute of limitations period is 15 years." *Pangaea Expl. Corp. v. Ryland*, 2007 OK CIV APP 106, ¶ 11, 173 P.3d 108 (citing 12 O.S.2001 § 93(4)). Section 93(4) states:

> Actions for the recovery of real property, or for the determination of any adverse right or interest therein, can only be brought within the periods hereinafter prescribed, after the cause of action shall have accrued, and at no other time thereafter:
> . . . .
> (4) An action for the recovery of real property not hereinbefore provided for, within fifteen (15) years.

12 O.S.2011 § 93(4). "The 15 year limitations period for the parties' quiet title claims began to run at the time of filing a document creating a cloud on the title to the minerals." *Pangaea*, 2007 OK CIV APP 106, ¶ 12.

¶25 The primary question raised is whether the royalty provisions of the 1973 lease or the 1978 lease apply. It is undisputed that Plaintiffs' predecessor, Eunice S. Justice, executed both the 1973 and 1978 leases which were recorded and filed of public record in the office of the County Clerk of Kingfisher County. The 1973 lease contained a five-year term from December 4, 1973, to December 4, 1978, but this term could be extended "'as long thereafter as oil, casinghead gas, casinghead gasoline or any of the products covered by this lease is or can be

produced.'"[3] This lease provides a 1/8th royalty. Defendant states the 1973 lease also provides: "'if lessee shall commence operations for drilling at any time while this lease is in force, this lease shall remain in force and its terms shall continue so long as such operations are prosecuted and, if production results therefrom, then as long as production continues.'" Plaintiffs again do not dispute this language is correctly quoted.

¶26 It is undisputed that the 1978 lease, with its 3/16th royalty, executed by Eunice S. Justice and Herman O. Justice on July 24, 1978, covering the same property was dated to become effective on December 4, 1978, the date on which the 1973 lease, with its 1/8th royalty, was set to terminate.

¶27 It is further undisputed that on August 21, 1978, the Lena Shawver #1 Well was spud and its first production date was November 24, 1978. Because the Lena Shawver #1 Well was spud and its first production date occurred before the 1973 Lease term expired on December 4, 1978, the terms of the 1973 lease were extended "as long thereafter as oil, casinghead gas, casinghead gasoline or any of the products covered by this lease is or can be produced.'" The 1973 lease further states that if the lessee began drilling operations while the lease is in effect, it shall remain in effect and "its terms shall continue so long as such operations are

[3] We presume the quoted language from the 1973 lease to be correct as the copies attached as an exhibit to the petition and the motion for summary judgment are not legible. And Plaintiffs do not dispute this language is correctly quoted from the 1973 lease.

prosecuted and, if production results therefrom, then as long as production continues." The continuation of the terms includes the 1/8th royalty set forth in the 1973 lease.

¶28 According to Defendant, "From 1979 until the filing of this lawsuit, Plaintiffs or their predecessor in interest received monthly or near-monthly royalty payments reflecting the 1/8 royalty provision of the 1973 Lease." Plaintiffs do not dispute that the lessor, Eunice S. Justice, now deceased, received such royalty payments.

¶29 This quiet title claim arose from the parties' dispute over which lease controls, a dispute involving a cloud on the title. "A cause of action accrues when the injury occurs." *Calvert v. Swinford*, 2016 OK 100, ¶ 11, 382 P.3d 1028. "'[T]he cause of action accrues when a litigant first could have maintained his [or her] action to a successful conclusion.'" *Claude C. Arnold Non-Operated Royalty Interest Props., L.L.C. v. Cabot Oil & Gas Corp.*, 2021 OK 4, ¶ 12, 485 P.3d 817 (quoting *MBA Commercial Constr., Inc. v. Roy J. Hannaford Co.*, 1991 OK 87, ¶ 13, 818 P.2d 469).

¶30 Because the 1973 lease by its terms was to end on December 4, 1978, and the 1978 lease was to begin the same day, the conflict in the royalty provisions of the two leases created a cloud on the title. Both leases had been signed by the lessors and filed in the Kingfisher County land records. Plaintiffs' predecessors

had the opportunity at that time to challenge and/or correct any cloud on the title arising from the conflicting royalty provisions. Pursuant to the relevant undisputed material facts on this issue, Plaintiffs' quiet title claim accrued in 1978, when according to Plaintiffs, the 1978 lease either modified the 1973 lease or was a novation superseding the first lease resulting in a cloud on the title. Governed by the provisions of 12 O.S.2011 § 93(4), this action for the recovery of real property is subject to a 15-year statute of limitations which began to run in 1978 and expired 15 years later.[4] As the trial court correctly held, Plaintiffs' quiet title claim is time-barred by operation of the 15-year applicable statute of limitations.[5]

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[4] It could be argued that the statute of limitations began to run on August 17, 1978, when the 1978 lease from the Justices to Petro-Lewis Funds, Inc., was filed with the County Clerk. This would comport with the holding in *Calvert* that the statute began to run when the deeds were filed with the county clerk. *Calvert v. Swinford*, 2016 OK 100, ¶ 0, 382 P.3d 1028. If a distinction is to be made between *Calvert* and our present case, it would be that the recorded instrument here is not a deed, but a lease with a stated effective date of December 4, 1978, when according to Plaintiffs, the 3/16th royalty provision took effect. Whether August or December, the 15-year statute of limitations began to run in 1978.

[5] Although the Dissent finds that no statute of limitations applies to this quiet title action because it is equitable in nature, equity in these circumstances would dictate the application of the doctrine of laches over this 40-year period to reach the same result. In *Parks v. Classen Co.*, 1932 OK 157, 9 P.2d 432, the Court said:

> Laches in general is defined as neglect for an unreasonable and unexplained length of time, under circumstances permitting diligence, to do what in law should have been done. In a more specific sense it is inexcusable delay in asserting a right; an implied waiver arising from knowledge of existing circumstances and an acquiescence in them; such neglect to assert a right as taken in conjunction with lapse of time more or less great, and under circumstances causing prejudice to an adverse party, operates as a bar in a court of equity; such a delay in enforcing one's rights as works disadvantage to another.

Id. ¶ 29 (citation omitted).

¶31 Our conclusion today aligns with the Supreme Court's reasoned precepts in *Calvert v. Swinford*, 2016 OK 100, 382 P.3d 1028, and *Scott v. Peters*, 2016 OK 108, 388 P.3d 699. The recent Supreme Court case of *Claude C. Arnold Non-Operated Royalty Interest Properties., L.L.C. v. Cabot Oil & Gas Corporation*, 2021 OK 4, ¶ 15, 485 P.3d 817, succinctly summarized their holdings this way:

> In those cases, the plaintiffs attempting to avoid the effect of the statute of limitations were the *grantors* of the mineral deeds in question. There, we held the statute-of-limitations period began to run when the deeds were filed with the county clerk. It is completely reasonable to expect that the grantor who negotiates, reads, and signs the instrument should be "on notice" of what it says from the time of filing onward.

¶32 Although the *Arnold* case was not available to the parties during the trial court briefing stage, we find it helpful and supportive of our conclusion in this case. This is true despite key factual differences between *Arnold* and the present case. Unlike the *Calvert* and *Scott* cases, plaintiffs in *Arnold* played no role in the drafting or recording of the subsequently recorded leases at issue. *Id.* ¶ 16. The *Arnold* Court held that "[b]ecause the later-recorded leases did not reasonably give plaintiffs notice of any interest adverse to their own, . . . their cause of action did

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It should further be noted that the Oklahoma Supreme Court in the quiet title action of *Wilson v. Bombeck*, 1913 OK 486, 134 P. 382, held that while such suits were equitable in nature and governed by the rules of equity, "the rule is that, in the absence of actual fraud, equity adopts the period of the statutes of limitations." *Id.* ¶ 13. As in the present case, the Court found that "the instant case contains no element of actual fraud, and presents no unusual conditions or circumstances such as would make it inequitable to follow the period of limitation prescribed by the statutes of limitations of the state for the recovery of real property." *Id.*

not accrue until defendant refused to pay royalties on the new production in 2012." *Id.* ¶ 0. Because Arnold did not participate in the drafting or recording of the subsequently recorded leases, nothing could have alerted Arnold about any claim adverse to his interest. *Id.* ¶ 16. Stated differently, the Court refused to "impose a notice requirement on a party some three decades before that party, in fact, has anything whatsoever to sue over." *Id.*

¶33 The facts in this case are readily distinguishable from *Arnold*. Plaintiffs have not argued that they or their predecessor, Eunice S. Justice, lacked notice of the later-recorded 1978 lease with its 3/16th royalty provision, nor could they, because Eunice S. Justice personally executed both the 1973 and 1978 leases and she or her Trust then accepted payments pursuant to the 1973 lease, not the 1978 lease, for more than 40 years. As Defendant persuasively argues, despite having actual knowledge of the change in the royalty provision in the 1978 lease, "Plaintiff[s'] predecessors Eunice S. Justice and the Eunice S. Justice Trust continued to accept those payments pursuant to the 1973 Lease and not the 1978 Lease for over 40 years." Plaintiffs or their predecessors had actual knowledge of the 1978 lease and had the opportunity to challenge Defendant's claim or maintain their quiet title action when the conflict first arose in 1978 and for 15 years thereafter. The undisputed facts and applicable law bring us to the same conclusion reached by the trial court, requiring the entry of summary judgment.

For these reasons, we affirm the trial court's order granting Defendant's motion for summary judgment based on the statute of limitations.

CONCLUSION

¶34 A *de novo* review of the record shows the trial court's decision granting Defendant's motion for summary judgment must be affirmed. Because the trial court correctly granted summary judgment, the trial court did not abuse its discretion in denying Plaintiffs' motion for new trial. These issues being dispositive, we affirm the trial court's orders denying Plaintiffs' motion to compel and denying Plaintiffs' motion for leave of court to supplement their response to the motion for summary judgment. For the same reason, we will not address any remaining issues on appeal.

¶35 **AFFIRMED.**

BARNES, J., concurs, and BLACKWELL, J., dissents.

BLACKWELL, J., dissenting:

¶1 As I do not agree that the plaintiffs' claims accrued as of the effective date of the 1978 lease, I must respectfully dissent. The plaintiffs seek to recover proceeds from the sale of oil and gas from specific wells, which were drilled from 2016 to 2018. After the wells were drilled, the plaintiffs made a claim for payment, which the defendant rejected. Although the facts in this case are not

identical to the *Arnold* case, the relevant holding of *Arnold* is that a cause of action for a claim of royalties on new production does not accrue until a claim for payment is made for the proceeds related to that production. *Claude C. Arnold Non-Operated Royalty Interest Properties, L.L.C. v. Cabot Oil & Gas Corp.*, 2021 OK 4, ¶ 13, 485 P.3d 817, 821 ("No cause of action accrued until Arnold asserted its right to payment under the still-operative 1973 leases in 2012, and Cabot refused to pay."). On this basis alone, I would reverse the trial court's grant of summary judgment and review the plaintiffs' remaining allegations of error.[1]

¶2 Additionally—although the issue is only dispositive given the application of the incorrect accrual date—I note that I do not believe there is *any* statute of limitations governing a simple action to quiet title. Although an action to *recover* real property is limited by statute to fifteen years, 12 O.S. §93(4), an action to quiet title is distinct from an action to recover real property. *Compare* 12 O.S. § 1141 (governing actions to quiet title), *with* 12 O.S. § 1142 (governing actions for the

[1] Note: I take no position here on the merits of the plaintiffs' claim of title—*i.e.*, whether the 1978 lease was a novation or an amendment of the 1973 lease. The defendant explicitly limited its request on summary judgment to the sole question of whether the entirety of the plaintiffs' claims were barred by the statute of limitations, based on an accrual date in the 1970s. Although the trial court made statements at the hearing discounting the plaintiffs' view of the record title, the court's written judgment is properly limited to the question of the applicability of a fifteen-year statute of limitations. The statements of the trial court regarding the merits of the plaintiff's theory of title were inappropriate, as those questions were not before the court at the time of the hearing on summary judgment.

recovery of real property). Accordingly, I would not follow the contrary statement, relied on by the majority, found in *Pangaea Expl. Corp. v. Ryland*, 2007 OK CIV APP 106, ¶ 11, 173 P.3d 108, 112. *Pangaea* cited to § 93(4) alone as authority for its view, which I interpret differently. Further, the statement does not appear to be necessary to the court's holding.[2] I would follow prior cases of the Supreme Court and other divisions of the Court of Civil Appeals, which have clearly stated that there is no statute of limitations in an action to quiet title. *See, e.g. Hester v. Watts*, 1950 OK 131, 218 P.2d 641, 643 (holding "[t]hat by reason of the equitable character of the action the statutes of limitation relied on have no application" in an action to quiet title); *Bd. of Cty. Comm'rs of Choctaw Cty. v. Schuessler*, 1960 OK 252, 358 P.2d 830, 835 (same); *Alfrey v. Richardson*, 1951 OK 133, 231 P.2d 363, 364 ("An action to quiet title where the plaintiff has been in continuous possession of the property, claiming an equitable title therein, may be maintained at any time while in possession, and no statute of limitation will bar such action.") (syllabus of the Court); *Paddyaker v. Griffith*, 2011 OK CIV APP 97, ¶ 8, 260 P.3d 1276, 1278

[2] According to the *Calvert* case, *Pangea* "holds that public records afford grantors with a means of discovery of a mistake in a deed, and therefore provides constructive notice of a mistake sufficient to start the statute of limitations period to begin to run." *Calvert v. Swinford*, 2016 OK 100, n. 10, 382 P.3d 1028, 1032. However, the applicable statute of limitations period discussed in both *Pangea* and *Calvert* is that relating to the reformation deeds, which has no relevance in this case.

(noting "that statutes of limitation are inapplicable in quiet title actions because of the equitable character of the action").[3]

November 5, 2021

[3] This does not mean that there is no applicable statute of limitations in this case. Because the plaintiffs are ultimately seeking their share of proceeds from production, the applicable statute of limitations is five years from the date the claims accrued. 52 O.S. § 570.14(D). As noted above, the accrual date is that date on which the defendant rejected the plaintiffs' claim for additional proceeds from the new wells.