IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION IV

BEN VAN VACTER III and VERONICA HILL,

Plaintiffs/Appellees,

vs.

ANEVAY RESOURCES, LLC,

Defendant/Appellant.

Case No. 123,030

APPEAL FROM THE DISTRICT COURT OF
ROGER MILLS COUNTY, OKLAHOMA

HONORABLE DONNA L. DIRICKSON, DISTRICT JUDGE

AFFIRMED

Mark E. Walraven
GRAFT & WALRAVEN, PLLC
City, Oklahoma

For Plaintiffs/Appellees

Michael S. Booze
OKLAHOMA ENERGY ADVISORS, PLLC
Oklahoma City, Oklahoma

and

Lindsay N. Kistler
KISTLER LEGAL GROUP PLLC
Oklahoma City, Oklahoma

For Defendant/Appellants

OPINION BY GREGORY C. BLACKWELL, JUDGE:

Anevay Resources, LLC (Anevay) appeals the court's grant of summary judgment in favor of the plaintiffs, Ben Van Vacter III and Veronica Hill, as

successor co-trustees of the Norris Corbitt Family Trust. Anevay also appeals the court's grant of plaintiffs' motion for attorney fees. Upon review, we affirm both judgments.

BACKGROUND

The Norris Corbitt Family Trust is an owner of an undivided interest in and to the oil, gas, and other minerals underlying property in Roger Mills County, Oklahoma. In November 2023, Anevay contacted the plaintiffs to negotiate an oil and gas lease covering the trust's property. In February 2024, Anevay sent the plaintiffs a proposed oil and gas lease and an order of payment. The plaintiffs returned a signed copy of the lease to Anevay but kept the original. The plaintiffs did not sign or return the order of payment.

In March 2024, the plaintiffs contacted counsel to review the lease. Plaintiffs' counsel then contacted Anevay, requesting material changes to the lease. The requested changes included adding terms to be placed in Exhibit A of the lease, redlines to the body of the lease, and a proposal for a multi-section deal to include other mineral interests owned by the trust. Anevay responded, stating that it would accept some of the changes but not others.

On March 12, 2024, Anevay sent the plaintiffs an updated lease with the discussed revisions. The plaintiffs did not respond to Anevay or execute the revised lease. At some point, Anevay also attempted to send a check to the plaintiffs, but it was not accepted. The plaintiffs had received a better lease offer and notified Anevay that they would not be accepting the revised lease.

On April 4, 2024, without the plaintiffs' approval, Anevay filed an *Oil & Gas Mineral Lease Notice* at Book 2564, Page 216, of the Roger Mills County Clerk's office. The notice states that the plaintiffs, as successor co-trustees of the Norris Corbitt Family Trust, had conveyed a leasehold interest in the property to Anevay on February 15, 2024 (the date the signed copy of the first lease was returned to Anevay). The plaintiffs maintained that the notice prevented the trust from moving forward with the other lease and constituted an apparent cloud on the trust's title to the property. As a result, the plaintiffs sent a demand letter to Anevay pursuant to the Nonjudicial Marketable Title Procedures Act, 12 O.S. § 1141.1, *et seq.*, requesting that it release the notice to cure the apparent cloud on the trust's property. Anevay did not respond to the demand letter, and, as a result, the plaintiffs brought claims for quiet title and slander of title against Anevay.

Anevay filed an answer, admitting that the order of payment was never executed by the plaintiffs, that the plaintiffs never accepted consideration for the lease, and that material terms of the lease were still being negotiated. Based on those admissions, the plaintiffs filed a partial motion for summary judgment on their quiet title claim, which the court ultimately granted. The plaintiffs then voluntarily dismissed their slander of title claim and the court entered a journal entry of judgment in the plaintiffs' favor.

Additionally, the plaintiffs filed an application for an order allowing attorney fees and costs under the NMTPA. The court awarded the plaintiffs

$26,358, which was the full amount they requested. It is from these orders that Anevay appeals.

STANDARD OF REVIEW

The trial court's decision on summary judgment is purely legal; whether a party is entitled to judgment as a matter of law because there are no material disputed facts. *Carmichael v. Beller,* 1996 OK 48, ¶ 2, 914 P.2d 1051, 1053. Therefore, our standard of review is *de novo. Id.* Even if the material facts are undisputed, a motion for summary judgment must be denied if a reasonable person could reach a different inference or conclusion from the undisputed facts. *Buckner v. Gen. Motors Corp.,* 1988 OK 73, ¶ 30, 760 P.2d 803, 812. We draw all inferences in favor of the party opposing the motion. *Davis v. Leitner,* 1989 OK 146, ¶ 9, 782 P.2d 924, 926.

"When a question on appeal presents the issue of reasonableness of attorney fees awarded by the court, abuse of discretion of the trial judge is the standard of review. Under this standard, a trial court will not be reversed unless it made a clearly erroneous conclusion against reason and evidence." *Fleig v. Landmark Constr. Grp.,* 2024 OK 25, ¶ 13, 549 P.3d 1208, 1210.

ANALYSIS

In its petition in error, Anevay raises several allegations of error related to the court's grant of summary judgment in favor of the plaintiffs. However, we find that the issue of whether the trial court correctly determined that there was not a binding agreement between Anevay and the plaintiffs is dispositive and will be addressed first below.

Oklahoma courts have consistently held that an oil and gas lease is construed as a contract. *Oil Valley Petroleum, LLC v. Moore*, 2023 OK 90, ¶ 38, 536 P.3d 556, 566. Title 15 O.S. § 2 provides that the following elements are essential to the existence of a contract: parties capable of contracting, their consent, a lawful object, and sufficient cause or consideration. The consent of the parties and consideration are each at issue here. Section 51 of the same title states that the consent of the parties to a contract must be free, mutual, and communicated by each to the other. 15 O.S. § 51. Mutual consent is further defined as all parties agreeing on the same thing in the same sense. *Id.* at § 66. In order to have a valid contract there must be a meeting of the minds on all the essential terms of the contract. *Beck v. Reynolds,* 1995 OK 83, ¶ 11, 903 P.2d 317, 319. On summary judgment, the plaintiffs argued that there was no meeting of the minds because they did not sign and return the order of payment, the parties could not agree on material terms of the lease, and while consideration may have been tendered by Anevay, it was never accepted.

Contracts require consideration. 15 O.S. § 2. Consideration is the benefit conferred or agreed to be conferred to the promisor, or in this case, the lessor. In this case, the benefit was the $154,000 that Anevay agreed to pay to the lessors (the plaintiffs) for use of their land. It is important to note that the first lease that Anevay sent to the plaintiffs did not contain any information regarding the purchase price or payment date. Instead, the order of payment, which was an entirely separate document sent to the plaintiffs with the lease, provided that Anevay would tender payment to the plaintiffs in the amount of $154,000 upon

"Anevay Resources LLC's receipt of the original executed Order of Payment and the original executed lease." ROA, Tab 4, Exhibit 1.

The plaintiffs never executed or returned either the order of payment to Anevay or an original executed lease, and Anevay does not dispute this.[1] Title 15 O.S. § 158 provides that "[s]everal contracts relating to the same matters, between the same parties, and made as parts of substantially one transaction, are to be taken together." The order of payment and the lease relate to the same matter, they were drafted by Anevay and sent to the plaintiffs, and they both relate to the same transaction because the order of payment explicitly provides that Anevay will not pay the plaintiffs until it received both the original executed order of payment and the original executed lease. Examining these two documents together, we agree with the plaintiffs that there was no meeting of the minds regarding consideration because the plaintiffs never accepted Anevay's suggested price and timing of payment or returned the original lease.

Additionally, we note that Anevay's order of payment indicated that it would tender $154,000 to the plaintiffs upon receipt of the signed original lease and the signed order of payment. As noted, it is undisputed that Anevay never received the original signed lease (the plaintiffs only sent back a signed copy) and did not receive the executed order of payment. Anevay contends, however, that it tried to tender the $154,000 to the plaintiffs anyway. ROA, Tab 5, pg. 9. Anevay

[1] "[Anevay] admits that representatives of the Norris Corbitt Family trust dated April 4, 2012, did not sign the Order of Payment." ROA, Tab 3, pg. 3. In its answer, Anevay admits that the "representatives of the Norris Corbitt Family Trust dated April 4, 2012, held the original signed Oil and Gas Lease in their possession." *Id.*

asserts that the plaintiffs refused the check. Meanwhile, the plaintiffs imply that the check was never sent while also maintaining that the consideration was not accepted. ROA, Tab 6, pgs. 2-5.

Regardless, we find that the plaintiffs' refusal to accept the check further demonstrates that there was no meeting of the minds regarding consideration. In *O'Neal v. Harper*, 1937 OK 628, 75 P.2d 879, the parties were negotiating a mineral deed. The seller tendered a check for $55 to the buyer in exchange for a signed original deed; however, the parties originally agreed on a price of $110.00. *Id.* ¶ 14. Before the buyer could protest, the seller left the premises. *Id.* ¶ 2. The buyer never cashed the check and initiated an action against the seller. *Id.* The Court held as follows:

> [T]he defendant intended to pay only $55 for the interest he was to acquire, and that intention was manifested by giving the plaintiff a check for that amount. Plaintiff contends that she intended to sell for $110 and no less, and that statement is corroborated by her refusal to cash the $55 check and her immediate objection to the defendant that she had not agreed to accept $55. It is, of course, elemental that there must be a meeting of the minds of the parties upon all essential elements before a contract is created .... In the instant case the minds of the parties did not meet upon the essential element of consideration; the defendant being mistaken as to the amount to be paid, there was no mutual consent and consequently no contract was created. There existed only an offer by plaintiff to sell the interest in question for $110 and a counter offer by defendant to buy for $55. Neither offer was accepted.

Id. ¶ 14. In the present case, Anevay proposed payment in the amount of $154,000. This proposal was never accepted by the plaintiffs. Thus, we find that the parties' minds did not meet upon the essential element of consideration. The

plaintiffs' refusal to accept the check or return the original lease shows that there was no mutual consent regarding the purchase price and, therefore, no contract was created.[2]

Because there was no contract between Anevay and the plaintiffs, we find that the court properly granted summary judgment on the plaintiffs' quiet title claim. "A marketable title is one free from apparent defects, grave doubts and litigious uncertainty, and consists of both legal and equitable title fairly deducible of record." *Stump v. Cheek*, 2007 OK 97, ¶ 15, 179 P.3d 606, 613. A cloud on title is any defect which prevents a title from meeting the standard of marketability. *Hull v. Sun Refining & Marketing Co.*, 1989 OK 168, ¶ 9, 789 P.2d 1272. The notice filed by Anevay in this case constituted a cloud on the trust's title because it falsely implied the existence of an oil and gas lease agreement between the trust and Anevay. As discussed above, no such agreement was ever reached. Therefore, we find that the notice created a defect on the trust's title and the court properly quieted title in favor of the plaintiffs on summary judgment.[3]

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[2] Failure to return the original lease, which was required to accept Anevay's offer, is noteworthy, both legally and practically. Without a signed original, Anevay had no direct ability to file the lease with the County Clerk. *See* 19 O.S. § 298(B) ("All documents filed of record in the office of the county clerk ... shall be an original or a certified copy of an original document."). Hence, it's filing of a *Notice* that referenced the copy of the lease.

[3] We note finally that Anevay made a new argument at the hearing on the motion for attorney fees that the trial court properly rejected. Anevay argued that because the plaintiffs had filed a new lease burdening their mineral interest prior to the initiation of quiet title proceedings against Anevay, the lessee of the new lease must be the one to file for quiet title, as "the alleged cloud on the title was cloud on the oil and gas leasehold estate and not on the mineral estate ...." Tr. (April 22, 2025) 5-6. This argument is without merit. If nothing else, the notice of oil and gas lease Anevay filed affected the plaintiff's interest in their *retained* mineral estate—the possibility of reverter that every lessor maintains even after the

After the court granted summary judgment in favor of the plaintiffs on their quiet title claim, the plaintiffs subsequently moved for attorney fees and costs under the Nonjudicial Marketable Title Procedures Act (NMTPA), 12 O.S. § 1141.1, *et seq.* The plaintiffs sent a pre-litigation demand letter to Anevay in accordance with § 1141.3 and Anevay admitted receipt of the demand letter and that it did not respond or comply to the letter within the statutory timeframe. Anevay's refusal to cure title as requested in the demand letter led to the plaintiffs' filing of the quiet title action. Because the plaintiffs prevailed on their quiet title claim, the plaintiffs are now entitled to "recover damages equal to the actual expenses incurred by the plaintiff in identifying the relevant instrument, preparing the notice to the respondent pursuant to § 3 of this act, and the expenses of litigation directly related to obtaining judgment quieting title in the plaintiff." *Id.* at § 1141.5(A)(1)-(4).

On appeal, Anevay does not challenge the plaintiffs' entitlement to fees under the NMPTA; rather, it contends that the fees awarded were not reasonable. We note that the plaintiffs attached extensive time records showing the amount of hours expended and the hourly rate. In reviewing the plaintiffs' fee application, the trial court found, and listed in its order, that the factors referenced in *State*

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execution and delivery of an oil and gas lease. *See generally, Rox Petroleum, L.L.C. v. New Dominion, L.L.C.*, 2008 OK 13, ¶ 11, 184 P.3d 502, 505 ("The estate remaining in the grantor after a conveyance of a determinable fee upon a conditional limitation is a possibility of reverter.... The possibility of reverter is an interest in the oil, gas, and minerals which is alienable and until otherwise conveyed, is retained by the grantor."). Thus, contrary to Anevay's late-breaking argument, the plaintiffs had standing to bring their quiet title action, and receive fees under the applicable statute, even after the filing of the second lease.

ex rel. Burk v. City of Oklahoma City, 1979 OK 115, ¶ 8, 598 P.2d 659, 661, as applied to the present case supported an award of fees:

> **Time and Labor/Hours Expended:** The Plaintiffs were required to file suit to clear title to the minerals they owned. Initially treating the case as a default matter. After a late entry of counsel on behalf of the Defendant, the matter was prosecuted as a motion for summary judgment proceeding. The attorney handling a majority of the case is a first-year associate and was supervised by lead counsel, who utilized a reduced hourly rate in this matter for many time entries.
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> **Novelty and Difficulty:** This case is not overly difficult but did require attention to title issues and detailed examination of records. Experience, Reputation, and Ability of Attorneys/Requisite Skill: Counsel are of good reputation and have the requisite skill to defend the litigation. Mark Walraven has 12 years of experience as an oil and gas attorney and supervised first-year attorney Chad Smith who handled much of the initial drafting.
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> **Customary Fee/Contingent:** Plaintiffs paid hourly rates as is customary in this type of litigation. No objection was raised as to the hourly rate charged.
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> **Time Limitations:** None the Court is aware of.
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> **Amount Involved and Results Obtained:** Plaintiffs were required to clear title to the minerals to receive full leasing benefits. Plaintiffs were successful in their prosecution of a Motion for Summary Judgment which resolved the legal issues in this matter resulting in an action quieting title in and to the Plaintiffs.

Supplemental ROA, Tab 5, pg. 2.

In its response to the plaintiffs' application for fees and now on appeal, Anevay took issue with the plaintiffs' "block billing" and billing of administrative tasks. The court in its order explicitly stated that "[a] review of the detailed billing records show that the billing was done as the work was performed." *Id.* Additionally, "[a]fter a review of the detailed billing records, the Court determines that the work billed for was in relation to litigation and handled by a senior

paralegal with 10 years of experience in oil and gas and complex litigation cases." *Id.* at 3. Thus, the record reflects that the court considered the concerns raised by Anevay on appeal and still found the amount requested by the plaintiffs to be reasonable. "When a question on appeal presents the issue of reasonableness of attorney fees awarded by the court, abuse of discretion of the trial judge is the standard of review." *Fleig v. Landmark Constr. Grp.*, 2024 OK 25, ¶ 13, 549 P.3d 1208, 1210. Under this standard, a trial court will not be reversed unless it made a clearly erroneous conclusion against reason and evidence. *Id.* Upon review, we find that the court's award of attorney fees and costs in the amount of $26,356.14, was supported by the evidence and not an abuse of discretion.

Finally, Anevay alleges that it was not reasonable for the plaintiffs to be awarded fees for time spent working on the slander of title claim, which was voluntarily dismissed. The relevant statute broadly provides for recovery for "the expenses of litigation directly related to obtaining judgment quieting title in the plaintiff." 12 O.S. § 1141.5(A)(1)-(4). The trial court found "the entire case has been about quieting title to the minerals in question." Supp. ROA, Tab 5, pg. 1. We cannot disagree. Thus, we find that the court did not abuse its discretion by including fees related to time spent on the plaintiffs' slander of title claim which was dismissed after the summary judgment stage.

AFFIRMED.

WISEMAN, P.J., and FISCHER, J., concur.

December 22, 2025