SUBSTITUTE OPINION AFTER REHEARING
THE COURT'S PRIOR OPINION HAVING BEEN WITHDRAWN

THIS OPINION HAS BEEN RELEASED FOR PUBLICATION BY ORDER OF THE COURT OF CIVIL APPEALS

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION IV

CONTINENTAL RESOURCES, INC.,

Plaintiff/Appellant,

vs.

L.E. JONES PRODUCTION COMPANY, LLC,

Defendant/Appellee.

Case No. 122,560

APPEAL FROM THE DISTRICT COURT OF STEPHENS COUNTY, OKLAHOMA

HONORABLE LAWRENCE M. WHEELER, ASSOCIATE DISTRICT JUDGE

VACATED AND REMANDED

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OPINION ON REHEARING BY GREGORY C. BLACKWELL, PRESIDING JUDGE:

¶1 L.E. Jones Production Company LLC and its predecessor assigned its leasehold rights in several oil and gas leases to Continental's predecessor. The assignment contains a clause intended to release unproductive acreage at the

end of the primary term to the assignor. The parties disagree as to what acreage, if any, reverted to L.E. Jones at the end of the primary term. The trial court granted summary judgment in favor of L.E. Jones, but we find that it was Continental that was entitled to judgment as a matter of law. Accordingly, we vacate the judgment entered in favor of L.E. Jones and remand for an entry of judgment in favor of Continental.[1]

I.

¶2 The relevant facts are not in dispute. L.E. Jones Production Company LLC obtained the leasehold interest in several oil and gas leases in Section 22-1S-4W, Stephens County.[2] In a term assignment, L.E. Jones assigned those interests, limited to four specific geologic formations (being the False Carney, the Carney, the Sycamore, and the Woodford) to Continental for a period of three years or for so long thereafter as oil or gas were produced in paying quantities.[3]

¶3 The assignment contained the following clause: "Should production be established in paying quantities ... then this Assignment shall expire as to all lands outside the spacing unit of any well drilled at the end of the Primary Term." ROA, Doc. 8, *Exhibit 1*, pg. 1. The assignment continued into its secondary term by the Hondo Well, which is producing from both the Woodford formation and

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[1] This appeal was assigned this author on January 9, 2026.

[2] It was actually both L.E. Jones and its predecessor-in-interest that obtained the interests. To simplify, we will refer to both L.E. Jones Production Company LLC and its predecessors as L.E. Jones.

[3] It was actually Continental's predecessors-in-interest that received these interests. We will refer to Continental Resources Inc. and its predecessors as Continental.

Sycamore formations, each underlying all or part of Section 22.[4] The parties here dispute the legal effect of the phrase "all lands outside the spacing unit of any well drilled at the end of the Primary Term."

¶4 L.E. Jones favors a broad interpretation of this clause, which would release significantly more leasehold acreage than Continental's. Under L.E. Jones's reading, all leasehold other than that actually within *producing formations* reverted to it at the end of the primary term. Under Continental's interpretation, no leasehold embraced by the assignment reverted to Jones because a producing well was drilled that is producing from all of Section 22 from the Woodford formation, and the term assignment conveyed no acreage outside Section 22.

¶5 On cross-motions for summary judgment, L.E. Jones's interpretation prevailed. The trial court entered judgment in favor of L.E. Jones, finding that "the leasehold rights for the False Caney, Caney, and non-producing Sycamore units all reverted to" L.E. Jones, and only "the producing Sycamore and Woodford units presently remain" with Continental. ROA, Doc. 18, pg. 1. Continental appeals.

II.

¶6 Our review is *de novo. Carmichael v. Beller*, 1996 OK 48, ¶ 2, 914 P.2d 1051, 1053. That standard "affords this Court with plenary, independent, and non-deferential authority to examine the issues presented." *Sheffer v. Carolina Forge Co.*, 2013 OK 48, ¶ 10, 306 P.3d 544, 547-48.

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[4] The Oklahoma Corporation Commission had established a 640-acre drilling and spacing unit as to the Woodford formation, covering all of Section 22, and an irregular 640-acre spacing unit as to the Sycamore formation which embraces a portion of Section 22.

III.

A.

¶7 The clause at issue is known in the oil and gas industry as a "pugh" clause.[5] It derives its name from Louisiana lawyer Lawrence G. Pugh, Sr., who was purportedly its originator and "a distinguished attorney of Crowley, Louisiana." *Fremaux v. Buie*, 212 So.2d 148, 149, n.1 (La. Ct. App. 1968). *See also Sandefer Oil & Gas v. Duhon*, 961 F.2d 1207, 1208, n.1 (5th Cir. 1992).[6] He reportedly fashioned the clause in response to *Hunter Co. v. Shell Oil Co.*, 31 So.2d 10 (La. 1947), which held that production from a unit including only a portion of a leased tract will maintain the entirety of a lease. *See Fremaux*, 212 So. 2d at 149. "A Pugh clause ... is any lease clause the purpose of which is to divide or segregate the lease into separately maintained parts when a portion of the lease is included in a unit." *Kysar v. Amoco Prod. Co.*, 93 P.3d 1272, 1279 (N.M.) (quoting BRUCE M. KRAMER & PATRICK H. MARTIN, *THE LAW OF POOLING AND UNITIZATION* (3d ed. 2003) (§ 9.01)). Pugh clauses have been in regular use in Oklahoma for many years, and in 1981, Oklahoma adopted a modified statutory

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[5] It is also often referred to as a retained-acreage clause. We will follow the parties' lead here and use pugh clause throughout this opinion.

[6] Although "pugh" is often capitalized because it derives from a proper noun, "[w]here the connection between the proper noun and its attributive use is weak or obscure, the noun is often lowercase," as in "french fry" or "diesel engine." THE UNIVERSITY OF CHICAGO PRESS, CHICAGO MANUAL OF STYLE, 165, (15th ed. 2003) (§ 5.67). We consider the connection in this case to be sufficiently obscure. *See Rist v. Westhoma Oil Co.*, 1963 OK 126, ¶ 7, 385 P.2d 791, 795 ("Our research on the 'Pugh' clause has thrown little light on its origin, except it seems to have first appeared in 1941."). We will therefore, with no disrespect to Mr. Pugh intended, adhere to our preferred, down-style of capitalization. *See* BRYAN A. GARNER, THE REDBOOK: A MANUAL ON LEGAL STYLE, 67, (4th ed. 2018) ("In legal writing there is an unfortunate tendency toward contagious capitalization. It is a reversible condition.").

pugh clause that, though is not directly at issue in this case, will be further discussed below. *See* 52 O.S. § 87.1(b).

¶8 Pugh clauses come in two flavors. They might operate "vertically" or "horizontally." *See Rogers v. Westhoma* Oil Co., 291 F.2d 726, 731-32 (10th Cir. 1961). As used in this opinion, a "vertical" pugh clause operates to create a surface area severance of the lease. Such a clause "generally provide[s] for vertical segregations of the original leasehold into separate tracts traceable on the surface of the land ...." 1A Summers Oil and Gas § 6:10 (3d ed.). That is to say, a vertical pugh clause makes no division between different depths but releases all acreage not in a producing drilling unit—and retains all acreage inside that unit—regardless of which formations are producing from the unit.

¶9 A "horizontal" pugh clause operates to create a severance based on the producing formation or subsurface horizon. *Id.* It "holds a lease only to the stratum or level from which production has been secured in the unit during the primary term of the lease and, thus, frees the mineral interests" not within that stratum "absent additional development." *Id.* at n.5.[7]

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[7] We recognize that these definitions are not quite universal, as some sources define these terms precisely the opposite of what we have laid out above—that is, defining a "horizontal pugh clause" as surface-tract-based severance and a "vertical pugh clause" as depth based. Our research indicates that the industry, courts, and commentators have converged on the usage as set out above. We will continue that trend. *See, generally,* Roger Gingell, *The Pugh Clause: Historical Development and Variations* (July 8, 2014), https://www.linkedin.com/pulse/20140709012517-48992161-development-of-and-variations-to-the-pugh-clause/ (noting prophetically that "[n]o writing concerning pugh clauses would be complete without referencing the ongoing confusion as to the names of the two main types of pugh clauses").

¶10 The question here is whether the clause at issue is a mere vertical pugh clause or also effectuates a horizontal severance. Upon *de novo* review, we find the clause is a vertical pugh clause only.

B.

¶11 We first examine the text. The clause in question releases "all lands outside the spacing unit of any well drilled at the end of the Primary Term." Of primary concern are definitions of the terms "lands" and "spacing unit." As to the term "lands," we cannot find it "import[s] to our minds other than [its] common meaning." *Rist*, 1963 OK 126, ¶ 22. Certainly, it does not in any way connote a horizontal division of the earth by various strata of oil and gas deposits.

¶12 While provoking somewhat more thought, the term "spacing unit" also, in and of itself, does not connote to our minds the necessity of horizontal stratification. While it *could* have that meaning—after all an order creating a "spacing unit" generally references both surface-level tract descriptions and a specific formation—we hold that, given the long history of using "spacing unit" in vertical-only pugh clauses, the meaning here is also vertical only.

¶13 Three main points support this reading. First, our own statutory pugh clause references "spacing unit[s]"[8] and L.E. Jones does not offer any authority for the proposition that our statutory pugh clause effectuates anything other than a vertical severance. However, if L.E. Jones's interpretation is correct, it

[8] "In case of a spacing unit of one hundred sixty (160) acres or more, no oil and/or gas leasehold interest outside the spacing unit involved may be held by production from the spacing unit more than ninety (90) days beyond expiration of the primary term of the lease." 52 O.S. § 87.1(b).

would be difficult to come to any other conclusion. Such would represent a seismic shift in the interpretation of that clause in the industry. For example, while never faced with the direct question, the Oklahoma Supreme Court has presumed our statutory pugh clause as a vertical-only clause. In *Hall v. Galmor*, 2018 OK 59, 427 P.3d 1052, the Court held:

> Section 87.1(b) was meant to prevent a unit well's production from satisfying the habendum clause of any lease for more than ninety days beyond the expiration of the primary term as to *acreage outside of the unit* when the leased premises, or any portion thereof, is included in a unit of 160 acres or more.

Id. ¶ 54 (emphasis modified). Review of the case confirms that "[a]creage outside the unit" was not intended to include non-producing acreage *inside* the unit, nor does the word "unit" itself, as used in the case, refer to only the targeted stratum but to the leasehold in the unit as to all depths.

¶14 Second, Professor Owen Anderson has made this same assumption regarding the use of the phrase "spacing unit" in a pugh clause since at least 1982. In an article of that year, he states: "A vertical Pugh clause divides the leasehold strictly on the basis of the *surface acreage included in a well spacing unit.*" Owen L. Anderson, *David v. Goliath: Negotiating The 'Lessor's 88' and Representing Lessors and Surface Owners in Oil and Gas Lease Plays*, 27 RMMLF-INST 2 (1982) (emphasis added). He goes on to give this as an example of a vertical-only pugh clause:

> Production from any well drilled hereunder shall not serve to extend the primary term of this lease nor to relieve the Lessee from rental payments hereunder, except as to such lands as are contained within the *spacing unit* in which such well is located.

Id. at n.252 (emphasis added). The operative language of this "textbook" vertical pugh clause is not distinguishable from the clause under review. If L.E. Jones's interpretation is correct, not only is Professor Anderson's incorrect, but it would be difficult to draft a vertical-only pugh clause in Oklahoma.

¶15 Third, we note what is not present. There is no reference in the clause at issue to depths, strata, non-producing units, non-producing formations, or any other reference that would clearly signal an attempt to create a horizontal severance. Simply put, if the parties had intended to effectuate a horizontal severance, it would have been quite easy to do so with language that is routinely used in the industry.[9] *See Rist*, 1963 OK 126, ¶ 21 ("Certainly the parties could have made reference to partial consolidation of separate horizontal structures by appropriate terms. But they say nothing as to depths, levels or strata."). The omission speaks volumes.

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[9] Indeed, Continental notes that L.E. Jones itself authored such a clause in a sample oil and gas lease attached to the parties' letter agreement in this very case. The language of that clause reads as follows:

> [I]t is agreed this lease will terminate at the end of the expiration of the primary term hereof as to all of the land covered hereby except as to the spacing unit around each producing oil or gas well, or wells currently being drilled and located on such land, ***and as to all non-producing formations and/or common sources (s) (sic) of supply, whichever is lesser***, within the spacing unit at the expiration of the primary term of this lease ....

ROA, Doc. 10, *Exhibit 3*, pg. 8 (emphasis added). Although this lease was never used, and we agree with L.E. Jones that it does not prove one way or the other the legal effect of the language used in the term assignment under review, it confirms a suspicion of this court: that clauses effecting a horizontal severance are not difficult to author and are routinely used in the industry.

C.

¶16 L.E. Jones brings several counterarguments to the table that merit attention. First, it relies heavily on an unpublished case of this court from 2015. There, the court faced a pugh clause that read as follows:

> Lessee agrees to release any portion of the leased premises not included in a ***producing unit*** or is not currently being drilled on a unit as designated by the Corporation Commission upon the expiration of the primary term of this lease.

Nat'l Gas Anadarko Co. v. Jerry L. Venable et. al., No. 111,611, pg. 2 (COCA Div. II, July 8, 2015) (unpublished) (emphasis added), *cert. denied* Okla. Sup. Ct., Jan. 12, 2016. The court determined that this clause resulted in both a vertical and horizontal severance. However, as previewed by our emphasis above, that case concerned a much different clause, which referenced "a producing unit," not a spacing unit. While we take no stance here as to whether the substitution of "producing unit" for "spacing unit" in the clause under review would obtain a different result, it should not be surprising that different contractual language may result in different legal outcomes. Given the vastly different language sought to be reviewed, we find L.E. Jones's reliance on *Nat'l Gas Anadarko* is misplaced.

¶17 Next, L.E. Jones insists that its interpretation can be the only natural result of reviewing the lease as a whole, whereas our interpretation requires a hyperfocus on the pugh clause itself. But this is a feature of our method, not a bug. L.E. Jones insists we refer back to the granting clause to determine what the pugh clause means. Because the granting clause only conveyed leases as to four specific formations, L.E. Jones argues that the pugh clause must also be so limited. This is a *non sequitur*. We need not consult the granting clause to

determine what is meant by the pugh clause. There is no issue in this case as to what was conveyed, but only what is held by production. Thus, it is perfectly natural that we would consult the words of the clause meant to release acreage, not the clause conveying that acreage in the first instance. Only if there is some incompatibility between the two clauses need we pit the one against the other. *See, e.g., Trapp v. Wells Fargo Express Co.*, 1908 OK 204, ¶ 0, 97 P. 1003, 1004 ("[E]ffect is to be given, if possible, to the whole instrument, and to every section and clause.... If different portions seem to conflict, courts must harmonize them, if practicable, favoring that construction which will render every word operative, rather than one which makes some words idle and nugatory." (syllabus of the Court)). But here, there is no incompatibility between the two clauses. The pugh clause releases what it releases, regardless of the quantum of the grant.

¶18 L.E. Jones also insists *Rist v. Westhoma Oil Co.*, 1963 OK 126, 385 P.2d 791, commands a different result because the Court consulted the granting clause in examination of the pugh clause. However, in *Rist*, the Court did nothing more than we do here: examine the granting clause for any incompatibility between the various clauses of the lease, including the pugh clause. Finding none, it held that the language of that lease, which referenced only "'[t]ract or tracts', 'Premises', 'lands', and 'leasehold estates,'" and nowhere referenced "depths, levels or strata" created a vertical pugh clause only. *Id.* 21-22. While *Rist*, which concerned language different than that we examine here, does not compel a result in either direction, it counsels against straining to find a

horizontal severance while examining language that has historically created only a vertical severance.

¶19 In the final analysis, L.E. Jones's interpretation would require us to do just that. It, in effect, asks us to read "spacing unit" as "producing formation." We decline to do so. We hold that the use of the term "spacing unit" in a pugh or retained-acreage clause, without more, effects a vertical (surface-tract based) severance only.[10]

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¶20 Based on our *de novo* review of the record, the judgment of trial court is vacated, and this matter is remanded with instructions to enter judgment in favor of Continental.

¶21 **VACATED AND REMANDED.**

HUBER, J., and FISCHER, J. (sitting by designation), concur.

April 23, 2026

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[10] L.E. Jones, although it prevailed under the theory that the term assignment and its pugh clause are unambiguous, offered below the affidavit of a principal of Continental's predecessor-in-interest in an effort to show that that entity intended L.E. Jones's interpretation of the assignment. Because we find the language of the term assignment unambiguous, we ignore this extrinsic evidence. 15 O.S. § 155 ("When a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone, if possible, subject, however, to the other provisions of this article.").