

**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**NO. 2019-CA-01296-COA**

**IN THE MATTER OF THE ESTATE OF RALPH  
CALLENDER, DECEASED: PATRICIA  
CALLENDER**

**APPELLANT**

**v.**

**ROBERT EARL CALLENDER**

**APPELLEE**

DATE OF JUDGMENT:	04/11/2019
TRIAL JUDGE:	HON. EDWARD E. PATTEN JR.
COURT FROM WHICH APPEALED:	LINCOLN COUNTY CHANCERY COURT
ATTORNEY FOR APPELLANT:	WILLIAM D. BOERNER
ATTORNEYS FOR APPELLEE:	DURWOOD JEWELL BREELAND CHRISTINA JOHNSON SMITH
NATURE OF THE CASE:	CIVIL - WILLS, TRUSTS, AND ESTATES
DISPOSITION:	AFFIRMED - 12/08/2020
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

**BEFORE BARNES, C.J., McDONALD AND LAWRENCE, JJ.**

**McDONALD, J., FOR THE COURT:**

¶1. This case involves a dispute over the ownership of mineral rights. Ralph Verdo Callender and Patricia Callender originally acquired interests in the Brookhaven and Mallalieu oil fields in Lincoln County, Mississippi, as joint tenants with rights of survivorship. When the parties divorced, Ralph and Patricia entered into a property settlement agreement (PSA) that provided that the parties shall divide equally all mineral rights of the Brookhaven field and that Ralph shall have exclusive rights to all mineral rights associated with the Mallalieu field. Six years later, Ralph passed away, leaving a will that bequeathed the mineral rights in the Brookhaven and Mallalieu fields to his son, Robert Earl

Callender. Robert filed a declaratory judgment action within the Estate proceedings, alleging that Patricia unlawfully claimed an interest in both fields. Patricia filed a counter-petition, arguing that because she and Ralph acquired the Brookhaven and Mallalieu fields as joint tenants with full rights of survivorship, she became the sole owner of any and all mineral and royalty interests upon Ralph's death.

¶2. The chancery court held that pursuant to the PSA, Ralph's Estate should receive an undivided one-half interest in all oil, gas, mineral, and royalty proceeds of the Brookhaven field and all oil, gas, mineral, and royalty proceeds of the Mallalieu field. Patricia filed a motion to amend the decree of declaratory judgment, which the chancery court denied. Patricia appealed. Finding that the chancery court did not err, we affirm the court's ruling.

### **Statement of the Facts and Procedural History**

¶3. Ralph and Patricia obtained mineral rights to the Brookhaven and Mallalieu oil fields by virtue of the following mineral deeds:

#### **Mineral Deed Subject to Life Estate - October 11, 1991 (Brookhaven Field)<sup>1</sup>**

FOR AND IN CONSIDERATION of the sum of Ten Dollars (\$10.00), cash in hand paid, and other good and valuable considerations, the receipt of which is hereby acknowledged, I, RUBY MILDRED HARMON, do hereby GRANT, BARGAIN, SELL, CONVEY AND WARRANT UNTO RALPH V. CALLENDER and Wife, MRS. PATRICIA R. CALLENDER, as Joint Tenants with full rights of survivorship, SUBJECT TO the reservations set forth herein, all of the oil, gas and other minerals in, on or under, or that may be produced from the following described lands, situated in Lincoln County, Mississippi, to-wit:

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<sup>1</sup> Because royalty proceeds were paid to Patricia and Ralph, it is presumed that Ruby Mildred Harmon died before Ralph and that Ralph and Patricia's remainder interest had matured.

IN SEC. 9, TOWNSHIP 7 NORTH, RANGE 7 EAST:  
E 1/2 of SW 1/4, and W 1/2 of SE 1/4, LESS THEREFROM 5  
acres in the Southeast corner, and 2 acres in North East corner  
conveyed to Bounds.

The GRANTOR herein hereby reserves unto herself a LIFE ESTATE in and to the said minerals, together with the right to lease said minerals, and to receive bonus payments and Lease Rental payments; and with the right to receive all income of whatever type, which may be generated by said mineral interest.

**Mineral Right and Royalty Transfer - November 15, 2002  
(Mallalieu Field)**

For and in consideration of Ten (\$10.00) Dollars, cash in hand paid, and other good and valuable considerations, I the undersigned, Margie C. Smith, hereby sell, transfer, and convey to Ralph V. Callender and Patricia R. Callender, as joint tenants with rights of survivorship, all of my mineral and royalty interest in the hereafter described lands to-wit:

NW 1/4 NW 1/4 and SW 1/4 NW 1/4 Section 7; SW 1/4 NE 1/4  
and SE 1/4 NE 1/4 Section 12, all in Township 6 North, Range  
8 East, Lincoln County, Miss.

¶4. Ralph and Patricia were divorced on February 19, 2010. The final judgment of divorce incorporated a PSA, to which the parties had agreed. As noted above, prior to their divorce, Ralph and Patricia owned all the mineral rights of the Brookhaven and Mallalieu oil fields as joint tenants with rights of survivorship. According to page five, paragraph thirteen of the PSA, the parties agreed to the following regarding the mineral rights:

The parties shall divide equally all mineral rights on the Brookhaven field, inclusive of, but not limited to, oil royalty proceeds (owner number 10040815). Patricia Callender shall waive any and all claims to the Mallalieu oil royalty proceeds (owner number 10029470) and Ralph Verdo Callender shall have exclusive rights to all mineral rights associated with the Mallalieu field.

Following the divorce, Ralph received all oil royalty proceeds from the Mallalieu field. For several years, Ralph received a single check for the Brookhaven field and gave half to

Patricia. Thereafter, Ralph and Patricia arranged to have their Brookhaven field checks sent to them separately. Patricia made no further claim to payments from the Mallalieu field for the next six years.

¶5. On August 15, 2016, Ralph died testate in Lincoln County, Mississippi. He was survived by his four children, including his son, Robert. Prior to his death, on July 20, 2016, Ralph executed a last will and testament in which Robert was named executor. Significant to this opinion, Ralph's will, Item I, addressed mineral rights:

After payment of my just debts, including the expenses of my last illness and burial, I hereby devise and bequeath all property owned by me, of every kind and character and wheresoever situated to Robert Earl Callender. This includes, but is not limited to my mobile home, mineral rights in the Brookhaven Oil Field and Mallalieu Oil Field.

¶6. On June 18, 2018, Robert, as executor, opened an Estate and in the Estate proceedings filed a petition for a declaratory judgment in the Lincoln County Chancery Court. In the petition, Ralph pleaded that Patricia claimed that she was the sole owner of certain interests in the Brookhaven and Mallalieu oil fields because the Mineral and Royalty Transfer Deeds deeded them to her and Ralph as joint tenants with rights of survivorship. Robert argued that all of the mineral rights and royalty proceeds of the Mallalieu field and one-half of the oil royalty proceeds of the Brookhaven Field were the property of Ralph's Estate pursuant to the PSA and Ralph's will. Patricia filed an answer to Robert's petition and a counter-petition on November 6, 2018, stating her position as noted above.

¶7. After hearing counsel on the matter, the chancery court granted Ralph's petition for a declaratory judgment on April 11, 2019. The court found that the PSA clearly defined the

interests of Ralph and Patricia. The court found that because there was a ten-year statute of limitations to challenge a real property interest, the limitations period on both Robert's petition and Patricia's counterclaim had not run.<sup>2</sup> Further, the court found that Patricia had waived her right to object the PSA's division of the mineral interests by accepting the royalty proceeds for years.<sup>3</sup> The chancery court held that Ralph's Estate owned an undivided one-half interest in all oil, gas, mineral, and royalty proceeds in the Brookhaven field and all oil, gas, mineral, and royalty proceeds in the Mallalieu field. The court vested the mineral interests owned by Ralph to his Estate.<sup>4</sup>

¶8. On April 15, 2019, Patricia filed a motion to amend the decree of declaratory judgment or to convene a new hearing pursuant to Mississippi Rule of Civil Procedure 59, arguing that the chancery court's decision amounted to a clear error of law for the following reasons: (1) that Ralph failed to make any attempt during his lifetime to present Patricia with an instrument or instruments to transfer oil, gas, and mineral rights as contemplated by the PSA; (2) that an agreement does not transfer legal title but provides a party with an equitable interest only; and (3) that she was the sole owner of the mineral interests by virtue of the

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<sup>2</sup> The chancery court raised the issue of the ten-year statute of limitations sua sponte during the motion for declaratory judgment hearing. But the statute of limitations is not at issue in this case.

<sup>3</sup> Patricia does not challenge this ruling on appeal.

<sup>4</sup> The decree of declaratory judgment stated the following: "In the event this Order is insufficient for the operator of the field to effect a Division Order, the [c]ourt authorizes Special Master, being Tillmon Bishop, Chancery Clerk, to sign any necessary documents to complete the intentions of this Order and vest the mineral interest heretofore owned by Ralph Callender in the Estate of Ralph Callender."

uncontroverted fact that Ralph is deceased and she survived him, without any other conveyance having taken place between them. Patricia requested a hearing to set aside the decree and/or amend the decree by adjudicating that she was vested with all rights, title, and interest in and to the oil, gas, and mineral rights originally conveyed to her and her former husband as joint tenants with rights of survivorship.

¶9. After a hearing, on July 22, 2019, the chancery court regarded her motion as a motion to reconsider and denied it, stating that she presented “no new laws, no new issues, and the issues thus raised ha[d] previously been adjudicated by the [c]ourt in its prior opinions.”

¶10. On August 15, 2019, Patricia appealed, arguing that the chancery court erred by declaring Ralph’s Estate be vested with mineral rights for the Brookhaven and Mallalieu oil fields. After reviewing the record, we find that there was substantial evidence to support the chancery court’s ruling.

### **Standard of Review**

¶11. “This Court will not overturn a chancellor’s findings of fact when supported by substantial evidence unless an erroneous legal standard was applied or the chancellor was manifestly wrong.” *Ehrhardt v. Donelson*, 221 So. 3d 393, 395 (¶9) (Miss. Ct. App. 2017) (quoting *Byrd v. Abney*, 99 So. 3d 1180, 1183 (¶11) (Miss. Ct. App. 2012)). “The standard of review employed by this Court for review of a chancellor’s decision is abuse of discretion.” *Id.*

### **Discussion**

¶12. Patricia argues that the chancery court erred by declaring that Ralph’s Estate be vested

with mineral rights because she and Ralph originally acquired title as joint tenants with rights of survivorship. She further argues that because she and Ralph acquired title as joint tenants with rights of survivorship, the final judgment of divorce and the PSA are irrelevant. We disagree.

¶13. “It is well-established in Mississippi law that a property-settlement agreement is a binding contract between the parties.” *Wilson v. Wilson*, 53 So. 3d 865, 869 (¶13) (Miss. Ct. App. 2011). “Once the agreement is incorporated into the judgment, they are not modifiable absent fraud, duress, or a contract provision allowing for modification.” *Id.* (citing *Ivison v. Ivison*, 762 So. 2d 329, 334 (¶14) (Miss. 2000)).

¶14. A PSA can terminate a joint tenancy with rights of survivorship. The Mississippi Supreme Court has stated that “a joint tenancy may be terminated by contract or agreement of the joint tenants as between themselves or may be deemed to have been terminated by implication when the parties enter into a valid contract containing provisions inconsistent with the continuance of the joint tenancy . . . .” *Parker v. Parker*, 434 So. 2d 1361, 1362 (Miss. 1983) (quoting *Shepherd v. Shepherd*, 336 So. 2d 497, 499 (Miss. 1976)). But there has to be evidence “to support the claim [that] the parties intended for the estate in entirety to be dissolved.” *Id.* (quoting *Shepherd*, 336 So. 2d at 499).

#### **A. Joint Tenancy with Rights of Survivorship**

¶15. Patricia argues that Ralph’s bequest of mineral rights was a unilateral attempt to avoid the joint tenancy that the mineral deeds created. Patricia cites *Huff v. Metz*, 676 So. 2d 264 (Miss. 1996), and *Ehrhardt v. Donelson*, 221 So. 3d 393 (Miss. Ct. App. 2017), both of

which held that a party cannot unilaterally sever a joint tenancy with rights of survivorship. In *Huff*, the Mississippi Supreme Court found that “Huff had no legal power to unilaterally revoke the survivorship provision of the joint tenancy in her will.” *Huff*, 676 So. 2d 265. In that case, Vera Huff conveyed a parcel of real property by warranty deed to herself and her grandmother Carole Metz as joint tenants with full rights of survivorship on September 28, 1982. *Id.* at 264. But on April 9, 1991, Huff executed a will that stated her intention was to leave one-half of the property to Metz and the other half of the property to her son John. *Id.* After Huff’s death, her will was filed for probate, and the chancery court ruled that the real property passed to Metz by virtue of the right of survivorship. *Id.* at 264-65. John appealed the ruling to the Mississippi Supreme Court. *Id.*

¶16. The Supreme Court cited *Shepherd*, which held that parties may validly terminate a joint tenancy by agreement or by entering into a contract that is inconsistent with a joint tenancy. *Id.* (citing *Shepherd*, 336 So. 2d at 499). But Huff had failed to secure consent, and Metz clearly did not consent to the termination of the joint tenancy. *Id.* Therefore, the chancery court did not err in ruling that the property passed to Metz. *Id.*

¶17. Following *Huff* in *Ehrhardt*, this Court found that the chancery court properly passed property to the surviving joint tenant because a tenant’s will alone does not defeat the joint tenancy with rights of survivorship. *Ehrhardt*, 221 So. 3d at 396 (¶13). Significantly this Court stated that there was no showing of intent, such as signed documents, that the surviving tenant wanted to sever the joint tenancy, and it was obvious that the surviving tenant did not agree to sever the joint tenancy with rights of survivorship. *Id.*

¶18. The facts of this case are distinguishable from *Huff* and *Ehrhardt* and are more akin to those in *Parker v. Parker*, 434 So. 2d 1361 (Miss. 1983). There, Bonnie Lou Parker and Carley Hugh Parker acquired property as joint tenants with rights of survivorship. *Id.* at 1361. The Parkers divorced and agreed to the following:

[Bonnie] is hereby awarded the use and possession of the jointly owned home located at 2006 Hands Drive, Gulfport, Mississippi, for a period of three (3) years, . . . and at the expiration of said three (3) year period, the house shall be placed on the market for sale and shall be sold at a figure not less than that determined as a result of two (2) independent appraisers, and the proceeds from the sale of said house shall be divided equally between the parties . . . .

*Id.* at 1361-62. Carley died prior to the expiration of the three-year period for the sale of the house provided in the divorce decree. *Id.* at 1362. The chancery court held that Carley's estate possessed an undivided one-half interest in the property, and the court enforced the provisions of the divorce decree for the sale of the property. *Id.* Bonnie appealed to the Mississippi Supreme Court, contending that there was no intention to destroy the joint tenancy, and therefore she should be vested with the entire fee simple title. *Id.* The Mississippi Supreme Court found that the firm agreement, which was incorporated into the divorce decree as a consent decree, amounted to a contract, and the contract clearly terminated the joint tenancy. *Id.* Therefore, the Supreme Court affirmed the chancery court's ruling.

¶19. Like *Parker*, in this case there was a clear agreement between Patricia and Ralph regarding the mineral rights in the Mallalieu and Brookhaven fields. Unlike *Huff* and *Ehrhardt*, in the present case, Ralph and Patricia's signed PSA documented this agreement.

As previously stated, in Mississippi, “a property-settlement agreement is a binding contract between the parties.” *Lindsay v. Lindsay*, 303 So. 3d 770, 784 (¶39) (Miss. Ct. App. 2020) (quoting *Wilson*, 53 So. 3d at 869 (¶13)). Ralph and Patricia’s PSA was clear and unambiguous, specifying:

**1. The Brookhaven Oil Field**

The parties shall divide equally all mineral rights on the Brookhaven field, inclusive of, but not limited to, oil royalty proceeds (owner number 10040815).

**2. The Mallalieu Oil Field**

Patricia Callender shall waive any and all claims to the Mallalieu oil royalty proceeds (owner number 10029470) and Ralph Verdo Callender shall have exclusive rights to all mineral rights associated with the Mallalieu field.

It is clear that both Ralph and Patricia intended to sever the joint tenancy with rights of survivorship in the mineral interests of both fields. Further, both Ralph and Patricia implemented the PSA and followed the provisions for six years until Ralph’s passing. After Patricia and Ralph’s divorce, Ralph received all of the mineral payments from the Mallalieu field. Ralph and Patricia then signed documents so that each received their own equal check from the proceeds of the Brookhaven field. Only after Ralph’s passing did Patricia attempt to claim the mineral rights and proceeds to both the Brookhaven and Mallalieu fields.

**B. Waiver**

¶20. Patricia also claims that Ralph waived the mineral rights provision in the PSA because he failed to present her with an instrument transferring the oil, gas, and mineral rights. She argues that *Weathersby v. Weathersby*, 693 So. 2d 1348 (Miss. 1997), is controlling. But

*Weathersby* is distinguishable from this case. In *Weathersby*, the PSA required that the wife designate an appraiser to value the marital home before she could collect a portion of the value. *Id.* at 1352. The Mississippi Supreme Court found that because the wife failed to carry out her responsibility in the PSA to select an appraiser, she waived her right to collect payments from her ex-husband for her share of the fair market value of the home. *Id.* In the present case, unlike *Weathersby*, there was no requirement that Ralph prepare and execute conveyances to confirm his and Patricia's agreement in the PSA concerning the mineral interests and royalty rights.<sup>5</sup>

¶21. The chancery court correctly relied on the substantial evidence of the PSA, which reflected the parties' intent to terminate the joint tenancy. Therefore, the chancery court did not abuse its discretion in following the PSA, vesting in Ralph's Estate an undivided one-half interest in all oil, gas, mineral, and royalty proceeds in the Brookhaven field and all of the oil, gas, mineral, and royalty proceeds in the Mallalieu field. Additionally, while it is understandable that Patricia might argue that her rights under the joint tenancy would only have accrued when Ralph died, the PSA not only dealt with the rights to proceeds but also the mineral interests itself. This clearly indicates that Patricia and Ralph agreed on the future ownership of the mineral interests.

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<sup>5</sup> Patricia briefly mentions that the PSA did not transfer legal title but equitable interest, citing *West v. West*, 88 So. 3d 735 (Miss. 2012). But that case is not on point and is easily distinguishable from this case. In that case, the PSA's language clearly stated that there was a transfer of "one-half (1/2) vested *equitable ownership interest*" in stock, and there was a statutory restriction on the transfer of restricted shares of corporate stock. *Id.* at 743 (¶31) (emphasis added). This case dealt with real property interest, i.e., mineral interests, and the parties never mentioned "equitable interest" in the PSA.

## **Conclusion**

¶22. Finding that there was substantial evidence that Ralph and Patricia's joint tenancy with rights to survivorship was implicitly severed by their PSA, we find that the chancery court did not abuse its discretion in vesting Ralph's Estate with one-half of the mineral rights in the Brookhaven oil field and all of the mineral rights in the Mallalieu oil field, as agreed to in the PSA. Accordingly, we affirm the chancery court's ruling.

¶23. **AFFIRMED.**

**BARNES, C.J., CARLTON AND WILSON, P.JJ., GREENLEE,  
WESTBROOKS, LAWRENCE AND McCARTY, JJ., CONCUR.**