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Estate Misconception & Presumed Grant: Navigating Mineral-Ownership Disputes After *Van Dyke*

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I. Introduction

Van Dyke v. Navigator Group, 668 S.W.3d 353 (Tex. 2023) was likely the most consequential and controversial oil-and-gas-related opinion issued by the Supreme Court of Texas in 2023.

The Court's primary holding—which established a new rebuttable presumption in some mineral-deed disputes—was monumental in and of itself. But the Court's secondary holding—arguably entirely dicta—could have even larger ramifications for resolving what will no doubt end up being billions of dollars in title disputes. This article attempts to answer two questions for each of the Court's historically significant holdings in *Van Dyke*: (1) how did we get here, and (2) where are we headed?

Part II discusses the Supreme Court of Texas's ordinary rules of instrument construction—which typically favor a holistic, plain-language interpretation of contracts and deeds so as to implement the intent of the parties as evidenced by the words of their agreement. Part III summarizes the *Van Dyke* opinion—including both of the Court's groundbreaking holdings. Part IV analyzes the history of the "estate misconception" and "legacy of the 1/8th" mistakes that ultimately led to the Court's creation of the *Van Dyke* rebuttable presumption. Part V analyzes the history of the "presumed grant" doctrine upon which the Court based its second historical *Van Dyke* holding. And Part VI discusses the questions answered by the Court's opinion as well as the many questions created (or at least left unanswered) by the opinion—which are likely to be litigated in the decades to come, as history determines the ultimate ramifications of the opinion's landmark rulings.

II. Plain Meaning, Holistic Construction, and Textualism

No one should be surprised that Texas's ordinary rules of instrument construction emphasize the actual words of the deeds as selected by the parties—*not* what the parties may have or likely intended but did not say. The Texas Supreme Court has made clear that the goal of construing an instrument "is to determine and enforce the parties' intent as expressed within the four corners of the" instrument. *Piranha Partners v. Neuhoff*, 596 S.W.3d 740, 743-44 (Tex. 2020). The Court has said that its "primary" duty is to give effect to the "intentions of the parties *as expressed in the instrument*." *J.M. Davidson, Inc. v. Webster*, 128 S.W.3d 223, 229 (Tex. 2003) (emphasis added). "To achieve this objective," courts "must examine and consider the entire writing in an effort to harmonize and give effect to all of the provisions of the contract so that none will be rendered

meaningless." *Id.* (citing *Universal C.I.T. Credit Corp. v. Daniel*, 150 Tex. 513, 243 S.W.2d 154, 158 (1951)). Finally, courts construing an instrument should neither disregard contract terms that don't support a favored construction nor "rewrite the parties' contract." *Fischer v. CTMI, L.L.C.*, 479 S.W.3d 231, 239 (Tex. 2016) (quoting *Am. Mfrs. Mut. Ins. Co. v. Schaefer*, 124 S.W.3d 154, 162 (Tex. 2003)). These plain-text-construction rules are in place because parties to an agreement "are free to decide their contract's terms, and the law's 'strong public policy favoring freedom of contract' compels courts to 'respect and enforce' the terms on which the parties have agreed." *Endeavor Energy Res., L.P. v. Discovery Operating, Inc.*, 554 S.W.3d 586, 595 (Tex. 2018) (citations omitted).

In recent years, the Texas Supreme Court has emphasized a "holistic approach" to construing an instrument's text. *E.g.*, *Hysaw v. Dawkins*, 483 S.W.3d 1, 13 (Tex. 2016). For the Court, that means construing "words and phrases … together and in context, not in isolation," and harmonizing "inconsistencies or contradictions … by construing the document as a whole." *Id.* (citing *Plainsman Trading Co. v. Crews*, 898 S.W.2d 786, 789 (Tex. 1995); *State Farm Life Ins. Co. v. Beaston*, 907 S.W.2d 430, 433 (Tex. 1995); *Luckel v. White*, 819 S.W.2d 459, 462 (Tex. 1991)). Further, the Court has recently said that it "eschew[s] reliance on mechanical or bright-line rules as a substitute for an intent-focused inquiry rooted in the instrument's words." *Hysaw*, 483 S.W.3d at 13.

The Court's description of its approach to instrument construction in some ways matches, and in some ways departs from, the version of textualism that Justice Antonin Scalia and Bryan Garner advocated for in *Reading Law: The Interpretation of Legal Texts*. In describing their "Supremacy-of-Text Principle," Scalia and Garner write that "[t]he words of a governing text are of paramount concern, and what they convey, in their context, is what the text means." ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 56 (2012). But Scalia and Garner make a key distinction between intent and meaning. For them, the purpose of focusing on an instrument's words is to give effect to *the instrument's meaning*—not *the drafter's intent*. *See id.* Said another way, the meaning of the text is what must be operative. *Id.* at 397. The text isn't evidence of what governs but is instead the thing that governs. *Id.* Criticizing a focus on *intent* rather than *meaning*, the authors wrote, "there is hardly a better way to unshackle oneself" from an instrument's text "than to minimize [the text] by calling it mere 'evidence'" of intent. *Id.* at 398.

Scalia and Garner also argue that although a document's purpose may inform its meaning, "the purpose is derived from the text, not from … an assumption about the legal drafter's desires." *Id.* at 56. They wrote that, "except in the rare circumstances of an obvious scrivener's error, purpose—even purpose as most narrowly defined—cannot be used to contradict text or to supplement it. Purpose sheds light only on deciding which of various *textually permissible meanings* should be adopted." *Id.* at 57.

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