IN THE SUPREME COURT OF TEXAS

NO. 01-0057

NATURAL GAS PIPELINE COMPANY OF AMERICA, MIDCON GAS SERVICES CORP., AND CHESAPEAKE PANHANDLE LIMITED PARTNERSHIP

v.

JOSEPH H. POOL, ET AL.

- consolidated with -

NO. 01-0058

NATURAL GAS PIPELINE COMPANY OF AMERICA, MIDCON GAS SERVICES CORP., AND CHESAPEAKE PANHANDLE LIMITED PARTNERSHIP

v.

JOSEPH H. POOL, ET AL.

ON PETITIONS FOR REVIEW FROM THE
COURT OF APPEALS FOR THE SEVENTH DISTRICT OF TEXAS

Argued on March 6, 2002

JUSTICE OWEN delivered the opinion of the Court, in which CHIEF JUSTICE PHILLIPS, JUSTICE HECHT, JUSTICE SCHNEIDER, JUSTICE SMITH, and JUSTICE WAINWRIGHT joined.

JUSTICE JEFFERSON filed a dissenting opinion.

JUSTICE O'NEILL and JUSTICE BRISTER did not participate in the decision.

We deny Respondents' motion for rehearing. We withdraw our opinion of August 28, 2003, and substitute the following in its place.

In these consolidated proceedings, lessors under three oil and gas leases contend that the leases terminated because intermittently over the years there were periods of time ranging from 30 to 153 days when there was no actual production. We do not decide whether the leases terminated because even assuming they did, the lessees thereafter acquired by adverse possession fee simple determinable interests in the mineral estates that are identical to those the lessees held under the leases. Accordingly, we reverse the judgments of the court of appeals and render judgments for petitioners.

I

Two separate suits were brought in the same trial court by the same lessors against the same defendants. The first suit involved two leases; the second suit involved a third lease. The cases were not consolidated in the trial court or the court of appeals, and the court of appeals issued an opinion in each case.[1] We consolidated the cases in this Court. For ease of reference, we will refer to the first-filed suit as *Pool 1*,[2] and the second as *Pool 2*.[3]

In *Pool 1*, two leases were executed by J. T. Sneed and his wife in 1926 and 1936, respectively. In a separate agreement, the leases were consolidated as to a portion of the lands they covered for purposes of natural gas exploration and production. The 1926 lease at issue in *Pool 1* provided it would remain in effect for a term of ten years and "as long thereafter as oil or gas, or either

[1] 30 S.W.3d 618; 30 S.W.3d 639.

[2] 30 S.W.3d 639.

[3] 30 S.W.3d 618.

of them, is produced from said land by the lessee." The 1936 lease similarly provided that it would remain in effect "so long as natural gas is produced."

A well, known as the J. T. Sneed #1 well, was drilled on the consolidated acreage, and it produced gas until a replacement well was drilled in 1994. The replacement well has produced without interruption. But according to records from the Texas Railroad Commission, there were periods of time when there was no production from the J. T. Sneed #1. Those periods were in August 1941, June through September 1963, July and August 1964, June 1979, March 1983, and July 1984. There is evidence that the J. T. Sneed #1 did not produce for 122 consecutive days in the summer of 1963 and for 62 consecutive days in 1964. The other periods of non-production were shorter.

The lease at issue in *Pool 2* was executed in 1937. It provided that "[s]ubject to the other provisions herein contained, this lease shall remain in force pending the commencement and continuation of drilling operations on said land as hereinafter provided, and as long thereafter as natural gas is produced and marketed from any well on said land."

Two producing wells were drilled on the acreage covered by the lease at issue in *Pool 2*. However, there was no actual production from either of these wells in August 1959, July and August 1960, June and July 1961, June through October 1963, July and August 1964, and June 1969. The periods of no actual production ranged from 30 to 153 days. Another well was drilled on the *Pool 2* lease in 1996, and it has produced in paying quantities without interruption.

The plaintiffs in the trial court, who are the respondents in this Court, are the successors of the Sneeds' interests in all three leases, and they contend that the leases terminated due to cessation of

production. They brought suit to quiet title, for trespass, conversion, and fraud, and for actual and exemplary damages. The defendants in the trial court, who are the petitioners in this Court, are Natural Gas Pipeline Company of America, MidCon Gas Services Corp., and Chesapeake Panhandle Limited Partnership. They are the current owners and operators of the leases. For simplicity, we will refer to them as the lessees. They contend that the leases did not terminate because there has been production in paying quantities at all times, notwithstanding the periods of non-production, or that production was restored within a reasonable period of time under the temporary cessation of production doctrine. In the alternative, the lessees contend that the lessors' claims are barred by laches, or that the lessees obtained a fee simple determinable in each of the mineral estates by adverse possession.

In both suits, the trial court granted motions for partial summary judgment in favor of the lessors, declaring in the partial summary judgment that the leases had terminated "due to one or more cessations of production from said land." The trial court then tried the remaining issues in *Pool 1* to a jury. In a verdict largely favorable to the lessees, the jury found that the lessees had produced gas in good faith after August 1964 and failed to find that the lessees had produced gas after 1964 as a result of fraud. The jury also found that the lessees' failure to produce gas was excused because the lessors were guilty of laches, and that the lessees had acquired title to the leases by adverse possession under the three-, five-, ten-, and twenty-five-year statutes of limitations. However, the jury found that the lessors had not executed any formal document that expressly recognized the validity of the leases and thus that the leases had not been revived. The trial court rendered judgment notwithstanding the aspects of the verdict that were favorable to the lessees. The trial court declared that the two leases

had terminated, and based on stipulated damage calculations, awarded $234,766.20 in actual damages to be paid by Natural Gas Pipeline and MidCon, and $545,416.79 in actual damages to be paid by Chesapeake Panhandle.[4] The trial court also awarded attorneys' fees and costs to the lessors.

The trial court tried the remaining issues in *Pool 2* to a different jury in a trial that began a few days after the conclusion of the *Pool 1* trial. Unlike the jury in *Pool 1*, the jury in *Pool 2* rendered a verdict that was entirely favorable to the lessors. The jury found that the lessees had acted in bad faith in producing gas after August 1964, that the lessees produced gas after that date as a result of fraud, that the lessors were not guilty of laches, that the lessees did not acquire title by adverse possession, and that the lessors had not executed any formal document that expressly recognized the validity of the lease and thus that the lease had not been revived. The trial court rendered a judgment declaring that the lease had terminated, that the lessees were jointly and severally liable for $1,522,754.93 in actual damages, that the lessors recover exemplary damages of $1,200,000 from Natural Gas Pipeline Co., $1,200,000 from MidCon and $1,200,000 from Chesapeake Panhandle, and awarded attorneys' fees, costs, and prejudgment interest.

The lessees appealed both judgments. In *Pool 1*, the court of appeals held that the leases had terminated due to cessation of production, the lessees could not establish adverse possession even if they were trespassers because they had not given notice of repudiation of the lessors' title, laches was

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[4] The lessees contended in the court of appeals that the damages awarded represented the amounts they had received for 7/8 of the gas produced, plus transportation costs, from a date four years before suit was filed until trial. The lessees argued that damages should have been calculated from only two years before suit was filed. The lessors contended, and the court of appeals held, that the stipulated amount correctly included damages from only two years before suit was filed. 30 S.W.3d at 648.

not a defense, the lessors were not entitled to attorneys' fees because the suit was essentially a trespass to try title action rather than an action for declaratory judgment, and certain offsets should be applied to reduce damages. The court of appeals accordingly modified and then affirmed the trial court's judgment.[5]

In *Pool 2*, the court of appeals held that the lease had terminated due to cessation of production, laches was unavailable as a defense, the lessors' execution of division orders did not revive the lease, the lessees did not establish adverse possession because there was no notice to the lessors that the lessees repudiated the lease, the evidence did not support the fraud finding and therefore exemplary damages were not recoverable, the evidence supported the finding that the lessors had produced gas in bad faith, the two-year limitations periods applied to the trespass and conversion claims for recovery of actual damages, and the lessors could not recover attorneys' fees. The court of appeals affirmed the trial court's judgment as modified.[6]

We granted the lessees' petitions for review. Because the lessees established adverse possession as a matter of law, and resolution of that issue is dispositive, we do not reach other issues presented by the lessees' petitions.

II

[5] 30 S.W.3d at 652-53.

[6] 30 S.W.3d at 638-39.

In Texas it has long been recognized that an oil and gas lease is not a "lease" in the traditional sense of a lease of the surface of real property.[7] In a typical oil or gas lease, the lessor is a grantor and grants a fee simple determinable interest to the lessee, who is actually a grantee.[8] Consequently, the lessee/grantee acquires ownership of all the minerals in place that the lessor/grantor owned and purported to lease, subject to the possibility of reverter in the lessor/grantor.[9] The lessee's/grantee's interest is "determinable" because it may terminate and revert entirely to the lessor/grantor upon the occurrence of events that the lease specifies will cause termination of the estate.[10] In the cases before us today, the lessors retained only a royalty interest. When an oil and gas lease reserves only a royalty interest, the lessee acquires title to all of the oil and gas in place, and the lessor owns only a possibility of reverter and has the right to receive royalties.[11] A royalty interest, as distinguished from a mineral interest, is a non-possessory interest.[12]

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[7] *Cherokee Water Co. v. Forderhause*, 641 S.W.2d 522, 525 (Tex. 1982).

[8] *See W. T. Waggoner Estate v. Sigler Oil Co.*, 19 S.W.2d 27, 28-29 (Tex. 1929).

[9] *Id*.

[10] *Id*.; *Cherokee Water Co.*, 641 S.W.2d at 525.

[11] *See W. T. Waggoner Estate*, 19 S.W.2d at 28; *see also* Walker, *Fee Simple Ownership of Oil and Gas in Texas*, 6 TEX. L. REV. 125, 128-29 (1928).

[12] *Concord Oil Co. v. Pennzoil Exploration and Prod. Co.*, 966 S.W.2d 451, 459 (Tex. 1998); *see also* Walker, *The Nature of the Property Interests Created by an Oil and Gas Lease in Texas*, 7 TEX. L. REV. 539, 547-48 (1929).

A mineral estate, even when severed from the surface estate, may be adversely possessed under the various statutes of limitations.[13] Once severance occurs, possession of the surface alone will not constitute adverse possession of minerals.[14] Generally, courts across the country including Texas courts have said that in order to mature title by limitations to a mineral estate, actual possession of the minerals must occur.[15] In the case of oil and gas, that means drilling and production of oil or gas.[16]

In order to acquire title under a statute of limitations, that statute's requirements must be met. In these cases, we consider the three-, five-, and ten-year statutes of limitations. Suit was filed in both cases more than ten years after the last cessation of actual production. The last period of nonproduction occurred in 1984 in *Pool 1* and in 1969 in *Pool 2*. Both suits were filed in 1998.

The three-year statute of limitations says: "A person must bring suit to recover real property held by another in peaceable and adverse possession under title or color of title not later than three years after the day the cause of action accrues."[17] The five-year statute says,

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[13] *See Hanks v. Magnolia Petroleum Co.*, 14 S.W.2d 348, 354 (Tex. Civ. App.–Eastland 1928), *aff'd*, 24 S.W.2d 5 (Tex. Comm'n App. 1930, judgm't adopted) (holding on rehearing that title to an oil and gas leasehold had been acquired by adverse possession under the five-year statute of limitations); *Lyles v. Dodge*, 228 S.W. 316, 317 (Tex. Civ. App.–Amarillo 1921, no writ); *Wallace v. Hoyt*, 225 S.W. 425, 426 (Tex. Civ. App.–Austin 1920, writ ref'd); *see also Mohoma Oil Co. v. Ambassador Oil Corp.*, 474 P.2d 950, 960 (Okla. 1970).

[14] *See Elliott v. Nelson*, 251 S.W. 501, 504 (Tex. 1923).

[15] *See Hunt Oil Co. v. Moore*, 656 S.W.2d 634, 641 (Tex. App.–Tyler 1983, writ ref'd n.r.e.); *Lyles*, 228 S.W. at 318 (citing *Gill v. Fletcher*, 78 N.E. 433 (Ohio 1906) and *Gordon v. Park*, 100 S.W. 621 (Mo. 1907)); *Mohoma Oil Co.*, 474 P.2d at 960; *Hope Land Mineral Corp. v. Christian*, 570 N.W.2d 268, 271 (Mich. Ct. App. 1997); *Thomas v. Rex A. Wilcox Trust*, 463 N.W.2d 190, 192 (Mich. Ct. App. 1990).

[16] *See generally Hunt Oil Co.*, 656 S.W.2d at 641.

[17] TEX. CIV. PRAC. & REM. CODE § 16.024.

> (a) A person must bring suit not later than five years after the day the cause of action accrues to recover real property held in peaceable and adverse possession by another who:
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> (1) cultivates, uses, or enjoys the property;
> (2) pays applicable taxes on the property; and
> (3) claims the property under a duly registered deed.[18]

The jury in this case was instructed that "an oil and gas lease is to be considered as a deed." The ten-year statute of limitations requires suit to be brought within ten years "to recover real property held in peaceable and adverse possession by another who cultivates, uses, or enjoys the property."[19]

"Adverse possession" is defined in the Civil Practice and Remedies Code as "an actual and visible appropriation of real property, commenced and continued under a claim of right that is inconsistent with and is hostile to the claim of another person."[20] "Peaceable possession" is defined as "possession of real property that is continuous and is not interrupted by an adverse suit to recover the property."[21]

The court of appeals concluded in these cases that the lessees' continuation of oil and gas operations and possession of the minerals after the leases terminated[22] was not adverse because no notice of repudiation had been given to the lessors. The court reasoned in *Pool 2* that because the

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[18] *Id.* § 16.025(a).

[19] *Id.* § 16.026(a).

[20] *Id.* § 16.021(1).

[21] *Id.* § 16.021(3).

[22] We reiterate that we do not reach whether the court of appeals correctly held that the leases had terminated.

lessees' original possession of the mineral estate was permissive, adverse possession could not be established "unless notice of the hostile nature of the possession or repudiation of [the record title owners'] title is clearly manifested."[23] The court of appeals employed similar reasoning in *Pool 1*.[24]

We first consider the relationship between the parties, which guides us in determining whether the lessees' possession was adverse. The parties to the leases were not co-tenants. As discussed above, the lessors retained only a royalty interest and the possibility of reverter. The lessors had no right to possess, explore for, or produce the minerals. The exclusive right to do so was conveyed to the lessees. Accordingly, even when the lease was in effect, there was no co-tenancy.[25] More importantly, if the leases terminated as the lessors contend, the lessees retained no interest whatsoever in the minerals. The entire mineral interest reverted to the lessors. There was no co-tenancy.

A lessee's position after a lease expires is more analogous to one holding over after the execution of a deed or after a judgment vesting title in another is entered. We have long said that "as a general rule, a party holding over after the execution of a deed or the rendition of an adverse judgment is merely a permissive tenant."[26] In such circumstances, "possession cannot be considered adverse until the tenancy has been repudiated, and notice of such repudiation has been brought home to the

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[23] 30 S.W.3d at 629.

[24] 30 S.W.3d at 644-45.

[25] *See In re Bass*, ___ S.W.3d ___ (Tex. 2003).

[26] *See, e.g., Tex-Wis Co. v. Johnson*, 534 S.W.2d 895, 899 (Tex. 1976) (citing *Sweeten v. Park*, 276 S.W.2d 794 (Tex. 1955) and *Kidd v. Young*, 190 S.W.2d 65 (Tex. 1945)).

titleholder."[27] But we have said that actual notice of repudiation is not required. Rather, notice can be inferred, or there can be constructive notice.[28]

This Court held in *Tex-Wis Co. v. Johnson* that a "jury [may] infer notice of a repudiation without any change in the use of the land," if there has been "long-continued use."[29] In *Tex-Wis*, the Court cited some of its early decisions to that effect. One of those decisions was *Vasquez v. Meaders.*[30] This Court said in that case:

> It is not necessary that actual notice of adverse claim and disseisin be given to the landlord. It is sufficient if constructive notice is given, and constructive notice will be presumed where the facts show, as they do in this case, that the adverse occupancy and claim of title to the land involved in this suit has been long continued, open, notorious, exclusive and inconsistent with the existence of title in the respondent.[31]

The Court also quoted at length from the decision in *Mauritz v. Thatcher*:

> It is the settled law in this state that a tenant cannot dispute the title of his landlord by setting up a title either in himself or in a third person during the existence of his tenancy until such notice of a termination thereof is given to the landlord as amounts to an actual disseizin. Limitation upon an adverse possession in a case of this kind begins to run from the time of such notice of a termination of tenancy. It is not necessary, however, that actual notice of an adverse holding and disseizin be given to a cotenant or owner. Such notice may be constructive and will be presumed to have been brought home to the co-tenant or owner when the adverse occupancy and claim of title to the property is so long-continued, open, notorious, exclusive and inconsistent with the existence of title in others, except the occupant, that the law will raise the

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[27] *Id.*

[28] *Id*.

[29] *Id.*

[30] 291 S.W.2d 926 (Tex. 1956).

[31] *Id.* at 928.

> inference of notice to the co-tenant or owner out of possession, or from which a jury might rightfully presume such notice.[32]

This Court had articulated the same principles even earlier in *Moore v. Knight*.[33] The Court also said in *Moore* that the failure of the record titleholder to assert a claim during long-continued possession was highly significant from an evidentiary perspective: "Long-continued possession and assertion of claim by one tenant with nonclaim on the part of one out of possession has always been regarded as a strong circumstance tending to authorize an inference of notice of the adverse possession."[34]

In this case, the lessors asserted no claim for at least fourteen years with regard to the *Pool 1* leases, and for at least twenty-nine years with regard to the *Pool 2* lease. That is a strong circumstance tending to authorize an inference of notice of adverse possession. There is also uncontroverted evidence that the lessees' long-continued possession was "open, notorious, exclusive, and inconsistent with the existence" of title to all the minerals in the lessors.

It is important to bear in mind that the lessees were not required to give actual or constructive notice that they were no longer claiming an interest under the *leases*, but instead that they were claiming an interest that was inconsistent with the lessors' title to all the minerals when the leases expired. Thus, it was not the leases that the lessees must have been adverse to, but the lessors' fee title to all the

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[32] *Id.* at 929 (quoting *Mauritz v. Thatcher*, 140 S.W.2d 303, 304 (Tex. Civ. App.–Galveston 1940, writ ref'd)).

[33] 94 S.W.2d 1137, 1139-40 (Tex. 1936).

[34] *Id.* at 1140.

minerals after the leases allegedly terminated. The lessees continued to claim rights under the leases, and it was that claim that was adverse to the lessors' fee title, unencumbered by the leases.

It is also important to recognize that the holding over of an oil and gas lessee after the lease has expired can differ from a tenant of the surface with regard to what is "open, notorious, exclusive, and inconsistent." A tenant of the surface that holds over and does nothing more than continue to occupy the premises as before, paying the same rent as before, is not in the same position as an oil and gas lessee who holds over. Surface leases do not typically contemplate that the tenant will remove permanent fixtures on or improvements to the property or consume or destroy the property itself. But an oil and gas lease contemplates that the mineral estate itself may be permanently and irrevocably depleted by removing and exhausting the minerals. An oil and gas lessee that holds over continues to physically remove and dispose of the very valuable, non-renewable minerals for its own account. Such actions are by their nature hostile to the lessor's ownership of all the minerals in place once the lease expires and the mineral estate reverts to the lessor in its entirety.

In both of the cases before us, the court of appeals relied on a decision from this Court, *Killough v. Hinds*.[35] In the *Killough* case, Hinds acquired an oil and gas lease on forty acres of land, the surface of which was owned by the Killoughs or their predecessors. Hinds and his wife were given permission by the surface owners to construct a home on the property. Hinds later sold his interest in the oil and gas lease to a third party, but he and his wife continued to live on the surface of the property.

[35] 338 S.W.2d 707 (Tex. 1960).

This Court held that Hinds had failed to establish title to the surface under the ten-year statute of limitations because "the erection of the barn, pig pen, chicken house and the grazing of milk cows, all of which were relied on to show adverse possession," were not "inconsistent with the permissive use and the right by which Hinds entered upon and occupied the property and built his residence, nor are they sufficient as a matter of law to afford the record owner constructive notice of a repudiation of that permissive use."[36]

In *Killough* we relied on and quoted from an earlier decision of this Court, *Evans v. Templeton*,[37] in explaining "the character of evidence necessary to show constructive notice of repudiation to the record owner."[38] Quoting *Evans*, we said:

> In order to make the plea of limitation effectual in such case, he must show some notorious act of ownership over the property, distinctly hostile to the claim of the grantee; and the adverse possession after this must continue for a sufficient length of time before suit to complete the statutory bar. The "possession must not only be actual, but also visible, continuous, notorious, distinct and hostile, and of such a character as to indicate unmistakably an assertion of claim of exclusive ownership in the occupant."[39]

There is evidence of a "notorious act of ownership over the property, distinctly hostile to the claim of the" lessors that "indicate[s] unmistakably an assertion of claim of exclusive ownership" to show notice in the cases before us today. Assuming that the leases terminated because of cessation of

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[36] *Id*. at 710.

[37] 6 S.W. 843 (Tex. 1887).

[38] *Killough*, 338 S.W.2d at 711.

[39] *Id*.

actual production, an issue that we again note we are not deciding, the character of the lessors' real property interests changed dramatically and instantaneously, as did the lessees' interests, as we have explained above. The lessors had owned a mere possibility of reverter in the respective mineral interests as long as the leases covering those interests remained in effect. The lessors had no right to possess or explore for minerals. That right had been granted in toto to the lessees. The lessees had the right to explore for and remove all of the oil and gas from the premises, subject only to the obligation to pay royalties on the oil and gas that was actually produced. And if the lessees did not properly account to the lessors for that royalty, the leases would not terminate. The lessors would be relegated to bringing suit to recover the unpaid royalties. As long as the leases continued in effect, the lessees were entitled to recover and sell one hundred percent of the oil and gas, to the point of totally exhausting those valuable resources. Once the leases terminated, the lessees had no right to explore for, produce, or sell any of the oil and gas, much less one hundred percent of all that was produced. Those rights reverted to the lessors. Thereafter, it was the lessors that had the exclusive right to all the proceeds from production, subject only to an equitable accounting to the former lessees for the actual cost of production.

After the leases allegedly terminated, the lessees' continued production and sale of all the oil and gas and payment of royalty on only a relatively small percentage of the proceeds was open, notorious, and hostile to the lessors, who received payments each month of only a 1/8 royalty for more

than ten years after they say the leases terminated.[40] Moreover, the lessees drilled new wells after the time the lessors contend the leases terminated. The act of drilling wells is an act hostile to the lessors' exclusive right to explore for and remove the valuable minerals as well as the lessors' exclusive right to make the decision *whether* to drill and therefore impact the speculative value of the mineral estate if the well were unsuccessful.

Our conclusion is consistent with the Fifth Circuit's decision in *St. Louis Royalty Co. v. Continental Oil Co.*,[41] in which the facts were similar to those before us today. In *St. Louis Royalty Co.*, the lessors brought suit long after the lessees had conducted successful exploration, drilling, and production operations, contending that the lease had expired many years earlier because there was no actual production during the primary term. The lease had a 60-day drilling clause, and a well had been successfully drilled during the 60-day period after the primary term expired. The Fifth Circuit held that the well maintained the lease under the 60-day clause. But that court also held, as an alternative ground, that the lessees "by open, notorious, and adverse possession for more than five years with payment of taxes, under a claim of right brought home to plaintiff, acquired a good and perfect title, to the leasehold interest."[42] The opinion in *St. Louis Royalty Co.* further observed that "the things

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[40] *See generally Thomas v. Rex A. Wilcox Trust*, 463 N.W.2d 190, 192-93 (Mich. Ct. App. 1990) (holding adverse possession established against co-owner of mineral interest because the other owner "had openly, notoriously, exclusively, and successively possessed full working interests in the oil and gas leases under color of title" and had "received one hundred percent of the working interests proceeds generated by operation of the wells" even though the co-owner owned one-half of the mineral interest).

[41] 193 F.2d 778 (5th Cir. 1952).

[42] *Id.* at 780.

[lessees] were doing were not done secretly and in a corner, but openly and in the face of all the world, with full knowledge thereof brought home to plaintiff and its predecessors in title."[43] Our Court later described *St. Louis Royalty Co.*'s alternative holding and the facts supporting it, saying,

> [T]he plaintiff and its predecessors in title, although fully informed of the lessee's claim to and operations under the lease, did not assert that the same had terminated until some ten years after the end of the primary term, during which time the lessee had developed the property by drilling seven producing wells. . . . The [Fifth Circuit] then went on to say that if the leases had lapsed, the plaintiff was still not entitled to recover because the evidence established as a matter of law that the defendants had perfected a limitation title to the leasehold estate.[44]

In the cases before us today, the fact that the lessees were claiming the right and title to all of the production and the right to drill and explore for oil and gas, subject only to the royalty obligation, was open and notorious and was hostile to the lessors' claim that all title and interest reverted to the lessors and that the lessees ceased to own any interest in the minerals. As one noted treatise has concluded, "a lessee who develops and produces under a lease which previously terminated may acquire title to such lease by adverse possession."[45]

The lessors also contend that the lessees' possession was never "adverse" because the lessees did not recognize that the leases had terminated when they continued operations and therefore lacked

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[43] *Id*. at 782.

[44] *Stanolind Oil & Gas Co. v. Newman Bros. Drilling Co.*, 305 S.W.2d 169, 172 (Tex. 1957).

[45] 1 KUNTZ, A TREATISE ON THE LAW OF OIL AND GAS § 10.5, at 280 (1987). We also note that the court of appeals' decisions in the *Pool* cases regarding adverse possession were questioned by at least one commentator. *See* 3 WILLIAMS & MEYERS, OIL AND GAS LAW § 604.9 n.7 (2002) (noting that the requirement of "actual notice of adverse possession through some type of act of repudiation after the lease has automatically terminated for lack of production . . . appears to be inconsistent with the fee simple determinable/automatic termination feature of oil and gas leases").

the requisite intent to adversely possess the mineral interests. Our decision in *Calfee v. Duke*[46] leads us to disagree with this contention. In that case, Calfee, an heir to J.H. Duke, occupied approximately 248 fenced acres of land. His deed from his parents did not include 24 of those acres. The other Duke heirs brought a trespass to try title suit, claiming that they and Calfee became co-tenants upon Calfee's parents' death with regard to the 24 undeeded acres. We observed that Calfee "never thought of himself as claiming adversely to anyone for the simple reason that he thought he was the rightful owner and had no competition for that ownership."[47] We held that this satisfied the statute's requirement of adverse possession:

> That being his claim of right, and it being coupled with his actual and visible possession and use, the adverse claim and possession satisfy the statutory requirements and cannot be defeated by Calfee's lack of knowledge of the deficiency of his record title or by the absence of a realization that there could be other claimants for the land.[48]

In the cases before us today, the lessors essentially contend that the lessees should have notified them that the leases had terminated and that the fee interest in the minerals had reverted to the lessors. This is tantamount to saying that the running of limitations is suspended until the record titleholder obtains actual knowledge of what it owns. This is a novel proposition indeed. It would mean, for example, that limitations would be suspended whenever heirs did not realize that they had inherited an interest. That has never been the law in Texas. A record titleholder's ignorance of what it owns does

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[46] 544 S.W.2d 640 (Tex. 1976).

[47] *Id.* at 642.

[48] *Id*.

not affect the running of limitations. The lessees' possession of the mineral estates in the cases before us today was adverse, and all the requirements of the three-, five-, and ten-year statutes of limitations were met.

Statutes of limitations require someone with a claim to assert that claim within a specified period of time, and the statutes of limitations dealing with real property are no different. The Legislature has required those claiming an interest in real property to "bring suit" within certain periods of time.[49] Statutes of limitations are designed "to compel the assertion of claims within a reasonable period while the evidence is fresh in the minds of the parties and witnesses"[50] and to "prevent litigation of stale or fraudulent claims."[51] The lessors in the cases before us contend that title reverted to them a number of years ago, perhaps as long as 57 years before suit was filed under the *Pool 1* leases, and as long as 39 years before suit was filed under the *Pool 2* lease. The last occasion when title could have reverted under the *Pool 1* leases was 14 years before suit was filed, and for the *Pool 2* lease, it was 29 years. These are the types of claims that statutes of limitations were intended to foreclose.

Our decision should not be read as awarding fee simple absolute interests to the lessees in the oil and gas resources at issue. The lessees acquired the same interest that they adversely and

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[49] *See, e.g.*, TEX. CIV. PRAC. & REM. CODE §§ 16.024, 16.025, 16.026.

[50] *Computer Assocs. Int'l, Inc. v. Altai, Inc.*, 918 S.W.2d 453, 455 (Tex. 1996) (citing *Price v. Estate of Anderson*, 522 S.W.2d 690, 692 (Tex. 1975) and *Gaddis v. Smith*, 417 S.W.2d 577, 578 (Tex. 1967)).

[51] *Robinson v. Weaver*, 550 S.W.2d 18, 20 (Tex. 1977).

peaceably possessed, that is, the oil and gas leasehold estates as defined by the original leases.[52] Those interests are fee simple determinable interests in the respective properties on the same terms and conditions as the original leases. The terms that made the original mineral estates "determinable" continue to apply to the fee simple determinable interests acquired by adverse possession.

The court of appeals accordingly erred in failing to hold that the lessees acquired leasehold interests by adverse possession.

III

In *Pool 1*, the lessors have brought forward a cross point in which they contend that some of the instructions and definitions in the trial court's charge to the jury on the limitations issues were incorrect. Among these complaints is the contention that the definition of "Notice of repudiation" accompanying the question regarding the ten-year statute of limitations allowed the jury to find adverse possession based on "long-continued" possession coupled with a repudiation that occurred less than ten years before suit was filed. The trial court's instruction said in pertinent part:

> You are instructed that, with respect to this question only, "adverse possession" means that the Plaintiffs or their predecessors as titleholders, had notice that the Defendants' gas lease has been repudiated, and Defendants were in peaceable and adverse possession of the lease and drilled for or operated and produced gas from wells thereon and used or enjoyed the property under a title instrument for a period of ten (10) years after August of 1964. For purposes of this instruction, a gas lease is to be considered as a title instrument.

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[52] *See generally St. Louis Royalty Co. v. Continental Oil Co.*, 193 F.2d 778, 780 (5th Cir. 1952); 1 KUNTZ, *supra* note 45 § 10.5, at 280 (concluding that "a lessee who develops and produces under a lease which previously terminated may acquire title to such lease by adverse possession"); 1 WILLIAMS & MEYERS, *supra* note 45 § 224.1, at 355 ("[A]n adverse possessor acquires no greater interest than that claimed . . . .").

> "Notice of repudiation" may be inferred to have been brought home to a titleholder where there has been long-continued possession by the adverse possessor under a claim of ownership coupled with the non-assertion of claim by the titleholder; by "non-assertion of claim by titleholder" means the absence of an overt act of ownership on part of the record owner which is inconsistent with the possession of the adverse possessor.

The language explaining "notice of repudiation" substantially tracks the holding of this Court in *Tex-Wis Co. v. Johnson*,[53] which concerned the fee simple title to a tract of land. This Court said, "[W]e hold that the jury may infer that notice of repudiation has been brought home to the titleholder where there has been (1) long-continued possession under claim of ownership and (2) nonassertion of claim by the titleholder."[54] In that case, Alexander lost title to 96 acres of a 150-acre tract in foreclosure proceedings. He, and after him his family, nevertheless continued to occupy the entire 150-acre tract for 34 years, from 1921 to 1955, without any intervening claim by the record titleholder.[55] This Court held that this extended period of time was evidence from which the jury could infer notice of repudiation to the record titleholder.[56] The Court explained that its holding was an application of rules regarding circumstantial evidence:

> [Our holding] is nothing more than an application of the rule of circumstantial evidence that the existence of certain facts tends to support a reasonable inference that the record owner has been put on notice that the tenancy has been repudiated. To this extent, both satisfy the rationale for requiring such notice. Where a tenancy relationship

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[53] 534 S.W.2d 895, 901 (Tex. 1976).

[54] *Id*.

[55] *Id*. at 898 n.2.

[56] *Id.* at 902.

> has arisen, the landlord is normally justified in assuming that the tenant's use of the premises is permissive and in recognition of the landlord's title. However, under certain circumstances, this assumption ceases to be justifiable. Thus acts which are inconsistent with the original use of the property may be sufficient to put the owner on notice that the tenancy has been repudiated. The same has been held to be true in cases of long-continued possession by the tenant under claim of ownership where the landlord has failed to assert any claim. Under such circumstances, the jury may find that continued reliance on the tenancy by the landlord was unreasonable and unwarranted.[57]

We further explained that the extended period of possession must have occurred and thus have constituted notice of repudiation before the applicable statute of limitations began to run.[58] We reiterated what had been said in *Sweeten v. Park*,[59] which was that possession for three and one-half years before the limitations period began was insufficient.[60] But we said in *Tex-Wis* that "24 years in excess of the 10-year statutory period falls within the *Mauritz*[61] rule, as constituting 'long-continued' possession."[62]

In *Pool 1*, the first period when there was no actual production under the leases occurred in 1941, 57 years before suit was filed and 47 years before the ten-year statute allegedly began to run. The last period of nonproduction occurred in 1984, fourteen years before suit was filed and four years before the ten-year statute allegedly began to run. It is thus unclear why the date of August 1964 was

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[57] *Id*. at 901.

[58] *Id.* at 901-02.

[59] 276 S.W.2d 794 (Tex. 1955).

[60] *Tex-Wis Co.*, 534 S.W.2d at 902.

[61] *Mauritz v. Thatcher*, 140 S.W.2d 303 (Tex. Civ. App.–Galveston 1940, writ ref'd).

[62] *Tex-Wis Co.*, 534 S.W.2d at 902.

used in the instruction regarding the ten-year statute of limitations. But we need not parse through whether another date should have been used, or whether a four-year period of possession before a ten-year period of possession occurred would be adequate to comport with the "long-continued possession" principles set forth in *Tex-Wis* and the cases cited therein. For the reasons discussed above in section II, as a matter of law, the lessors were put on notice that the lessees' claims were hostile to the claim that the lease had terminated when the lessees continued to operate the leases, produce oil or gas, sell it, and pay only a royalty to the lessors. Adverse possession under the ten-year statute was conclusively established. Any error in the charge to the jury was harmless. And, because adverse possession under the ten-year statute of limitations was established as a matter of law, we need not consider whether there was any error in the charge to the jury regarding the three- and five-year statutes of limitations.

IV

As noted throughout this opinion, we have not reached the question of whether the leases terminated due to cessation of production. Specifically, it is unnecessary to decide whether the terms "is produced" or "so long as natural gas is produced" as used in the leases before us mean that the leases would terminate whenever actual production ceased, or instead, whether the leases would terminate only when production in paying quantities ceased. Nor do we decide whether the doctrine of temporary cessation of production includes or should include cessation of production for economic reasons.

The dissent contends that in deciding these cases based on statutes of limitations, we have "put[] the cart before the horse."[63] The dissent proposes that these cases be remanded for a trial of fact issues that it concludes are raised under its view of the temporary cessation of production doctrine.

For reasons of judicial economy, this Court has long required that dispositive issues must be considered and resolved and that a judgment moving the case to the greatest degree of finality must be rendered. We held in *Bradleys' Electric, Inc. v. Cigna Lloyds Insurance Co.* that when a party presents multiple grounds for reversal of a judgment on appeal, appellate courts should first address issues that would require rendition.[64] In accord with that principle, in *CMH Homes, Inc. v. Daenen*, we addressed whether the evidence was legally sufficient to support the judgment, and concluding that it was not, rendered judgment without considering whether venue was proper.[65] Any error in venue would have only required a remand.[66] We similarly have admonished courts of appeals that "[p]rior to ordering a remand, points calling for rendition of judgment should be considered."[67] The disposition of the statutes of limitations questions resolves the cases before us, and therefore, we do not reach other issues presented.

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[63] __ S.W.3d at __ (JEFFERSON, J., dissenting).

[64] 995 S.W.2d 675, 677 (Tex. 1999).

[65] 15 S.W.3d 97, 99 (Tex. 2000).

[66] *Id*.

[67] *Lone Star Gas Co. v. R.R. Comm'n of Tex.*, 767 S.W.2d 709, 710 (Tex. 1989).

For the foregoing reasons, we hold that the court of appeals erred in failing to hold that the lessees in these two cases acquired fee simple determinable mineral estates by adverse possession. Accordingly, we reverse the judgments of the courts of appeals and render judgments for the lessees.

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Priscilla R. Owen
Justice

OPINION DELIVERED: December 19, 2003