Judgment rendered March 1, 2017.
Application for rehearing may be filed
within the delay allowed by Art. 2166,
La. C.C.P.

No. 51,212-CA

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

* * * * *

PETRO-CHEM OPERATING COMPANY, INC. — Plaintiff-Appellee

versus

FLAT RIVER FARMS, L.L.C., LOTT COMPANY, L.L.C., JON G. BLACK, L.L.C., DEBRA K. IRELAND, INDEPENDENT EXECUTRIX FOR THE ESTATE OF MAXINE HART PREWITT, G. KEITH CHRISTY, M.D. AND DESRA K. SELPH, N/K/A DESRA KAY BURCH, INDEPENDENT ADMINISTRATRIX FOR THE ESTATE OF ALTHEA HARRIS HART AND BERNADETTE M. HART — Defendants-Appellants

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Appealed from the
Twenty-Sixth Judicial District Court for the
Parish of Bossier, Louisiana
Trial Court No. 135178

Honorable Edward Charles Jacobs, Judge

* * * * *

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* * * * *

Before MOORE, LOLLEY, and PITMAN, JJ.

LOLLEY, J.

This appeal arises from a judgment by the 26th Judicial District Court, Parish of Bossier, State of Louisiana. Petro-Chem Operating Company, Inc., filed a concursus action seeking to resolve competing ownership interests in minerals for land on which it was operating. The trial court issued a partial final judgment on cross motions for summary judgment. Bernadette M. Hart, Jon G. Black, LLC, and McDonald Land Services, Inc., now appeal certain portions of that judgment. Specifically, Bernadette M. Hart appeals the ruling that the mineral servitude on the subject property prescribed for nonuse, and Jon G. Black, LLC, and McDonald Land Services, Inc., appeal the ruling that use of a notarial affidavit of correction is invalid for reservation of mineral rights previously omitted in an authentic act. For the following reasons, we affirm the judgment of the trial court.

FACTS

Upon discovering potential issues concerning the ownership of mineral rights on certain property in Bossier Parish, Louisiana, Petro-Chem Operating Company, Inc. ("Petro-Chem"), filed this concursus proceeding to determine actual ownership of those mineral interests, as well as past and future production proceeds associated with those mineral interests. Determination of who actually owns the mineral interests is dependent on the prescription of nonuse of a mineral servitude on March 3, 2004, as well as the validity of notarial affidavits of correction in connection with the reservation of mineral rights.

Prescription of the Hart Servitude

On March 3, 1994, Max Hart Jr., now deceased, and his wife, Bernadette M. Hart, executed a cash sale deed transferring an undivided

three-fourths interest in 707 acres of land to Flat River Farms, LLC ("Flat River"), subject to a mineral reservation ("the Hart Servitude").[1] Flat River became the surface owner of property in Bossier Parish, Louisiana, but the Harts retained ownership of the mineral rights, which contingent upon use of such servitude would prescribe after 10 years if no actual drilling operations commenced to interrupt the running of prescription.

Larry Lott of Lott Company, LLC (collectively "Lott"), also owned certain portions of land within section 11 subject to the Hart Servitude. On April 9, 1998, Lott granted a warranty easement deed to the United States Department of Agriculture (the "USDA"). Another easement was granted to the USDA by Flat River on April 28, 1999.[2] These easements were both subject to the Harts' rights per the Hart Servitude previously established on the property.

On May 9, 2001, the Harts entered into a three-year oil, gas, and mineral lease ("the Hart Lease") with Spanoil Exploration, LLC ("Spanoil"). This lease granted Spanoil drilling rights on the land within the Hart Servitude until May 9, 2004, even though, without use, the Hart Servitude would prescribe on March 3, 2004.

On January 8, 2002, preparation to begin drilling operations within the Hart Servitude commenced with the Louisiana Commissioner of Conservation creating a drilling and production unit, titled Swan Lake Prospect. This unit contained the lands covered by the Hart Servitude,

[1] The property was located in certain portions of sections 3, 10, 11, 14, and 15 of Township 15 North, Range 11 West, Bossier Parish, Louisiana.

[2] These easements are landowner-created restrictions on land use under the Wetlands Reserve Program and require the landowner to obtain a Compatible Use Authorization ("CUA") permit from the National Resource Conservation Service ("NRCS") before drilling in the protected area.

notably the portion within section 11, which is the subject of this matter. Petro-Chem, operator for the working interest owners of the Hart Servitude, is the designated operator for the entire unit, including Section 11.

On December 17, 2003, Petro-Chem requested that Lott, as landowner, acquire CUA permits for two wells, one outside of the Hart Servitude, and a second one, Lott 11 No. 1 ("the Lott well"), which was within the Hart Servitude in section 11. On January 20, 2004, the NRCS issued the requested CUA permits, and on March 28, 2004, Petro-Chem spudded the Lott well in section 11.[3] It is undisputed that this was the first well spudded within the Hart Servitude—25 days after the Hart Servitude prescribed—and no other drilling activity, which would have interrupted prescription, took place previous to spudding the Lott well. Petro-Chem continued to operate in the Swan Lake area, including the area within the Hart Servitude area, and it was not until 2008, when a title company discovered the issue, that Petro-Chem became aware of the possibility that the Hart Servitude had prescribed before drilling operations commenced.

To resolve the issue of the mineral rights' ownership, Petro-Chem filed this concursus proceeding naming as defendants Hart and the other surface land owners in succession who stand to gain ownership of the mineral rights to respective owned property within the Hart Servitude if it has prescribed, those being: Raymond J. Lasseigne; Lott Company, LLC; Jonathan G. Black and Melissa Black; Flat River; Jon G. Black, LLC; McDonald Land Services, Inc.; and, G. Keith Christy, M.D. and Katherine

[3] A "spud date" is the date the drill bit penetrates the surface of the earth and is considered to be the date actual drilling operations are commenced for the interruption of prescription. *See* La. R.S. 31:30.

Christy (collectively "Competing Claimants").[4] The Competing Claimants filed motions for partial summary judgment on the grounds that the Hart Servitude prescribed for nonuse on March 3, 2004. Hart filed a motion for summary judgment seeking a declaratory judgment that the Hart Servitude was maintained and still in existence on the grounds that inclement weather and the USDA easements created obstacles which suspended the running of prescription, in accordance with La. R.S. 31:59,

The trial court denied Hart's motion, and granted the motions for partial summary judgment in favor of the Competing Claimants. Hart appeals that ruling.

Validity of Acts of Correction

The second appealed portion of the partial final judgment concerns ownership of a specific tract of land within the Hart Servitude. Only some of the Competing Claimants are parties involved in this particular issue, namely: Lasseigne, Lott, Jon G. Black, LLC ("Black") and McDonald Land Services, Inc. ("McDonald"). In 2004, Lott sold Lasseigne a 63-acre tract of land in sections 14 and 15 ("Tract A"). Later, Black sought to buy Tract A, and hired Interstate Title Company ("Interstate") and notary Becky Lambert to manage the transaction.

Interstate discovered a defect in the 2004 sale of Tract A from Lott to Lasseigne. In order to correct this defect, Lott and Lasseigne exchanged Tract A with another piece of property owned by Lott in section 11 ("Tract

[4] At the time Petro-Chem learned the Hart Servitude had possibly prescribed for nonuse, it had paid Hart over six years of royalty payments. Petro-Chem has filed a contingency claim against Hart for return of royalty payments, and Hart has also filed a contingency claim against Petro-Chem for damages should the court find the Hart Servitude has prescribed for nonuse.

B”). This was accomplished by an act of exchange. Then, Lott proceeded to sell Tract A to Black by cash sale deed. Both the act of exchange and cash sale deed were recorded in the conveyance records on December 17, 2007.

As originally filed, there was no reservation of mineral rights in the act of exchange between Lott and Lasseigne. Therefore, as a result of the exchange, Lott acquired Tract A with both its surface and mineral rights, and Lasseigne acquired Tract B with both its surface and mineral rights. In the sale of Tract A from Lott to Black, Lott reserved the mineral rights, which resulted in Black owning only the surface rights to Tract A. Thus, as a result of the above-described transactions the parties and their ownership interests were as follows:

(1) Lott: owned mineral rights to Tract A;

(2) Black: owned surface rights to Tract A; and,

(3) Lasseigne: owned surface and mineral rights to Tract B.

About three months after recordation of the act of exchange and act of sale, Lambert, the notary for both acts, filed two notarial affidavits of correction, which are the subject of this matter. The first sought to correct the act of exchange, and stated that the intent of the parties (Lott and Lasseigne) was for Lott to reserve the mineral rights to Tract B. The second sought to correct the cash sale deed, and stated it was not the intent of the parties (Lott and Black) for Lott to reserve the mineral rights to Tract A. Thus, through these affidavits of correction, Lambert attempted to create ownership interests of the parties as follows:

(1) Lott: owned mineral rights to Tract B;

(2) Black: owned surface and mineral rights to Tract A; and,

(3) Lasseigne: owned surface rights to Tract B.

Lambert's affidavits of correction were filed in the conveyance records on March 26, 2008. Then, on June 17, 2008, Lott sold to Black by mineral deed all mineral rights owned by Lott in sections 2, 11, 12, 13, and 14.[5] This series of transactions resulted in Black owning both the surface and mineral rights to Tract A and also the mineral rights to Tract B, leaving Lasseigne now owning only surface rights to Tract B. Before this series of transactions, he had owned surface and mineral rights to Tract A.

Lasseigne filed a motion for summary judgment, seeking a declaration that the affidavit of correction related to the act of exchange is invalid and requesting it be stricken from the conveyance records. Black and McDonald also filed cross motions for summary judgment. The trial court granted Lasseigne's motion, concluding, as a matter of law, an affidavit of correction, pursuant to La. R.S. 35:2.1, can correct only a "clerical error," and is not the proper device to alter the intent of the parties to a recorded document in the conveyance records. Black and McDonald appeal this ruling.

DISCUSSION

This appeal involves three issues: the expiration of the Hart Servitude; the invalidity of the notarial affidavit of correction relative to the act of exchange; and the payment of court costs in this matter. Hart appeals the

[5] Several months after the execution and filing of the affidavits of correction, Lott transferred ownership of the Tract B mineral rights to Black. Subsequently, Black transferred an undivided one-half ownership interest in the Tract B minerals to McDonald.

portion of the judgment concerning the expiration of the Hart Servitude, arguing that prescription was suspended, and thus, the servitude did not prescribe for nonuse. Black and McDonald appeal the trial court's judgment on the issue of the notarial affidavit of correction concerning the act of exchange between Lott and Lasseigne. Finally, in their answers to the appeals, appellees, Lott and Lasseigne, argue that, although this matter was instituted as a concursus action, court costs should be cast to the non-prevailing parties, instead of deducted from the funds deposited in the registry. These issues are discussed, in turn, herein.

Expiration of the Hart Servitude

Generally, in her first assignment of error, Hart argues that the trial court erred in granting the Competing Claimants' motions for summary judgment because material issues of fact exist concerning inclement weather and easements on the subject property, which she claims prevented exercise of her servitude. Specifically, in her second assignment of error, Hart argues that the trial court misapplied La. R.S. 31:59 and erred in finding that no obstacle existed to suspend the running of prescription. Hart argues that above average rainfall during the beginning of 2004 created an obstacle that suspended prescription because it prevented the Lott well from being spud, an act which would have interrupted the running of prescription. Hart also argues that the USDA easements, which allowed use of the land for drilling operations, but required acquiring an additional permit, prevented timely exercise of her servitude. We disagree.

The summary judgment procedure is favored and is designed to secure the just, speedy, and inexpensive determination of actions. La. C.C.P. art. 966(A)(2). A motion for summary judgment shall be granted if the

pleadings, depositions, answers to interrogatories and admissions on file, together with any affidavits, show that there is no genuine issue of material fact and that the mover is entitled to judgment as a matter of law. La. C.C.P. art. 966(B). The burden of proof on a motion for summary judgment remains with the movant. *Samaha v. Rau*, 2007-1726 (La. 02/26/08), 977 So. 2d 880.[6]

Although typically asserted through the procedural vehicle of the peremptory exception, the defense of prescription may also be raised by motion for summary judgment. *Hogg v. Chevron USA, Inc*., 2009-2632 (La. 07/06/10), 45 So. 3d 991; *Hardin Compounding Pharmacy, LLC v. Progressive Bank*, 48,397 (La. App. 2d Cir. 09/25/13), 125 So. 3d 493, 497, *writ denied*, 2013-2517 (La. 01/27/14), 131 So. 3d 60. Appellate courts review summary judgment *de novo* under the same criteria that govern the trial court's consideration of whether the summary judgment is proper. *Samaha*, *supra*.

A mineral servitude is extinguished by prescription resulting from nonuse for 10 years. La. R.S. 31:27(1). The prescription of nonuse running against a mineral servitude is interrupted by good faith operations for the discovery and production of minerals. La. R.S. 31:29. If the owner of a mineral servitude is prevented from using it by an obstacle that he can neither prevent nor remove, the prescription of nonuse does not run as long as the obstacle remains. La. R.S. 31:59.

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[6] Although certain portions of La. C.C.P. art. 966 have been redesigned or amended, in accordance with Acts 2015, No. 422, § 1 those provisions shall not apply to any motion for summary judgment pending adjudication or appeal on or before the effective date of January 1, 2016. The motions for summary judgment appealed in this matter were decided October 23, 2014 and June 1, 2015.

It is undisputed that the Hart Servitude, created on March 3, 1994, stood to prescribe on March 3, 2004, unless prescription was interrupted or suspended. It is also undisputed that no activity took place within section 11 that would have interrupted prescription before March 3, 2004. Therefore, unless prescription was suspended by law, the Hart Servitude prescribed on March 3, 2004. Hart argues that Petro-Chem originally planned to spud a well in section 11 before the date of prescription, but inclement weather, poor soil conditions, and easements on the property prevented this from happening and suspended prescription.

In support of her argument, Hart relied on deposition testimony provided by Petro-Chem landman Stephen Smith and Petro-Chem president Larry Hock. They testified that the well Petro-Chem planned to spud in section 11, the Lott well, is hard to access because it is bounded by two rivers on the west and east, and because there are no roads to access the originally selected drill site. Petro-Chem planned to build a road along a bayou spoil bank to access the prospective drill site. The planned spoil bank road would connect to Swan Lake Road. According to the plan, Petro-Chem would need to build 5000 feet of road to a different drill site before building another 4500 feet of road to access the Lott well drill site. Hart claims the Lott well would have been spudded on February 29, 2004, had it not been for weather delays in building this road.

In support of her argument that the weather was an uncontrollable and unpreventable obstacle, Hart also entered into evidence expert reports from meteorologist Anthony Troy Frame and soil scientist B. Arville Touchet. Frame's report revealed that there was above average rainfall in January and

February 2004. Touchet's report highlighted that the soil was very soft in the area in which Petro-Chem sought to build the road.

Further, Hart argues in order to prove an obstacle to servitude exercise, one is required only to attempt to access the servitude. She offers as evidence of attempted access to the Hart Servitude the following facts. On February 8, 2004, the drilling rig necessary to drill the wells was available, but could not be moved because of the weather. As a result of this delay, Petro-Chem had to pay standby time on the drilling rig. Hart argues that paying standby time is obviously unplanned, and therefore, she argues, it is a clear indication that Petro-Chem was attempting to access the servitude.

Despite Hart's argument, the trial court took notice that Petro-Chem was not unfamiliar with the Swan Lake Prospect area, the challenges associated with standing water in low-lying areas, and the rainy wintertime weather of North Louisiana. Deposition testimony from Hock and Smith evidenced that Petro-Chem has various factors it considered when setting deadlines, one of which is the weather and possibility of weather delays. Smith stated during his deposition that the "drop dead date" to spud the Lott well was listed as May 9, 2014.[7] He further stated that had he known the proper "drop dead date," the Lott well could have been spudded in time, before March 3, 2004.

It is undisputed that Petro-Chem believed the "drop dead date" to spud the Lott well in section 11 was May 9, 2004 (the date the Hart Lease expired) and not March 3, 2004 (the date the Hart Servitude prescribed). It

[7] "Drop dead date," in this context, refers to the last day on which a well can spud in order to avoid irreversible, adverse consequences.

is this misunderstanding by Petro-Chem of the consequences of these two dates, and not the weather, that prevented the spudding of a well in time to interrupt prescription. Thus, the trial court did not err in its rejection of Hart's argument, because as a matter of law, Hart did not prove the weather was an obstacle that prevented exercise of the servitude.

Hart also claims that the USDA easements placed on the property by Lott created an obstacle to the exercise of her servitude. Hart argues the USDA easement is analogous to a landowner placing a fence and a locked gate to prevent access to a servitude, which has been recognized under La. R.S. 31:59 as a situation creating an obstacle which the servitude holder cannot prevent. *See Hall v. Dixon*, 401 So. 2d 473 (La. App. 2d Cir. 1981). The trial court also did not err in rejecting this argument.

Smith, in his deposition, explained the process he would go through for all wells drilled in the Swan Lake Prospect, which included securing access grants for right-of-way to access the drilling site, settling damages for the site, setting up a pipeline right-of-way, and, because the area contained protected wetlands, acquiring the proper permits. The CUA permit was not unlike any other permit required to drill a well. Further, Lott responded promptly in aiding Petro-Chem to acquire the necessary authorizations—as surface owner of the property, Lott did nothing to intentionally block the exercise of the Hart Servitude or access to the property. In light of Smith's uncontradicted testimony, we find on *de novo* review that getting a permit is an ordinary part of oil exploration, did not result in unusual delay, and did not create the kind of obstacle contemplated by R.S. 31:59.

Based on the summary judgment evidence presented in this matter, the trial court correctly identified that failure to timely exercise use of the

Hart Servitude was due to poor planning, and not an obstacle outside of Hart's control. With the evidence before it, the trial court did not err in its determination that neither bad weather nor a permit is an obstacle in accordance with La. R.S. 31:59. Although, the trial court acknowledged that Hart cannot control the weather, it stated that weather delays can be anticipated. For these reasons, we find the trial court did not err in finding that neither the weather in 2004 nor the USDA easement on the property were obstacles to Petro-Chem having the Lott well spudded before the Hart Servitude prescribed; thus, these assignments of error have no merit.

Ownership of Tract B mineral rights

Black and McDonald set forth five assignments of error in their appeal. First, they argue the trial court erred in its interpretation of La. R.S. 35:2.1 by finding that the addition of a mineral rights reservation was not a clerical error capable of being corrected by a notarial affidavit of correction. Generally, the remaining assignments of error argue that the trial court erred by allowing Lasseigne to challenge the validity of the notarial affidavit of correction, because he approved the document before it was filed. Black and McDonald also argue that the trial court erred in failing to find Lasseigne's acknowledgment constituted a counter letter and by denying their motions for summary judgment on this issue. We disagree.

The determination of the legislature's will regarding legislation must start with the language of the statute itself. *McGlothlin v. Christus St. Patrick Hosp.*, 2010-2775, (La. 07/01/11), 65 So. 3d 1218, 1227. The words used must be interpreted as they are generally understood. La. C.C. art. 11; *McGlothlin*, *supra*, at 1228. When the words of a statute are clear and unambiguous, and the application of the law does not lead to absurd

consequences, the statute should be applied as written and no further effort should be made to determine the legislature's intent. La. C.C. art. 9; La. R.S. 1:4; *First Nat. Bank, USA v. DDS Const., LLC*, 2011-1418 (La. 01/24/12), 91 So. 3d 944, 953; *In re: Succession of Faget*, 2010-0188, (La. 11/30/10), 53 So. 3d 414, 420.

Louisiana R.S. 35:2.1 states, in pertinent part:

> A. (1) A clerical error in a notarial act affecting movable or immovable property or any other rights, corporeal or incorporeal, may be corrected by an act of correction executed by any of the following:
>
> (a) The person who was the notary or one of the notaries before whom the act was passed.
>
> (b) The notary who actually prepared the act containing the error.

Black's Law Dictionary defines a "clerical error" as "[a]n error resulting from a minor mistake or inadvertence, [especially] in writing or copying something on the record, and not from judicial reasoning or determination." *Black's Law Dictionary* 622 (9th ed. 2009). An affidavit of correction cannot correct a substantive error or be used for amendment of the substantive terms of a contract. *See City of Harahan v. State ex rel. Div. of Admin.*, 2008-106 (La. App. 5th Cir. 05/27/08), 986 So. 2d 755, 761.

A mineral right is an incorporeal immovable. La. R.S. 31:18. A transfer of immovable property must be made by authentic act or by act under private signature; nevertheless, an oral transfer is valid between the parties when the property has been actually delivered and the transferor recognizes the transfer when interrogated under oath. La. C.C. art. 1839. An instrument involving immovable property shall have effect against third persons only from the time it is filed for registry in the parish where the

property is located. *Id*. Under Louisiana law, an authentic act is defined as a writing executed before a notary public or other officer authorized to perform that function, in the presence of two witnesses, and signed by each party who executed it, by each witness, and by each notary public before whom it was executed. La. C.C. art. 1833. An act under private signature need not be written by the parties, but must be signed by them. La. C.C. art. 1837.

Determination of this issue is dependent upon the intention of the legislature in allowing for the correction of an authentic act already filed in the conveyance records by merely subsequently filing an affidavit of correction completed by the notary before whom the act was passed. Here, it is clear from the language of the statute that a notarial affidavit of correction may correct only a "clerical error." By definition, a clerical error is an error in writing or copying a document. A reservation of mineral rights is a substantive change, because the addition of a reservation of mineral rights would change the effect of the document in regard to the real rights held by the parties to the act. Therefore, the trial court did not err in ruling, as a matter of law, a notarial affidavit of correction cannot be used to correct the omission of a mineral rights reservation in a sale of land, since reservation of real rights is a substantive issue which implicates the thought process and intention of the parties to the transaction.

In accordance with Louisiana law, a transfer of real rights in immovable property requires an authentic act or act under private signature (i.e. the act of exchange between Lott and Lasseigne was completed as an authentic act before a notary, Lambert, and signed by both parties and two witnesses). However, Louisiana law does allow for an act under private

signature or oral transfer of immovable property with a later recognition by the transferor under oath. Here, Lasseigne's acknowledgment of the affidavit of correction related to the act of exchange is a disputed issue of material fact.

Lambert testified by deposition that before filing the affidavits of correction she contacted Lasseigne, who then signed an acknowledgment that it was his intent for Lott to retain the mineral rights to Tract B. Lasseigne claims he signed the acknowledgment because, at the time, he believed that Lott had requested this, and it was necessary to complete the exchange. Lott and Lasseigne both testified by deposition that neither intended to reserve mineral rights in the act of exchange, which is contrary to Lambert's affidavit of correction. Further, Lambert never contacted Lott, and did not inform Lott or Lasseigne that she was filing the affidavits of correction. Lasseigne claims the acknowledgment is vitiated by fraud. Black argues Lasseigne is precluded from challenging the affidavit of correction because he acknowledged it pursuant to La. C.C. art. 3342, and the acknowledgment is a counter letter as provided in La. C.C. art. 2025 or an oral transfer as provided in La. C.C. art. 1839.

The trial court found that the reservation of mineral rights, even if omitted in error, is a substantive change which cannot be corrected by an affidavit of correction. Notably, Black and McDonald focus on the acknowledgment signed by Lasseigne, but this acknowledgment was not filed by Lambert along with her affidavit of correction. It is unclear why Lambert did not file these together or why Lambert would choose to file affidavits of correction in seeking to correct her purported error omitting the reservation of mineral rights.

Although Lasseigne signed an acknowledgment regarding the affidavit of correction, this issue is distinct and has no bearing on the determination that the affidavits of correction are void and invalid because not appropriate to correct the type of error which Lambert claims to have made. We find, the trial court has correctly determined that a notarial affidavit of correction cannot correct omissions of substantive rights. It is unnecessary to discuss these alternative arguments in regards to Lasseigne's acknowledgment here because they involve genuine issues of material fact; and, therefore, cannot be decided on summary judgment.

Thus, we find the trial court did not err in granting Lassigne's motion for summary judgment seeking to declare the affidavit of correction related to the act of exchange invalid and striking that affidavit of correction from the conveyance records. Further, the trial court also did not err in denying the cross-motions for summary judgment by Black and McDonald, because material issues of fact exist concerning Lasseigne's acknowledgment. These assignments of error have no merit.

Court Costs

The final issue raised on appeal concerns the payment of court costs. Appellees, Lasseigne and Lott, have answered this appeal to request that court costs be taxed to Hart, Black, and McDonald, the non-prevailing parties in this action. They argue that since the funds deposited in the registry of the court are the royalties from Petro-Chem to Hart, the effect of paying costs from those funds is that the prevailing parties, the Competing Claimants, will pay 100% of the costs. Lasseigne and Lott further argue for the application of La. C.C.P. art. 1920 regarding costs in this matter, instead

of applying La. C.C.P. art. 4659, which is specific to concurcus proceedings. We disagree.

Here, confusion over the payment of court costs is related to inconsistent pronouncements by the trial court. On October 24, 2014, in its amended opinion on the cross motions for summary judgment related to prescription of the Hart Servitude, the trial court granted summary judgment "at Bernadette M. Hart's cost." The interlocutory judgment which followed that opinion provided that costs would be paid "from the funds on deposit in the registry of the court," which is in keeping with La. C.C.P. art. 4659. The partial final judgment, from which this appeal stems, makes no express pronouncement for the taxing of costs.

Louisiana C.C.P. art. 1920 sets out the general rule for determining liability for the costs of court: "Except as otherwise provided by law, the court may render judgment for costs, or any part thereof, against any party, as it may consider equitable." This provision vests great discretion in the trial court to determine who is liable and assign costs as it deems equitable. However, where the law specifically provides a procedure for payment of costs, the trial court does not have the discretion to tax costs otherwise. One such limitation on the discretion granted to the trial court under art. 1920 is found in La. C.C.P. art. 4659, which provides for the payment of costs in a concursus proceeding, and states:

> When money has been deposited into the registry of the court by the plaintiff, neither he nor any other party shall be required to pay any of the costs of the proceeding as they accrue, ***but these shall be deducted from the money on deposit.*** The court may award the successful claimant judgment for the costs of the proceeding which have been deducted from the money on deposit, or any portion thereof, against any other claimant who contested his right thereto, as in its judgment may be considered equitable.

> In all other instances, the court may render judgment for costs as it considers equitable. (Emphasis added).

Official Revision Comment (a) relates to the first paragraph of art. 4659, and provides:

> (a) The first paragraph is similar to the source provision, except that it makes the award of costs or any part thereof discretionary with the court. The second paragraph deals with a situation not covered under the prior law: when the plaintiff does not deposit a fund into the registry of the court. Since it is virtually impossible to treat specifically all of the various situations which might arise, the court is given complete discretion in assessing costs.

In this case, although the partial final judgment made no express pronouncement taxing costs, as a matter of law, in accordance with La. C.C.P. art. 4659, the court costs are to be paid from the money deposited in the registry of the court. The question is whether Lott and Lasseigne, as prevailing parties, should bear that cost.

Petro-Chem has placed the disputed royalty payments in the court's registry, and, under art. 4659, "*these [costs] shall be deducted from the money on deposit*." By depositing disputed funds, Petro-Chem is relieved of all liability to all of the defendants for the money so deposited. Louisiana C.C.P. 4659 does not take away the trial court's discretion to assign costs equitably as provided for in La. C.C.P. art. 1920. However, art. 4659 merely states that in a concurcus proceeding, when money has been deposited in the registry of the court: first, cost costs will be paid from the money deposited in the registry, and *after* court costs have been paid the trial court *may* award costs to the prevailing parties or assign costs however it deems equitable.

For these reasons, court costs in this matter are to be paid from the money deposited in the registry pursuant to La. C.C.P. art. 4659 as ordered

by the trial court. Further, the trial court still has discretion to tax costs however it deems equitable. We do not find it equitable that the prevailing parties incur all of the costs of this proceeding. Upon final disposition in this matter, the trial court may include in the final judgment an award to the prevailing parties for court costs paid from the money in the registry.

CONCLUSION

For the foregoing reasons, we affirm the partial final judgment and denial of cross motions for summary judgment rendered by the trial court.

All costs associated with this appeal are cast to appellants, Bernadette M. Hart, Jon G. Black, LLC, and McDonald Land Services, Inc.

AFFIRMED.