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COMMENTS

CALVERT V. SWINFORD: CONFIRMING THE IMPORTANCE OF SETTLED PROPERTY OWNERSHIP

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I. INTRODUCTION

According to the personhood theory of property, owning property "is necessary for an individual's personal development," and people develop "a close emotional connection" to property.[1] Owning real property is something that Americans seem to value greatly since 63.7% of Americans are homeowners.[2] But one cannot truly own real property without good title to that piece of property.[3] Present title to a property is

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1. JOHN G. SPRANKLING & RAYMOND R. COLETTA, PROPERTY: A CONTEMPORARY APPROACH 7 (3d ed. 2015).

2. Press Release, U.S. Census Bureau, Quarterly Residential Vacancies and Homeownership, Second Quarter 2017 (July 27, 2017), https://www.census.gov/housing/hvs/files/currenthvspress.pdf [https://perma.cc/WS38-4KMX].

3. *See* SPRANKLING & COLETTA, *supra* note 1, at 553 ("[M]arketable title is defined as title reasonably free from doubt as to its validity" and "[i]f a reasonable and prudent purchaser would pay fair market value for the property, then the title is considered to be

determined by searching the public records, most commonly the county recording office, and then looking at the history of ownership to that property, also known as the chain of title.[4] All of the documents pertaining to that particular chain of title are then evaluated to determine who the present owner is.[5] But what if it became difficult for anyone to have good title to property because there is no limit to when a predecessor can assert an interest to any given piece of real property?

This Case Comment discusses the Supreme Court of Oklahoma's decision in *Calvert v. Swinford*,[6] which held that a cause of action for negligence and deed reformation accrues when a real-property deed is filed of record.[7] The fundamental issue in this case was whether the discovery rule could toll the date of accrual to the date when the grantors discovered that the deeds failed to reserve the minerals that they intended to exclude from the sale to grantees.[8] First, the Comment will present a brief overview of private property ownership, statutes of limitations, and the discovery rule, and then explain how they relate to each other and to the *Calvert* decision. Second, the Comment will provide an overview of the procedural history, facts, and the Court's opinion in *Calvert.* Finally, this Comment will discuss why the Court in *Calvert* made the right decision based on property law's utilitarian, labor, and personhood theories, the importance of having settled ownership of property, and the potential harm to the oil and gas industry had the court ruled the opposite way. Because if the outcome would have been different, there would be no reason for the private ownership of property to exist since there would be no limitations as to when a predecessor in interest could seek deed reformation.

II. BACKGROUND OF PROPERTY, STATUTES OF LIMITATIONS, AND THE DISCOVERY RULE

The theories about why private ownership of property is recognized apply to *Calvert* because some of those reasons support why the Court decided correctly in *Calvert* and why it was the best decision for society as a whole. Also, the issue in *Calvert* deals with whether the lawsuit was

marketable.").

4. *Id.* at 619–20.
5. *See id.* at 620–21.
6. 2016 OK 100, 382 P.3d 1028.
7. *Id.* ¶¶ 6, 19, 382 P.3d at 1031, 1036.
8. *See id.* ¶¶ 3 n.3, 12, 382 P.3d at 1030 n.3, 1033.

precluded by the statute of limitations or whether the discovery rule applied to toll when the statute of limitations began to run.[9] Therefore, it is important to understand why property is recognized, why statutes of limitations were created, and why the discovery rule was created as a tolling mechanism to statutes of limitations.

A. Private Ownership of Property

Property is defined "as rights among people concerning things."[10] The ownership of property has traditionally been described as consisting of a "bundle of sticks," and the sticks represent the right to transfer, exclude, use, and destroy.[11] The ownership of private property is not treated as a god-given right, but instead it is something that was created by humans.[12] The result is that the private ownership of property is only valid if "it is recognized by the government."[13] Five different theories of property help explain the reasons why private ownership of property is recognized.[14] The first theory protects first possession by granting ownership to the first individual to take possession of unowned property.[15] The second theory encourages labor by granting ownership to the individual that acquires property through his or her labor.[16] The third theory is the utilitarian theory that aims to maximize societal happiness by recognizing and granting ownership in such a way that "promote[s] the welfare of all members of society."[17] The fourth theory states that private property ownership is recognized to facilitate and ensure democracy.[18] Finally, the fifth theory states that owning private property "is necessary for an individual's personal development."[19] Not any one theory is said to be correct[20] and some may no longer seem as applicable as they once were. However, they can still be used to support the reasoning behind decisions in property cases such as this one.

9. *Id.* ¶ 12, 382 P.3d at 1033.
10. SPRANKLING & COLETTA, *supra* note 1, at 25 (emphasis omitted).
11. *Id.* at 25–26 (emphasis omitted).
12. *Id.* at 1.
13. *Id.*
14. *Id.* at 2.
15. *See id.*
16. *See id.* at 3.
17. *See id.* at 4.
18. *Id.* at 6.
19. *Id.* at 7.
20. *Id.* at 8.

B. Statutes of Limitations and the Discovery Rule

A statute of limitations bars claims after the period of time provided in the statute is exceeded.[21] These statutes "are designed to prevent fraud and to protect litigants against stale claims."[22] One reasoning is that after a long period of time, lawsuits become more problematic because evidence is lost[23] or a witness's recollection of events could be altered. Another reason is to allow "both personal and business planning and to avoid the economic burden that would be involved if defendants and their insurance companies had to carry indefinitely a reserve for liability that might never be imposed."[24] Unless a law of the state says otherwise, the time period allowed under any given statute of limitations typically begins to run when a claimant first has a cause of action.[25] As applicable to real property, the time provided for in a statute of limitations for reformation begins to run from the time when the mistake occurs or when the instrument is executed, even if the parties to the transaction did not have knowledge that an error occurred.[26]

In some cases, the State of Oklahoma allows the discovery rule to toll when the time period under a statute of limitation begins to run.[27] The discovery rule, when applicable in certain court cases, will toll the start of a given statute of limitations "until the injured party knows or, in the exercise of reasonable diligence, should have known of the injury."[28] The purpose of the discovery rule is to prevent the time provided for in a statute of limitations from running out when the injured party is unaware of the injury despite exercising reasonable diligence.[29] For example, if a patient has surgery and a tool is left inside of him, the patient may not discover right away that there is a foreign object inside his body until he starts having health complications.[30] It may take years before the injury is discovered, and by that time the statute of limitations may have

21. *See* Calvert v. Swinford, 2016 OK 100, ¶ 10, 382 P.3d 1028, 1032.
22. *Id.* ¶ 10, 382 P.3d at 1032–33.
23. DAN B. DOBBS, PAUL T. HAYDEN & ELLEN M. BUBLICK, TORTS AND COMPENSATION: PERSONAL ACCOUNTABILITY AND SOCIAL RESPONSIBILITY FOR INJURY 283 (concise 7th ed. 2013).
24. *Id.*
25. *Calvert*, 2016 OK 100, ¶ 11 & n.17, 382 P.3d at 1033 & n.17.
26. 54 C.J.S. *Limitations of Actions* § 310 (2017).
27. *Calvert*, 2016 OK 100, ¶ 11, 382 P.3d at 1033.
28. *Id.*
29. *Id.*
30. *See generally* Shearin v. Lloyd, 98 S.E.2d 508 (N.C. 1957).

already run.[31] For that reason, the State of Oklahoma applies this rule to certain tort cases so that parties in those types of situations have the same opportunity to file suit as those who are able to discover their injury as soon as it occurs.[32]

III. CALVERT V. SWINFORD

A. Facts

The plaintiffs Lisa D. Calvert and Teresa Roper were sisters.[33] Their father owned land and the mineral rights in Noble County, Oklahoma.[34] Because the plaintiffs were "attorneys in fact for their father under a durable power of attorney," they entered into a contract to sell the surface only to Wayland and Dawn Swinford, the defendants, on October 29, 2000.[35] As part of the selling process, the sisters hired both Randee Koger as the attorney to represent them and the Powers Abstract Co., Inc. (Abstract Company) "to perform abstracting and closing functions for the sale of the property."[36]

The terms of the contract indicated that the sellers were to "retain the mineral rights on the property for a period of thirty-five years . . . or for as long as oil and gas are being produced from the property. At the end of such time the mineral rights shall revert to the then surface owner."[37] A few months later, the sisters entered into another contract with the Swinfords to sell other property under the same terms as the first contract.[38] When it came time for closing, "the Abstract Co[mpany] mailed the sisters a packet of closing documents and deeds to sign."[39] The deeds that were mailed and that the sisters signed did not reserve the mineral interests.[40] The sisters then allegedly sent the documents to their attorney for review during which time he claims to have corrected the deeds to include a mineral reservation clause.[41] The closing, during

31. *See id.* at 511–12.
32. *Calvert*, 2016 OK 100, ¶ 11, 382 P.3d at 1033.
33. *Id.* ¶ 2, 382 P.3d at 1030.
34. *Id.*
35. *Id.*
36. *Id.*
37. *Id.* ¶ 3, 382 P.3d at 1030.
38. *Id.*
39. *Id.* ¶ 4, 382 P.3d at 1030–31.
40. *Id.*
41. *Id.*

which neither the sisters nor their attorney were present, took place on July 20, 2002.[42] "The deeds were filed [of record] in the Noble County Clerk's office" a few days later.[43] The sisters did not receive a copy of the filed deeds, which did not contain a reservation of the minerals.[44]

B. Procedural History

In 2003, the Swinfords filed a quiet-title suit naming the sisters' father and Lisa Calvert as defendants.[45] The trial court rendered a default judgment in favor of the Swinfords, deciding in effect "that the Swinfords owned the real property in fee simple absolute."[46] The sisters also filed a lawsuit of their own against Route 66 Minerals, Sundown Energy, and the Swinfords for unjust enrichment and to quiet title.[47] In this unpublished case, cause no. 113,558, the Court of Civil Appeals determined that the sisters' claims were barred by the statute of limitations and "affirmed the trial court's grant of summary judgment" in favor of defendants.[48] Title 12, section 95(A)(3) of the Oklahoma Statutes provides that an action for negligence must be filed within two years from the date that the plaintiff's cause of action has accrued.[49] Section 95(A)(12) provides that an action for deed reformation must be filed within five years.[50]

As to this action, the sisters did not file suit until "more than twelve years [after] the deeds were [initially] filed" of record.[51] On November 7, 2014, the sisters filed a lawsuit against MKB Royalty Corporation, attorney Randee Koger, his law firm Bremyer & Wise, and Abstract Company.[52] The sisters claimed professional negligence on the part of the Abstract Company and sought deed reformation to recover the minerals they had intended to reserve.[53] On August 14, 2015, the

42. *Id.*
43. *Id.*
44. *Id.*
45. *Id.* ¶ 6 & n.8, 382 P.3d at 1031 & n.8.
46. *Id.*
47. *Id.* ¶ 8, 382 P.3d at 1032.
48. *Id.*
49. *Id.* ¶ 6 & n.6, 382 P.3d at 1031 & n.6 (citing OKLA. STAT. tit. 12, § 95(A)(3) (2011)).
50. *Id.* ¶ 6 & n.7, 382 P.3d at 1031 & n.7 (citing tit. 12, § 95(A)(12)).
51. *Id.* ¶ 5, 382 P.3d at 1031.
52. *Id.*
53. *See id.* ¶¶ 5–7, 382 P.3d at 1031.

Abstract Company filed a motion for summary judgment asserting that the sisters' claim was barred by the statute of limitations.[54] Alternatively, the sisters asserted the discovery rule defense claiming "that the limitations period did not begin to run when the deeds were filed" but instead when they discovered the mistake in 2013.[55] The sisters alleged that they were not aware of the lack of mineral reservation in the deeds until the Swinfords began leasing the mineral rights.[56]

The summary judgment hearing took place on November 18, 2015.[57] During this hearing, the Abstract Company argued that the sisters had "actual notice" of the lack of mineral reservation in the deeds because of the 2003 quiet-title suit filed by the Swinfords.[58] The sisters' main contentions were that the purpose of filing a deed is to put third parties, not the grantors, on notice; that they were under no duty to check the public records; and that the 2003 quiet-title suit was inapplicable because it did not involve the Abstract Company.[59]

A few months later, the trial court granted summary judgment to the Abstract Company.[60] The trial court reasoned that the sisters had constructive notice of the mistake in the deeds because they had examined and signed the deeds.[61] Therefore, the trial court determined that the sisters' claims were barred by the statute of limitations.[62] The sisters appealed the trial court's decision about a month later.[63] They claimed that the trial court improperly awarded summary judgment because there was a question of fact "as to whether the statute of limitations had run."[64] On the other hand, the Abstract Company argued that the Court of Civil Appeals' decision in cause no. 113,558 barred the present lawsuit because the sisters' claims in that action were already declared time-barred.[65] As a result, the Supreme Court of Oklahoma "retained [the] cause . . . to address the statute of limitations issue."[66]

54. *Id.* ¶ 5, 382 P.3d at 1031.
55. *Id.*
56. *Id.*
57. *Id.* ¶ 6, 382 P.3d at 1031.
58. *Id.*
59. *Id.*
60. *Id.* ¶ 7, 382 P.3d at 1031.
61. *Id.*
62. *Id.* ¶ 7, 382 P.3d at 1031–32.
63. *Id.* ¶ 8, 382 P.3d at 1032.
64. *Id.*
65. *Id.*
66. *Id.*

C. Opinion

The question before the Supreme Court of Oklahoma was whether the statute of limitations time period began to run when the deeds were filed of record.[67] The sisters' contention was that even though they did not file suit until "more than twelve years after the deeds were filed" of record, the suit was still "timely because they did not discover the deficiency in their deed until 2013."[68] Title 16, section 16 of the Oklahoma Statutes provides that "[e]very conveyance of real property acknowledged or approved, certified and recorded as prescribed by law from the time it is filed with the register of deeds for record is constructive notice of the contents thereof to subsequent purchasers, mortgagees, encumbrancers or creditors."[69] The Court points out that although the Oklahoma statute does not expressly indicate that grantors are also put on notice by the recording of a deed, other states do expressly include grantors to be on notice.[70] But the Court reasoned that the issue of whether the statute was held to put grantors on notice did not matter unless the discovery rule was applied.[71]

The Court looked back upon previous cases where it had applied the discovery rule but found that "negligence [was] not readily discoverable such as the repair of a storm damaged roof; the failure of a plumber to reconnect a sewer line; medical malpractice;" and other similar situations where the injury may not be immediately discovered.[72] The Court stated that the discovery rule should be applied when the plaintiff cannot discover the injury despite being reasonably diligent, when the injury is hidden from the plaintiff, or when, without any negligence on the plaintiff's part, the plaintiff is kept from learning of the injury until the injury becomes obvious.[73] The Court concluded that the sisters' situation did not fall into any of these categories.[74]

The Court found that the discovery rule had only been applied to a limited number of real-property cases in Oklahoma.[75] It explained that

67. *Id.* ¶ 1, 382 P.3d at 1030.
68. *Id.* ¶ 9, 382 P.3d at 1032.
69. *Id.* ¶ 13, 382 P.3d at 1032 (quoting OKLA. STAT. tit. 16, § 16 (2011)).
70. *Id.*
71. *Id.* ¶ 13, 382 P.3d at 1033–34.
72. *Id.* ¶ 14 & nn.26–35, 382 P.3d at 1034 & nn.26–35.
73. *See id.* ¶ 15, 382 P.3d at 1034.
74. *Id.*
75. *Id.* ¶ 16, 382 P.3d at 1034.

the rule had been applied in a case where fraud was involved and the plaintiff had no reason to know of the fraud until it became obvious.[76] Other situations where the discovery rule has been applied include instances where mutual mistakes exist between the parties.[77] The Court distinguished the sisters' claim from other previous cases where the discovery rule was applied because the sisters had signed the deed and therefore had the opportunity to read it and see that the deed did not contain a mineral reservation.[78] In addition, after they signed the deed, it was filed in the public records where it became readily available to the public.[79] The Court concluded that a reasonable person in the sisters' position would have verified that what they were signing was correct or requested a copy of the filed deed.[80] Even if they never received a copy of the deed, the sisters had the opportunity to search for the deed in the Noble County public records or could have obtained a copy of it online.[81]

Since the sisters do not allege that any fraud occurred, nor that they were kept in any way from discovering the mistake, the Court held that the discovery rule did not apply.[82] The Court reasoned that the sisters had plenty of opportunities to discover the lack of mineral reservation in the deeds.[83] Therefore, the statute of limitations began to run when the deeds were filed of record, resulting in the sisters' negligence action being time-barred.[84]

IV. ANALYSIS

This decision did not simply determine whether the sisters' suit for negligence and deed reformation was timely. The Court's decision in this case is crucial to the future of private property ownership. The Court summed it up perfectly when it stated that had it not made the decision that it did, there would be no limit to when a predecessor in interest

76. *See id.* ¶ 16, 382 P.3d at 1034–35 (discussing Webb v. Logan, 1915 OK 502, 150 P. 116).

77. *Id.* ¶ 16 & n.36, 382 P.3d at 1035 & n.36 (discussing Cunnius v. Fields, 1969 OK 8, 449 P.2d 703).

78. *Id.* ¶¶ 16–17, 382 P.3d at 1035.

79. *Id.* ¶ 17, 382 P.3d at 1035.

80. *See id.*

81. *See id.*

82. *Id.* ¶¶ 18–19, 382 P.3d at 1036.

83. *See id.* ¶ 18, 382 P.3d at 1036.

84. *See id.* ¶ 19, 382 P.3d at 1036.

could file a claim, which would cause property ownership to always be unknown.[85] This is not to say that statutes of limitations related to real property should never be tolled or that some property transactions should never be set aside. As the Court correctly indicated, when situations where fraud or mutual mistake call for tolling the statute of limitations, it should be rightfully tolled.[86] But where a plaintiff wants to file a claim so many years past the time provided in the statute and their failure to file a claim sooner is due to his or her own negligence, the claim should be rightfully dismissed.[87]

A. The Calvert *Court's Correct Reasoning*

To start off, the sisters claim "that they [did not] discover the mistake . . . until 2013," even though they had opportunity to read the deeds before they signed them.[88] After the sisters signed and sent the deeds to their attorney, he claims that he corrected the deeds to include the mineral reservation.[89] Despite his claim, the deeds were still filed of record without mineral reservations.[90] The sisters did not receive nor request a copy of the recorded deeds.[91] If the sisters had not intended to reserve any interest in the property, then it is more comprehensible for them to not desire a copy of the recorded deed, although most people in their situation may still want a copy for personal records.[92] But since the sisters did intend to reserve an interest in minerals[93] that could potentially be extremely valuable in the future, it is difficult to comprehend why a person would not want a copy of such a transaction.

The discovery rule and the Court refer to reasonableness.[94] But sometimes it can be difficult to ascertain exactly what reasonableness means. Reasonableness is often defined as what "a reasonable and prudent person [would do] under the same or similar circumstances."[95]

85. *See id.*
86. *Id.* ¶ 16, 382 P.3d at 1034–35.
87. *See id.* ¶¶ 18–19, 382 P.3d at 1035–36.
88. *Id.* ¶¶ 5, 17, 382 P.3d at 1031, 1035.
89. *Id.* ¶ 4, 382 P.3d at 1030.
90. *Id.* ¶ 4, 382 P.3d at 1030–31.
91. *See id.* ¶¶ 4, 17, 382 P.3d at 1030–31, 1035.
92. *Id.* ¶ 17, 382 P.3d at 1035.
93. *Id.* ¶ 3 n.3, 382 P.3d at 1030 n.3.
94. *Id.* ¶ 11, 382 P.3d at 1033.
95. DOBBS, HAYDEN & BUBLICK, *supra* note 23, at 93.

To conclude whether the sisters' actions were reasonable, one must look at what the normal behavior of most would be in that scenario.[96] It is not uncommon for people to keep paper records of important documents such as tax returns, car deeds, house deeds, etc. Of course, it is probably also not uncommon for documents to be lost for various reasons. But the documents, or copies thereof, were still in the possession of the interested party to begin with. Here, the sisters never received a copy of the fully executed and recorded deeds,[97] and nothing in the opinion indicates that any effort was made to obtain one. Had they obtained a copy of it, the sisters would have likely realized sooner than the year 2013 that the deeds were recorded without a mineral reservation.[98] It is therefore difficult to conclude that their behavior was reasonable. As adequately stated in *William L. Lyon & Associates, Inc. v. Superior Court*,[99] "[a] plaintiff need not be aware of specific 'facts' necessary to establish the claim . . . . So long as a suspicion exists, it is clear that the plaintiff must go find the facts; [the plaintiff] cannot wait for the facts to find her [or him]."[100] Yet the sisters did in fact wait for the facts to find them. Unfortunately, the facts found them after the time they had to assert a claim had lapsed.[101] Because there was no reservation when the sisters and their attorney examined the deeds prior to recording,[102] they had reason to suspect that the deeds did not properly reserve the minerals, and they should have sought a copy of the recorded deeds to ensure that they contained a proper reservation. It is not unreasonable to encourage property owners to read the contents of a deed that can affect that piece of property's chain of title for generations.[103] Even if the ordinary person does not necessarily have the knowledge to interpret and know exactly what an instrument says, he or she should either be required to inquire from a professional as to its contents or not be allowed to make a claim for a mistake in the instrument after a certain

96. *Id.*

97. *Calvert*, 2016 OK 100, ¶ 4, 382 P.3d at 1030–31.

98. *See id.* ¶¶ 5, 18, 382 P.3d at 1031, 1036 ("[T]he alleged negligence was *readily discoverable* by . . . the sisters utilizing ordinary due diligence and not hidden from being readily discoverable by them." (emphasis added)).

99. 204 Cal. App. 4th 1294, 139 Cal. Rptr. 3d 670 (3d Dist. 2012).

100. *Id*. 1313, 139 Cal. Rptr. 3d at 684 (quoting Sahadi v. Scheaffer, 155 Cal. App. 4th 704, 715, 66 Cal. Rptr. 3d 517, 526).

101. *See Calvert*, 2016 OK 100, ¶¶ 4–6, 382 P.3d at 1030–31.

102. *Id.* ¶ 4, 382 P.3d at 1030.

103. *See id.* ¶ 17 & n.38, 382 P.3d at 1035 & n.38.

period of time.

An important reason to bar claims, such as the one at issue, is to encourage the efficient use of property.[104] One of the five theories for recognizing the ownership of private property is the utilitarian theory, which recognizes property in order to maximize societal happiness.[105] If ownership is protected, individuals have the security that they need to use the property in the most effective way that will benefit society as a whole.[106] When applying the law and economics variant of the utilitarian approach, "property is seen as an efficient method of allocating valuable resources in order to maximize one particular facet of societal happiness: wealth, typically measured in dollars."[107] The sisters may have intended to reserve the minerals, yet the facts do not indicate that they made any attempt to exploit the mineral interests during the twelve years before they filed suit.[108] Had they attempted to lease their mineral interests, they would have likely discovered sooner that they did not retain the minerals to the property they sold to the Swinfords because the lessee would have likely discovered that the sisters did not have title to the minerals according to ownership of record.[109] Therefore, the sisters' lack of use of the minerals in an efficient manner goes against property's utilitarian theory. The utilitarian theory also supports the reasoning behind imposing statutes of limitations on real-property claims because if a time limit is not placed on when claims can be filed, then it would not give owners enough confidence in their title so that they can make the best use of land and minerals.[110] Additionally, the Supreme Court of Oklahoma has previously held that "the right of an owner in possession to remove a cloud from his title is a continuing right and never barred by limitations."[111] The party seeking deed reformation must be in "continuous, peaceable, and uninterrupted possession since the execution of the instrument."[112] But where the grantors are not the record title

104. SPRANKLING & COLETTA, *supra* note 1, at 5.
105. *Id.* at 4.
106. *See id.*
107. *Id.* at 5.
108. *See Calvert*, 2016 OK 100, ¶¶ 4–5, 382 P.3d at 1030–31.
109. Texas Tech University Energy Commerce Program, Petroleum Land Management ENCO 3385, 65–71 (2013) (unpublished manuscript) (on file with Oklahoma City University Law Review).
110. SPRANKLING & COLETTA, *supra* note 1, at 4.
111. Maloy v. Smith, 1959 OK 69, ¶ 9, 341 P.2d 912, 914 (citing Whitehead v. Bunch, 1928 OK 576, ¶ 8, 272 P. 878, 879).
112. *Id.*

owner of the minerals and "have done nothing towards reducing the minerals to possession," the grantor cannot be held to be in possession of the interest and afforded the right to have the statute of limitations toll for their claim.[113] Had the sisters attempted to exploit the minerals earlier, it is possible that the case may have had a different outcome.

Another theory of property is the labor theory, which says that "each person [is] entitled to the property produced through his own labor."[114] Owners of property have the option to make valuable improvements to their land, such as farming it or building homes and businesses on it.[115] It is not unreasonable to think that people would only make such improvements if they are certain that they have good title to the property. It would be difficult to find someone who would put in the time and effort to make any improvements on property if a predecessor in interest could succeed on a claim that he or she never intended to sell that property decades after the sale took place. It is also not unreasonable for people to develop emotional connections to property, as is suggested by the personhood theory of property.[116] Some people would also not likely take the risk of buying a house if there was a possibility that a predecessor could obtain deed reformation under a claim that some sort of mistake was made a long time after the sale occurred.

It is important to note that the validity of the sisters' claim is not being questioned in this Comment. Because of the timing issue, the sisters should simply not be allowed to seek relief after so many years have passed. By pleading that the discovery rule should apply, the sisters are essentially conceding that if the discovery rule is not applied, their claim is barred by the applicable statute of limitations.[117] The barring of the sisters' claim does not mean that the sisters did not have a legitimate claim of negligence against the Abstract Company or their attorney.[118] If filed sooner, the Court could have very well found that the Abstract Company was in fact negligent. But because the sisters were not diligent in filing a timely suit, they should not be allowed to seek recovery of the mineral interests twelve years after the Swinfords obtained title to the property. The Supreme Court of Oklahoma correctly limits the discovery

113. *Id.* ¶¶ 11, 28, 341 P.2d at 915, 918.
114. SPRANKLING & COLETTA, *supra* note 1, at 3.
115. *See id.*
116. *See id.* at 7.
117. 51 AM. JUR. 2D *Limitation of Actions* § 393 (2017).
118. *See* DOBBS, HAYDEN & BUBLICK, *supra* note 23, at 283.

rule to apply only in situations "where the negligence is not readily discoverable"[119] because if that were not the case, then it would encourage property owners to not be diligent since they could later claim ignorance of the issue and succeed on a claim that is years after the conveyance took place.[120]

The Court stated that there has been limited application of the discovery rule to real-property cases in Oklahoma.[121] It correctly distinguished this case from other property cases where a legitimate reason called for the discovery rule to apply.[122] For example, in *Webb v. Logan*,[123] when the grantee to a real-property transaction fraudulently added additional property to the deed than what was agreed to and the grantor did not know how to read or write, the Supreme Court of Oklahoma applied the discovery rule.[124] Yes, the grantor in *Webb* could have also sought out the assistance of a professional to advise her of the deed's contents. However, there is an important difference from the *Calvert* case. The grantee in *Webb* exhibited active fraud by inserting the additional property description in the deed, failing to inform the grantor of the additional language, and asserting that the deed only covered the property that the grantor intended to sell.[125] Nothing in the *Calvert* opinion suggests that the Abstract Company, the attorney, or the Swinfords exhibited bad faith or fraudulently excluded the mineral reservation from the deeds.[126]

The Supreme Court of Oklahoma has also applied the discovery rule to situations where a mutual mistake between the parties exists and the surrounding circumstances warrant tolling the statute of limitations.[127] For example, in *Cunnius v. Fields*,[128] the grantors were under the impression that they owned a one-fourth mineral interest in property they inherited.[129] They sold the property to the grantees, intending only to sell

119. Calvert v. Swinford, 2016 OK 100, ¶¶ 14, 18–19, 382 P.3d 1028, 1034, 1036.
120. *Cf. id.* ¶ 19, 382 P.3d at 1036.
121. *Id.* ¶ 16, 382 P.3d at 1034.
122. *Id.* ¶¶ 14, 16, 382 P.3d at 1034–35.
123. 1915 OK 502, 150 P. 116.
124. *Calvert*, 2016 OK 100, ¶ 16, 382 P.3d at 1034–35 (discussing *Webb*, 1915 OK 502, 150 P. 116).
125. *Webb*, 1915 OK 502, ¶¶ 13–14, 150 P. at 118.
126. *Calvert*, 2016 OK 100, ¶ 18, 382 P.3d at 1035–36.
127. *Id.* ¶ 16 & n.36, 382 P.3d at 1035 & n.36 (discussing Cunnius v. Fields, 1969 OK 8, 449 P.2d 703).
128. 1969 OK 8, 449 P.2d 703.
129. *Id.* ¶ 1, 449 P.2d at 704.

the surface, through a deed that expressly reserved a one-fourth mineral interest.[130] The grantors later found out that they had actually inherited a one-half mineral interest and sought deed reformation after the grantees declined to quit claim any mineral interest to the grantors.[131] This case differs from *Calvert* in that the grantors in *Cunnius* did not know and did not have reason to know that they owned a higher mineral interest than they thought.[132] The additional one-fourth mineral interest was conveyed to the grantees because the deed only reserved the one-fourth mineral interest that the grantors reasonably believed they owned and not because of the grantors' lack of due diligence in properly reading and seeking clarification of the deed's contents.[133] Nothing occurred that would have alerted the grantors to their ownership of a higher mineral interest until they were informed of such when they leased their mineral interest.[134] Such special facts are simply not present in *Calvert*.[135]

B. Calvert v. Swinford *Decision Affirmed in* Scott v. Peters

Additionally, the Supreme Court of Oklahoma revisited the *Calvert* decision in *Scott v. Peters*[136] and came to the same conclusion.[137] In a similar situation, Steven Boyd Scott owned 160 acres of real property.[138] On August 11, 1997, he conveyed 120 of those acres to the Peters, including a clause in the deed that was intended to reserve the mineral interest.[139] A couple of years later, Scott conveyed the remaining forty acres to the Peters with no mineral-reservation clause in the deed.[140] The following year, Scott deeded to Larry Russell the same property he had previously conveyed to the Peters, also with no mineral reservation.[141] Russell then conveyed the property to the Wicherts without reference to reserving the minerals.[142] When the Peters later tried to obtain a

130. *Id.* ¶¶ 1–3, 449 P.2d at 704–05.
131. *Id.* ¶ 3, 449 P.2d at 705.
132. *See id.* ¶¶ 7–8, 449 P.2d at 705–06.
133. *See id.* ¶ 7, 449 P.2d at 705–06.
134. *Id.* ¶¶ 3, 7, 14, 449 P.2d at 705–07.
135. *See* Calvert v. Swinford, 2016 OK 100, ¶ 16 & n.36, 382 P.3d 1028, 1035 & n.36.
136. 2016 OK 108, ¶¶ 13–15, 388 P.3d 699, 702–03.
137. *Id.* ¶¶ 18–19, 388 P.3d at 703–04.
138. *Id.* ¶ 2, 388 P.3d at 700.
139. *See id.* ¶ 2 & n.2, 388 P.3d at 700 & n.2.
140. *Id.* ¶ 2, 388 P.3d at 700.
141. *Id.* ¶¶ 2–3, 388 P.3d at 700.
142. *Id.* ¶ 3, 388 P.3d at 700.

mortgage, they then discovered that there was a cloud on their title and proceeded to obtain a quit-claim deed from the Wicherts.[143] In 2008, the Peters leased their mineral interests to Summit Land Company.[144] In 2014, almost seventeen years after the initial conveyance to the Peters, Scott filed a quiet-title suit against the Peters to recover the mineral interests to the entire 160 acres.[145]

The Peters in turn filed for summary judgment.[146] As to the forty-acre tract, the Peters asserted the same argument as in *Calvert* by arguing that Scott's claim was barred by the statute of limitations since the recording of the deed provided him with notice of the deed's contents.[147] Scott later conceded that the statute of limitations barred reformation of the forty-acre deed.[148] As to the 120 acres, the Peters argued that even though the deed contained a reservation, it was insufficient.[149] But regardless of the insufficiency, the Peters argued that since they obtained a quit-claim deed from the Wicherts and none of the previous conveyances contained mineral reservations, they still owned the minerals.[150] Also, the Peters argued that the five-year statute of limitations period had expired as to the 120-acre deed.[151]

Scott argued that the statute of limitations five-year period did not begin to run from the date the deed was recorded because a mineral-reservation clause was included in the deed and "a layman, such as himself, should not be held to know the legal effect of such an insufficiency until the legal effect is questioned or disputed."[152] The trial court had initially overruled the Peters' motion for summary judgment, but on January 22, 2016, the trial court vacated that judgment and granted summary judgment in favor of the Peters.[153] Scott appealed the decision, and the Supreme Court of Oklahoma retained the cause to address the statute of limitations issue.[154] Using the *Calvert* decision, the

143. *Id.* ¶ 4, 388 P.3d at 700.
144. *Id.*
145. *Id.* ¶¶ 2, 5, 388 P.3d at 700.
146. *Id.* ¶ 6, 388 P.3d at 700.
147. *Id.* at 701–01. *See also* Calvert v. Swinford, 2016 OK 100, ¶¶ 9 & n.10, 17–19, 382 P.3d 1028, 1032 & n.10, 1035–36.
148. *Scott*, 2016 OK 108, ¶ 12, 388 P.3d at 702.
149. *Id.* ¶¶ 2 & n.2, 7, 388 P.3d at 700 & n.2, 701.
150. *Id.* ¶ 7, 388 P.3d at 701.
151. *Id.*
152. *Id.* ¶ 9, 388 P.3d at 701.
153. *Id.* ¶¶ 6, 8, 10, 388 P.3d at 700–01.
154. *Id.* ¶ 10, 388 P.3d at 701.

Court held that, for limitation purposes, the time began to run when the deed was filed.[155] The Court reasoned that aside from the sufficiency or insufficiency of the reservation clause, Scott deeded the same property to Russell with no mineral reservation, who then deeded it to the Wicherts. Then the Peters subsequently obtained a quit-claim deed from the Wicherts.[156]

Although the *Calvert* and *Scott* decisions have slightly different fact patterns, the reasoning and holdings are essentially the same. In both cases, the Court indicated that the recording of any instrument involving title to real estate creates a statutory presumption that the instrument is genuine and properly executed.[157] Therefore, applicable statutes of limitations begin to accrue when the instrument is filed since this acts as constructive notice to individuals, unless other circumstances such as active fraud prevent it from doing so.[158] Through its holdings, the Court determined that neither of these cases involved special circumstances that would call for the tolling of the accrual date.[159] In support of these decisions, the Court provided valuable policy reasoning that "[i]f this were not the case, real property transactions across the state could be set aside at almost any time which could leave all real property transactions unsettled indefinitely."[160]

C. Potential Impact on the Oil and Gas Industry

Further, not only would allowing reformation in situations like this cause real-property ownership to be indefinite, but it would also wreak havoc on the oil and gas industry where large sums of money are spent in reliance on who owns what.[161] Both *Calvert* and *Scott* involved the reservation of minerals.[162] Based on the fact that the mineral reservation

155. *See id*. ¶¶ 18–19, 388 P.3d at 703–04.

156. *Id*. ¶¶ 17–18, 388 P.3d at 703.

157. *Id*. ¶ 19, 388 P.3d at 704; Calvert v. Swinford, 2016 OK 100, ¶ 19, 382 P.3d 1028, 1036.

158. *See Scott*, 2016 OK 108, ¶ 19, 388 P.3d at 704.

159. *Id*. ¶¶ 14, 16–17, 388 P.3d at 702–03; *Calvert*, 2016 OK 100, ¶¶ 17–18, 382 P.3d at 1035–36.

160. *Scott*, 2016 OK 18, ¶ 19, 388 P.3d at 704; *Calvert*, 2016 OK 100, ¶ 19, 382 P.3d at 1036.

161. STATE CHAMBER OF OKLA. RESEARCH FOUND., ECONOMIC IMPACT OF THE OIL & GAS INDUSTRY ON OKLAHOMA 1–3 (Sept. 2016).

162. *Calvert*, 2016 OK 100, ¶¶ 3–4, 382 P.3d at 1030–31; *Scott*, 2016 OK 108, ¶¶ 2–5, 388 P. 3d at 700.

in the Calverts' contract was for thirty-five years "or for as long as oil and gas are being produced from the property,"[163] the sisters probably intended to reserve the minerals so that they could benefit from royalty payments if their mineral interest was included in an oil and gas well unit in the future. Also, in both cases the grantors were alerted to the problem with the deeds when the grantees leased their minerals to oil and gas companies.[164]

A big component of the process of drilling a well is determining ownership by looking at which companies own what leasehold and which owners own what minerals.[165] Once the well is drilled, a division order title opinion is obtained that specifies in detail in what proportions all working-interest and royalty-interest owners are to be paid.[166] Depending on the size of any given interest, the amounts paid to individuals can be significant. As an example, suppose the Swinfords owned 320 mineral acres in a 640-acre section and Company A, using thorough ownership examination, obtains a lease from them. Based on the fact that it obtained a lease from the record title owner of 320 acres and maybe other smaller interest owners, Company A believes that it is the majority working-interest owner and decides to drill a well in that section that turns out to be a successful well. If the sisters were successful in recovering the mineral rights to those 320 acres because the discovery rule was applied and the sisters then leased to Company B, all of a sudden Company A is no longer the majority working-interest owner. Company A took all of the risk and did all of the work, and it will no longer be entitled to the benefit of doing such. Now imagine if the discovery rule was applied freely to toll statutes of limitations, and this could potentially occur at any given moment. The oil and gas business already involves a high amount of risk. Of course ownership is almost never perfect,[167] but if real-property ownership was indefinite, such as it would be had the Court allowed the discovery rule to toll the statute of limitations in *Calvert* or *Scott*, it would place a huge burden on the industry because no one company or individual would be certain as to his or her ownership if any of their predecessors could successfully assert a

163. *Calvert*, 2016 OK 100, ¶ 3, 382 P.3d at 1030.

164. *Id.* ¶¶ 3, 5, 382 P.3d at 1030–31; *Scott*, 2016 OK 108, ¶ 4, 388 P.3d at 700.

165. Petroleum Land Management ENCO 3385, *supra* note 109, at 65–71.

166. *See* Texas Tech University Energy Commerce Program, ENCO 4399 – Senior Seminar Packet #2 18–33 (Spring 2015) (unpublished manuscript) (on file with Oklahoma City University Law Review).

167. SPRANKLING & COLETTA, *supra* note 1, at 608–09.

right to that property at any given moment.[168]

V. CONCLUSION

Because the sisters had plenty of opportunity to discover the lack of mineral reservation in the deeds to the Swinfords, the Court properly denied their attempt at recovering the minerals they failed to reserve.[169] The Court did not create and impose a new duty upon grantors.[170] Instead, it reinforced an existing duty for grantors, or any individual with a potential claim, to act with reasonable diligence and to file timely lawsuits.[171] With this decision, the Court reasonably limited the application of the discovery rule to real-property cases only in special circumstances.[172] Had it not, the decision would have opened the door for endless occurrences of "unsettled" ownership of real property.[173] Therefore, courts should continue to only allow the discovery rule to toll statutes of limitations relating to real-property cases where the injured party had no reasonable means of discovering the injury.

168. *Calvert*, 2016 OK 100, ¶ 19, 382 P.3d at 1036; *Scott*, 2016 OK 108, ¶ 19, 388 P.3d at 704.
169. *Calvert*, 2016 OK 100, ¶¶ 17–19, 382 P.3d at 1035–36.
170. *See id.* ¶ 19, 382 P.3d at 1036.
171. *See id.*
172. *Id.*
173. *Id.*