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Quiet Title Actions in Arkansas–A Primer

C. Michael Daily¹

I. Introduction

Marketable title is a relevant topic for those involved in the oil and gas industry. The Arkansas Title Standards define marketable title as follows:

[A] title free from reasonable doubt both as to matters of law and fact, a title which a reasonable purchaser, well informed as to the facts and their legal bearings and willing and ready to perform the contract, would, in the exercise of that prudence which business persons ordinarly bring to bear upon such transactions, be willing to accept and ought to accept. A marketable title is “not only a title that . . . a purchaser can hold against all comers, but one that he can hold without reasonable apprehension of it being assailed, and one that he can readily transfer. . . in the market.”²

According to one early Arkansas case, “reasonable doubt” exists when there is uncertainty as to some defect that appears in the course of the deduction of title, and that doubt must be such as affects the value of the land or that will interfere with its sale.³ More succinctly stated, marketable title is “title which a reasonably prudent man would be willing to accept.”⁴

Marketable title is relevant to operating companies and mineral owners. The operating


²Standards for Examination of Real Estate Titles in Arkansas, § 1.1 (Arkansas Bar Association, 2000) (citing 3 Am. L. Prop. § 11.48 (A. James Casner, et al. eds. 1952); Shelton v. Ratteree, 1221 Ark. 482, 181 S.W. 288 (1915); see also Holt v. Manual, 186 Ark. 435 (1932) (holding that the court will never compel a purchaser to take a title where the point on which it depends is too doubtful to be settled without litigation or where the purchase would expose him to the hazard of such proceedings or as it is usually expressed it will not compel him to buy a lawsuit).


⁴Paul E. Basye, Clearing Land Titles § 4 (1953).
companies conduct title research and request attorney title opinions so they may determine the property ownership for a particular drilling unit. The scope of a title examination can vary based on the client’s needs, but in all cases a title opinion will reveal surface, mineral and leasehold ownership, expose defects in title, impose requirements and suggest curative measures. Once a title defect is presented, a prudent oil and gas company should suspend payment of the mineral royalties pending resolution. Mineral owners typically cannot receive their royalty check until the title defect is removed.

The form of title curative can vary based on the circumstances. Simple title defects can be resolved with minimal expense. Complicated title defects may involve multiple and adverse parties and may require litigation to resolve the issues. In complicated cases, a quiet title suit is effective curing title defects.

An action to quiet title is defined as a remedy sought by a party seeking to establish marketable title or clear adverse claims. The remedy is rooted in equity. Even though statutory quiet title procedures exist, a petitioner may also file a quiet title lawsuit pursuant to general equity principles. After a brief review of the history of quiet title actions, this paper will explore the statutory and common law procedures.

II. A Very Brief Historical Overview of Quiet Title Actions

Quiet title actions were born in England. The English courts of law viewed title as

5Standards for Examination of Real Estate Titles in Arkansas, Appendix “A”, 5(c) (Arkansas Bar Association, 2000).

6For a very extensive and thoughtful article covering the history and development of quiet title actions, see Joe E. Covington, Bills to Remove Cloud on Title and Quieting Title in Arkansas, 6 Ark. L. Rev. 83 (1952).
having one of two qualities: good or bad.\textsuperscript{7} There was no intermediate ground and a purchaser could be compelled to take title, even though it was extremely doubtful because the concept of unmarketable title had not yet been introduced.\textsuperscript{8} English Chancery Court rules were not as rigid. Chancellors developed procedures, including the bill to remove a cloud on title, to aid a land purchaser with a doubtful title when there was no other adequate remedy at law.\textsuperscript{9}

For many years Arkansas maintained separate courts of law and equity. Quiet title lawsuits were within the exclusive equity jurisdiction of the chancery courts. Several reported quiet title cases involved the question of subject matter jurisdiction and distinction of cases brought at law and in equity.\textsuperscript{10} In those cases, the court often wrestled with the factual distinction between ejectment, a legal remedy and an action to quiet title.\textsuperscript{11} Some actions brought before the wrong forum were either dismissed or transferred.\textsuperscript{12}

The “watershed event”\textsuperscript{13} of 2000 eliminated the dual court system in Arkansas. Now, a

\textsuperscript{7}Basye, supra note 3, § 4.

\textsuperscript{8}Basye, supra note 3, § 4.

\textsuperscript{9}Basye, supra note 3, § 4; see also Covington, supra note 6 at 83-84

\textsuperscript{10}Ligget v. Church of Nazarene, 291 Ark. 298, 724 S.W.2d 170 (1987).

\textsuperscript{11}Id.

\textsuperscript{12}See generally Hesser v. Johns, 288 Ark. 264, 704 S.W.2d 165 (1986).

\textsuperscript{13}See In re Implementation of Amendment 80, 345 Ark Adv. App. (June 28, 2001). (“The passage of Amendment 80 on November 7, 2000 was a watershed event in the history of the Judicial Department of this state. Jurisdictional lines that previously forced cases to be divided artificially and litigated separately in different courts have been eliminated. This fundamental change brings with it a whole host of issues, both theoretical and practical, concerning the form and structure of our court system.”); see also Larry Brady and J.D. Gingerich, A Practitioner’s Guide to Arkansas’s New Judicial Article, 24 U. Ark. Little Rock L. Rev. 715 (2002).
petitioner seeking to quiet title may file an action in the circuit court, a court of general jurisdiction. The circuit court clerk assigns all cases pursuant to the particular plan adopted by each judicial district and approved by the Supreme Court.14 A judge hearing the case has full authority to rule on all issues brought before the court.15 Although Amendment 80 eliminated the dual court system, it did not destroy the court’s equity jurisdiction. General equity principles still apply to any quiet title case, including those brought pursuant to statute.

III. Procedures for Maintaining a Real Property Quiet Title Suit in Arkansas

Most jurisdictions permit a quiet title action to proceed to remove a cloud on interest in real property.16 Such property interests include surface rights, easements, minerals, timber or water rights.17 Arkansas courts appear to be in accord with the general rule.

The General Assembly has enacted specific statutory procedures that apply to actions quieting title to Federal land,18 proceedings to confirm public sales,19 and proceedings against railroads.20 While a discussion of these specific laws are outside the scope of this paper, the rules are relevant and should be followed closely in those limited situations.

The General Assembly has also created a statutory framework that applies generally to

14Brady, supra note 12, at 722-23.
15Id. at 720.
17Id.
quiet title actions. At least one reported decision has held that these procedures relate to quiet title actions that are not otherwise specifically provided for, but for reasons outlined below, this may not be the case. In the situations where neither the general nor specific statutes apply, a claimant may still initiate a quiet title action pursuant to the general equity principles under common law.


Most statutory quiet title actions are brought pursuant to Ark. Code Ann. §18-60-501, which states as follows:

Any person claiming to own land that is wild or improved or land that is in the actual possession of himself or herself, or those under him or her, may have his or her title to the land confirmed and quieted by proceeding in the manner provided in this subchapter.

Assuming the property interests at stake fall within the purview of the statute, the procedure and rules set forth in this subsection serve as excellent guideposts to a party seeking relief. Whether the statute applies to all incidents of property ownership that are capable of being quieted requires more investigation.

1. What Property Interests Can Be Quieted?

The statute clearly applies to quiet title actions involving “land.” “Land”, in this case, definitely includes surface property ownership rights as well as any subsurface rights that are


22Ex parte Morrison, 69 Ark. 517, 64 S.W. 270 (1901).


incidentally attached. Whether the word “land” applies to a severed mineral interest, however, requires additional consideration. Although some reported Arkansas Supreme Court decisions have held that an owner of the mineral estate is a landowner, other judicial decisions indicate that such a simplistic rule can be deceiving. A proper determination can be made by investigating these cases and following commonly accepted rules of statutory construction.

The first rule of statutory construction is to apply a plain reading to the statute, construing it just as it reads, by giving the words their ordinary and usually accepted meaning in common language. When the language of a statute is plain and unambiguous, there is no need to resort to rules of statutory construction. When a statute is clear, a court will not search for legislative intent; rather, that intent must be gathered from the plain meaning of the language used.

Assuming that a plain reading of the statute is possible, there is no reason to believe that a court would apply the general statutory procedure to an action involving a severed mineral interest. The statute only applies to actions involving “land that is wild or improved or land that is in the actual possession of himself or herself.” The Arkansas Supreme Court has held that statutes regarding the payment of taxes on “wild and unimproved land” for the purposes of acquiring title to minerals by adverse possession are inapplicable to minerals because minerals

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25El Paso Production Co. v. Blanchard, No. 061107 (Ark. 12/06/2007) (stating that a mineral owner is properly considered a "landowner."); see also Schnitt v. McKellar, 244 Ark. 377, 427 S.W.2d 202 (1968) (holding that the interest of a mineral owner was an interest in land).


27Id.

28Id.
within the earth are not susceptible of inclosure.\textsuperscript{29} If a mineral is not “land that is wild”, there is no logical reason to consider it improved land either.\textsuperscript{30} For this subsection to have any application to a severed mineral estate, the mineral estate must fall within “land that is in the actual possession of himself or herself.”\textsuperscript{31}

Actual possession of a mineral estate is complicated. One must actually possess the minerals themselves.\textsuperscript{32} Possession of the surface is insufficient.\textsuperscript{33} In the context of oil and natural gas, actual adverse possession of the minerals can only occur by opening mines and operating the same.\textsuperscript{34} Based on the limited factual circumstances where actual possession could occur, it is fair to conclude that a severed mineral interest is not a property interest that is capable of being quieted pursuant to the general quiet title procedure.

An argument could be made that Ark. Code Ann. § 18-60-601 is ambiguous and open to two or more interpretations, requiring more thorough statutory construction. If this is the case, then the intent of the legislature must be ascertained.\textsuperscript{35} Legislative intent is to be derived from

\begin{flushleft}
\textsuperscript{29}Brizzolara v. Powell, 214 Ark. 870, 218 S.W.2d 728 (1949).

\textsuperscript{30}See Blacks Law Dictionary, 761 (7th ed. 199) (defining improved land as real property that has been developed).

\textsuperscript{31}See Covington, supra note 5 at 97 (indicating that a lawsuit brought pursuant to this section can only be maintained by a plaintiff who is in possession of the property).


\textsuperscript{33}Id.

\textsuperscript{34}Id.

\textsuperscript{35}Graham v. Forrest City Housing Authority, 304 Ark. 632, 803 S.W.2d 923 (1991).
\end{flushleft}
the legislative body that enacted the law.\textsuperscript{36} Even if the statute is ambiguous, this subsection is still inapplicable to an action to quiet title to a severed mineral interest. The basis for this conclusion is grounded in another rule of Arkansas property\textsuperscript{37}—the Strohacker doctrine.

In Missouri Pacific Railroad Co., Thompson, Trustee v. Strohacker, it was held that in construing conveyances that purported to reserve mineral rights, the intent of the parties was to be determined so as to be consistent with and limited to minerals commonly known and recognized by legal or commercial usage in the area where the instrument was executed.\textsuperscript{38} At issue in Strohacker was the court’s interpretation of a reservation of “mineral deposits” in a deed executed by the railroad in 1892 and 1893 in Miller County, Arkansas. The Supreme Court ultimately concluded that a reservation of “mineral deposits” was ineffective to reserve oil and gas because oil and gas were not minerals commonly known and recognized by legal or commercial usage at the time and place of the conveyance. Strohacker has been revisited on a few occasions. In one case, the court held that a generic reservation of “minerals” in 1990 in Union County did not effectively reserve oil and gas,\textsuperscript{39} and in another, the court held that a

\textsuperscript{36}Baxter v. McGee, 82 F.2d 695, cert. denied 298 U.S. 680 (1936); see also Doe v. Baum, 348 Ark. 259, 72 S.W.3d 476 (2002) (holding that in ascertaining an act’s intent, the court examines the statute historically, as well as the contemporaneous conditions at the time of the enactment, the object to be accomplished, the remedy to be provided, the consequences of interpretation, and matters of common knowledge within the court’s jurisdiction).

\textsuperscript{37}See Gerald L. DeLung, The Strohacker Doctrine - An Arkansas Rule of Property, 14\textsuperscript{th} Annual Oil and Gas Institute (Arkansas Bar Association, 1975).

\textsuperscript{38}Missouri Pacific Railroad Co., Thompson, Trustee v. Strohacker, 202 Ark. 645, 152 S.W.2d 557 (1941); see also Ahne v. Reinhart and Donovan Co., 240 Ark. 691, 401 S.W.2d 565 (1966).

\textsuperscript{39}Stegall v. Bush, 228 Ark. 632, 310 S.W.2d 251 (1958).
reservation of “all of the coal, oil and minerals” in 1905 in Logan County did effectively reserve natural gas.

In Schuman v. Certain Lands\textsuperscript{40}, the Arkansas Supreme Court addressed whether the General Assembly intended for the word “land,” as used in the statutory procedure for the quieting of title to lands acquired through public sale, to apply to a severed mineral interest. The claimants preceded pursuant to Ark. Stat. 34-1918, which provided, in relevant part, as follows:

“purchasers . . . of lands made by the County Clerk, or by the Commissioner of State Lands, . . . may protect themselves from eviction of the lands so purchased, or from any responsibility as possessors of them, by proceeding in the manner provided in this subchapter.”\textsuperscript{41}

This Act was originally enacted in 1836 and amended in 1881, however, the 1881 amendment only inserted and substituted the words “County Clerk, or by the State Land Commissioner” for the words “by the Auditor of the State.” The statute used the word “land,” without any mention or reference to mineral rights. Citing Strohacker, the Court held that this procedure was inapplicable to an action involving a severed mineral interest because it was unreasonable to suppose that the legislature, in 1836, intended for the word “land” to include an undivided interest in minerals.\textsuperscript{42} Not only is Strohacker a unique rule of Arkansas property, but apparently it is also a rule of statutory construction.

Based on Schuman, it is consistent to also conclude that no action to quiet title to a severed mineral interest could be brought pursuant to Ark. Code Ann § 18-60-501. Similar to the

\textsuperscript{40}223 Ark. 85, 264 S.W.2d 413 (1954).


\textsuperscript{42}See Schuman v. Certain Lands, 223 Ark. 85, 264 S.W.2d 413 (1954).
statute in Schuman, the 1899 original enactment of Ark. Code Ann. § 18-60-501 also only apply to “land.” The statute has been amended twice, first by Acts 1927, No. 64, and most recently by Acts 2007, No. 1037. Neither amendment added any provisions relating to mineral interests. If Schuman is any guide, this subsection cannot apply to a quiet title action involving a severed mineral interest.

Since a claimant to a severed mineral interest has no specific statutory authority to pursue, he may only bring a petition to quiet title pursuant to the general equity principles. For a claimant who is seeking to quiet title to property covered by the statute, he may proceed pursuant to the rules stated in Ark. Code Ann. § 18-60-501-511.

2. **Pleadings and Proof**

Arkansas is a fact pleading state, thus a petitioner must allege sufficient facts to state a claim. Otherwise, his petition may be subject to dismissal. Strict compliance with Ark. Code Ann. § 18-60-502 should satisfy the factual pleading requirements. According to the statute:

> A claimant shall file in the office of the clerk of the circuit court of the county in which the land is situated a petition describing the land and stating facts which show a *prima facie* right and title to the land in himself or herself and that there is no adverse occupant thereof.

In counties with multiple judicial districts, the petition should be filed in the appropriate county

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43 Acts 1899, No. 79.

44 See Section III(B), *infra*.


The petitioner may include multiple tracts in the same petition as long as they all lie in the same county. The rules applicable to legal descriptions in conveyances should also apply to the petition to quiet title. The petitioner, if possible, should describe the land with specificity, however, a precise legal description may not always be necessary. The land should be described with sufficient certainty to identify the land, and a court will typically not find that a legal description is void if, by any reasonable construction, the land can be identified. However, the word “part” should not be used to describe a tract of land if at all possible. It has been held that the word “part” invalidates a legal description unless the description continues and specifically describes the precise part intended.

The petitioner has the burden of proof in establishing that he is entitled to a quiet title decree. If possible, the petitioner should present evidence of a perfect claim of title to the property. A perfect claim of title includes continuous uninterrupted conveyances of the property that date back to the United States patent. If the petitioner cannot show a perfect claim of title, \textit{prima facie} title can be shown if the petitioner can prove that he, and those under whom he claims, have had color of title to the land for more than seven years; and during that time the

\footnotesize{\textsuperscript{48}}Ark. Code Ann. § 18-60-502(c) (Supp. 2007).

\footnotesize{\textsuperscript{49}}\textit{Ingram v. Luther}, 244 Ark. 260, 424 S.W.2d 546 (1968); \textit{Snyder v. Bridewell}, 167 Ark. 8, 267 S.W. 561 (1924).

\footnotesize{\textsuperscript{50}}See generally \textit{Browning v. Hicks}, 243 Ark. 394, 420 S.W.2d 545 (1967); \textit{Dierks Forests, Inc. v. Garrett}, 242 Ark. 223, 412 S.W.2d 849 (1967); see also Standards for Examination of Real Estate Titles in Arkansas, 21.3 (Arkansas Bar Association, 2000).

\footnotesize{\textsuperscript{51}}\textit{Ark. & Ozarks R.Y. Corp. v. West}, 234 Ark. 590, 353 S.W.2d 337 (1962); \textit{Bullock v. Duerson}, 95 Ark. 445, 129 S.W. 1083 (1910).
petitioner, or those under whom he claims, have continuously paid the taxes on the tracts that are
the subject of the petition.\textsuperscript{52}

The Arkansas appellate courts have detailed the characteristics of color of title as follows:

Color of title is not, in law, title at all. It is a void paper, having the semblance of a
muniment of title, to which, for certain purposes, the law attributes certain
qualities of title. Its chief office or purpose is to define the limits of the claim
under it. Nevertheless, it must purport to pass title. In form, it must be a deed, a
will, or some other paper or instrument by which title usually and ordinarily
passes. Such qualities as are imputed to it by the law, for limited purposes, are
purely fictitious and are accorded to it only to work out just results. Fictions are
never used in procedure or law for any other purpose.\textsuperscript{53}

Color of title cannot be manufactured between parties with knowledge of their lack of title.\textsuperscript{54} It
has been held that a certificate of purchase issued at a tax sale is not color of title.\textsuperscript{55} Where the
minerals had been previously severed, a void tax deed issued from the State of Arkansas, has
been held to be color of title to the surface estate, but not color of title to the underlying mineral
estate.\textsuperscript{56}

Proof of payment of taxes can be shown by attaching tax receipts as exhibits. The


\textsuperscript{53}Jones v. Barger, 67 Ark. App. 337, 1 S.W.3d 31 (1999); see also Weast v. Hereinafter

\textsuperscript{54}Weast v. Hereinafter Described Lands, 33 Ark. App. 157, 803 S.W.2d 565 (1991)
(quoting State v. King, 77 W. Va. 37, 87 S.E. 170 (1915): To permit [color of title] to become
the shield and protection of admitted fabrication of papers having the muniments of title, such as
forged deeds and wills and deeds made by men having no titles, at the instance of persons having
knowledge of their lack of title, for the express purpose of founding claims thereon, would be a
flagrant perversion of it to unworthy purposes and a departure from the judicial intent and design
in the adoption thereof).

\textsuperscript{55}Broadhead v. McEntire, 19 Ark. App. 259, 720 S.W.2d 313 (1986).

\textsuperscript{56}Skelly Oil Company v. Johnson, 209 Ark. 1107, 194 S.W.2d 425 (1946).
statutes also permit live or deposition testimony in support of a claim. Failure to allege and subsequently prove color of title and continuous payments of taxes will preclude the court from granting relief.

3. Parties and Notice

All parties with any incidental claim to the property should be considered a necessary and indispensable party to an action to quiet title. The failure to join such a party can result in dismissal of the case and can render any order quieting title void ab initio. The quiet title petition filed pursuant to the statutory rules must include the name of any party as a defendant, that the petitioner has knowledge of, who claims an interest to the land. Any potential claimant that is within the petitioner’s own chain of title should be named as a party. Furthermore, the recent amendment to Ark. Code Ann § 18-60-502 imposes additional research upon a petitioner. Now, the petitioner must initiate a search of all of the following records in order to identify persons entitled to notice of the lawsuit:

(A) Land title records in the office of the county recorder;
(B) Tax records in the office of the county collector;
(C) Tax records in the office of the county treasure;
(D) Tax records in the office of the county assessor;
(E) For an individual, records of the probate court for the county in which the property is located;
(F) For an individual, voter registration records maintained by the Secretary of

61 Union Sawmill Co. v. Rowland, 178 Ark. 372, 10 S.W.2d 858 (1928).
Any person discovered through this search who may have a claim to the property should be named as a party.

Once the petitioner has determined the necessary parties to summon to the action, he must properly effectuate service of the petition and summons. Although Rule 4 of the Arkansas Rules of Civil Procedure typically governs the service of process in civil cases, the amendment to Ark. Code Ann. §18-60-502 creates additional requirements. The petitioner is required to send notice by certified mail to the defendant’s last known address in duplicate, with one copy addressed by name to the person entitled to notice and the other copy addressed to “occupant”. If the certified mail is returned undelivered, the petitioner must send a second notice by regular mail. Also, the petitioner is required to post a notice of the pending quiet title action conspicuously on the property.

If personal service on known defendants cannot be accomplished through actual service, the warning order procedure is available pursuant to Rule 4(f). This rule permits constructive

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65 Ark. Code Ann. §18-60-502(b)(2)(B) (Supp. 2007); The updated notice procedures also make reference only to “land”, which further supports the argument that this subsection cannot apply to a severed mineral interest.
service only if the whereabouts of a defendant is unknown after diligent inquiry.⁶⁶ Proof that a petitioner has made a diligent search likely requires an affidavit stating that the petitioner has made a thorough search of the records listed in Ark. Code Ann. §18-60-502(b)(1). Exact compliance with the warning order procedure is required.⁶⁷

The statutory procedure for quieting title also requires publication of notice of the pendency of the suit.⁶⁸ This procedure differs from the warning order procedure, in that it appears to effectuate constructive notice on unknown claimants of the land, rather than the known and named defendants who cannot be located after a diligent inquiry. The publication statute states:

Upon the filing of the petition to quiet title, the clerk of the court is charged with publishing a notice of the filing of the petition on the same day of each week, for four (4) weeks in some newspaper published in the county, if there is one, and if not, then in some newspaper having a circulation in the county.⁶⁹ The petition shall describe the land and call upon all persons who claim an interest in the land or lien thereon to appear in the court and show cause why the title of the petitioner should not be confirmed.⁷⁰ The circuit court within the proper county is authorized and empowered under the notice to find apparent existing liens on the real estate to be barred by the laws of limitation or laches, and decree the cancellation of said liens and records thereof.⁷¹

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The four week publication requirement is mandatory.\textsuperscript{72} Once proof of the publication is filed, the petitioner may attempt to prove his allegations.\textsuperscript{73} In the absence of compliance with the notice requirements of § 18-60-503(a), the petitioner cannot make a \textit{prima facie} case to quiet title.\textsuperscript{74} Failure to comply with the statute results in the trial court lacking subject-matter jurisdiction to adjudicate the rights to the property.\textsuperscript{75}

The petitioner should also cause a notice of lis pendens to be recorded in the county real estate records. The Arkansas lis pendens statute states as follows:

To render the filing of any suit at law or in equity in either a state court or United States district court affecting the title or any lien on real estate or personal property constructive notice to a bona fide purchaser or mortgagee of any such real estate or personal property, it shall be necessary for the plaintiff or any one (1) of the plaintiffs, if there is more than one (1) plaintiff, or his or her attorney or agent to file a notice of the pendency of the suit, for record with the recorder of deeds of the county in which the property to be affected by the constructive notice is situated.\textsuperscript{76}

This notice places bona fide purchasers or mortgagees on notice that the title to certain

\textsuperscript{72}Crain v. Burns, 82 Ark. App. 88, 112 S.W.3d 371 (2003) (holding that warning order that was only published for two weeks did not comply with statute and therefore petitioner could not quiet title).

\textsuperscript{73}Ark. Code Ann. § 18-60-505(a) (2003).


\textsuperscript{75}Crain v. Burns, 82 Ark.App. 88, 112 S.W.3d 371 (2003); Koonce v. Mitchell, 341 Ark. 716, 19 S.W.3d 603 (2000); \textit{but see} Boyd v. Roberts, 98 Ark. App. 385, 76, S.W.3d ___ (2007) (holding that Koonce had no application in a dispute involving the location of a single boundary between two parcels of land, one of which was undisputably owned by one party and one which was undisputably owned by another party).

real or personal property is being litigated.\textsuperscript{77} A lis pendens has the effect of keeping the subject matter of the lawsuit in controversy.\textsuperscript{78} Assuming a lis pendens has been filed, a person who subsequently acquires property that is subject to litigation will take that property subject to the rights of the parties to the litigation and will be bound by the litigation as if he was a party.\textsuperscript{79}

4. \textit{The Decree}

If no party appears to defend against the petition, then in an appropriate case, the petitioner can have his title quieted by default.\textsuperscript{80} Where the pleadings are uncontroverted, the court may render a decree of confirmation.\textsuperscript{81} This decree establishing and quieting title is binding against all persons, with only a few exceptions. The decree is ineffective to bar the rights of one who claims, under or by virtue of any contract with the petitioner, who was an adverse occupant of the land at the time the petition was filed\textsuperscript{82}, or who within seven years preceding had paid the taxes on the land\textsuperscript{83}, or a remainderman unless the person was a named defendant was personally summoned.\textsuperscript{84}

The statutory period to set aside the quiet title decree is three years. Within that time, a

\textsuperscript{77}Bill's Printing, Inc. v. Carder, 161 S.W.3d 803, 357 Ark. 242 (2004).

\textsuperscript{78}Id.

\textsuperscript{79}Mitchell & Shaw v. The Fed. Land Bank of St. Louis, 206 Ark. 253, 174 S.W.2d 671 (1943).


\textsuperscript{82}See Hargis v. Lawrence, 135 Ark. 321, 204 S.W. 755 (1918).

\textsuperscript{83}See Hensley v. Phillips, 215 Ark. 543, 221 S.W.2d 412 (1949).

person with a “meritorious defense” may appear and cause the decree to be set aside.\textsuperscript{85} One court has held that a party prejudiced by the invalidity of a tax sale has a meritorious defense to a quiet title decree.\textsuperscript{86} Disability tolls the running of the statute of limitations until the disability has been removed.\textsuperscript{87}

After the three year period has expired, a confirmation decree rendered pursuant to Ark. Code Ann. §§ 18-60-501-511 is immune from collateral attack, except for jurisdictional defects apparent on the face of the record.\textsuperscript{88} The decree may still be directly attacked by a plenary suit having for its specific purpose the setting aside of the decree for fundamental errors such as fraud or lack of jurisdiction, which would render the decree void \textit{ab initio}.\textsuperscript{89} Failure to provide adequate notice to a property owner is a violation of the fundamental right to due process and is grounds to set aside a confirmation sale.\textsuperscript{90}

B. Proceeding Pursuant to General Equity Principles


\textsuperscript{87}Ark. Code Ann. § 18-60-510(b) (2003).


\textsuperscript{89}See Verkamp v. Floyd E. Sagely Props., 96 Ark. App. 61, ___, S.W.3d ___ (2006); Hall v. Blanford, 254 Ark. 590, 494 S.W.2d 714 (1973) (holding that an action by claimants who were not made parties to the original action deemed a direct attack on the judgment and permissible); see also Buckhannan v. Nash, 216 F. Supp. 843 (E.D. Ark. 1963).

\textsuperscript{90}See e.g. Jones v. Flowers, 126 S. Ct. 1708, 547 U.S. 220, 164 L. Ed.2d 415 (2006) (Recent United States Supreme Court decision invalidating Arkansas’s tax sale notice procedures).
The statutory procedures outlined above did not eliminate the general equitable remedy available under common law. For those cases brought pursuant to general equity principles, many of the rules relating to the proper naming of parties, drafting of pleadings, service of process and providing published notice should be followed, even if not explicitly required. Although the traditional rules for notice and service of process under the Arkansas Rules of Civil Procedure may appear adequate, it would be a sound practice for a petitioner to still conduct a diligent search of the various records listed under Ark. Code Ann. § 18-60-502(b) and to make a valiant effort to effectuate adequate notice, if at all possible. These efforts should be documented. The procedures suggested under Ark. Code Ann. § 18-60-502(b)(2) and (b)(3) may eventually accomplish actual notice or at the very least prevent a subsequent constitutional challenge.

The primary difference between an action brought pursuant to statute and brought pursuant to general equity principles is the quantum of proof required to show entitlement to a quiet title decree. While the statutory procedure allows a petitioner to maintain a lawsuit even if he cannot show a perfect claim of title, the common law action requires a showing of legal title to the property involved.\(^91\) Typically, a showing of actual possession is also required,\(^92\) however, in cases where no party has actual possession, or where a petitioner has no adequate remedy at law, the equity jurisdiction of the court may intervene to quiet title to a petitioner.\(^93\)

To be entitled to a decree quieting title in an adversary suit under general equity


\(^{92}\)Jackson v. Frazier, 175 Ark. 421, 299 S.W. 738 (1927).

\(^{93}\)McKim v. McLiney, 250 Ark. 423, 465 S.W.2d 911 (1971).

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principles, the plaintiff must deraign title from the government or from someone who is shown to be the owner of the land by possession and/or payment of taxes.\(^\text{94}\) Deraignment of title from the government requires proof of a continuous chain of title from the sovereign. If a party asserts to own title independent of a common source, the petitioner must recover on the strength of his own title.\(^\text{95}\) Where the parties trace their title to a common source, the prevailing party is the one who has the superior equity.\(^\text{96}\) In such a case, a party is not permitted to attempt to impeach the common source.\(^\text{97}\)

To quiet title by showing adverse possession, the petitioner must prove that his possession was actual, open, notorious, continuous, hostile, exclusive, and accompanied with intent to hold against the true owner for the statutory period.\(^\text{98}\) The adverse possessor must also hold color of title to the claimed property for seven years and prove that he has paid taxes over the same period.\(^\text{99}\)

A surface claimant can clearly maintain a quiet title action based on adverse possession if the above requirements are met, however, adverse possession of a mineral estate is more difficult to prove. As previously stated, actual possession of a mineral estate is complicated. The only

\(^{94}\)Coulter v. O’Kelly, 226 Ark. 836, 295 S.W.2d 753 (1956).

\(^{95}\)Coulter v. O’Kelly, 226 Ark. 836, 295 S.W.2d 753 (1956); Eickhoff v. Scott, 137 Ark. 170, 208 S.W. 421 (1918).

\(^{96}\)Eickhoff v. Scott, 137 Ark. 170 (1918).

\(^{97}\)Id.

\(^{98}\)Potlach Corp. v. Richardson, 278 Ark. 498, 647 S.W.2d 438 (1983).

manner in which a party may claim adverse possession of the minerals is by opening a mine and producing the minerals for the statutory period.\textsuperscript{100} There is also indication that the adverse possession of one mineral would not necessarily result in the adverse possession of the remaining minerals.\textsuperscript{101} The Arkansas Supreme Court has recognized that title to minerals may be quieted.\textsuperscript{102} However, since adverse possession is impractical, it appears that a court may only quiet title to a severed mineral interest by proving actual title that dates back to the sovereign or to a common source.

IV. Conclusion

A quiet title action is effective in resolving title disputes and clearing title defects. Whether a party proceeds under statutory authority or pursuant to general equity principles, the quiet title decree is very effective by adjudicating the rights of all possible claimants to property.

Still, a quiet title lawsuit is not suitable for all situations. If a title defect can be cured outside of litigation, there are highly effective and inexpensive alternatives available. While the curative measure ultimately used will undoubtedly vary from based on the circumstances, the cost and effectiveness of the particular method should always be considered.

Minor defects can be cured with simple remedies: A scrivener’s error can be cured by correcting and re-recording the instrument;\textsuperscript{103} a gap in the chain of title can be cured by obtaining

\begin{footnotesize}
\begin{enumerate}
\item\textsuperscript{100} Hurst v. Rice, 278 Ark. 94, 643 S.W.2d 563 (1982).
\item\textsuperscript{101} Hurst v. Rice, 278 Ark. 94, 643 S.W.2d 563 (1982).
\item\textsuperscript{102} See generally Bond v. Marlin, 199 Ark. 806, 36 S.W.2d 460 (1940).
\item\textsuperscript{103} Standards for Examination of Real Estate Titles in Arkansas, Appendix “A”, 1 (Arkansas Bar Association, 2000).
\end{enumerate}
\end{footnotesize}
and recording missing documents;\textsuperscript{104} affidavits of occupancy and use\textsuperscript{105} and affidavits of death and heirship\textsuperscript{106} are also useful. Assuming that the affiant is credible and would not be incompetent to testify, affidavits are very cost-effective in resolving simple title defects.\textsuperscript{107} Even time itself can cure a title defect.

Still, other situations may require extensive curative efforts. While a stray deed in an otherwise clear chain of title can typically be ignored, a stray deed that begins its own very lengthy title chain cannot. Stray deeds and tax sales that purport to convey or sever mineral interests should be viewed with caution. Even though the parties could execute a stipulated agreement to remedy the title defect, rarely will such an amicable situation present itself. Absent a stipulated agreement, litigation may be the only viable option. In such a case, one may ask the court to quiet his title.

\textsuperscript{104}Standards for Examination of Real Estate Titles in Arkansas, Appendix “A”, 2 (Arkansas Bar Association, 2000).

\textsuperscript{105}Standards for Examination of Real Estate Titles in Arkansas, 11.4 (Arkansas Bar Association, 2000).

\textsuperscript{106}Standards for Examination of Real Estate Titles in Arkansas, 11.5 (Arkansas Bar Association, 2000).

\textsuperscript{107}Standards for Examination of Real Estate Titles in Arkansas, Appendix “A”, 4 (Arkansas Bar Association, 2000).