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Jordan v. Jensen

The sole notable development in Utah's oil and gas jurisprudence this year was the case of *Jordan v. Jensen*. In *Jordan*, the Supreme Court of Utah considered the impact of insufficient notice to a record mineral owner on the validity of a tax sale of the overlying surface parcel.[1] The Jordans'

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1. Jordan v. Jensen, 391 P.3d 183, 185 (Utah 2017).

predecessors owned the minerals underlying a tract of land in Uintah County, having conveyed the surface away in 1995, expressly reserving all oil, gas, and mineral rights.[2] From 1995 to 1999, the property was subject to a single annual tax assessment from Uintah County (the "County"), with all tax notices directed only to the surface owner.[3] The surface owner failed to pay the taxes during that period, and in May 2000, the County seized and sold the property at a tax sale to the Jensens' predecessor.[4] The tax deed from the County did not contain any exception, reservation, or other recognition of the severed mineral interest.[5] After leasing activity eventually gave rise to disagreements over mineral ownership between the Jordans and the Jensens, the Jordans and their oil and gas lessee (the "Appellees") filed suit to quiet title to the mineral estate.[6]

In Utah, a county may sell real property after taxes remain delinquent for four years,[7] provided that the county affords proper notice of the sale to "'the last-known recorded owner . . . and all other interests of record . . . at their last known address.'"[8] The Jensens conceded that the County failed to give notice of the tax sale to the Jordans or any other record mineral owner or lessee.[9] Thus, the court faced the single issue on appeal of "whether Utah Code section 78B-2-206 can apply to bar the Appellees' challenge to the validity of the Jensens' tax title even though Uintah County failed to provide the Jordans with notice of the tax sale as required by the Due Process Clause of the Fourteenth Amendment."[10]

The trial court found that Section 206 could not bar the challenge to the tax sale "because 'the sale, if intended to convey the severed mineral interest, was without due process of law, and resulted in an unconstitutional taking.'"[11] The Jensens, relying on the supportive precedent of *Hansen v.*

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2. *Id*. at 186.
3. *Id*.
4. *Id*. at 186-87.
5. *Id*. at 187.
6. *See id*.
7. *See id*. at 186-87 (citing UTAH CODE ANN. § 59-2-1346(1) (West 2016)).
8. *Id*. at 186-87 (quoting UTAH CODE ANN. § 59-2-1351(2)(a) (West 2016)).
9. *Id*. at 189.
10. *Id*. at 189. Utah Code § 78B-2-206 provides in relevant part that "[a]n action or defense to recover, take possession of, quiet title to, or determine the ownership of real property may not be commenced against the holder of a tax title after the expiration of four years from the date of the sale, conveyance or transfer of the tax title to any county, or directly to any other purchaser at any public or private tax sale."
11. *Jordan*, 391 P.3d at 189.

Morris,[12] claimed on appeal that insufficient notice of a tax sale did not render Section 206's four-year limitations period inapplicable.[13] In *Hansen*, the Supreme Court of Utah denied claims that a procedural failure in perfecting title via tax sale, including statutorily inadequate notice of a tax sale, would affect the statute of limitations in Section 206, which was enacted to "validate tax titles."[14]

However, based on a series of post-*Hansen* due process decisions from the Supreme Court of the United States, the Utah high court determined that "*Hansen* is no longer good law on this point."[15] Instead, as illustrated by the Supreme Court of the United States holdings in *Mennonite Board of Missions v. Adams*,[16] *Schroeder v. City of New York*,[17] *Tulsa Professional Collection Services, Inc. v. Pope*,[18] and *Texaco, Inc. v. Short*,[19] the Supreme Court of Utah explained that "a statute providing a limitations period will not apply when it is triggered by constitutionally defective state action."[20] The *Jordan* court held that Section 206, like the statutes in *Schroeder* and *Tulsa*, is triggered by state action as it is designed to come into effect upon the tax sale.[21] Therefore, "because section 206 was triggered by the county's unconstitutional conduct in failing to provide the Jordans with constitutionally adequate notice of the tax sale, it would be repugnant to due process to apply that statute to bar the Appellees' challenge now."[22]

The court in *Jordan* stressed that its inquiry was limited to the issue of whether Section 206's four-year statute of limitations could bar the Appellees' challenge to the unconstitutional tax sale.[23] Yet, without much explanation, the court went beyond this initial question in holding that the defective notice of the tax sale meant not only that the Appellees' could bring their suit, but that "the county's failure to provide notice prevented the Jordans' mineral interest from passing at the tax sale."[24] According to the court, because a county "lacks jurisdiction to sell property when it fails

12. 283 P.2d 884 (Utah 1955).
13. *Jordan*, 391 P.3d at 189-91.
14. *Id*. at 191; *see Hansen*, 283 P.2d 884, 885-86.
15. *Jordan*, 391 P.3d at 191.
16. 462 U.S. 791 (1983).
17. 371 U.S. 208 (1962).
18. 485 U.S. 478 (1988).
19. 454 U.S. 516 (1982).
20. *Jordan*, 391 P.3d at 191.
21. *Id*. at 193.
22. *Id*. at 195.
23. *Id*. at 196.
24. *Id*.

to provide interested parties of a tax sale," the County had no jurisdiction over the Jordans' mineral interest and therefore that interest could not be conveyed by the County's tax sale.[25]

25. *Id*.