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Sarah Trainer

Steven A. Rhodes

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Sarah Trainer & Steven A. Rhodes[*]

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* Sarah Trainer is an associate in The Woodlands, Texas office of Steptoe & Johnson PLLC, who concentrates her practice in the areas of energy law and mineral law, and is licensed to practice in Kansas, Texas, Nebraska and Oklahoma. Steven A. Rhodes is Of Counsel in the Charleston, West Virginia office of Steptoe & Johnson PLLC, and concentrates his practice in the areas of energy law and mineral law, with a focus on coal, oil, and gas transactions, and related industry contracts, and is licensed to practice in West Virginia.

I. Introduction

The following is an update on Kansas legislative activity and case law relating to oil and gas law from August 1, 2017 to July 31, 2018.

II. Legislative and Regulatory Developments

There has not been any significant Legislative or Regulatory Developments affecting Kansas Oil and Gas Law from August 1, 2017, to July 31, 2018.

III. Judicial Developments

A.Supreme Court Cases

No relevant Supreme Court activity was reported during the survey period.

B. Appellate Activity

One significant appellate case decided by the Kansas Court of Appeals was *Adamson v. Drill Baby Drill, LLC, et al.*[1]On appeal from the Douglas District Court, landowners "claim[] that two oil and gas leases held by owners and companies involved in exploration and drilling operations on the landowners' property have terminated because" oil and gas production has ceased to produce paying quantities.[2]

1. Facts and Procedural History

Appellants own surface and mineral rights in Douglas County, Kansas.[3] In February 2014, Appellants sued Appellees alleging that the leases that allowed Defendants to conduct drilling operations on Appellant's property had expired because there was insufficient production.[4] The district court granted summary judgment in favor of Appellees and the Court of Appeals affirmed.[5]

Appellants jointly own two separate parcels of land.[6] "Scott and Amy Adamson, Fernando Guerrero, Dan and Sara Yardley, Brian Stultz . . . and Spring Creek Acres, LLC[,] are" owners of the surface and mineral rights

1. 409 P.3d 874, Kan. App. (2018), 2018 WL 560890 (Kan. Ct. App. Jan. 26, 2017).
2. *Id*. at *1.
3. *Id*.
4. *Id*.
5. *Id*.
6. *Id*.

of the "Pearson Lease" and "John and Mary Kay Fortin, Rudy and Sally Sudja, Gayla Spradling, and Scott and Amy Adamson are owners of the surface rights of the 'Finnerty Lease'."[7]

Appellees claim they have valid oil and gas leases for both parcels.[8]

In 1918, "William and Mary Finnerty and Hiram and Bertha Howard granted oil and gas leases to James A. Moon for their property, known as the 'Finnerty Lease' and 'Pearson Lease' respectively. Each lease contained a termination date five years from its execution, with the option to extend the initial term for 'as long thereafter as oil or gas, or either of them, is produced from said land by the lessee.'"[9]

Several companies acquired assignments of these leases.[10]

In 2013, "[Appellant's] legal counsel notified [Appellees] that [they] believed the Finnerty and Pearson leases were invalid" because oil and gas production had ceased "in paying quantities" and they then filed suit.[11] The district court found that the leases were valid.[12]

2. Analysis

The Appellants contended that the lower court "erred when it found the Finnerty and Pearson leases were still valid and had not terminated due to cessation of production of oil and gas in paying quantities."[13]

Appellants first argued that the district court erroneously put the burden to show absence of production in paying quantities on Appellants. The district court ruled that Plaintiffs "must point out evidence of non-production (or lack of production in paying quantities) and then the burden shifts to Defendants to show facts why any such evidence is not sufficient to warrant termination."[14] On appeal, Appellants argued that the burden to prove continued validity of the leases is on the lessee and that the lessor is "not required to prove a negative."[15] Based on the case law they relied on, Appellants concluded "that the party asserting an oil and gas lease is valid always bears the burden of proving the leases validity."[16]

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7. *Id*.
8. *Id*.
9. *Id*.
10. *Id*. at *2.
11. *Id*. at *1-*2
12. *Id*. at *2.
13. *Id*.
14. *See id*. at *3.
15. *Id*. at *4.
16. *Id*.

The Court of Appeals in this case disagreed. They found that Kansas case law makes clear that the district court correctly assigned the initial burden of providing nonproduction to Plaintiffs or "*on the one bringing the claim.*"[17] One case the Court of Appeals relied on in their decision was *Eichman v. Leavell Res. Corp.*[18] In *Eichman,* the Court of Appeals found that that "the party alleging an oil and gas lease has been abandoned due to nonproduction . . . must first present evidence that oil production on the property has, in fact, ceased" and that "the mere allegation of lack of production in paying quantities is not sufficient to shift the initial burden to a lessee to prov[ing] paying quantities throughout" the life of the lease.[19] "Once a party has shown nonproduction, the burden shifts to the opposing party . . . to prove that any cessation in production was only temporary."[20]

The Appelants next challenged the district court's ruling regarding the validity of the Finnerty Lease. The district court ruled that because Appellants were surface owners and not mineral owners of the land covered by the Finnerty Lease, that they could not contest the validity thereof.[21] However, Appellants argued that because the leases had been improperly ratified by a mineral owner because she did not know what she was signing, the ratification, and therefore, the lease, was invalid.[22] The district court ruled that under Kansas law, each cotenant has an "equal right to develop," so even if one ratification was improper, the Appellants' failure to controvert the validity of the other ratifications would render the Finnerty lease valid.[23] The Court of Appeals confirmed this argument by the district court.[24]

Appellants further argued that the "district court erred when it granted partial summary judgment . . . regarding the validity of the Pearson Lease, from 1923 until 1989, and then from 1989 to present.[25] Appellants alleged that the Kansas Geological Survey ('KGS') " records contained 'no evidence of production from 1918 through 1953, and insufficient production'" until 1989.[26] However, the district court ruled that KGS

17. *Id*. (emphasis in original).
18. 19 Kan. App. 2d 710, 876 P.2d 171 (Kan. Ct. App. Sep. 9, 1994).
19. *Adamson*. 2018 WL 560890 at *3-*5.
20. *Id*. at *5.
21. *Id*. at *8.
22. *Id*.
23. *Id*. (citation omitted).
24. *Id*.
25. *Id*.
26. *Id*. at *9.

records from the years 1923 until 1953 were not competent evidence to prove nonproduction.[27] As far as the KGS records from 1953 to 1989 are concerned, the district court found that the records were not competent evidence of production or nonproduction and that KGS specifically stated that it did not certify the accuracy of the production records related to the Pearson Lease.[28] The Court of Appeals found that because Appellants had the burden to establish nonproduction in paying quantities and because the KGS records for the time period were not probative, that the district court did not err in these rulings.[29]

As far as the validity of the Pearson lease from 1989 to the present, Appellants attempted to reassert their claim that Appellees bore the burden of proving production.[30] The district court found that Appellants had no evidence to meet their burden to establish lack of production in paying quantities from 1989 to present. The Court of Appeals reaffirmed their "prior legal conclusion that Kansas law has established that the initial burden of proof rests with the party claiming production on the property has ceased.[31] Appellants did not demonstrate "that there was nonproduction in paying quantities on the Pearson Lease from 1989 to present."[32]

3. Conclusion

The Court of Appeals in this case confirmed the long-standing Kansas principle that the initial burden of proving nonproduction or lack of production in paying quantities is on the one bringing the claim and that once a party has shown nonproduction, the burden shifts to the opposing party to prove that any cessation in production was only temporary.

C. Trial Activity

No relevant trial activity was reported during the survey period.

27. *Id*.
28. *Id*.
29. *Id*. At *12.
30. *Id*.
31. *Id*.
32. *Id*.