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Horton v. Browne

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HORTON V. BROWNE, ILLUSTRATING CONFUSION (LITERALLY) IN THE CIVIL CODE

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I. BACKGOUND

In Horton v. Browne,[1] the plaintiffs, three siblings, sought declaratory judgment recognizing them as owners of mineral rights.

Initially, plaintiffs' mother had full ownership of a 40 acre tract in Red River Parish. In 1997, the mother executed a donation that divided the land into three separate tracts, and gave each sibling ownership of a particular tract. In the same donation, the mother stated each sibling was to receive an undivided one third interest in the minerals covering the entirety of the 40 acres.[2]

In the following years, a series of transactions occurred. One sibling was no longer involved after she sold her interest to another sibling in 2002. In 2003, the remaining two siblings sold their interest (collectively, the entirety of the 40 acres) to a third party, reserving their mineral interests.[3] In 2004, the third party conveyed her rights in the property (again, the surface of the 40 acres) to the defendant, Donald O. Browne. In 2005, the siblings and Donald Browne executed a mineral lease in favor of Pride Oil and Gas Properties, Inc.[4] No wells were spud until 2010.[5]

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1. Horton v. Browne, 47,253 (La. App. 2 Cir. 6/29/12) 94 So. 3d 1034.
2. *Id*. at 1036. While the act of donation could have been more specific, it arguably created a mineral servitude over the entirety of the 40 acres, and each sibling received a one third interest in the mineral servitude. *Id.* Thus, each sibling owned the surface of his particular tract, and a one third undivided interest in the mineral servitude covering the entirety of the 40 acres.
3. *Id.*
4. *Id.*

A dispute arose as to who owned the mineral rights at the time the first well was spud in 2010. Defendant Donald Browne, the owner of the surface, argued that the siblings' mineral servitude prescribed in 2007 for 10 years non-use, and therefore, he owned the mineral rights. The plaintiffs contended that the original donation by the mother failed to create a valid mineral servitude, or alternatively, confusion occurred between their fractional interest in the servitude and their rights in the surface.[6]

II. DECISION OF THE COURT

The trial court ruled that the mother's donation in 1997 created a single servitude, which prescribed in 2007.[7] The court of appeal affirmed the trial court's ruling.[8]

Article 66 of the Mineral Code provides, "[t]he owners of several contiguous tracts of land may establish a single mineral servitude in favor of one or more of them or of a third party."[9] Plaintiffs argued that the article was inapplicable, as it refers to "owners" and, at the time of the donation, the mother was the only owner. The court of appeal, however, looked to the intent of the mother, and determined that she intended to create a single mineral servitude.[10] Further, the court found that "by agreeing to the terms in the conveyance, each plaintiff intended to be subject to a mineral servitude in favor of the others."[11] The donations of the surface and mineral rights were separate and distinct donations, even though they were executed by means of the same instrument.[12]

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5. *Id.*
6. *Id.*
7. *Id.*
8. *Id.*
9. LA. REV. STAT. ANN. § 31:66 (1974).
10. Horton v. Browne, 94 So. 3d at 1037.
11. *Id*.
12. *Id.*

As to the confusion argument, the court ruled that confusion did not occur with regard to the mineral servitude.[13] Article 27(2) of the Mineral Code states, "a mineral servitude is extinguished by confusion."[14] However, the Mineral Code does not have specific articles regarding confusion of mineral servitudes. Thus the court applied by analogy the Civil Code articles regarding predial servitudes.[15] The court cited Civil Code article 765, which states that a predial servitude is extinguished by confusion "when the dominant estate and servient estates are acquired in their entirety by the same person."[16]

Applying this article by analogy, the court found that because the landowner did not acquire the entirety of the dominant estate, but rather only a fractional interest, the servitude was not extinguished by confusion.[17] This was so because the rights were unequal between the two estates; as a landowner in full ownership, one would have an independent right for the exploration of minerals, but as a co-owner of a mineral servitude, consent by all of the co-owners was required for mineral operations on the property.[18] Accordingly, defendant Donald Browne was declared

13. *Id*.
14. LA. REV. STAT. ANN. § 31:27(2) (2000).
15. A similar question was presented in Allied Chemical Corp. v. Dye, 441 So. 2d 776 (La. App. 2 Cir. 1983). The question was, "when a person has full ownership of a contiguous tract and also a fractional mineral servitude in the same land, are not the full ownership and servitude merged together and the servitude extinguished by confusion?" The court in *Allied Chemical Corp.* analogized former Civil Code article 805, an article on predial servitudes, which required that the two estates be of equal quality for confusion to occur. The court then found that full ownership and servitudes were not of equal quality, and therefore confusion did not occur. Horton v. Browne, 94 So. 3d at 1038. (Title IV of Book II of the Louisiana Civil Code of 1870, which formerly contained art. 805 as cited by the court in Allied Chemical Corp. v. Dye, was revised, amended, and reenacted by Acts 1977, No. 514, effective January 1, 1978.)
16. In this case, the dominant estate would be the mineral servitude, and the servient estate would be the surface servitude. *Id*.
17. The court also cited Luther L. McDougal III, *Louisiana Mineral Servitudes*, 61 TUL. L. REV. 1097, in support of the outcome.
18. Horton v. Browne, 94 So. 3d at 1038.

the owner of the mineral rights to the 40 acres, as the mineral servitude created in 1997 had prescribed for non-use in 2007.

III. COMMENTARY

The determination of when and to what extent confusion occurs is nuanced. On confusion with respect to predial servitudes, Professor Saul Litvinoff writes:

> Confusion may take place only in part, as when the owner of the dominant estate acquires only a part of the servient estate the whole of which is burdened by the servitude, in which case the servitude continues burdening the rest of the servient estate if in doing so it affords any benefit to the dominant estate. On the other hand, confusion does not take place at all when the owner of the servient estate acquires a part of the dominant estate, in which case the servitude continues to exist in favor of the remaining part of the dominant estate.[19]

Horton illustrates this distinction by analogy to mineral servitudes. Although each sibling owned the entirety of a particular tract of land (the servient estate), the *entirety* of the mineral servitude (the dominant estate) was not acquired by the same person, as each sibling only had a fractional interest in the mineral servitude. Therefore, based on analogy, the requirements of Civil Code article 765 were not met, so confusion did not occur at all.[20]

It is interesting to note that article 66 of the Mineral Code provides an exception to this rule in that it allows owners of several contiguous tracts of land to establish a single mineral servitude in favor of one of them.[21] For example, if the three siblings decided to create a mineral servitude in favor of one of the

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19. SAUL LITVINOFF, 5 LOUISIANA CIVIL LAW TREATISE, OBLIGATIONS 641-42, (2d ed., West 2001) (footnotes omitted). *See also* ATHANASSIOS N. YIANNOPOULOS, 4 LOUISIANA CIVIL LAW TREATISE, PREDIAL SERVITUDES 453 (West 1983).

20. Horton v. Browne, 94 So. 3d at 1038.

21. LA. REV. STAT. ANN. § 31:66 (2000). The rule of Civil Code article 765 is also codified in Mineral Code article 27. LA. REV. STAT. ANN. § 31:27(2) (2000).

siblings, confusion would not extinguish the mineral servitude burdening his particular tract, despite the fact that the dominant estate and servient estate would be owned in their entirety by the same person.[22]

In a situation like the one in *Horton*, a challenge arises when one of the landowners decides to sell but wants to reserve his interest in the mineral rights. In this case, reserving the mineral rights would only reserve the interest in the existing mineral servitude. Of course, the prescription of non-use will accrue ten years from the date it was created, not from the date of sale of the land.[23] As a practical matter, the siblings could have partitioned the mineral servitude. A partition would divide the servitude and result in each sibling having full ownership of the land and mineral rights in his particular tract. This would allow a sibling to create a new mineral servitude from the date of sale of the land. Alternatively, the siblings could have executed an acknowledgment of the servitude, pursuant to Mineral Code article 54, which would have extended the date of prescription for non-use.[24]

22. *See* LA. REV.STAT. ANN. § 31:66 (2000) and LA. CIV. CODE art. 765.
23. LA. REV. STAT. ANN. § 31:28 (2000).
24. LA. REV. STAT. ANN. § 31:54 (2000).