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## Oklahoma

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# ONE J

*Oil and Gas, Natural Resources, and Energy Journal*

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## OKLAHOMA



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### *I. Legislative and Regulatory Developments*

This year the State of Oklahoma passed a law about the ownership of produced water, and the Oklahoma Corporation Commission issued new

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regulations about production rates for gas wells and when operators may shut in their wells to prevent waste.

*A. State Legislative Developments*

*1. Ownership of Produced Water*

On May 19, 2020, SB 1875 was signed into law by Gov. Kevin Stitt creating the Oil and Gas Produced Water and Waste Recycling and Reuse Act (“Act”) to be codified at Section 86.6 of Title 52 of the Oklahoma Statutes. The Act designates who owns and is responsible for produced water and waste from oil and natural gas drilling and production operations.

The Act states that before its extraction from the ground, subterranean water, including its constituent elements, is the property of the owner of the surface estate, and is subject to the right of the mineral owner or the oil and gas lessee of the mineral owner, or both, to extract the water as is reasonably necessary for, or incident to, the exploration and extraction of the oil and gas. The Act states that unless provided otherwise by an order of the Corporation Commission or other legally binding document, the operator and nonoperators of an oil and gas well are the owners of the produced water and waste extracted from the ground through the borehole of the oil or gas well, have the right to use, possess, handle, dispose of, transfer, sell, process, recycle, reuse or treat the produced water and waste, and are entitled to the proceeds for any of the uses of the produced water.

The Act includes an exception if oil and gas produced water and waste is processed for the extraction of the constituent elements for commercial purposes, the produced water and waste shall be considered brine under the Oklahoma Brine Development Act and subject to the provisions of that act, including the entitlement to and sharing of proceeds. The Act is effective November 1, 2020.

*2. Limitation on local Controls on Utility Service Connections*

On May 19, 2020, Gov. Kevin Stitt signed HB 3619 into law amending Okla. Stat. tit. 11, § 14-107(2020), to prohibit a city, town or county from adopting real estate development, building or construction ordinances, rules, or codes restricting or prohibiting connections to the facilities of utility providers. This measure also prohibits discrimination in the adoption of rules or codes against one or more utility providers based upon the nature or source of the utility service provided. The goal of the legislation is to prohibit local governments from banning certain utility connections, such as natural gas hookups. The amendment is effective November 1, 2020.

## *B. State Regulatory Developments*

### *1. Production Rates for Unallocated Gas Wells*

On March 5, 2020, by Order No. 709553, the Oklahoma Corporation Commission adjusted the maximum permitted rates of production for unallocated natural gas wells. The order sets a proration formula for the period between April 1, 2020, and September 30, 2020, that requires operators to limit an unallocated gas well's absolute open flow to 50%, down from the prior rate of 65%, or to cap its maximum allowable production at 2 million cubic feet per day (mmcf/d), whichever is greater.

### *2. Well Shut In to Prevent Waste.*

On April 22, 2020, the Oklahoma Corporation Commission issued an emergency order providing that to help prevent waste, protection of correlative rights, and to optimize production, operators/producers may shut-in or curtail oil production from wells where they determine such action is necessary and warranted to prevent economic waste. The order was to remain effective for ninety (90) days from April 17, 2020, but was superseded by Interim Order, Order No. 711992, entered June 3, 2020. In the Interim Order, the Commission orders that to help prevent waste, protection of correlative rights, and to optimize production, producers may shut-in or curtail oil production from wells where the producer deems such action necessary based on their determination that economic waste is occurring. The Commission further ordered that during shut-in or curtailment of such wells, the wells shall be deemed as producing under Commission Rules and Regulations. The Interim Order is to remain in effect until the matter is reopened on August 10, 2020.

## *II. Judicial Developments*

This year Oklahoma state courts examined the Surface Damages Act and homestead conveyances between spouses. Also, the federal court for the Western District of Oklahoma tackled how Oklahoma Corporation Commission orders affect lease provisions and joint operating agreements.

### *A. Supreme Court Cases*

*Talen Paul Hobson v. Cimarex Energy Co.*, 2019 OK 58, 453 P.3d 482

How does Oklahoma's Surface Damages Act (the "SDA") define "surface owner?" And does that definition include a vested remainderman, or just the life tenant? In *Hobson v. Cimarex*, the Oklahoma Supreme

Court held that a vested remainderman does not qualify as a surface owner under the SDA.<sup>1</sup>

Timothy Hobson, the Plaintiff's father, owns a life estate in the surface estate in property in Canadian County, Oklahoma, with the remainder to his son, Talen Hobson, the Plaintiff. Cimarex is a lessee in the property and before it drilled, Cimarex reached a surface damages agreement with the life tenant pursuant to the SDA.<sup>2</sup>

Plaintiff then sued Cimarex and argued he is entitled to compensation because he is a surface owner under the SDA, and Cimarex should have negotiated with him. Cimarex argued Plaintiff is a future interest owner and is not considered a "surface owner" under the SDA. But if the court did find Plaintiff to qualify as a surface owner, then Cimarex argued he should look to the life tenant for recourse instead of Cimarex.<sup>3</sup>

The Canadian County District Court dismissed the case with prejudice, finding a vested remainderman does not qualify as a surface owner under the SDA. The Court of Civil Appeals reversed, ruling the SDA deals with ownership as opposed to possession.<sup>4</sup>

The Oklahoma Supreme Court explained this case depended on how the SDA defines "surface owner," or "the owner or owners of record of the surface of the property on which the drilling operation is to occur." However, the SDA does not further define "owner."<sup>5</sup>

Therefore, the court looked to the ordinary meaning of owner found in Black's Law Dictionary: "[s]omeone who has the right to possess, use, and convey something."<sup>6</sup> Looking to the United States Supreme Court, ownership does not always mean absolute dominion, but where the property is private, the owner retains more dominion.<sup>7</sup>

Then the court explained how Plaintiff's vested remainder will only become possessory when his father, the life tenant, dies.<sup>8</sup> Since Plaintiff does not currently own a possessory interest in the surface estate, the SDA only requires Cimarex to negotiate with the person holding a current possessory interest, the life tenant.<sup>9</sup>

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1. *Talen Paul Hobson v. Cimarex Energy Co.*, 2019 OK 58, 453 P.3d 482.

2. *Id.* ¶ 2.

3. *Id.* ¶ 3.

4. *Id.*

5. *Id.* ¶ 7.

6. *Id.* ¶ 9.

7. *Id.*

8. *Id.* ¶ 10.

9. *Id.* ¶ 13.

As support for its ruling, the court cited *McCrabb v. Chesapeake Energy Corp.*, where the appellate court ruled an operator must negotiate a surface damages agreement with all tenants in common. All tenants in common have a current possessory interest, unlike a vested remainderman.<sup>10</sup> Therefore, the court held that although the SDA's definition of surface owner is ambiguous, Plaintiff did not qualify as such an owner and Cimarex did not have to negotiate for surface damages with anyone but the life tenant.

*B. Appellate Activity*

*In the Matter of the Estate of Hyer*, 2020 OK CIV APP 31, 2020 WL 3529410

This case explained when both spouses need not join in a deed conveying their homestead. The Court of Civil Appeals ruled Okla. Stat. tit. 16, § 4 (2011) does not apply when one of the spouses is the grantee.

Daniel Benjamin Hyer owned real property in Cleveland County, Oklahoma, prior to his marriage to Sara Beth Hyer. During their marriage, Daniel deeded the property to himself and his wife as joint tenants with the right of survivorship. Only Daniel signed the deed, and they lived in the home on the property and claimed it as their homestead until Daniel died about sixteen months later.<sup>11</sup>

After Daniel's death, Sara executed and filed for record, an affidavit claiming full ownership of the property as her husband's surviving joint tenant. However, somehow Sara knew Benjamin Hyer, Daniel's adult son from a prior relationship, intended to claim partial ownership of the property as an heir of his father. Therefore, Sara moved to ask the probate court to determine the ownership of the property.<sup>12</sup>

Sara claimed the property through the joint tenancy deed. Benjamin argued the deed was invalid under Okla. Stat. tit. 16, § 4 (2011) the statute requiring both spouses to join in a deed conveying homestead property.<sup>13</sup> The district court invalidated the deed, holding the conveyance was "inadequate to establish a joint tenancy for the reason that both the husband and wife did not execute to convey."<sup>14</sup>

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10. *McCrabb v. Chesapeake Energy Corp.*, 2009 OK CIV APP 66, ¶ 16, 216 P.3d 312, 315.

11. *In the Matter of the Estate of Hyer*, 2020 OK CIV APP 31, ¶ 2, 2020 WL 3529410.

12. *Id.* ¶ 3.

13. *Id.* ¶ 4.

14. *Id.* ¶ 5.

Okla. Stat. tit. 16, § 4 (2011) states:

No deed, mortgage, or contract affecting the homestead exempt by law, except a lease for a period not exceeding one (1) year, shall be valid unless in writing and subscribed by both husband and wife, if both are living and not divorced, or legally separated, except as otherwise provided for by law.<sup>15</sup>

It is undisputed the property was the decedent's homestead, and the deed was not executed by both spouses. Therefore, the deed appears to be invalid based on strictly reading the statute. However, the appellate court explained it must look at Oklahoma Supreme Court precedent before ruling on this case.<sup>16</sup>

The Oklahoma Supreme Court issued multiple rulings holding Okla. Stat. tit. 16, § 4 (2011) does not apply when the deed is only between the spouses.<sup>17</sup> In *Hall v. Powell*, the court held the husband "had a perfect right to convey the land to his wife, although he signed it by himself alone."<sup>18</sup> The court decided a deed between spouses is not within the "spirit of the section, which surely cannot intend that the wife should do the vain and absurd thing of executing, as grantor, a deed to herself as grantee."<sup>19</sup>

In *Brooks v. Butler*, the Oklahoma Supreme Court validated a husband's unilateral conveyance of a mortgage of the homestead to his wife. Focusing on the statute's purpose, the court said:

The manifest purpose of the foregoing constitutional provision is to protect the homestead interest. The homestead interest is for the benefit of both the husband and the wife. If the execution of the mortgage did not destroy the homestead interest the mortgage is valid. It follows, therefore that when [the husband] executed the mortgage to the wife... there was nothing in the execution thereof which attempted to or did affect the homestead interest. The mortgage was therefore not void under the foregoing constitutional or statutory provision.<sup>20</sup>

In *Grenard v. McMahan*, a wife owned the homestead property outright, and conveyed it to her husband, for life, with the remainder to her

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15. *Id.* ¶ 7.

16. *Id.*

17. *Id.* ¶ 8.

18. *Hall v. Powell*, 1899 OK 50, 57 P. 168.

19. *Id.*, quoting *Harsh v. Griffin*, 72 Iowa 608, 34 N.W. 441 (1887).

20. *Brooks v. Butler*, 1939 OK 132, ¶ 17, 87 P.2d 1092, 1096.

daughters from a previous marriage. The Oklahoma Supreme Court invalidated the deed and specifically rejected the argument the deed was just a conveyance between spouses. The court held the exception for conveyances between spouses was valid, but the conveyance of the remainder estate to the wife's daughters, i.e., third persons, took the case out of the exception.<sup>21</sup>

While Okla. Stat. tit. 16, § 4 (2011) does require conveyances of the homestead to be joined by both spouses, multiple Oklahoma Supreme Court cases held a spouse does not need to join as a grantor if the spouse is also the grantee in the instrument. Therefore, the Court of Civil Appeals reversed the district court's ruling and found the deed to be valid.<sup>22</sup>

*Devon Energy Production Company, L.P. v. Wyckoff*, 2020 OK CIV APP 4, 457 P.3d 284

A Lessor executes an oil and gas lease and strikes the warranty clause. The Lessee pays Lessor the bonus, and then later discovers Lessor's mineral interest is already subject to a different oil and gas lease. Can Lessee recover the bonus even though the lease did not include a warranty? In *Devon v. Wyckoff*, the Oklahoma Court of Civil Appeals ruled the Lessee must have the opportunity to prove its case that the Lessor committed fraud when it executed the lease.<sup>23</sup>

Chesapeake Exploration, L.L.C. released all of its interest in a lease. Afterwards, the Defendants' attorney contacted Devon and asked if they were interested in leasing his clients' approximately 400 net mineral acres in Section 3-20N-17W in Woodward County, Oklahoma. The Defendants executed two leases to Devon, striking the warranty from both leases. Devon paid almost \$1.8 million in bonuses to the Defendants, only to later learn Chesapeake released a wellbore-only interest in the Wyckoff #2-3 well in Section 3.<sup>24</sup>

Further investigation led Devon to discover a 1956 lease covering Section 3 and other sections still in effect. Production from multiple sections was still holding the lease, although there were no producing wells on Section 3 itself. Therefore, the Defendants owned no mineral acres available for lease in Section 3.<sup>25</sup>

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21. *Grenard v. McMahan*, 1968 OK 75, 441 P.2d 950.

22. *Estate of Hyer* at ¶ 14.

23. *Devon Energy Production Company, L.P. v. Wyckoff*, 2020 OK CIV APP 4, 457 P.3d 284

24. *Id.* ¶ 2.

25. *Id.*



Devon filed suit and pleaded four causes of action: (1) breach of the implied covenant of quiet enjoyment; (2) actual and/or constructive fraud; (3) rescission; and (4) unjust enrichment. The Major County District Court dismissed Devon's claims for failure to state a claim on which relief can be granted.<sup>26</sup> The district court gave no further explanation or detail.

The appellate court explained this case relies on two cases: *Peabody Coal Co. v. State ex rel. Comm'rs of the Land Office*, and *French Energy, Inc. v. Alexander*.<sup>27</sup> In *Peabody Coal*, the Oklahoma Land Office executed a lease removing a warranty that the lessor was "seized in fee with the right to lease the minerals."<sup>28</sup> Essentially, the Land Office would not warrant its title or right to lease. The court described the lease as a quitclaim and ruled the coal company took the lease at its own risk. The court found the coal company could not recover any bonus or royalties from the Land Office.<sup>29</sup> The Defendants in this case argued the court should treat their leases to Devon as quitclaims, similar to the lease in *Peabody Coal*.<sup>30</sup>

In *French Energy*, an oil and gas lease was sold at a judicial sale, and the minerals described in the lease were already held by production, so there was nothing for Alexander to convey. The Oklahoma Supreme Court held *French Energy* was entitled to equitable relief because Alexander was aware of the pre-existing lease, although Alexander may not have understood the importance of this lease.<sup>31</sup> The court ruled at the very least there was a mutual mistake between the parties as to whether or not Alexander could convey the present right to explore for oil and gas. Alexander would be substantially and unjustly enriched if he could keep the bonus money in exchange for nothing.<sup>32</sup>

Regarding fraud, the court said:

The doctrine of caveat emptor can never be invoked to perpetrate a fraud. The purchaser is entitled to receive the title owned by the estate of the decedent at the time of his death or prior to the sale. The estate will never be allowed to retain its title to the property and also retain the purchase price therefor. The law requires the estate to part with whatever title it has in and to the

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26. *Id.* ¶ 3.

27. *Id.* 4.

28. *Peabody Coal Co. v. State ex rel. Comm'rs of the Land Office*, 1992 OK CIV APP 83, 884 P.2d 857.

29. *Id.* at 859.

30. *Devon v. Wyckoff* at ¶4.

31. *French Energy, Inc. v. Alexander*, 1991 OK 106, 818 P.2d 1234.

32. *Id.* at 1239.

land before it will be permitted to retain the purchase price therefor.<sup>33</sup>

Devon argued the Defendants knew or should have known their net mineral acres in Section 3 were not available to lease because they were still receiving royalties from a 1956 lease. Devon claimed Defendants failed to disclose this information and intended Devon to rely on this omission. In their pleadings, Defendants argued they told Devon they were not sure what they owned and Devon should search the public records to verify their interest.<sup>34</sup>

Therefore, while the District Court dismissed Devon's case for failure to state a claim, the Court of Civil Appeals reversed and remanded the case to provide Devon the opportunity to prove their fraud claim.

### C. Federal Cases

*Curtis Cory et al. v. Newfield Exploration Mid-Continent, Inc.*, 2020 WL 981718 (W.D. Oklahoma 2020)

How does an order from the Oklahoma Corporation Commission interact with a pooling provision in a lease? *Cory v. Newfield* explained how a court decides which takes precedence when the order and the lease conflict.<sup>35</sup>

In 1980, the Oklahoma Corporation Commission (the "OCC") issued Order No. 164538 establishing Section 36, Township 15 North, Range 9 West, in Kingfisher County, Oklahoma, as a 640-acre spacing unit for gas and gas condensate production from the Tonkawa, Mississippi Solid, and Hunton common sources of supply.<sup>36</sup>

Plaintiffs own the surface estate of a 160-acre tract out of Section 36. In 1997, Plaintiff's predecessor executed an oil and gas lease to Defendant's predecessor covering an 80-acre tract in Section 36. The lease's pooling clause provided for unit sizes up to 160 acres for an oil well and up to 640 acres for a gas well.<sup>37</sup>

On April 25, 2017, Plaintiffs contacted Defendant because they learned Defendant planned to drill a horizontal well in Section 36. The Plaintiffs claimed the pooling clause in the 1997 lease prevented anyone from

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33. *Id.*

34. *Devon v. Wyckoff* at ¶ 8.

35. *Curtis Cory et al. v. Newfield Exploration Mid-Continent, Inc.*, 2020 WL 981718 (W.D. Oklahoma 2020).

36. *Id.* at 1.

37. *Id.*

creating a pooled unit exceeding 160 acres for an oil well.<sup>38</sup> Then on April 27, 2017, Defendant filed an application with the OCC, requesting Section 36 be established as a 640-acre spacing unit for oil production from the Mississippian, Woodford, and Hunton common sources of supply. Defendant later asked to dismiss its application because it did not intend to drill the well.<sup>39</sup>

On May 18, 2017, Defendant applied to the OCC for an increased density so it could drill an additional well under Order No. 164538. Its application claimed Order No. 164538 established a 640-acre spacing unit for the production of oil and gas, or gas and gas condensate from the Mississippian common source of supply. However, said Order did not cover oil production or the Mississippian.<sup>40</sup>

On July 6, 2017, the OCC granted Defendant's increased density application (Order No. 665651). The OCC stated the additional well would be an exception to Order No. 164538. Soon Defendant drilled an oil well named the Katie 1509 1H-36 well (the "Katie 1509").<sup>41</sup>

On November 1, 2018, the OCC issued an order nunc pro tunc, noting a scrivener's error in Order No. 665651. That Order should have covered the Mississippi Solid common source of supply instead of the Mississippian.<sup>42</sup>

Then in January of 2019, Plaintiffs filed suit in the District Court in Kingfisher County, asking to quiet title to the leased 80 acres and claiming breach of contract, tortious interference with contract, and bad faith. Defendant removed the case to this federal court, and moved to seek partial judgment on the pleadings. Plaintiffs admitted they had no claim for tortious interference, so this court granted Defendant's motion as to that claim.<sup>43</sup>

Defendant argued Plaintiffs were attempting an impermissible collateral attack on Order No. 164538 and Order No. 665651. Oklahoma law prevents courts from allowing a collateral attack "upon the orders, rules and regulations of the OCC."<sup>44</sup> The term "collateral attack" has been defined as "an attempt to avoid, defeat, evade, or deny the force and effect of a final

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38. *Id.*

39. *Id.* at 2.

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

44. *Ladra v. New Dominion, LLC*, 2015 OK 53, ¶ 11, 353 P.3d 529, 531-32.

order or judgment in an incidental proceeding other than by appeal, writ of error, certiorari, or motion for new trial.”<sup>45</sup>

However, OCC orders are not completely immune from lawsuits; the OCC’s jurisdiction is “limited to the resolution of public rights.”<sup>46</sup> State district courts have the jurisdiction to resolve disputes over private rights. “Judicial adjudication of private rights under a leasehold agreement does not amount to a collateral attack on an OCC order unless it would require the court to ‘reverse, modify, or correct’ the order.”<sup>47</sup>

This court explained Plaintiffs are not attempting to reverse, modify, or correct an OCC order; they are trying to enforce a contractual right in an oil and gas lease. Therefore, this lawsuit is not an impermissible collateral attack on Order No. 164538 or Order No. 665651 and this court has the jurisdiction to hear the case.<sup>48</sup>

Moving on to Defendant’s motion for judgment on the pleadings, Plaintiffs claimed Defendant violated the lease’s 160-acre limit for pooled units with an oil well. Defendant agreed the Katie 1509 is an oil well and it is being drilled on a unit larger than 160 acres. However, Defendant argued it drilled the Katie 1509 under Order No. 164538 and Order No. 665651, and those orders overruled the spacing limitation in the lease. Also, Defendant argued Plaintiffs have alleged no conduct which actually violated the lease’s spacing limitation.<sup>49</sup>

Defendant pointed out that Paragraph 14 of the lease provided:

Should lessee be prevented from complying with any express or implied covenant of this lease... by reason of... any order, rule or regulation of governmental authority, then while so prevented, lessee’s obligation to comply with such covenant shall be suspended and lessee shall not be liable in damage for failure to comply therewith.<sup>50</sup>

Therefore, Defendant argued any size limitation in the lease is inferior to the OCC orders allowing the drilling of the Katie 1509.<sup>51</sup>

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45. *Id.* at 532.

46. *Tucker v. Special Energy Corp.*, 2008 OK 57, ¶ 9,187 P.3d 730, 733.

47. *Grayhorse Energy, LLC v. Crawley Petroleum Corp.*, 2010 OK CIV APP 145, ¶ 11, 245 P.3d 1249, 1254.

48. *Cory v. Newfield* at 3.

49. *Id.* at 4.

50. *Id.*

51. *Id.*

The court rejected this argument by noting the OCC orders did not “prevent” Defendant from complying with the size limitation in the lease. Order No. 164538 and Order No. 665651 *allowed* Defendant to drill the Katie 1509, but they did not require Defendant to do so. Therefore, the court held the Defendants were not prevented from complying with the lease.<sup>52</sup>

Next, Defendant argued it “did not voluntarily pool an area greater than 160 acres” so it could drill the Katie 1509. As the owner of 100% of the working interest in Section 36, Defendant claimed it did really pool lands together because it did not need to obtain a pooling order from the OCC. Also, the royalty interests in Section 36 had been pooled in 1980 under Order No. 164538.<sup>53</sup>

The court explained it did not have to determine whether or not Defendant engaged in pooling because the lease also prevented Defendant from “combining” the leased premises with any other acreage. The court ruled the lease precluded the drilling of an oil well on a unit larger than 160 acres regardless of whether any pooling occurred, and Defendant did not show it was entitled to judgment on the pleadings on Plaintiffs’ breach of contract claim.<sup>54</sup>

Turning to Plaintiffs’ bad faith claim, Defendant argued Oklahoma courts do not recognize a cause of action for pooling in bad faith. The court agreed, noting breach of the duty of good faith and fair dealing results in damages for breach of contract, not independent tort liability. A tort action may be available if the parties are in a “special relationship,” but Oklahoma courts have held an oil and gas lease does not give rise to such a relationship. Therefore, the court granted Defendant’s motion regarding Plaintiffs’ bad faith claim.<sup>55</sup>

In the end, this court allowed Plaintiffs to proceed with their claims to quiet title and for breach of contract, but denied their claims for tortious interference with contract and bad faith.

*Crawley Petroleum Corp. v. Gastar Exploration Inc.*, 2020 WL 2545327 (W.D. Oklahoma 2020)

Does the Oklahoma Corporation Commission (the “OCC”) have the jurisdiction to issue a pooling order covering a section where the land is

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52. *Id.*

53. *Id.* at 5.

54. *Id.*

55. *Id.* at 5-6.

already subject to a joint operating agreement? And does a joint operating agreement covering “wells” include both vertical and horizontal wells?<sup>56</sup>

Both parties own leasehold working interests in a section in Kingfisher County, Oklahoma. Also, they are both parties to a 1971 joint operating agreement (the “1971 JOA”). While the 1971 JOA is still in effect, Plaintiff argued it applies to all wells in a specific area, while Defendant argued it only applies to vertical wells, not horizontal wells.<sup>57</sup>

Early in 2017, both parties proposed drilling a horizontal well. Plaintiff’s proposal indicated it would send another letter if it determined Defendant had an interest subject to an operating agreement. Then Plaintiff sent a second letter detailing its belief that Defendant had an interest subject to the 1971 JOA. Defendant’s proposal did not reference the 1971 JOA.<sup>58</sup>

The OCC issued a spacing order and a pooling order covering the Mississippian (less Chester) and Woodford common sources of supply, and named Defendant as operator for a single horizontal well for the section. The OCC orders cover an area larger than the area subject to the 1971 JOA.<sup>59</sup>

Plaintiff elected to participate in the horizontal well with that portion of its interest that was not subject to the 1971 JOA. Then, Plaintiff promised to make a separate election as to that portion of its interest that was subject to the 1971 JOA, but only if Defendant made a proposal based on the 1971 JOA. Defendant never made such a proposal because it did not believe the agreement covered horizontal wells. In December 2017, Defendant completed the Yogi 1801 8-1UOH horizontal well.<sup>60</sup>

Plaintiff filed suit in the District Court for Kingfisher County, and Defendant removed the case to federal court. Plaintiff asked for a declaratory judgment that the 1971 JOA “controls the drilling, completion and operation of the [relevant] Horizontal Well and [that Plaintiff’s] leasehold interests subject to the [1971] JOA cannot be force pooled pursuant to the [OCC’s] Pooling Order.” Plaintiff also asserted a claim for breach of the 1971 JOA.<sup>61</sup>

The court noted this case turns on whether the 1971 JOA covers vertical and horizontal wells, or just vertical wells. Plaintiff pointed out the 1971

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56. *Crawley Petroleum Corp. v. Gastar Exploration Inc.*, 2020 WL 2545327 (W.D. Oklahoma 2020).

57. *Id.* at 1.

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.* at 2.

JOA references “all wells.” Defendant argued that because of technological advances, it is common sense to treat it as only covering vertical wells, because how could the parties intend for the agreement to cover something which did not exist when they entered into the agreement, i.e., horizontal wells?<sup>62</sup>

The court explained the Plaintiff has the “better legal argument.”<sup>63</sup> The 1971 JOA repeatedly refers to “well” and “wells” without more detail. It does not show an intent to only cover vertical wells. Therefore, the court ruled the 1971 JOA covers both vertical and horizontal wells.

The court cited longstanding rules of contract interpretation that insist a court determine the intent of the parties to the contract. A court may not read words into a contract that are not there, which is why this court refused to add “a ‘vertical’ modifier into the contract to precede each use of ‘well’ or ‘wells.’”<sup>64</sup>

Defendant argued Okla. Stat. tit. 15, §164 states a contract can only cover things which the parties intended to include.<sup>65</sup> The court noted the 1971 JOA references oil and gas wells, and §164 would be relevant if the parties were now intending to drill a drinking water well.<sup>66</sup>

Since the court found the 1971 JOA applies to both vertical and horizontal wells, Plaintiff’s interests subject to the agreement are outside the scope of the OCC orders. The OCC Pooling Order granted elections to parties who had “not agreed with Operator to develop said unit and common sources of supply.”<sup>67</sup> The 1971 JOA was an agreement to develop an area within the area covered by the OCC Pooling Order.

Defendant argued the OCC Pooling Order “undisputedly and unequivocally” demonstrates the OCC determined the parties had not reached such an agreement:

Applicants are the owners of the right to drill wells on said drilling and spacing unit and to develop and produce said common sources of supply, [and they] have made a bona fide effort to reach an agreement with all of the other such owners in such drilling and spacing unit, as set forth on Exhibit “A,” to pool their interests and to develop the drilling and spacing unit

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62. *Id.*

63. *Id.*

64. *Id.* at 3.

65. *Id.*

66. *Id.*

67. *Id.*

and common sources of supply as a unit, and the Commission should issue an order requiring such owners to pool and develop the drilling and spacing unit and common sources of supply covered hereby as a unit.<sup>68</sup>

However, the court noted the Pooling Order states Plaintiff and Defendant attempted to reach an agreement with all of the other owners; it does not state that no agreement was reached by the parties with any other owner. The court added their decision could be different if the Pooling Order included the following language: “Applicant has not agreed with all [or any] of the other such owners in such drilling and spacing unit to pool their interests and to develop the drilling and spacing unit and common source of supply as a single unit.”<sup>69</sup> While that language is included in some pooling orders, it was not included in this Pooling Order.

Also, since some of Plaintiff’s interests within the section are subject to the 1971 JOA and some are outside the boundaries of the agreement, the OCC still has jurisdiction to issue a pooling order covering those interests that are not subject to the 1971 JOA.<sup>70</sup> Therefore, the court granted Plaintiff’s motion for summary judgment and denied Defendant’s summary judgment motion.

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68. *Id.* at 4.

69. *Id.*

70. *Id.* at 5.