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Black v. Floyd, 630 S.E. 2d 382 (Ga. 2006)

Jonathan Long

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terminated that the members representing the HOA in this case were either identical to, or in privity with, the HOA members in the district court case. The court reasoned that both cases involved substantially similar interests, which the HOA members in the district court case represented and protected on the association's behalf. Third, the HOA's failure to directly appeal the district court's decision resulted in a final judgment on the merits. Finally, the court found that the HOA had a full and fair opportunity to litigate the ownership of the disputed water rights in district court. The court observed that the HOA members in this case either already argued the ownership issue in district court, or had notice of the issues scheduled for litigation but chose not to appear.

Moreover, the court determined that the doctrine of issue preclusion also prevented the HOA from challenging the district court's subject matter jurisdiction because it failed to do so during the district court trial, or on direct appeal. The court reasoned that allowing the HOA to collaterally attack the district court's jurisdiction would "undermine the finality of the judgment and could lead to conflicting factual determinations" over the ownership of the water rights in the Original Decree.

Accordingly, the court affirmed the water court's decision and held that the doctrine of issue preclusion bars the HOA from asserting ownership of the water rights in the Original Decree, and prevents the HOA from collaterally attacking the district court's subject matter jurisdiction.

Cameron Banko

GEORGIA

Black v. Floyd, 630 S.E.2d 382 (Ga. 2006) (affirming that Georgia holds title to all tidewaters within the state except where a private party can trace their title to a valid Crown or state grant containing an explicit conveyance).

Russell and Josie Black (collectively "Black") claimed that two Crown grants gave them title to property along the tidewaters of Sterling Creek. Douglas Floyd, Thomas Garrett and Tami Garret (collectively "Floyd"), owners of adjacent property, joined the State of Georgia as a necessary party in a declaratory judgment action maintaining that the State of Georgia held title to the property along Sterling Creek. The Bryan County Superior Court entered judgment in favor of Floyd and the State of Georgia. On appeal to the Supreme Court of Georgia, Black argued that navigability of tidewaters is a factor for determining tidewater ownership.

In Georgia, tidewaters include the sea as well as all rivers and arms of the sea affected by the rise and fall of the tide, useable for fishing,

passage, navigation, commerce, or transportation. At common law, tidewater beds extended to the high water mark and the Crown owned the soil between the high-water mark and the low-water mark. The court reiterated the rule that Georgia now holds title to the beds of all tidewaters within the state, except where a private party can trace its title to a valid crown or state grant which explicitly conveys the tidewater beds. The burden is on the grantee to show an explicit conveyance that demonstrates clear intent on the part of the crown to part with ownership of the tidewater beds in question. Further, the court strictly construes any ambiguity in Royal grants against the grantee.

Upon reviewing Black's grant, the court found that the words were completely illegible. The court held that indecipherable Crown grants were inadmissible at summary judgment and Black failed to present other evidence supporting his claims at the motions hearing. The court added that, even if the Crown issued grants containing the language alleged by Black, they would still lack clear intent on the part of the Crown to convey ownership of the tidewater property along Sterling Creek. Therefore, the court affirmed the decision of the lower court and granted summary judgment in favor of Floyd and the State of Georgia.

Jonathan Long

KANSAS

Hawley v. Kansas Dep't of Agric., 132 P.3d 870 (Kan. 2006) (holding that the Kansas Division of Water Resources correctly applied a Kansas water right forfeiture statute because the Kansas legislature intended for water rights to comply with a "use it or lose it" philosophy).

Karen and Marlin Hawley ("Trustees") inherited the right to appropriate water from the Republican River in Kansas from their father, Max, who had received the right from his father, E.E. Conzelman. The record showed that the water users failed to put this water right to beneficial use for thirty-one successive years, from 1971 to 2001. In May 2003, the owners of other water rights in the same area requested the Kansas Department of Agriculture's Division of Water Resources ("DWR") pursue a abandonment trial for the water right.

In December 2003, the DWR filed a report concluding the Trustees had made no beneficial use of the water from 1971 to 2002 and had not shown sufficient cause for the non-use. DWR gave notice to the Trustees of a hearing to determine whether the water right should be abandoned and terminated under the Kansas Water Appropriation Act.

After a formal termination hearing, the chief water engineer adopted the DWR hearing officer's recommendation to issue an order of termination of the water right. The Trustees filed a petition for ju-