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Oklahoma Oil and Gas Update

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OKLAHOMA OIL AND GAS UPDATE

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TABLE OF CONTENTS

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I. NON OPERATOR VERSUS OPERATOR AND OTHER OIL AND GAS OPERATIONS RELATED CASES

A. *Court Allows Operator to Recoup Mistaken Over-payment of Production Proceeds*

In *Marlin Oil Corp. v. Lurie,* the court was presented with the operator's mistaken overpayment of $135,625.35 in production proceeds to Lurie.[2] Marlin was the operator of the subject well, and Lurie owned a 3.071349% working interest and a 2.36502% net revenue interest in the well.[3] Lurie had been in a non-consent penalty recoupment status due to his election to not participate in a rework operation.[4] After recovering the penalty, Marlin put Lurie back in pay status.[5] However, due to an accounting error, Marlin *overstated* Lurie's interest in the well as a 19.006109% net revenue interest (instead of 2.36502%).[6] The check stub sent to Lurie showed the inflated and mistaken net

2. Marlin Oil Corp. v. Lurie, 417 F. App'x 740, 741 (10th Cir. 2011).
3. *Id.*
4. *Id.*
5. *Id.*
6. *Id.*

https://scholarship.law.tamu.edu/txwes-lr/vol19/iss2/26
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revenue interest.[7] Lurie contacted Marlin to ask if the "amount" of the check was correct, without making any reference to the overstated net revenue interest.[8] The operator's personnel responded that the "amount" was correct.[9] Marlin did not discover the error and monthly over-payment until almost three years later.[10]

In defending against Marlin's suit to recover the overpayment, Lurie asserted that the computer error was either known or should have been known by Marlin, so that there was no mistake in the over-payment.[11] The Tenth Circuit Court of Appeals found that even if Marlin should have discovered its mistake sooner, that fact did not bar Marlin's right to receive restitution from Lurie.[12] The court found that Marlin was entitled to restitution of the $135,625.35 plus interest on that amount.[13] The court *further* found that Marlin was entitled to withhold future payments to Lurie until Marlin was repaid in full.[14]

B. *Court Finds that District Court Lawsuit for Fraud and Other Torts did not Constitute a Collateral Attack on Orders of the Oklahoma Corporation Commission*

The case of *Samson Resources Company v. Newfield Exploration Mid-Continent, Inc.* involved an application of Newfield to force-pool the working interest rights of Samson and other owners in Section 28.[15] Samson elected to participate in the proposed well as a cost-bearing working interest owner "to the full extent of its interest."[16] At the time of that election, Samson thought it owned only 17.78 acres, and it believed that an oil and gas lease covering an additional seventy net acres had recently expired due to the absence of the timely commencement of a well on the lease.[17] However, Newfield's early commencement of the well at issue in the pooling action had, without the knowledge of Samson, maintained the additional seventy leasehold acres in force and effect.[18]

Samson sent Newfield a check in the amount of $285,999.63 for the estimated well costs attributable to the 17.78 acres Samson thought it owned.[19] A Newfield landman treated Samson's payment as a payment to secure Samson's election to participate to the extent of all its

7. *Id.*
8. *Id.* at 741–42.
9. *Id.* at 742.
10. *Id.*
11. *Id.*
12. *Id.* at 744.
13. *Id.*
14. *Id.* at 745–46.
15. Samson Res. Co. v. Newfield Exploration Mid-Continent, Inc., 281 P.3d 1278, 1280 (Okla. 2012).
16. *Id.*
17. *Id.*
18. *Id.*
19. *Id.*

interest, and the landman did not compare the prepayment amount with the 87.78-acre interest Newfield believed was covered by Samson's participation election.[20] Approximately one month later, Newfield noticed the under-payment and advised Samson that it had underpaid the well costs and that Samson's election to participate with 87.78 acres would require a prepayment of $1,411,982.45.[21] Samson responded that its intent was to participate with only its 17.78-acre interest.[22]

Samson filed an application with the Oklahoma Corporation Commission (the "Commission") asking it to determine that Samson's election was limited to 17.78 acres.[23] The Commission determined that Samson had elected to participate to the full extent of its 87.78-acre interest in the unit and that Samson had made a unilateral mistake as to the size of its interest.[24] The court of appeals ultimately affirmed that ruling.[25]

While Samson's appeal was pending before the court of appeals, Samson sued Newfield in the state district court alleging actual fraud, deceit, intentional and negligent misrepresentation, constructive fraud, and breach of duty as operator.[26] Samson additionally alleged that Newfield's actions amounted to extrinsic fraud on the Commission, rendering the pooling order invalid as to Samson's seventy-acre interest in the lease that Samson thought had expired.[27] The district court dismissed Samson's petition on the basis that Samson's claims were an impermissible collateral attack on a final order of the Commission.[28] The court of appeals affirmed.[29]

The Oklahoma Supreme Court reversed the district court and vacated the court of appeals's ruling, although it did agree that the Commission's order could not be challenged in district court based upon allegations of extrinsic fraud.[30] However, the court found that Samson's claims for actual and punitive damages were private claims that sounded in tort and were beyond the jurisdiction of the Commission, and that the district court was the proper tribunal for Samson to bring the above-described claims.[31]

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20. *Id.*
21. *Id.*
22. *Id.*
23. *Id.*
24. *Id.* at 1281–82.
25. *Id.* at 1281.
26. *Id.*
27. *Id.* at 1281. Samson alleged that Newfield concealed from Samson the dirt work, which held the seventy-acre lease in continued force and effect, and that Newfield had stated in its Commission papers that it *proposed* to drill a well on the subject property when, in fact, the well had already been commenced. *Id.* at 1280.
28. *Id.* at 1279.
29. *Id.*
30. *Id.* at 1282–83.
31. *Id.* at 1283.

II. Oil and Gas Contracts, Transactions, and Title Matters

A. *Sellers and Buyers Disagree as to Whether the Deed Conveyed a One-Half Mineral Interest, or Only a One-Fourth Mineral Interest*

The controversy in *Combs v. Sherman* involved the interpretation of a deed.[32] The two sellers held joint ownership of a fifty-six-acre tract of land.[33] In a 1993 letter, they offered to sell the property to the Rowtons "for $175.00 per acre with one-quarter mineral rights going to the buyer."[34] The letter contained a "P.S." stating that the two sellers "will retain 3/4 of the minerals and sell 1/4 with the 56 acres."[35]

Each of the sellers executed an identical, but separate, joint tenancy warranty deed in favor of the Rowtons.[36] The description of land and reservation language in each deed referred to certain described lands and stated that those lands contained

> 56 acres, more or less, as the case may be, **LESS AND EXCEPT an undivided 3/4ths interest in and to the oil, gas and other minerals lying in and under the property, which are specifically reserved by Grantor herein, it being the intent of Grantor herein to convey to Grantee herein, an undivided 1/4th mineral interest.**[37]

In 1999, the Rowtons sold their interest in the property to the Combs (the "buyers").[38] The buyers then leased their mineral interests.[39] In 2007, the sellers sold their reserved mineral interests to Legacy Royalty.[40]

A disagreement arose between the parties as to the relative ownership of the minerals underlying the fifty-six-acre tract.[41] So, in 2009, the buyers sued the sellers claiming ownership of a 1/2 mineral interest.[42] The sellers asserted that they had conveyed to the Rowtons only a 1/4th mineral interest.[43] The trial court granted judgment in favor of the buyers finding that they owned a 1/2 mineral interest in the property.[44] In support of that conclusion, the trial court cited the "Duhig rule"[45] under which a grantor can, under certain circum-

32. Combs v. Sherman, 267 P.3d 150 (Okla. Civ. App. 2011).
33. *Id.* at 152.
34. *Id.* at 151.
35. *Id.*
36. *Id.*
37. *Id.* (emphasis in original).
38. *Id.*
39. *Id.*
40. *Id.*
41. *Id.*
42. *Id.*
43. *Id.*
44. *Id.*
45. *Id.* at 151–52; *see also* Duhig v. Peavy-Moore Lumber Co., 144 S.W.2d 878 (Tex. 1940); Birmingham v. McCoy, 358 P.2d 824 (Okla. 1960).

stances, be estopped from claiming "that the deed conveyed a less estate than grantor's complete ownership."[46] The sellers appealed.[47]

The buyers argued on appeal that each of the two deeds reserved 3/4ths of the mineral interests and conveyed the remaining 1/4th of each seller's mineral interest and that, because 1/4th plus 1/4th equals 1/2, the sellers conveyed 1/2 of their mineral interest.[48] The court of appeals rejected this contention for several reasons.[49]

First, the court found that the buyers' reasoning was flawed.[50] Under the buyers' logic, the sellers reserved 6/4ths or 150% of what they owned, which was mathematically impossible.[51]

Second, the buyers' rationale was found to have ignored the essence of joint tenancy ownership in which the two sellers owned the property in "equal shares."[52] Each of the sellers could convey as much of that seller's share as desired but no more than that.[53] "Buyers received one quarter of each 'equal share.' That is not the same thing as two quarters of the whole. In short, each [seller] here owned an undivided half of the entire estate, and each sold 1/4 of her interest."[54]

Third, the court found that the cases cited with respect to the Duhig rule were distinguishable from the facts in the case for a variety of reasons.[55]

Finally, the court found that there was nothing in the deeds and nothing in the other evidence that indicated any intent on the part of the sellers to divest themselves of more than a quarter interest in the minerals.[56] The court reversed the district court's decision and held that the buyers acquired only a 1/4th mineral interest in the property.[57]

B. *Court Construes Ambiguous Assignment and Determines the Scope of the Rights Conveyed*

The case of *Citation 2002 Investment Partnership v. Apache Corp.* presented a quiet title action that involved the interpretation of an assignment of oil and gas leases that was delivered in 1990 by Sun Operating in favor of Mobil Oil.[58] The assignment included the Jef-

46. *Combs*, 267 P.3d at 151–52.
47. *Id.* at 150.
48. *Id.* at 152.
49. *Id.*
50. *Id.*
51. *Id.*
52. *Id.* at 152–53.
53. *Id.* at 153.
54. *Id.*
55. *Id.*
56. *Id.*
57. *Id.* at 154.
58. Citation 2002 Inv. P'ship v. Apache Corp., No. 108,456, ¶¶ 1, 2 (Okla. Civ. App. Feb. 3, 2012) (Okla. Pub. Legal Research Sys.), http://oklegal.onenet.net/oklegal-cgi/isearch.

ferson Lease that was at issue in the suit.[59] The language in the assignment that described the Jefferson Lease included, in part, the following words:

> The following Oil & Gas Leases are hereby assigned INSOFAR AND ONLY INSOFAR as they contribute to the Graham Deese Unit Phase II as established by that certain Plan of Unitization and further as said unit was approved and granted under that certain Oklahoma Corporation Commission Order No. 91401 dated 6-7-72 and as amended by Order No. 301376 dated 8-5-86.[60]

After describing the internal company lease number, the lessor, lessee, date, book and page of recordation, and the tracts of land covered, the assignment then added the following words:

> LESS AND EXCEPT the Arbuckle Formation as found in the Neustadt 1-25 at a subsurface depth of 9,864 ft. down to 10,152 ft.[61]

In 1993, Sun delivered an assignment of the Jefferson Lease to Apache that purported to assign that lease:

> INSOFAR AND ONLY INSOFAR as said oil and gas lease covers and applies to depths below the base of the Graham Deese Unit [in certain described lands].[62]

Citation succeeded to the position of Mobil under the first assignment.[63] Apache and the other appellees were the owners of the rights conveyed under the second assignment.[64]

In 2009, Citation filed the present quiet title action against Apache and the other appellees, asserting ownership of all rights in the Jefferson Lease except for the Arbuckle formation.[65] The Apache group pointed to the terms of Sun's assignment to Mobil that conveyed only the portion of the Jefferson Lease that "contributed to" the Graham Deese Unit Phase II, and they argued that the assignment did not include any depths below the Deese formation.[66] The Apache group argued that the Jefferson Lease only contributed to the Graham Deese Unit Phase II to the extent it granted the right to produce oil and gas from the Deese formation.[67]

Citation asserted that the reference to the Graham Deese Unit Phase II in Sun's assignment to Mobil did not limit the depths conveyed to Mobil.[68] Citation pointed to the later language in the assignment excluding the Arbuckle formation as supporting its

59. *Id.* ¶ 2.
60. *Id.*
61. *Id.*
62. *Id.* ¶ 3.
63. *Id.* ¶ 2.
64. *Id.*
65. *Id.* ¶ 4.
66. *Id.* ¶ 6.
67. *Id.*
68. *Id.* ¶ 5.

interpretation.[69] Those words in the assignment would have been unnecessary if the Apache group's interpretation were correct, since the Arbuckle was outside the Deese Formation.[70] The Apache group replied that the Arbuckle language was, at worst, redundant in relation to the depth limits already imposed with the earlier reference to the Deese Unit.[71]

The case proceeded to a bench trial, and each side introduced lay and expert testimony to support the opposing interpretations of Sun's assignment to Mobil.[72] In ruling in favor of the Apache group, the district court noted in part as follows: first, the district court found that the assignment was ambiguous, and it also found that the term "contribute," as used in Sun's assignment to Mobil, appeared to be synonymous with the term "apply."[73]

Second, in addressing the inconsistency between (a) the contention that the assignment to Mobil covered only the Deese Formation and (b) the inclusion by Sun of words in the assignment that excluded and reserved the Arbuckle formation, the district court stated the following:

> After having read the assignment many times, the Court has reached the following conclusion: If I conveyed my backyard and specifically excluded my driveway (which is in the front yard), I still would only have conveyed my backyard. I would not have conveyed my house.[74]

The court concluded that the intent of the assignment "was to convey only that portion of the lease which is included in the Graham Deese Unit. . . . If Sun and Mobil had intended for the instrument to convey all formations except for the Arbuckle, it could have done so in very simple language."[75]

On appeal, the court of appeals cited the legal standards that need to be met in order to reverse a trial court's ruling regarding the interpretation of an ambiguous contract.[76] The appellate court concluded that the trial court's judgment was not against the clear weight of the evidence or contrary to law.[77] It affirmed the decision of the district court.[78]

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69. *Id.*
70. *Id.*
71. *Id.* ¶ 6.
72. *Id.* ¶¶ 7, 8.
73. *Id.* ¶ 7.
74. *Id.*
75. *Id.*
76. *Id.* ¶ 12.
77. *Id.*
78. *Id.* ¶ 14.

III. Surface Use, Surface Damages, Surface Damages Act, and Environmental Cases

A. *Court Rules that the State of Oklahoma ex rel. Department of Transportation is not Exempt From the Provisions of the Oklahoma Surface Damages Act*

The case of *JMA Energy Co., LLC v. State of Oklahoma ex rel. Department of Transportation* presented the Oklahoma Department of Transportation's ("DOT") appeal in proceedings that JMA brought under the Oklahoma Surface Damages Act.[79] The DOT moved to dismiss JMA's surface damage appraisal action, asserting that sovereign immunity precluded the state from being sued unless such immunity had been waived by the state.[80] The DOT argued that the Surface Damages Act did not waive the immunity of the state.[81] The trial court rejected the DOT's contention, noting that the Surface Damages Act explicitly exempts property held by an Indian, an Indian tribe, or by the United States for an Indian tribe, but the Act does not expressly exempt property owned by the state.[82]

The Oklahoma court of appeals affirmed the ruling of the district court.[83] In doing so, the court first found that Oklahoma's common law doctrine of sovereign immunity has been abrogated, and the DOT must now point to a specific statute to support its contention that it has sovereign immunity from the provisions of the Surface Damages Act.[84] The court held that the Governmental Tort Claims Act only establishes sovereign immunity as to torts.[85] Finally, with regard to the DOT's assertion that the Surface Damages Act does not by its terms apply to state lands, the court noted that the legislature addressed the scope of lands exempted from that Act, and it could have exempted state lands but chose only to exempt Indian lands under the express provisions in the Act.[86] The court concluded that the DOT is not exempt from the provisions of the Surface Damages Act.[87]

79. JMA Energy Co. v. State *ex rel.* Dep't of Transp., 278 P.3d 1053, 1054 (Okla. Civ. App. 2012).
80. *Id.*
81. *Id.*
82. *Id.* at 1055.
83. *Id.* at 1059.
84. *Id.* at 1056.
85. *Id.* at 1056–57.
86. *Id.* at 1058–59.
87. *Id.* at 1059.

B. *Court Finds that the Corporation Commission Exceeded its Jurisdiction When it Found that the Operator, who was the Subject of Pending Civil Litigation for Nuisance, Trespass, and Other Claims, had Made "Reasonable Use" of the Surface*

The case of *Morgan v. Corporation Commission* involved the Velma Sims Sand (Vess) Unit in Stephens County, Oklahoma and certain wells which the Morgans (the "landowners") contended had been abandoned and had fallen into disrepair. In May 2007, the landowners sued Chevron for nuisance, trespass, and other claims.[88] They asserted, among other claims, that Chevron had used more of the surface than was reasonably necessary, and for a longer period of time than was reasonably necessary, and had failed to properly maintain the wells.[89]

After retaining experts to examine the unit in June 2009, Chevron filed an application with the Oklahoma Corporation Commission seeking approval of a plan of remediation for the unit, involving the cleaning up of debris and remediation of several of the wells and surrounding lands.[90] Chevron also asked that the Commission determine whether its operations complied with the Commission's rules and regulations and "pose[d] no threat to the health, safety and welfare" of the landowners and other Oklahoma citizens.[91] The Commission held a hearing on the merits of Chevron's application.[92]

In November 2009, the administrative law judge ("ALJ") issued a report recommending that Chevron's remediation plan be approved.[93] Chevron appealed, seeking to supplement the report with a finding that Chevron's use of the land was "reasonable."[94] The matter was remanded to the ALJ who issued a supplemental report in January 2010, which found in part that the testimony and exhibits "clearly show Chevron has made reasonable use of the at issue surface estate."[95]

The landowners did not appeal the initial and supplemental reports.[96] However, when the parties could not agree on the form of the final order and their differences were presented to the ALJ for resolu-

88. Morgan v. Okla. Corp. Comm'n, 274 P.3d 832, 834 (Okla. Civ. App. 2011).
89. *Id.*
90. *Id.* at 834–35.
91. *Id.* at 835. The court notes in its opinion that Chevron did not initially seek a Commission finding as to the reasonableness of its use, but instead framed its application as a plan to remediate for purposes of public rights and safety: "Only in later hearings before the ALJ and on appeal to the OCC did Chevron urge a finding that its use of the surface was reasonable. The purpose of Chevron's insistence, admittedly, is to seek issue preclusion in the district court case based on the OCC's order." *Id.* at 837.
92. *Id.*
93. *Id.*
94. *Id.*
95. *Id.* at 835.
96. *Id.*

tion, the ALJ ruled that the final order would be based on both the original and supplemental reports.[97] The landowners appealed to the Commission *en banc*.[98] Chevron moved to strike the landowners' appeal.[99] The ALJ and Appellate Referee both recommended that the motion to strike be granted and that the landowners' motion to settle the terms of the final order be denied.[100] The Commission agreed and entered a final order in favor of Chevron.[101] The landowners filed suit, asserting that the Commission exceeded its jurisdiction when it determined that Chevron's use of the surface was reasonable.[102]

The Oklahoma court of appeals agreed with the landowners that the Commission's final order exceeded its jurisdiction to the extent that the Commission determined that Chevron's use of the surface was reasonable.[103] The court vacated the specified paragraphs of the order that related to that determination.[104] Since the landowners did not challenge Chevron's plan of remediation, the other portions of the order were affirmed.[105]

In reaching that ruling, the court noted that the right to reasonable use of the surface is a right implied from the parties' oil and gas lease.[106] Consequently, the dispute concerned the liability of one private individual or entity to another and thus, involved private rights within the jurisdiction of the district courts rather than the Commission.[107]

The court rejected Chevron's contention that the landowners failed to exhaust their administrative remedies by failing to appeal the ALJ's two reports.[108] It found that the landowners' challenge to the jurisdiction of the Commission to act with respect to the appealed ruling involved a fundamental question that must be inquired into by the court in every case, whether raised by a party or not (i.e., the issue of jurisdiction may be raised by the court *sua sponte*).[109]

97. *Id.*
98. *Id.*
99. *Id.*
100. *Id.*
101. *Id.*
102. *Id.*
103. *Id.* at 837.
104. *Id.* at 839.
105. *Id.*
106. *Id.* at 838.
107. *Id.*
108. *Id.*
109. *Id.* at 838–39.

IV. Conservation Commission Related Cases

A. *Court Reviews Corporation Commission Order Finding Landowner and Equipment Salvage Company Primarily Liable for the Plugging of the Subject Well*

The case of *Hoover v. Boone Operating, Inc.*, involved an appeal by a landowner and a salvage company of the Oklahoma Corporation Commission's interim order finding them to be primarily responsible for plugging certain oil wells and finding the operator to be only secondarily liable for such plugging operations.[110]

Hoover was the surface owner of the subject lands, and Boone had operated several oil wells on the lands.[111] Based on the landowner's observations regarding the condition of the well equipment, he believed that Boone had abandoned the wells.[112] Indeed, through the course of the proceedings in this matter, the landowner claimed that ownership of the well equipment had reverted to him because it had been abandoned.[113] So, by quitclaim conveyance, the landowner sold the well equipment to the owner of a salvage company, which then removed the well equipment.[114] Neither the landowner nor the salvage company plugged any of the wells from which the equipment had been removed.[115]

After learning that the landowner had sold the equipment and that the salvage company removed it, Boone filed an application with the Oklahoma Corporation Commission requesting that the Commission find both the landowner and salvage company responsible for plugging the subject wells.[116] The operator alleged that it could no longer economically operate the wells due to the actions of the landowner and the salvage company.[117] The operator further asserted that the two respondents had, by their actions, asserted dominion and control over the wells without authority or permission and were thereby responsible for plugging the wells.[118]

The Administrative Law Judge found that the landowner, the salvage company, and the operator were "jointly and severally" liable for plugging the wells.[119] All parties appealed to the Corporation Commission *en banc*.[120] The Commission entered an interim order finding the landowner and the salvage company to be primarily responsible

110. Hoover v. Boone Operating, Inc., 274 P.3d 815, 816 (Okla. Civ. App. 2011).
111. *Id.*
112. *Id.*
113. *Id.*
114. *Id.*
115. *Id.*
116. *Id.*
117. *Id.*
118. *Id.*
119. *Id.*
120. *Id.*

for plugging the well, with the operator being secondarily liable.[121] The landowner and the salvage company appealed.[122]

The court of appeals first addressed the question of whether the Commission possessed the constitutional or statutory authority to declare a surface owner or equipment salvager responsible for plugging a well.[123] While Rule 165:10-11-3 of the Commission, dealing with the duty to plug and abandon, refers to "working interest owners" and "operators," the court found that the authority of the Commission to hold any person (and not just the operator) liable for plugging, replugging, or repairing a well is a necessary part of the Commission's general authority to take action to prevent and prohibit waste and pollution relating to activities under its jurisdiction.[124] The court next found that the findings of the Commission were supported by substantial evidence.[125]

However, the court held that before the Commission could proceed against "other responsible persons," the Commission must first promulgate rules and regulations which, at a minimum, provide criteria for the determination of who is an "other responsible person" and the criteria for assigning to "other responsible persons" primary, joint, or secondary liability and responsibility.[126] To the extent that there should be unequal treatment of parties subject to the Commission's rules, there must be a rational basis for the disparity in treatment.[127] Since the Commission had not enacted such rules, the court concluded that the Commission did not have authority to act.[128] The court reversed the Commission's interim order.[129]

One collateral procedural issue of interest is that, after the landowner and the salvage company's request for a stay of the Commission's order was denied both by the Commission and the Oklahoma Supreme Court, the landowner began plugging the well.[130] The operator then moved to dismiss the appeal as moot.[131] However, the court of appeals denied that motion, finding that "coerced compliance with the conditions of an order is not tantamount to accepting the benefit of a judgment, which acceptance waives the right of appeal."[132] The court noted that the landowner and salvage company might have be-

121. *Id.*
122. *Id.*
123. *Id.* at 817.
124. OKLA. ADMIN. CODE § 165:10-11-3 (1999); *Hoover*, 274 P.3d at 818.
125. *Hoover*, 274 P.3d at 819.
126. *Id.* at 820.
127. *Id.*
128. *Id.*
129. *Id.*
130. *Id.* at 816.
131. *Id.*
132. *Id.* at 816–17.

come subject to an enforcement action for failure to comply, had they taken no action, resulting in a situation of coerced compliance.[133]

B. *Court Reverses Trial Court Decision Invalidating in Part a Forced Pooling Order that was Entered More Than 25 Years Earlier, on the Basis of a Failure to Give Personal Notice*

In *Indio Investments, Inc. v. Mesa Ridge Resources, Inc.*, the complex factual backdrop involved unleased mineral owners, a forced pooling order, subsequent disputes as to the correct ownership of the mineral rights, and ultimately, an attempt to invalidate the pooling order as to certain mineral owners.[134]

The forced pooling proceedings occurred long ago, in 1980.[135] The pooling application represented that the applicant had exercised due diligence to locate each respondent.[136] The applicant filed an affidavit with the Commission stating that it did not mail notice of the pooling application to the respondent at issue in this lawsuit, and certain other responsibilities, because "after the exercise of due diligence the whereabouts of said parties or successors to their interests have not been located."[137] Publication notice was given, and proof of publication was filed with the Commission.[138]

In granting the pooling application on September 5, 1980, the Commission found in part that "notice has been given as required by law and by Commission rules; that due diligence has been exercised to find each Respondent; that a bona fide effort was made to reach an agreement with each Respondent."[139] The applicant subsequently filed an affidavit with the Commission in September 1980 stating that it did not mail a copy of the Commission's pooling order to the subject respondent, and others, because "after the exercise of due diligence the whereabouts of said parties or successors to their interests have not been located."[140]

In the lawsuit that was filed in October 2006, the plaintiffs asserted that the September 1980 forced pooling order was void as to certain parties due to the lack of personal notice to their predecessor.[141] The trial court agreed with the plaintiffs and entered a summary judgment for them.[142] The trial court stated that "[a] party must use reasonable diligence and conduct a meaningful search of all reasonably available

133. *Id.* at 817.
134. Indio Invs., Inc. v. Mesa Ridge Res., Inc., No. 108,928 (Okla. Civ. App. Nov. 18, 2011) (Okla. Pub. Legal Research Sys.).
135. *Id.*
136. *Id.*
137. *Id.*
138. *Id.*
139. *Id.*
140. *Id.*
141. *Id.*
142. *Id.*

sources at hand to locate and notify the record owner."[143] The court found that the undisputed facts documented the conclusion that a cursory review of the records in the county where the record owner resided would have revealed the names and whereabouts of those required to be notified.[144] The successors to the applicant under the pooling order appealed.[145]

The court of appeals described the issue presented as one of whether, over twenty-five years after the pooling order was entered, the assertion that the order was void for lack of personal notice and personal jurisdiction constituted an impermissible collateral attack on the pooling order.[146] The court found that the order at issue was not appealed and is now final.[147] So a collateral attack would be permissible only to the limited extent of reviewing whether the Commission had jurisdiction to enter the order.[148] The court of appeals further observed that "the trial court, and this Court on appeal, may not go beyond the face of the OCC's proceedings and [may not] consider extrinsic evidence to determine whether Oakland exercised due diligence in locating the record owner."[149]

Additionally, the court observed that, at the time the applicant filed the 1980 force pooling proceedings, the Oklahoma statutes concerning pooling actions only required publication notice.[150] It was only later that the Oklahoma Supreme Court in subsequent cases held that publication notice was not reasonably calculated to provide actual knowledge of legal proceedings and was inadequate.[151] Thus, to the extent the trial court applied more-recent notice standards that had not been adopted at the time of the subject pooling proceedings, it erred.[152] The face of the 1980 pooling proceedings established that the applicant complied with the applicable Oklahoma statutes.[153]

Based upon the foregoing, the court of appeals concluded that the present lawsuit constituted an impermissible collateral attack on the pooling order, and it reversed the trial court's order.[154]

143. *Id.*
144. *Id.*
145. *Id.*
146. *Id.*
147. *Id.*
148. *Id.*
149. *Id.*
150. *Id.*
151. *Id.*
152. *Id.*
153. *Id.*
154. *Id.*

C. *Court Affirms Corporation Commission Pooling Order that Protects the Applicant/Operator from Excessive Oil and Gas Lease Burdens Created in Anticipation of the Pooling Action*

The case of *WN Operating, Inc. v. Terraco LLC* involved an appeal from a forced pooling order of the Oklahoma Corporation Commission which designated WN Operating as the unit operator.[155] Viersen owned mineral rights in the subject property.[156] WN contacted Viersen concerning the proposed development of the property for oil and gas purposes, but Viersen opposed having any well or production facilities located on its property.[157] When WN submitted a formal proposal to Viersen, Viersen executed an oil and gas lease in favor of Terraco the very next day in apparent anticipation of WN filing a forced pooling proceeding.[158] The new lease contained surface-use restrictions preventing drilling activity on the subject property, provided for a 1/4th royalty and gave Terraco an option at payout to either increase the 1/4th royalty to 40% or convert it to a 50% working interest.[159] There was no evidence that Terraco paid Viersen anything for the heavily-burdened oil and gas lease.[160]

WN subsequently filed the present compulsory pooling proceeding naming Terraco as a respondent.[161] After the hearing, the Commission granted the pooling application.[162] With respect to the heavily-burdened oil and gas lease and working interest of Terraco, the Commission specifically found as follows:

> The interest of Terraco, LLC is . . . subject to a non-arm's-length overriding royalty and back-in that substantially reduces the net revenue below a 75% net revenue interest. This overriding royalty and back-in was made in contemplation of the pooling proceeding and creates an excessive burden, for fair market appraisal as a working interest. This Commission has the power to pierce through this non-arm's-length transaction, in order to prevent waste and to protect correlative rights by requiring Terraco, LLC to bear this excessive burden. Any burden on the Terraco, LLC interest exceeding a 1/4 total royalty shall be borne by Terraco, LLC and not be the responsibility of WN Operating, Inc.[163]

Terraco appealed.[164]

155. WN Operating, Inc. v. Terraco, LLC, No. 108,564, ¶ 1 (Okla. Civ. App. Nov. 18, 2011) (Okla. Pub. Legal Research Sys.).
156. *Id.* ¶ 2.
157. *Id.*
158. *Id.*
159. *Id.*
160. *Id.*
161. *Id.*
162. *Id.*
163. *Id.*
164. *Id.*

The court of appeals affirmed the Commission's pooling order.[165] The court first rejected Terraco's assertion that there was insufficient evidence to support the Commission's finding that its oil and gas lease with Viersen was not an arm's-length transaction.[166] The court noted that the expert testimony presented at the hearing showed that the lease was non-standard and did not reflect the fair market value for leases in the area.[167] The lease was found to have created excessive burdens and to have been made in contemplation of the pooling proceedings.[168]

Terraco additionally argued that the Commission was without jurisdiction to rearrange contractual rights and duties of overriding royalty interest owners and that it did not have authority to deem Terraco liable for any burdens in excess of 1/4th.[169] The court overruled this contention and found that the Commission had acted within its broad discretion in determining what constitutes just and reasonable compensation to the owners of force-pooled interests.[170]

V. OTHER OIL AND GAS CASES

A. *Appellate Court Reverses District Court's Order Directing the Release and Distribution of the Payments Deposited with the District Court in an Interpleader Action Since the Texas Judgment upon which that Order was Based was Reversed on Appeal*

In *Williams Production Mid-Continent Co. v. Patton Production Corp.*, a dispute had arisen between Anoco and Patton concerning ownership of certain overriding royalty interests in gas wells operated by Williams.[171] When the ownership dispute led to litigation in Texas between Anoco and Patton, Williams filed the present interpleader action in May 2007 and began depositing the overriding royalty payments into the registry of the district court of Tulsa County.[172]

On June 25, 2009, the court in the Texas case granted Patton's application for a "turnover order," which ordered Anoco to turn over to Patton all of its interest in the funds held in the registry of the district court of Tulsa County.[173] Patton then filed a renewal of a prior unsuccessful motion with the Oklahoma court asking it to give full faith and credit to the Texas judgment.[174] Anoco objected on the grounds that

165. *Id.* ¶ 7.
166. *Id.* ¶ 5.
167. *Id.*
168. *Id.*
169. *Id.* ¶ 6.
170. *Id.*
171. Williams Prod. Mid-Continent Co. v. Patton Prod. Corp., 277 P.3d 499, 500 (Okla. Civ. App. 2012).
172. *Id.*
173. *Id.* at 501.
174. *Id.*

the Texas judgment was the subject of a pending appeal.[175] The Oklahoma court granted Patton's motion and directed that all the interpled funds be released to Patton and that Williams remit the future overriding royalty payments to Patton.[176] Anoco appealed.[177] During the pendency of the appeal, the Texas court of appeals reversed the Texas judgment that had been the basis of the Oklahoma court's order for the release of the funds.[178]

In addressing the issues on appeal, the Oklahoma court of appeals first observed that the Oklahoma court initially "did not err in granting judgment to Patton based upon the Texas decree."[179] The appellate court further observed the following:

> The Oklahoma court was constitutionally required to accord full faith and credit to the judgment of the Texas court, notwithstanding that the Texas judgment was then pending on appeal. Under Texas law, 'a judgment is generally final for the purposes of issue and claim preclusion regardless of the taking of an appeal.' *Texas Beef Cattle Co. v. Green*, 921 S.W.2d 203, 207 (Tex. 1996). Because the Texas judgment was 'final' for purposes of claim and issue preclusion, the District Court of Tulsa County correctly predicated its decision thereon.[180]

However, the court went on to find that, notwithstanding the correctness of the Oklahoma court's ruling at the time it was rendered, the judgment must be reversed.[181] As a matter of first impression in Oklahoma, the appellate court held that a second judgment predicated on a prior judgment later reversed cannot stand.[182]

The decision in the above case will be of great import in future interpleader actions in which the underlying dispute is being litigated in the courts of another jurisdiction.

B. *Court Finds that an Injunction was Warranted to Prevent the Defendant from Disposing of the Funds in Dispute During the Pendency of the Lawsuit*

In *Chesapeake Exploration, L.L.C. v. Rafter Ranch, L.L.C.*, Chesapeake sued Rafter for breach of contract and unjust enrichment.[183] Chesapeake alleged that it paid $1,269,665.00 to Rafter for an assignment of certain oil and gas leasehold rights, but that Rafter never ac-

175. *Id.*
176. *Id.*
177. *Id.*
178. *Id.*
179. *Id.*
180. *Id.*
181. *Id.*
182. *Id.*
183. Chesapeake Exploration, L.L.C. v. Rafter Ranch, L.L.C., No. 108,219, ¶ 2 (Okla. Civ. App. Jan. 6, 2012) (Okla. Pub. Legal Research Sys.).

quired the leasehold rights and never assigned them to Chesapeake.[184] Rafter refused Chesapeake's demand to return the money.[185] Chesapeake alleged that Rafter was spending the money on its operating expenses (and that Rafter had already spent $439,912.67 of the amount paid).[186] Consequently, Chesapeake sought temporary and permanent injunctions, or the imposition of a constructive trust, to prevent Rafter from disposing of the remainder of the cash pending the outcome of the litigation over Chesapeake's claims.[187]

Rafter admitted that it received the payment from Chesapeake but denied that it was for an assignment of leasehold rights.[188] Rafter further denied that it had any duty to Chesapeake to acquire the leases.[189]

The district court held an evidentiary hearing and denied Chesapeake the requested injunctive relief on the grounds that Chesapeake had not presented evidence showing it would suffer irreparable harm without the issuance of an injunction, and had not demonstrated a likelihood of prevailing on the merits.[190] Chesapeake appealed.[191]

The court of appeals reversed and remanded the case with instructions to enter a temporary injunction barring Rafter from using or spending the balance of the purchase money in its possession.[192] The court also found that the imposition of a constructive trust on any remaining balance was warranted and should have been granted.[193]

In reaching those rulings, the court of appeals held that the district court erred because Chesapeake submitted uncontroverted evidence (a) that it advanced purchase money to Rafter for the acquisition of the subject leases and not for any other purpose, (b) that Rafter failed to acquire the leases, (c) that Rafter was instead spending Chesapeake's purchase money on litigation against the owner of the subject interests and had already spent $439,912.67 of the money, and (d) that "Chesapeake would be irreparably harmed if Rafter was permitted continued access to the fund."[194]

184. *Id.* ¶ 2.
185. *Id.*
186. *Id.*
187. *Id.*
188. *Id.* ¶ 32.
189. *Id.*
190. *Id.* ¶ 5.
191. *Id.*
192. *Id.* ¶ 10.
193. *Id.* ¶ 9.
194. *Id.* ¶ 8.