

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State ex rel. Gulfport Energy Corporation,	:	
	:	
Relator,	:	No. 17AP-358
v.	:	(REGULAR CALENDAR)
Oil and Gas Commission et al.,	:	
	:	
Respondents,	:	
	:	
[John P. Wehr et al.,	:	
	:	
Intervenor-Respondents].	:	

D E C I S I O N

Rendered on November 2, 2017

Step toe & Johnson PLLC, John Kevin West, and Alana Valle Tanoury, for relator.

Michael DeWine, Attorney General, and *Angela M. Sullivan*, for respondent Oil and Gas Commission.

Stubbins, Watson & Bryan Co., L.P.A., Mark W. Stubbins, and Kyle S. Witucky, for intervenor-respondents John P. Wehr and Arlene Wehr.

IN PROHIBITION
ON MOTIONS TO DISMISS

BROWN, J.

{¶ 1} Relator, Gulfport Energy Corporation, has filed a petition seeking a writ of prohibition ordering respondents the Ohio Oil and Gas Commission ("commission") and the three members of the commission in their official capacities from continuing to

exercise jurisdiction over commission appeal No. 912. The commission and its individual members have filed a motion to dismiss on grounds that the original action has become moot. Intervenor-respondents, John P. Wehr and Arlene Wehr, have also filed a motion to dismiss on the same ground.

{¶ 2} Pursuant to Civ.R. 53 and Loc.R. 13(M) of the Tenth District Court of Appeals, this matter was referred to a magistrate of this court. The magistrate issued the appended decision, including findings of fact and conclusions of law, recommending this court grant the motions to dismiss on the basis that the present action is moot as the commission has acted to dismiss its commission appeal No. 912 and no longer intends to exercise jurisdiction over that appeal. No objections have been filed to that decision.

{¶ 3} Finding no error or other defect on the face of the magistrate's decision, we adopt the decision of the magistrate as our own, including the findings of fact and conclusions of law. In accordance with the magistrate's recommendation, respondents' motions to dismiss are granted, and relator's request for a writ of prohibition is denied.

Writ of prohibition denied; motions to dismiss granted.

SADLER and LUPER SCHUSTER, JJ., concur.

APPENDIX A

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

The State ex rel.
Gulfport Energy Corporation,

Relator,

v.

Oil and Gas Commission, et al.,

Respondents.

:
:
:
:
:
:
:

No. 17AP-358

(REGULAR CALENDAR)

M A G I S T R A T E ' S D E C I S I O N

Rendered on July 20, 2017

Steptoe & Johnson PLLC, John Kevin West, and Alana Valle Tanoury, for relator.

Michael DeWine, Attorney General, and Angela M. Sullivan, for respondent Oil and Gas Commission.

Stubbins, Watson & Bryan Co., L.P.A., Mark W. Stubbins, and Kyle S. Witucky, for intervenor respondents John P. Wehr and Arlene Wehr.

IN PROHIBITION
ON MOTIONS TO DISMISS

{¶ 4} Relator, Gulfport Energy Corporation ("Gulfport Energy"), seeks a writ of prohibition ordering respondents, the Ohio Oil and Gas Commission ("commission") and the three members of the commission in their official capacities, from continuing to exercise jurisdiction over commission appeal No. 912. The commission and its individual members have filed a motion to dismiss on the basis that the original action has become moot. Intervenor respondents, John P. Wehr and Arlene Wehr, appellants in the underlying appeal before the commission, have also filed a motion to dismiss on the same ground.

Findings of Fact:

{¶ 5} 1. Gulfport Energy is an oil and natural gas exploration and production business organized as a corporation under the laws of the state of Delaware.

{¶ 6} 2. Gulfport Energy is headquartered in Oklahoma City, Oklahoma and is registered to do business in the state of Ohio.

{¶ 7} 3. Intervenor respondents, John P. Wehr and Arlene Wehr, are land owners who entered into an oil and gas lease with a development entity that eventually assigned its rights to Gulfport Energy.

{¶ 8} 4. Gulfport Energy filed on March 28, 2014 an application for unit operation under R.C. 1509.28 with the Ohio Department of Natural Resources, Division of Oil and Gas Resources Management ("the division").

{¶ 9} 5. The chief of the division issued an order for unit operation on or about October 17, 2014. The impact of that order on the Wehr intervenor respondents is contested in the present case.

{¶ 10} 6. The Wehrs attempted to appeal the division's order to the commission pursuant to R.C. 1509.36, which provides that persons adversely affected by an order of the chief of the Division of Oil and Gas Resources Management may bring such an appeal to the commission. The Wehrs filed their appeal on February 3, 2016. The commission docketed it under commission appeal No. 912.

{¶ 11} 7. Gulfport Energy intervened before the commission and filed a motion to dismiss appeal No. 912 as untimely.

{¶ 12} 8. On November 11, 2016, the commission denied Gulfport Energy's motion to dismiss appeal No. 912.

{¶ 13} 9. On May 16, 2017, Gulfport Energy commenced the present action with a complaint seeking a writ of prohibition to enjoin the commission from continuing to exercise jurisdiction over commission appeal No. 912, asserting that the commission lacked jurisdiction over the untimely appeal.

{¶ 14} 10. On June 19, 2017, the magistrate granted the Wehrs' motion to intervene. On June 6, 2017, the magistrate denied Gulfport Energy's motion for an immediate stay of all proceedings before the commission.

{¶ 15} 11. On June 16, 2017, respondent commission and its members filed a motion to dismiss the complaint in the present action for failure to state a claim, based on mootness. Attached to the motion as exhibit A is an order of the Oil and Gas Commission issued on June 15, 2017 concluding that the commission would dismiss appeal No. 912 for lack of statutory authority over the matter.

{¶ 16} 12. On June 19, 2017, the Wehrs filed their own motion to dismiss on the same grounds of mootness.

{¶ 17} 13. Gulfport Energy has filed a responsive memorandum conceding that the action is now moot.

Conclusions of Law:

{¶ 18} "The duty of this court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it." *Miner v. Witt*, 82 Ohio St. 237, 238 (1910). "The doctrine of mootness is based on constitutional principles and the concept of judicial restraint." *State v. Henderson*, 10th Dist. No. 16AP-870, 2017-Ohio-2678, citing *Tschantz v. Ferguson*, 57 Ohio St.3d 131, 133 (1991). An issue is moot when it no longer involves a genuine, live controversy, and the court can render no decision definitively affecting existing legal rights and obligations. *Grove City v. Clark*, 10th Dist. No. 01AP-1369, 2002-Ohio-4549, ¶ 11.

{¶ 19} A writ of prohibition is an extraordinary judicial writ issuing out of a court of superior jurisdiction and directed to an inferior tribunal commanding it to cease abusing or usurping judicial functions. *State ex rel. Jones v. Suster*, 84 Ohio St.3d 70, 73 (1998). In other words, the purpose of the writ of prohibition is to restrain inferior courts and tribunals from exceeding their jurisdiction. *Id.* For the writ of prohibition to issue, the relator must prove that: (1) the lower court is about to exercise judicial authority; (2) the exercise of authority is not authorized by law; and (3) the relator has no other adequate remedy in the ordinary course of law if a writ of prohibition is denied. *State ex rel. Keenan v. Calabrese*, 69 Ohio St.3d 176, 178 (1994).

{¶ 20} Based on Gulfport Energy's complaint in this matter and the subsequent filings of the parties, it is apparent that the present original action seeking a writ of prohibition has become moot. Although Gulfport Energy has declined to voluntarily dismiss the matter pursuant to Civ.R. 41(A), it concedes that the commission has acted to dismiss its appeal No. 912 and no longer intends to exercise jurisdiction over that appeal. As such, there is nothing for this court to enjoin through issuance of a writ of prohibition, and the action has become moot. *State ex rel. Hazel v. Bender*, 10th Dist. No. 10AP-435, 2011-Ohio-1027, ¶ 11. It is accordingly the magistrate's decision that this court will grant the motions to dismiss filed by respondents and deny relator's request for a writ of prohibition.

/S/ MAGISTRATE
MARTIN L. DAVIS

NOTICE TO THE PARTIES

Civ.R. 53(D)(3)(a)(iii) provides that a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b).