[Cite as *Holland v. Gas Ents. Co.*, 2015-Ohio-2527.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
WASHINGTON COUNTY

CHAD AND DIANIA HOLLAND, ET AL.,	:	Case No. 14CA35
Plaintiffs-Appellees,	:	
v.	:	DECISION AND JUDGMENT ENTRY
GAS ENTERPRISES CO., ET AL.,	:	**RELEASED: 6/15/2015**
Defendants-Appellants.	:	

APPEARANCES:

John E. Triplett, Jr., Theisen Brock, L.P.A., Marietta, Ohio, for appellants.

Ethan Vessels, Fields, Dehmlow & Vessels, L.L.C., Marietta, Ohio, for appellees.

Harsha, J.

{¶1} The trial court granted summary judgment in favor of the successors in interest to the lessors of a mineral lease; the court ordered the lease forfeited and declared it void because oil and gas had not been produced in paying quantities. Gas Enterprises, Co. ("Gas Enterprises"), one of the successors in interest to the lessee, appealed.

{¶2} Gas Enterprises claims that the trial court erred in granting summary judgment for several reasons, including that the landowners failed to join all of the required parties under R.C. 5301.10. This statute requires plaintiffs in actions seeking to cancel oil and gas leases to join all persons who the evidence indicates have an interest in the lease before the court can adjudicate all questions concerning the lease. Because the uncontroverted discovery evidence established that the landowners failed

to make an entity with an interest in the leases a defendant to the forfeiture action, the trial court erred in granting summary judgment in their favor.

I. FACTS

{¶3} In March 2014, Chad and Diania Holland and Gregory and Brenda Westbrook filed an amended complaint in the Washington County Court of Common Pleas against Gas Enterprises, MNW Energy, L.L.C. ("MNW Energy"), and Triad Hunter, L.L.C. ("Triad Hunter"). The complaint and the subsequent discovery indicate the Hollands and the Westbrooks ("landowners") own approximately 40 acres of real property located in Ludlow Township in Washington County. In 1930, the predecessors in interest to the landowners leased the oil and gas rights in the property to D.B. Yaw for the term of "One year from the date hereof and as much longer as gas or oil is found in paying quantities thereon." Four wells that were drilled under the lease remain on the property. Gas Enterprises obtained the lessee's interest in 1996. Gas Enterprises subleased the deep rights to oil and gas to MNW Energy in July 2013; MNW Energy in turn assigned its interest in the sublease to Triad Hunter in December 2013.

{¶4} In their amended complaint the landowners alleged that the production from the four wells on the property has not been sufficient to hold the lease, resulting in its expiration under its own terms. The landowners requested a judgment declaring that the oil and gas lease, sublease, and assignments were forfeited and void because they expired when there was insufficient production of oil or gas. They also claimed Gas Enterprises, MNW Energy, and Triad Hunter had breached various implied covenants. The named defendants filed answers denying the landowners' claims. In Triad Hunter's

answer it claimed as an affirmative defense that the landowners "may fail to join necessary/indispensable persons or claims."

{¶5} The landowners subsequently filed a motion for summary judgment. They attached "Ohio Well Completions Reports", which showed that the four wells had produced no oil or gas in 2006, 2007, 2008, 2012, and 2013. They also attached Gas Enterprises' responses to their discovery requests, which indicated that "Gas Enterprises (lease), Upper Fifteen Mile Investment (override) and Triad Hunter (sublease)" claimed interests in the wells. Gas Enterprises further stated that the wells were primarily oil wells, that there was oil in the tanks that could be sold, and that yearly comparisons of oil sales could not be easily obtained because sales are done in lots or loads. The landowners voluntarily dismissed MNW Energy without prejudice because it no longer had an interest in the leased property.

{¶6} Gas Enterprises and Triad Hunter filed affidavits and memoranda in opposition to the landowner's motion for summary judgment. In its memorandum in opposition Gas Enterprises noted that "[t]he record indicates that at least one party's interest that appears in the discovery has not been addressed (royalty interest of Upper Fifteen Mile Investment LLC)."

{¶7} The landowners later supplemented their motion for summary judgment to include additional discovery provided to them by Gas Enterprises. These documents were Gas Enterprises' own forms stating that no oil or gas had been produced by the wells on the property except for 2010 and 2011.

{¶8} In October 2014, the trial court entered summary judgment in favor of the landowners. The trial court found that oil or gas had not been produced in paying

quantities necessary for the lease to remain in effect and declared the lease, the sublease, and assignments void.

II. ASSIGNMENT OF ERROR

{¶9} Gas Enterprises assigns the following error:

> THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT TO THE PLAINTIFF-APPELLEE ON THE RECORD BEFORE THE COURT.

III. STANDARD OF REVIEW

{¶10} Appellate review of summary judgment decisions is de novo, governed by the standards of Civ.R. 56. *Vacha v. N. Ridgeville*, 136 Ohio St.3d 199, 2013-Ohio-3020, 992 N.E.2d 1126, ¶ 19; *Chase Home Finance, LLC v. Dunlap*, 4th Dist. Ross No. 13CA3409, 2014-Ohio-3484, 2014 WL 3940314, ¶ 26. Summary judgment is appropriate if the party moving for summary judgment establishes that (1) there is no genuine issue of material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) reasonable minds can come to but one conclusion, which is adverse to the party against whom the motion is made. Civ.R. 56(C); *New Destiny Treatment Ctr., Inc. v. Wheeler*, 129 Ohio St.3d 39, 2011-Ohio-2266, 950 N.E.2d 157, ¶ 24; *Settlers Bank v. Burton*, 4th Dist. Washington Nos. 12CA36 and 12CA38, 2014-Ohio-335, 2014 WL 356626, ¶ 20.

{¶11} The moving party has the initial burden of informing the trial court of the basis for the motion and identifying the parts of the record that demonstrate the absence of a genuine issue of material fact on the pertinent claims. *Dresher v. Burt*, 75 Ohio St.3d 280, 293, 662 N.E.2d 264 (1996). Once the moving party meets this initial burden, the non-moving party has the reciprocal burden under Civ.R. 56(E) to set forth

specific facts showing that there is a genuine issue for trial. *Id.*; *Chase Home Finance* at ¶ 27.

IV. LAW AND ANALYSIS

{¶12} In its sole assignment of error Gas Enterprises asserts that the trial court erred in granting summary judgment in favor of the landowners and declaring the oil and gas lease forfeited and void. Its first contention is that the judgment was erroneous because the landowners did not comply with R.C. 5301.10 by failing to join Upper Fifteen Mile Investment as a defendant once it became apparent that entity had an interest in the lease.

{¶13} R.C. 5301.09 addresses leases of natural gas and oil and the necessity that these leases and interests must be recorded. R.C. 5301.10 mandates that plaintiffs in actions to cancel an oil and gas lease must name all claimants in actual and open possession, and persons whose interests appear of record, as defendants in the action in order for the court to decide all issues concerning the lease:

> *The plaintiff in an action to cancel a lease* or license *mentioned in section 5301.09 of the Revised Code*, or in any way involving it, *in order to finally adjudicate and determine all questions involving such lease or license in such action, need only make those persons defendants*, so far as such lease or license is involved, *who claim thereunder and are in actual and open possession, and those who then appear of record, or by the files in such office, to own or have an interest in such lease or license.* If there is no claimant in actual and open possession, and no persons whose interest appears of record or file, then so far as such lease or license is involved, it will only be necessary to make the original lessee or licensee defendant in order to finally adjudicate and determine all questions concerning such lease or license.

(Emphasis added.)

{¶14} "Our paramount concern in construing a statute is legislative intent." *Ohio Neighborhood Finance, Inc. v. Scott*, 139 Ohio St.3d 536, 2014-Ohio-2440, 13 N.E.3d

1115, ¶ 22. "To discern legislative intent, we first consider the statutory language, reading all words and phrases in context and in accordance with rules of grammar and common usage." *Id.* citing R.C. 1.42. "When statutory language is unambiguous, we will apply it as written, without resort to additional rules of statutory interpretation or considerations of public policy." *Id.* at ¶ 23.

{¶15} The language of R.C. 5301.10 is plain and unambiguous. Once the evidence indicates that a person or entity has an interest in an oil and gas lease, the plaintiff must join that person or entity as a defendant "in order to finally adjudicate and determine all questions involving such lease * * * in such action." Therefore, when Gas Enterprises' interrogatory response, which the landowners themselves attached to the summary judgment evidence, indicated that Upper Fifteen Mile Investment had an "overriding"[1] interest in the lease, a genuine issue of material fact arose over whether the landowners had satisfied their statutory duty under R.C. 5301.10. Moreover, this was not a vague reference by a defendant to unknown entities or persons. It was an express reference to Upper Fifteen Mile Investment and the type of interest claimed-an overriding royalty interest in the production of oil and gas under the lease. Because of this genuine issue of material fact concerning Upper Fifteen Mile Investment's status, the landowners were not entitled to summary judgment.

{¶16} The landowners argue that R.C. 5301.10 does not require reversal because Gas Enterprises waived this issue by not raising it below with specificity. We disagree because the statute unambiguously requires the joinder of all known interested

[1] *See GM Gas Exploration, Inc. v. McClain*, 4th Dist. Athens No. 1438, 1991 WL 163644, *8 (Aug. 13, 1991), adopting and incorporating trial court decision ("An 'overriding royalty' is a fractional interest in the gross production of oil and gas under a lease in addition to usual royalties paid to the lessor, free of any expense for exploration, drilling, development, operating, marketing and other costs incident to the production and sale of oil and gas produced from the lease").

persons and entities as a *condition precedent* to the adjudication and determination of all questions involving the lease in a suit seeking its cancellation. Once a genuine issue arose over whether Upper Fifteen Mile Investment had an interest in the lease, the landowners had a duty under the statute to either join it as a defendant for their claim to proceed or establish Upper Fifteen Mile had no legitimate interest.

{¶17} And Gas Enterprises did raise this issue below when it specified in its memorandum in opposition to the landowners' motion for summary judgment that "[t]he record indicates that at least one party's interest that appears in the discovery has not been addressed (royalty interest of Upper Fifteen Mile Investment LLC)." *See* Civ.R. 12(H)(2) ("a defense of failure to join a party indispensable under Rule 19 * * * may be made in any pleading permitted or ordered under Rule 7(A), or by motion for judgment on the pleadings, or at the trial on the merits"); *see also* Klein, Darling, and Terez, *Baldwin's Ohio Civil Practice*, Section 17:22 (2014) ("in the abstract, in single-interest claims or multiple-interest claims in which the missing real party in interest is an indispensable party, the defense may be asserted at any time prior to the entry of final judgment").

{¶18} Therefore, the trial court erred in granting summary judgment in favor of the landowners when based upon current summary judgment evidence, Upper Fifteen Mile Investment may have an interest that required it to be named or joined as a defendant. *See Horvat v. Integrated Petroleum Co., Inc.*, 11th Dist. Trumbull No. 3642, 1986 WL 10004, *4 (Sept. 12, 1986) ("Equitable claims of investors in oil and gas wells must be considered before an order of total forfeiture can be made"); *POI Energy, Inc. v. James Drilling Corp.*, 782 F.2d 1043 (6th Cir.1985) (under R.C. 5301.10, "it is

apparent from the record and the nature of this case that the adjacent landowners, who stand to lose their interest in the disputed parcels and would gain nothing if POI prevails, should properly be joined as defendants" in action to cancel an oil and gas lease).

{¶19} We sustain Gas Enterprises' assignment of error,

V. CONCLUSION

{¶20} Having sustained Gas Enterprises' sole assignment of error, we reverse the judgment of the trial court, and remand the cause for further proceedings, including a determination of the status of the Upper Fifteen Mile Investment. Gas Enterprises' additional contentions are moot and we need not address them. App.R. 12(A)(1)(c); *First Sentry Bank v. Rose*, 4th Dist. Gallia No. 13CA2, 2014-Ohio-594, ¶ 15 (holding that remaining arguments are rendered moot after sustaining assignment of error reversing summary judgment).

JUDGMENT REVERSED
AND CAUSE REMANDED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS REVERSED and that the CAUSE IS REMANDED. Appellees shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Washington County Court of Common Pleas to carry this judgment into execution.

Any stay previously granted by this Court is hereby terminated as of the date of this entry.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Abele, J. & McFarland, J.: Concur in Judgment and Opinion.

For the Court

BY: _____
William H. Harsha, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.