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SUPREME COURT OF ARKANSAS

No. 11-902

KENNY STAGGS AND SHELIA STAGGS, HUSBAND AND WIFE, AND KENDELL LEE STAGGS

APPELLANTS

V.

UNION PACIFIC RAILROAD COMPANY; HEARTLAND EXPLORATION, LLC; AND XTO ENERGY, INC.

APPELLEES

Opinion Delivered April 12, 2012

APPEAL FROM THE INDEPENDENCE COUNTY CIRCUIT COURT
[NO. CV-2009-4-2]
HON. JOHN ADAM HARKEY, JUDGE

AFFIRMED.

PAUL E. DANIELSON, Associate Justice

Appellants Kenny Staggs and Shelia Staggs, husband and wife, and Kendell Lee Staggs, appeal from the circuit court's order, which found that a general reservation of mineral rights in a 1934 deed included oil and gas and granted summary judgment to appellees Union Pacific Railroad Company; Heartland Exploration, LLC; and XTO Energy, Inc. The Staggses' sole point on appeal is the circuit court erred in so finding. We affirm the circuit court's order.

On January 5, 2009, the Staggses brought suit in the Independence County Circuit Court seeking quiet title to the oil and gas rights on certain real property of which they claimed ownership of the surface and subsurface rights.[1] In their complaint and amended

[1]Kendell Lee Staggs was added as a plaintiff in a second amended complaint, and XTO Energy, Inc., was added as a defendant in an amended complaint. The Staggses alleged that XTO was the sole producer of hydrocarbons in the subject property and that XTO

complaints, they asserted that while Union Pacific claimed ownership of the oil and gas rights in the property and leased those rights to Heartland Exploration, it did so erroneously based

> on a Deed dated August 28, 1934, in which its predecessor in title, Missouri Pacific Railroad Company ("Missouri Pacific"), conveyed said property to M.H. Pierce and Gus Young, but reserved to itself "all the minerals, upon in or under the said land or any part thereof."

The Staggses contended that the oil and gas rights did not pass to Union Pacific, but instead passed to Pierce and Young and through the chain of title to them.

Union Pacific, Heartland, and XTO ultimately moved for summary judgment, asserting that this court's case law, as well as that of the federal courts, conclusively established that by 1934, a reservation of minerals included oil and gas. The Staggses countered the motion, maintaining that the question of whether oil and gas were included was governed by the doctrine set forth by this court's decision in *Missouri Pacific Railroad Co. v. Strohacker*, 202 Ark. 645, 152 S.W.2d 557 (1941). They claimed that a generic reservation of minerals included only those substances generally known to exist and falling within the legal or commercial meaning of the term at the time and place of the reservation. Following a hearing on the summary-judgment motion, the circuit court entered its order, granting summary judgment and finding that a general reservation of minerals in a deed executed in 1934 included oil and gas as a matter of law. It is from this order that the Staggses appeal.

For their sole point on appeal, the Staggses argue that the circuit court erred in granting summary judgment. They contend that the construction of mineral reservations,

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recognized Union Pacific as the owner of the real property's hydrocarbons for purposes of determining whom it pays for those hydrocarbons.

such as the one at issue, are governed by the *Strohacker* doctrine irrespective of the date on which the reservation was made. They urge that the circuit court erred in failing to perform the factual analysis required by *Strohacker* and in mistakenly relying on the proposition that, by 1941 in Arkansas, a general reservation of minerals included oil and gas as a matter of law. The Staggses aver that the *Strohacker* doctrine applies to the reservation at issue and that the circuit court erred in holding that it did not.

Union Pacific, Heartland, and XTO jointly respond that the *Strohacker* factual analysis is limited to those deeds executed at a time when it was unclear whether the commercial usage of the word "minerals" included oil and gas, since the *Strohacker* doctrine has not been applied by this court to any deed executed after 1905. They further point to decisions of the federal courts, which they claim were based on well-established precedent from this court, as establishing that mineral reservations in the 1930s included oil and gas as a matter of law in Arkansas.

A circuit court may grant summary judgment only when it is clear that there are no genuine issues of material fact to be litigated and that the party is entitled to judgment as a matter of law. *See Gunn v. Farmers Ins. Exch.*, 2010 Ark. 434, ___ S.W.3d ___. Once the moving party has established a prima facie case showing entitlement to summary judgment, the opposing party must meet proof with proof and demonstrate the existence of a material issue of fact. *See id.* On appellate review, we determine if summary judgment was appropriate based on whether the evidentiary items presented by the moving party in support of its motion leave a material fact unanswered. *See id.* This court views the evidence in a

light most favorable to the party against whom the motion was filed, resolving all doubts and inferences against the moving party. *See id*. At issue, here, is whether the reservation of mineral rights in the 1934 deed, which reserved "all the minerals, upon in or under the said land or any part thereof," was sufficient to reserve the rights to oil and gas.

This court's previously settled rule, or the *Strohacker* doctrine, was

> that, where there is ambiguity as to minerals actually embraced in instruments purporting to convey or to reserve certain unspecified minerals under generalized terms as to minerals, a fact question is presented as to the true intent of the parties; and in such cases the contemporary facts and circumstances surrounding the execution of the instrument are admissible in evidence on the question. Furthermore, the intent of the parties will be determined so as to be consistent with and limited to those minerals commonly known and recognized by legal or commercial usage in the area where the instrument was executed.

Ahne v. The Reinhart & Donovan Co., 240 Ark. 691, 696, 401 S.W.2d 565, 569 (1966). Indeed, this rule was applied in several notable cases, each of which dealt with a mineral reservation dating prior to 1905. *See, e.g.*, *Ahne*, 240 Ark. 691, 401 S.W.2d 565 (involving a deed dated July 26, 1905); *Stegall v. Bugh*, 228 Ark. 632, 310 S.W.2d 251 (1958) (involving a deed dated November 6, 1900); *Brizzolara v. Powell*, 214 Ark. 870, 218 S.W.2d 728 (1949) (involving a deed dated October 27, 1897); *Carson v. Missouri Pac. R.R. Co.*, 212 Ark. 963, 209 S.W.2d 97 (1948) (involving a written agreement of purchase dated August 21, 1892); *Missouri Pac. R.R. Co. v. Furqueron*, 210 Ark. 460, 196 S.W.2d 588 (1946) (involving deeds from 1892 and 1894); *Strohacker*, 202 Ark. 645, 152 S.W.2d 557 (involving deeds from 1892 and 1893).

In a decision dealing with a 1937 deed, however, this court expressly held, without further comment, that the reservation to "the mineral rights in, upon and under" the subject

property "was effective to withhold oil, gas, and other minerals from conveyance." *Sheppard v. Zeppa*, 199 Ark. 1, 13, 133 S.W.2d 860, 866 (1939). In addition, in its subsequent *Strohacker* decision delivered in 1941, this court observed that it could "no longer be doubted that a reservation of minerals, or of mineral rights, is sufficient to identify oil and gas." 202 Ark. at 652, 152 S.W.2d at 561. Considering the foregoing decisions, it is apparent that this court concluded that between 1905 and 1937, it became common knowledge in Arkansas that a reservation of mineral rights included oil and gas.

While not bound by federal precedent, we note that the federal courts have drawn similar conclusions. In *Griffis v. Anadarko E & P Co., LP*, 606 F.3d 973 (8th Cir. 2010), applying Arkansas's substantive law and discussing both *Sheppard*, *supra*, and *Strohacker*, *supra*, the Eighth Circuit Court of Appeals held that the mineral reservation in a 1936 deed was sufficient to reserve in the grantor the right to natural gas. Our federal district courts have found likewise, relying on the appellate court's decision in *Griffis*. *See Froud v. Anadarko E & P Co. Ltd. P'ship*, No. 4:09-CV-00936-WRW, 2010 WL 3516906 (E.D. Ark. Sept. 1, 2010) (finding that the reservation of minerals in deeds dated July 1, 1935, and November 30, 1934, included oil and natural gas); *Robertson v. Union Pac. R.R. Co.*, No. 1:09CV00020 JLH, 2010 WL 3363400 (E.D. Ark. Aug. 24, 2010) (finding that a general reservation of mineral rights in an August 28, 1934 deed included oil and gas as a matter of law).

At issue here is a 1934 deed, which is most certainly closer in time to 1937 than 1905. But, in addition, in 1912, this court recognized it well settled that "natural gas is a mineral." *Osborn v. Arkansas Territorial Oil & Gas Co.*, 103 Ark. 175, 179, 146 S.W. 122, 124 (1912).

See also Strohacker, *supra* (noting that, as early as *Osborn*, gas was referred to in this state as a mineral). And, in 1920, this court made the observation that gas, oil, and coal were classified as minerals. *See Lee v. Straughan*, 146 Ark. 504, 507, 226 S.W. 171, 172 (1920). In light of this court's precedent in its entirety, we hold that the 1934 reservation at issue included any rights to oil and gas. Accordingly, we affirm the circuit court's grant of summary judgment.

Affirmed.