

No. 02-170

IN THE SUPREME COURT OF THE STATE OF MONTANA

2003 MT 157N

TEXTANA, INC., a/k/a TEXTANA USA, a Texas Corp.,

Plaintiff and Respondent,

v.

KLABZUBA OIL & GAS, A Family Limited Partnership, a Delaware limited partnership, Defendant, Third Party and Plaintiff; and KLABZUBA OIL & GAS, INC., a Texas corp.; KB DRILLING CO., a Texas corp.; BEARPAW GATHERING SYSTEMS, INC., a Texas corp.; CORNERSTONE GAS MARKETING, LLC, a Montana limited liability company; and AMARICEN GENERAL PARTNERSHIP, a Texas general partnership,

Third Party Plaintiffs, Appellants, and Cross-Respondents,

v.

JOHN O. BROWN, a Montana resident; TEXTANA, INC., a/k/a TEXTANA USA; J. BURNS BROWN OPERATING CO., a Texas corp.; and SANDTANA, INC., a Texas corp.,

Third Party Defendants, Respondents, and Cross-Appellants,

and

MERLE HARMON and RONALD M. HARMON,

Intervenors, Respondents, and Cross-Appellants,

v.

JOHN O. BROWN, SANDRA L. BROWN, TEXTANA, INC.,
J. BURNS BROWN OPERATING CO.,

Defendants in Intervention and Respondents.

APPEAL FROM: District Court of the Twelfth Judicial District,
In and for the County of Hill, Cause Nos. DV 98-051, DV 98-137
The Honorable John Warner, Judge presiding.

COUNSEL OF RECORD:

For Appellants:

Keith D. Tooley, Welborn, Sullivan, Meck & Tooley, P.C., Denver, Colorado
Matthew Hutchison, McPherson & Hutchison, L.L.C., Great Falls, Montana

For Respondent:

Jack L. Lewis, John D. Stephenson, George N. McCabe, Jardine,
Stephenson, Blewett & Weaver, P.C., Great Falls, Montana

For Intervenors, Respondents, and Cross-Appellants (Harmon):

Douglas C. Allen, Corder & Allen, Great Falls, Montana

Submitted on Briefs: January 16, 2003

Decided: June 3, 2003

Filed:

Clerk

Justice Jim Regnier delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court 1996 Internal Operating Rules, the following decision shall not be cited as precedent but shall be filed as a public document with the Clerk of the Supreme Court and shall be reported by case title, Supreme Court cause number, and result to the State Reporter Publishing Company and to West Group in the quarterly table of noncitable cases issued by this Court.

¶2 The Appellants (“Klabzubas”) appeal from the Findings of Fact and Conclusions of Law of the Twelfth Judicial District Court, Hill County, with respect to a constructive trust established over various property interests and the denial of punitive damages. The Cross-Appellants (“Browns”) raise several issues on appeal which primarily address the constructive trust, a constructive fraud determination in favor of the Intervenors (“Harmons”), and the District Court’s award of damages to the Klabzubas and Harmons. The Harmons appeal from the District Court’s denial of punitive damages.

¶3 The parties present multiple issues for review on appeal. However, the dispositive issue is whether the court’s findings of fact are supported by substantial evidence and are, therefore, not clearly erroneous and whether the court’s conclusions of law are correct. *Ray v. Nansel*, 2002 MT 191, ¶¶ 19-20, 311 Mont. 135, ¶¶ 19-20, 53 P.3d 870, ¶¶ 19-20.

¶4 On February 11, 2003, we entered an order amending Section 1.3 of our 1996 Internal Operating Rules. The amended Section 1.3(d) provides in relevant part:

(i) After all briefs have been filed in any appeal, the Supreme Court by unanimous action may, sua sponte, enter an order or memorandum opinion affirming the judgment or order of the trial court for the reason that it is manifest on the face of the briefs and the record that the appeal is without merit because:

(1) the issues are clearly controlled by settled Montana law or federal law binding upon the states;

(2) the issues are factual and there clearly is sufficient evidence to support the jury verdict or findings of fact below; or

(3) the issues are ones of judicial discretion and there clearly was not an abuse of discretion.

We conclude that this is an appropriate case to decide pursuant to our February 11, 2003, order.

¶5 Here, the District Court's Findings of Fact and Conclusions of Law include over seventy pages of comprehensive and well reasoned analysis. On the face of the briefs and the record on appeal it is manifest that the appeal is without merit as the issues are clearly controlled by settled Montana law, which the District Court correctly interpreted, and because there is clearly sufficient evidence to support the court's findings of fact. Therefore,

¶6 We affirm the judgment of the District Court.

/S/ JIM REGNIER

We Concur:

/S/ KARLA M. GRAY

/S/ JAMES C. NELSON

/S/ PATRICIA COTTER