[Cite as *Baker v. Gulfport Energy Corp.*, 2020-Ohio-4825.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MONROE COUNTY

PENINA OKEL BAKER, et al.,

Plaintiffs-Appellants,

v.

GULFPORT ENERGY CORPORATION, et al.,

Defendants-Appellees.

OPINION AND JUDGMENT ENTRY
Case No. 19 MO 0023

Civil Appeal from the
Court of Common Pleas of Monroe County, Ohio
Case No. 2018-490

BEFORE:
Cheryl L. Waite, Gene Donofrio, Carol Ann Robb, Judges.

JUDGMENT:
Affirmed.

Atty. Logan Trombley and *Atty. Warner Mendenhall*, Law Offices of Warner Mendenhall, 190 N. Union St., Suite 201, Akron, Ohio 44304, for Plaintiffs-Appellants

Atty. Matthew W. Warnock , *Atty. Daniel C. Gibson*, and *Atty. Kara H. Herrnstein*, Bricker & Eckler LLP, 100 South Third Street, Columbus, Ohio 43215 and

Atty. Zachary M. Simpson, Gulfport Energy Corporation. 3001 Quail Springs Parkway, Oklahoma City, Oklahoma 73134, for Defendant-Appellee Gulfport Energy Corporation

Atty. Holly S. Planinsic and *Atty. Jacquelyn J. Cowan*, Herndon, Morton, Herndon & Yaeger, 83 Edgington Lane, Wheeling, West Virginia 26003, for Defendant-Appellee The Beallsville Sportsman Club.

Atty. Andrew P. Lycans and *Atty. Garrett Roach*, Critchfield, Critchfield & Johnston, 4996 Foote Road, Medina, Ohio 44256, for Defendants-Appellees Marvin H Baldridge and Jean E. Baldridge

Dated: September 28, 2020

WAITE, P.J.

{¶1} Appellants Penina Okel Baker, Charles Wayne Bailey, Clarence Baker, Jr., Rhoda Baker, Fred Runucci, Donald Wine, Julia Suzi Roscart, Emmett Baker, Linda Lee Baker, and Donita G. Montoya (collectively referred to as "Appellants") appeal an October 22, 2019 judgment entry of the Monroe County Court of Common Pleas. The court granted a motion to strike Appellants' class allegations filed on behalf of Appellees Gulfport Energy Corporation, Beallsville Sportsmen Club, and Marvin H. and Jean Baldridge (collectively referred to as "Appellees"). Appellants argue that the trial court erroneously denied class certification under Civ.R. 23(B)(2) and failed to conduct an analysis as to the Civ.R. 23(B)(3) certification request. For the reasons provided, the trial court's decision to strike the class was not an abuse of discretion. Accordingly, Appellants' arguments are without merit and the judgment of the trial court is affirmed.

Factual and Procedural History

{¶2} This oil and gas action involves a 70 acre tract of land located in Sunsbury Township, Monroe County. On November 30, 1920, William P. and Penina C. Baker

transferred the surface rights to Lizzie Laughery. Within the deed, the Bakers reserved a three-fourth interest in the minerals through the following language:

> Also excepting three-fourths or all the oil and gas in and underlying the above described premises be the same more or less, and all the estate, title and interest of the said Grantors William P. Baker and Penina C. Baker either in law or equity, or, in and to the said premises together with all the privileges and appurtenances to the same belonging, and all the rents, issues and profits thereof; to have and to hold the same to the only proper use of the said Grantee Lizzie Laughery her heirs and assigns forever.

(12/14/18 Class Action Complaint, Exh. C). The record is unclear as to who owns the remaining one-fourth interest.

{¶3} Sometime in 2013, Appellees entered into an oil and gas lease with Gulfport. Two years later, the well began producing gas. As of the filing of the complaint in this matter, the well has produced 19,879,901 MCF of gas. Also as of the filing of the complaint, Appellants and other heirs of William and Penina Baker have not been paid any royalties.

{¶4} As such, on December 14, 2018, Appellants filed a class action complaint against Appellees. The complaint asserted five claims, including: trespass, accounting, conversion, unjust enrichment, and additionally sought quiet title. It appears that the trespass, accounting, and conversion claims were asserted against Gulfport and the remaining unjust enrichment and quiet title claims were raised against all defendants.

{¶5} Each of the defendants filed a separate answer. On February 25, 2019, Defendants James and Gwendolyn Routh filed a motion for judgment on the pleadings, arguing that subsequent deeds pertaining to the property caused the surface and mineral interests to merge and reunite without a new reservation in favor of the Bakers. The trial court denied the motion.

{¶6} On February 26, 2019, Gulfport filed a Civ.R. 12(B)(6) motion to dismiss the complaint based on a similar argument. It does not appear that the trial court ruled on this motion.

{¶7} On March 26, 2019, Appalachia Minerals, LLC filed a motion to intervene as plaintiffs. Appalachia claimed that it purchased the royalty interests of several Baker heirs, including Richard and Sandra Stickney, and Rebecca and Jerry Wieland. Appalachia asserted that, despite holding a fractional interest in the minerals, Gulfport has not paid it any royalties.

{¶8} On April 4, 2019, Appellants voluntarily dismissed the unjust enrichment and quiet title claims against the Rouths and all claims against Gulfport pertaining to parcel number 24-024005.000. It is unclear how many acres of the total property is included within this parcel.

{¶9} On August 12, 2019, the Baldridges filed a motion for leave to file an amended answer, counterclaim, and cross-claim. It does not appear that the trial court ruled on this motion.

{¶10} On August 23, 2019, Gulfport filed a motion to strike Plaintiffs' class allegations. Gulfport argued that a quiet title action would be better suited to resolve what they classified as a typical land dispute. In response, Appellants argued that there are at

least one hundred possible heirs in this matter, many of which would not be able to hire an attorney and would not be sufficiently informed as to the proceedings if the matter were relegated to a quiet title action. These heirs apparently own fractional interests that differ from heir-to-heir.

{¶11} On October 22, 2019, the trial court granted Gulfport's motion to strike the class allegations. This timely appeal follows.

Standard of Review

{¶12} As a threshold matter, the parties dispute the standard of review in this matter. According to Appellants, the issue is reviewed *de novo.* In support of their argument, Appellants cite to *Perrysburg, Twp. v. Rossford,* 103 Ohio St.3d 79, 2004-Ohio-4362, ¶ 5. In response, Appellees claim that the issue is reviewed for an abuse of discretion, citing *Marks v. C.P. Chemical Co., Inc.,* 31 Ohio St.3d 200, 509 N.E.2d 1249 (1987).

{¶13} The case cited by Appellants pertains to the review of a Civ.R. 12(B)(6) motion to dismiss. Here, the trial court's decision is based on a motion to strike class allegations. Thus, the proper standard of review is abuse of discretion. In *Marks,* the Ohio Supreme Court stated: "[a] trial judge has broad discretion in determining whether a class action may be maintained and that determination will not be disturbed absent a showing of an abuse of discretion." *Id.* at 201.

ASSIGNMENTS OF ERROR NOS. 1 AND 2

> The trial court erred in finding Appellants did not state a claim for which class certification could be granted under Civ. R. 23(B(3) [sic].

> The trial court erred in finding Appellants did not state a claim for which class certification could be granted under Civ. R. 23(B)(2).

{¶14} Appellants argue that class certification is proper under both Civ.R. 23(B)(2) and Civ.R. 23(B)(3). Appellants contend that, contrary to the trial court's decision, Civ.R. 23 contains a notice provision that provides equal, if not superior, notice to that provided by Civ.R. 4. Thus, the class action is superior to other available methods, as provided in Civ.R 23(B)(3). In the alternative, Appellants argue that the court failed to undertake any analysis of their Civ.R. 23(B)(2) certification request, which would have been successful under the facts of this case.

{¶15} Before a trial court can certify a class, the requirements of Civ.R. 23(A) must be met. If these requirements are met, then the court must determine whether certification is proper under the Civ.R. 23(B) subsections. A court only analyzes the Civ.R. 23(B) subsections if it first finds that the requirements of subsection (A) are satisfied. "If the court determines that the proposed class satisfies the first six prerequisites of Civ.R. 23(A), it must then determine whether a class action is maintainable under at least one of the three subsections in Civ.R. 23(B)." *Stammco, L.L.C. v. United Tel. Co. of Ohio*, 136 Ohio St.3d 231, 2013-Ohio-3019, 994 N.E.2d 408, ¶ 20. "[A]t the certification stage in a class-action lawsuit, a trial court must undertake a rigorous analysis." *Stammco, supra,* at ¶ 44.

{¶16} Pursuant to Civ.R. 23(A):

> One or more members of a class may sue or be sued as representative parties on behalf of all members only if:

(1) the class is so numerous that joinder of all members is impracticable,

(2) there are questions of law or fact common to the class,

(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class,

(4) the representative parties will fairly and adequately protect the interests of the class.

{¶17} In addition to these four statutory factors, the Ohio Supreme Court has added two "implied factors": an identifiable class must exist, and the class representatives must be members of the class. *Warner v. Waste Mgt., Inc.*, 36 Ohio St.3d 91, 96, 521 N.E.2d 1091 (1988).

{¶18} If the four express and two implied factors are satisfied, the plaintiff must then satisfy one of the three provisions of Civ.R. 23(B):

(1) prosecuting separate actions by or against individual class members would create a risk of:

(a) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; or

(b) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members

not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests; or

(2) the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole; or

(3) the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. The matters pertinent to these findings include:

(a) the class members' interests in individually controlling the prosecution or defense of separate actions;

(b) the extent and nature of any litigation concerning the controversy already begun by or against class members;

(c) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and

(d) the likely difficulties in managing a class action.

{¶19} In this case the court determined that a class action would not be proper because "[a]ll parties with any claims to the property, or material interests that might be

affected, are considered necessary and indispensable to an action to quiet title." (10/22/19 J.E., p. 3.)

{¶20} Again, the complaint sought quiet title and raised claims of trespass, conversion, and unjust enrichment. It is axiomatic that the quiet title issues must be resolved before the remaining claims can be analyzed. In other words, before it can be shown that a trespass or conversion occurred, it must first be demonstrated that Appellants own an interest in the royalties. Similarly, before it can be determined whether Appellees were unjustly enriched, it must first be shown that Appellants do, in fact, own an interest and how much of an interest each person owns.

{¶21} This particular class action excludes two groups that are necessary to these determinations. First, it excludes those individuals who opt-out pursuant to Civ.R. 23(B)(3). Second, it excludes all heirs who have entered into an oil and gas lease with Gulfport pertaining to the instant property. While it is true that Civ.R. 23(B)(2) does not include an opt-out clause, the class still excludes those heirs who have entered into a lease with Gulfport. Thus, the proposed class excludes parties necessary to the full determination of the ownership claims.

{¶22} Appellants argue that this Court has previously found that quiet title issues surrounding an oil and gas lease can be resolved through a class action lawsuit. Specifically, we reviewed the certification of a class of "all landowners in Ohio who executed leases with Beck where Beck did not drill a well on their property." *Hupp v. Beck Energy Corp.,* 2014-Ohio-4255, 20 N.E.3d 732, ¶ 17 (7th Dist.), affirmed by *State ex rel. Claugus Family Farm, L.P. v. Seventh District Court of Appeals,* 145 Ohio St.3d 180, 2016-Ohio-178, 47 N.E.3d 836.

{¶23} However, *Hupp* is distinguishable from the instant matter. In *Hupp,* the court was charged with determining whether the language of the secondary term of the habendum clause rendered those leases perpetual and whether Beck violated the terms of the lease by failing to timely drill a well. *Id.* at ¶ 10. Here, the court is tasked with determining who owns an interest and what portion of the whole interest each person owns among more than one hundred heirs. Because all of the heirs are necessary parties in order to quiet title, a class action is not the proper vehicle to determine the rights of the parties. While the trial court's judgment entry appears to rely on Civ.R. 23(B)(3), based on the court's finding that all heirs are necessary parties it did not need to reach Civ.R. 23(B)(2). As such, Appellants' first and second assignments of error are without merit and are overruled.

Conclusion

{¶24} Appellants argue that the trial court erroneously denied class certification as they had satisfied the requirements of both Civ.R. 23(B)(2) and (B)(3). For the reasons provided, the trial court's decision to strike the class allegations was not an abuse of discretion. Accordingly, Appellants' arguments are without merit and the judgment of the trial court is affirmed.

Donofrio, J., concurs.

Robb, J., concurs.

For the reasons stated in the Opinion rendered herein, the assignments of error are overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Monroe County, Ohio, is affirmed. Costs to be taxed against the Appellants.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.