

No. 31549 – Ark Land Company v. Rhonda Gail Harper, Edward A. Caudill, Rose M. Thompson, Edith D. Kitchen, Therman R. Caudill, John A. Caudill, Jr., Tammy Willis, and Lucille M. Miller

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OF WEST VIRGINIA

Maynard, Chief Justice, concurring, in part, and dissenting, in part:

I concur with the new law created by the majority in this case. That is to say, I agree that evidence of longstanding ownership along with sentimental or emotional attachment to property are factors that should be considered and, in some instances, control the decision of whether to partition in kind or sale jointly-owned property which is the subject of a partition proceeding.

I dissent in this case, however, because I do not believe that evidence to support the application of those factors was presented here. In that regard, the record shows that none of the appellants have resided at the subject property for years. At most, the property has been used for weekend retreats. While this may have been the family “homeplace,” a majority of the family has already sold their interests in the property to the appellee. Only a minority of the family members, the appellants, have refused to do so. I believe that the sporadic use of the property by the appellants in this case does not outweigh the economic inconvenience that the appellee will suffer as a result of this property being partitioned in kind.

I am also troubled by the majority's decision that this property should be partitioned in kind instead of being sold because I don't believe that such would have been the case were this property going to be put to some use other than coal mining. For instance, I think the majority's decision would have been different if this property was going to be used in the construction of a four-lane highway. Under those circumstances, I believe the majority would have concluded that such economic activity takes precedence over any long-term use or sentimental attachment to the property on the part of the appellants. In my opinion, coal mining is an equally important economic activity. This decision destroys the value of this land as coal mining property because the appellee would incur several million dollars in additional costs to continue its mining operations. As a result of the majority's decision in this case, many innocent coal miners will be out of work.

Accordingly, for the reasons set forth above, I respectfully concur, in part, and dissent, in part, to the decision in this case.