

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MARY ANN MURRAY; LIGE M.
MURRAY,
*Plaintiffs-Counter-Defendants-
Appellees,*

v.

BEJ MINERALS, LLC; RTWF, LLC,
*Defendants-Counter-Claimants-
Appellants.*

No. 16-35506

D.C. No.
1:14-cv-00106-
SPW

OPINION

Appeal from the United States District Court
for the District of Montana
Susan P. Watters, District Judge, Presiding

Submitted En Banc June 9, 2020*
San Francisco, California

Filed June 17, 2020

Before: Sidney R. Thomas, Chief Judge, and Kim McLane
Wardlaw, Marsha S. Berzon, Jay S. Bybee, Consuelo M.
Callahan, Sandra S. Ikuta, Mary H. Murguia, Morgan
Christen, Paul J. Watford, Michelle T. Friedland, and Ryan
D. Nelson, Circuit Judges

Opinion by Chief Judge Thomas

* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

SUMMARY**

Montana Law

The en banc court affirmed the district court's order granting summary judgment to plaintiffs and declaring them owners of dinosaur fossils discovered on their ranch.

The Montana Supreme Court accepted a certification request from the en banc court, answered the certified question, and concluded that dinosaur fossils were not within the "ordinary and natural meaning" of "mineral" and, thus, belonged to the surface estate. The en banc court held that because the plaintiffs were the undisputed owners of the surface estate at issue, the Supreme Court's decision required a resolution in their favor.

COUNSEL

Eric D. Miller (argued), Perkins Coie LLP, Seattle, Washington; Shane R. Swindle, Perkins Coie LLP, Phoenix, Arizona; Brian C. Lake, Perkins Coie LLP, Phoenix, Arizona; for Defendants-Counter-Claimants-Appellants.

Harlan B. Krogh (argued) and Eric Edward Nord, Crist Krogh & Nord PLLC, Billings, Montana, for Plaintiffs-Counter-Defendants-Appellees.

** This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

Gary S. Guzy and Pooja S. Kothari, Covington & Burling LLP, Washington, D.C., for Amici Curiae Paleontological Societies and Scientific Institutions.

Colleen M. Dowdall, Dowdall Law, Missoula, Montana, for Amicus Curiae United Property Owners of Montana (UPOM).

OPINION

THOMAS, Chief Judge:

After granting rehearing *en banc* in *Murray v. BEJ Minerals, LLC*, 908 F.3d 437 (9th Cir. 2018), *see Murray v. BEJ Minerals, LLC*, 920 F.3d 583 (9th Cir. 2019), we certified the following question, an issue of first impression under Montana law and dispositive of the instant case, to the Montana Supreme Court:

Whether, under Montana law, dinosaur fossils constitute “minerals” for the purpose of a mineral reservation.

Murray v. BEJ Minerals, 924 F.3d 1070, 1074 (9th Cir. 2019) (citing Mont. R. App. P. 15).

The Montana Supreme Court graciously accepted our certification request, *Murray v. BEJ Minerals*, No. 19-0304, 2019 WL 2383604 (Mont. June 4, 2019), and then answered our certified question, without modification and on the facts and procedural history provided in our certification order. *See Murray v. BEJ Minerals, LLC*, 2020 MT 131, ¶¶ 1–3 (Mont. 2020). It concluded that dinosaur fossils are not

within the “ordinary and natural meaning” of “mineral” and, thus, belong to the surface estate. *Id.* at ¶ 41. Because Mary Ann and Lige Murray (the “Murrays”) are the undisputed owners of the surface estate here, *see Murray*, 924 F.3d at 1072, the Supreme Court’s decision requires a resolution in their favor.

Accordingly, the district court’s order granting summary judgment to the Murrays and declaring them the sole owners of dinosaur fossils discovered on their ranch, *see Murray v. Billings Garfield Land Co.*, 187 F. Supp. 3d 1203, 1204 (D. Mont. 2016), is **AFFIRMED**.