

# Commonwealth Of Kentucky

## Court Of Appeals

No. 1997-CA-002368-MR

SUNNY RIDGE MINING  
COMPANY, INC.

APPELLANT

v.

APPEAL FROM PIKE CIRCUIT COURT  
HONORABLE EDDY COLEMAN, JUDGE  
ACTION NO. 96-CI-000519

RUTH ADKINS; DORLENE SHELL;  
BETTY LAWSON COLEMAN;  
KIMELA EPLING; KERMAL LAWSON;  
and ADAM LAWSON

APPELLEES

### OPINION

#### AFFIRMING IN PART AND REMANDING IN PART WITH DIRECTIONS

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BEFORE: GUDGEL, CHIEF JUDGE; GARDNER and MILLER, Judges.

MILLER, JUDGE. Sunny Ridge Mining Company, Inc. (appellant), brings this appeal from an August 7, 1997 judgment of the Pike Circuit Court. We affirm in part and remand in part with directions.

The facts are these: In 1994 appellant began strip mining operations in Pike County, Kentucky. It is undisputed that appellant owned the mineral estate underlying all lands to be mined. A dispute arose between appellants and appellees -- Ruth Adkins; Dorlene Shell; Betty Lawson Coleman; Kimela Epling; Kermal Lawson; and Adam Lawson. Particularly, appellees asserted

surface ownership to a "high knob" area of the land that appellant sought to mine and refused to grant permission to strip same. Appellant ultimately strip mined the disputed area without appellees' permission and over their objection. Appellees then instituted a trespass action against appellant in the Pike Circuit Court. Record title to the disputed surface area was put in issue. No adverse claim was asserted. A jury trial ensued wherein appellees were awarded \$1.00 in compensatory damages and \$45,001.00 in punitive damages. This appeal followed.

Appellant contends that appellees failed to prove record title to the disputed surface estate. Appellees assert that on March 2, 1959, their parents, Adam and Elsie Adkins, obtained from Jackson Ramsey and Fannie Ramsey, his wife (the Ramseys), the surface estate to approximately 60 acres, including the disputed area. Adam Adkins died. Thereafter, on or about June 23, 1980, said estate was divided with separate deeds to the children. Appellant counters, however, that said deeds did not actually convey the disputed surface estate and points to the deeds' property descriptions in support thereof.

The 1980 deeds described the conveyances in relevant part as follows:

BEGINNING at a two (2) inch iron pipe corner with the J. E. Ratliff Jr.'s property line; thence running North 87-05-West 398 feet to an iron pin; **thence S 5° 45' E to the top of the hill at Big Sandy Company's line;** thence running with Big Sandy Company's property line to the J. E. Ratliff Jr.'s' property line; thence running down the hill with the J. E. Ratliff, Jr.'s property line to a two (2) inch iron pipe, the BEGINNING. (Emphasis added.)

The 1959 deed from the Ramseys to Adam and Elsie Adkins, and other deeds in their chain of title, contained the following relevant description:

**. . . thence leaving Marrowbone road right of way line and . . . running up hill with the said Rowe line to the back of line** of that certain deed from Marrowbone Mining Company by D. T. Keal, Sheriff of Pike County dated Dec. 3, 1932; thence with said back line to the intersection of the property line between Big Sandy Company and J.E. Ratliff; thence with said property line down the hill to the intersection of the south right of way line of tje [sic] Marrowbone road; thence with said south right of way line back to the beginning. (Emphasis added.)

It is obvious that the 1980 deeds place the boundary at the top of the hill, while the 1959 deed simply states that the boundary **runs up the hill**. The "hill," of course, is the disputed surface estate known as the "high knob." Appellant observed that the description in the 1980 deeds is inconsistent with the description found in the 1959 deed and certain deeds in the chain of title. Consequently, appellant claimed that appellees failed to establish record title. Perceiving the matter unclear, the circuit court resorted to the jury.

To determine ownership of the disputed surface estate, the circuit court submitted the following instruction:

Do you believe from the evidence that the Defendant engaged in surface mining on the property owned by the Plaintiffs?

We are of the opinion that the case was improperly submitted to the jury. It is a general rule of law that matters of interpretation and construction of deeds are to be determined by the court. See Delph v. Daly, Ky., 444 S.W.2d 738 (1969), Harmon v.

Blackburn, 278 Ky. 306, 128 S.W.2d 730 (1939), and Dennis v. Bird, Ky. App., 941 S.W.2d 486 (1997). In so doing, the court should, of course, look to the "four corners" of a deed. See Townsend v. Cable, Ky., 378 S.W.2d 806 (1964). If, however, such proves unfruitful, the court may resort to parol evidence. See Williams v. Williams, Ky., 259 S.W.2d 53 (1953). In any event, the interpretation and construction of deeds, with or without the necessity of parol evidence, are not generally within the province of the jury. Upon remand, we direct the circuit court to determine whether appellees hold record title to the disputed surface estate by construing and interpreting the relevant deeds in the respective chains of title.

Appellant also maintains that as owner of the mineral estate it had the right to conduct strip mining activities without permission of the surface owner and that the circuit court erred by not so concluding. In support thereof, appellant relies upon the severance deed that disjoined the mineral and surface estates of the disputed property. The severance deed, appellant contends, specifically granted the mineral estate the privilege and right to conduct strip mining activities upon the surface without the surface owners' consent. Additionally, appellant points out that strip mining was a known method of coal extraction in 1948, the time of the mineral severance, and that by operation of Kentucky Constitution §19(2), the disputed surface area may be strip mined without the surface owners' consent. We disagree. We do not believe the severance deed specifically granted appellant the right to strip mine without

consent of the surface owners. We do not construe the severance deed as a "broad form deed,"; thus, Kentucky Constitution §19(2) has no application. See Ward v. Harding, Ky., 860 S.W.2d 280 (1993).

Next, appellant asserts that the circuit court erred in failing to instruct the jury as to innocent trespass. We note that traditionally the "innocent/willful trespasser" distinction applied only to instances where the mineral estate suffered trespass. See Caldwell County v. Hughett, Ky., 248 S.W.2d 338 (1951). It is uncontradicted in this case that appellant held record title to the mineral estate and that the trespass, if any, was only upon the surface estate. Thus, we view the innocent/willful trespasser distinction as inapposite to the present circumstances and perceive no error in the circuit court's refusal to instruct the jury upon innocent trespass.

Last, appellant contends that the award of punitive damages was clearly excessive. We are however unable to reach such conclusion. There exists ample evidence from which a jury could reasonably believe that appellant acted with malice when conducting mining activities upon the surface estate over the appellees' objection. KRS 411.184. See Holliday v. Campbell, Ky. App., 873 S.W.2d 839 (1994). Considering the record as a whole, we are not inclined to disturb the jury's assessment of punitive damages. See Hanson v. American National Bank & Trust Company, Ky., 865 S.W.2d 302 (1993).

We remand this action for a determination by the circuit court as to whether appellees owned the surface estate to

the property in question. If the circuit court concludes that appellees do, in fact, hold record title to the disputed surface estate, the August 7, 1997 judgment awarding \$45,001.00 in punitive damages will stand. If, however, it is determined that appellees do not hold record title to the disputed surface estate, said judgment will, of course, be for naught.

For the foregoing reasons, the judgment of the Pike Circuit Court is affirmed in part, reversed in part, and remanded for proceedings consistent with this opinion.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Herman W. Lester  
Billy R. Shelton  
Tammy L. Campbell  
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BRIEF FOR APPELLEES:

Phil A. Stalnaker  
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