

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-001398-MR

MARK E. MCPEEK AND
MCPEEK MINING, INC.

APPELLANTS

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE WILLIAM L. GRAHAM, JUDGE
ACTION NO. 95-CI-01449

COMMONWEALTH OF KENTUCKY,
NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: DYCHE, EMBERTON, AND MILLER, JUDGES.

MILLER, JUDGE: Mark E. McPeek and McPeek Mining, Inc. bring this appeal from an April 22, 1999, judgment of the Franklin Circuit Court. We affirm.

In July, 1985, officials of the Natural Resources and Environmental Protection Cabinet (Cabinet) issued a Notice of Non-Compliance for mining without a permit (wildcat mining) to appellants, Mark E. McPeek, individually, and McPeek Mining, Inc. The matter languished in the administrative arena through August, 1995. Activity was interrupted by numerous periods of repose

variously by one party then the other. On August 31, 1995, the Secretary of the Cabinet accepted, in part, a recommendation of a Hearing Officer and imposed a monetary penalty upon McPeek and McPeek Mining, Inc., jointly and severally, for violation of Kentucky Revised Statutes (KRS) 350.060.

Pursuant to KRS 350.032(2), McPeek and McPeek Mining, Inc. appealed to the Franklin Circuit Court on September 29, 1995. The issue presented was whether the Cabinet would be barred by the statute of limitations or laches from collecting the penalties. Holding the Cabinet was not barred, the court entered an April 22, 1999, order dismissing the petition, thus precipitating this appeal.

The issue before us is whether the Cabinet's enforcement action to collect the monetary penalty is barred by either the statute of limitations or the doctrine of laches.

We view the applicable statute of limitations as five years pursuant to KRS 413.120(3). There is no other statutory provisions prescribing a time in which an action for recovery of penalties or forfeitures may be commenced. It appears the parties are in agreement with the applicability of this statute.

The dispute arises over the commencement of the running of the statute. Appellants would have us hold that the statute begins to run at the time the notice of violation is first issued. We are not inclined to so hold. If this were the case, long administrative procedures would exhaust the statute and result in a fruitless gain in the event penalties were imposed. The penalties would then be uncollectible. In any event, we

think the cases of Couch v. Natural Resources and Environmental Protection Cabinet, Ky., 986 S.W.2d 158 (1999), and Vanhoose v. Commonwealth, Ky. App., 995 S.W.2d 389 (1999), are dispositive. As such, we hold that the statute of limitations for the collection of penalties and forfeitures begins to run at the time the final administrative process is exhausted, to wit, when the Commissioner issues his order imposing the obligation.

We conclude, therefore, the enforcement proceedings were not barred by limitations. We are further of the opinion that except in rare cases, an applicable statute of limitations, as is the case here, sub-plants laches as a bar to an action. Cf. Karami v. Roberts, Ky. App., 706 S.W.2d 843 (1986).

For the foregoing reasons, the judgment of the Franklin Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANTS:

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BRIEF FOR APPELLEE:

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