

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2008-CA-002218-MR

EDGEL GILLIAM AND  
KATHARINA GILLIAM

APPELLANTS

v. APPEAL FROM PIKE CIRCUIT COURT  
HONORABLE STEVEN D. COMBS, JUDGE  
ACTION NO. 94-CI-01185

NEW RIDGE MINING COMPANY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: CAPERTON, THOMPSON, AND VANMETER, JUDGES.

THOMPSON, JUDGE: Edgel and Katharina Gilliam, husband and wife (“Edgel”), appeal the summary judgment for New Ridge Mining Company finding that the parties’ coal leasing agreement was valid. For the reasons stated below, we affirm.

On March 17, 1959, Edna Gilliam and her children, Georgia Blackburn, John Gilliam, Frances Gilliam, Magdalene McCoy, and Robert

Gilliam, conveyed a tract of property to Edgel Gilliam, Edna's son. The deed provided that the property was subject to Edna's life estate in all coal and mineral rights. The deed empowered Edna to dispose of the property's mineral estate for her support *if* she needed financial assistance. The deed further provided that the remainder of the entire estate would pass to Edgel upon his mother's death.

On January 12, 1972, during his mother's lifetime and without her consent, Edgel and D.R.T. Coal Company (now New Ridge) entered into a coal leasing agreement providing it the right to mine the coal contained on the property. Under the terms of the lease, Edgel received a minimum annual royalty fee and a dollar amount based on the tonnage of mined coal every year. The terms of the lease provided for its termination when all of the usable coal was exhausted. The lease further permitted termination if New Ridge defaulted for a ninety-day period.

In 1982, Edna discovered the coal leasing agreement and Edgel's income related to the mining of the property. On April 9, 1982, she executed a deed conveying all of her interest in and to the property to her remaining children, excluding Edgel. She then filed a civil action seeking to terminate the coal leasing agreement and to recover lost royalties. After Edna's death, Edgel filed an action requesting the setting aside of Edna's 1982 deed, alleging that it was not made for her support in violation of the provisions of the 1959 deed. He further alleged that he inherited the entire property and mineral estate after his mother's death.

Subsequently, Edna's estate's and Edgel's actions were consolidated and tried before the trial court on March 14, 1986. On July 29, 1992, the trial court

found that Edna possessed a limited power to dispose of the mineral estate for her support but that Edgel failed to establish her improper disposal of the estate. Thus, the trial court ruled that Edna's 1982 deeding of the mineral estate to her remaining children was valid and Edgel's coal lease agreement was "null and void." The trial court further issued a judgment awarding Edna's estate a monetary award for all of the lost royalties, including interest.

In Case No. 1992-CA-002113-MR, a panel of this Court reversed the judgment by concluding that there was "insufficient evidence to support a finding that the conveyance of the mineral estate was needed for Edna's support." The panel further concluded that the property transfer was simply a gift to Edna's children, excluding Edgel, because there was no evidence that Edna gained from the transfer. The panel then reduced the estate's monetary award to the interest on the mining royalties during the period of Edna's life estate.

On remand, the trial court found that the 1982 deed was invalid and that Edgel received all of the mineral estate upon his mother's death. The estate was awarded interest on the royalties that accrued during Edna's life estate, plus post-judgment interest. Subsequently, the trial court ordered that the children of Edna's deceased child, Captain Walker Gilliam, Sr., receive a one-seventh interest in the royalty interest payment. The trial court's order was affirmed by this Court on appeal.

On August 25, 1994, Edgel filed an action seeking to invalidate the coal leasing agreement that he entered into with New Ridge. He contended that the

lease was invalid because New Ridge could not mine coal which was subject to Edna's life estate. He further contended that the trial court's July 29, 1992, order invalidated the lease and that this Court affirmed the ruling in Case No. 1992-CA-002113-MR. Alternatively, Edgel contended that the leasing agreement expired or was abandoned as a result of a fifteen-year period of mining inactivity.

On October 10, 2008, the trial court issued a summary judgment finding that Edgel was attempting to use his own misconduct, which he defended during earlier proceedings, to void the coal lease. The trial court further found that this Court completely reversed its July 29, 1992, order in Case No. 1992-CA-002113-MR, and that New Ridge was indeed mining during the relevant period of the alleged default. Additionally, the trial court ruled that the lease could not be invalidated due to the principle of estoppel by deed or lease. The trial court then denied Edgel's request for prejudgment interest. This appeal follows.

Edgel contends that the trial court erred by not finding the lease agreement invalid. He contends that the trial court's decision was based on a misinterpretation of this Court's decision in Case No. 1992-CA-002113-MR, which he contends invalidated the lease agreement.

The standard of review applicable to an appeal of a summary judgment is well-established. An appellate court must decide whether the trial court correctly ruled that there was no genuine issue as to any material fact and that the moving party was entitled to a judgment as a matter of law. *Barnette v. Hospital of Louisa, Inc.*, 64 S.W.3d 828, 829 (Ky.App. 2002). "Summary

judgment is proper ‘if the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.’” *Id.*, quoting CR 56.03.

Summary judgment should only be granted when it appears that it would be impossible for the non-moving party to produce sufficient evidence to succeed at trial. *Paintsville Hosp. Co. v. Rose*, 683 S.W.2d 255, 256 (Ky. 1985). Because there are no disputed facts involved with summary judgments, we review the decision of the trial court without deference. *Kreate v. Disabled American Veterans*, 33 S.W.3d 176, 178 (Ky.App. 2000).

Although Edgel contends that this Court affirmed a finding by the trial court that his coal leasing agreement was invalid, we note that a judgment reversed by an appellate court renders the judgment as though it never existed. *Clay v. Clay*, 707 S.W.2d 352, 353 (Ky.App. 1986). On remand, parties stand in the same position as if no judgment was ever issued. Thus, Edgel’s contention that this Court’s reversal of the trial court’s July 29, 1992, findings of fact and order invalidated his lease agreement is incorrect.

In his second and third arguments, Edgel contends that summary judgment for New Ridge was precluded because the doctrine of *res judicata* foreclosed New Ridge’s defenses against his action. He contends that New Ridge failed to assert the issues of “after acquired property or estoppel by lease” in the consolidated case and, thus, could not argue them in his 1994 action.

The doctrine of *res judicata* bars subsequent actions between the same parties and their privies on a cause of action that was previously decided upon its merits. *Buis v. Elliott*, 142 S.W.3d 137, 139 (Ky. 2004). *Res judicata* generally consists of two parts: 1) claim preclusion bars a party from relitigating a previously adjudicated action and entirely bars a new lawsuit on the same cause of action; and 2) issue preclusion precludes a party from relitigating any issue actually litigated and finally decided in an earlier action. *Id.* at 140.

After reviewing the record, we conclude that the doctrine of *res judicata* has no application in this case. During the consolidated case, Edgel did not argue for the invalidation of the leasing agreement. Rather, Edna sought the nullification of the coal leasing agreement. The trial court's initial judgment voided the coal leasing agreement because Edgel's siblings were awarded the entire mineral estate in fee simple. Thus, Edgel's attempt to convey away any interest in the mineral estate would be invalid. However, after this judgment was reversed, Edgel was awarded the mineral estate and no issue relating to the validity of New Ridge's lease agreement was further litigated or appealed.

Accordingly, after our reversal, the lease agreement's validity was not raised again until Edgel filed his action in 1994. Thus, the procedural history of this action does not include a ruling on the merits invalidating the lease agreement. Therefore, we conclude that the doctrine of *res judicata* has no application.

Edgel next contends that the trial court erred by finding that the doctrine of estoppel by deed or lease validates the lease. Specifically, in his brief, Edgel argues the following:

The final order in the 1982 and 1984 Consolidated Action cannot be modified or altered by New Ridge's estoppel arguments in this case. Pursuant to the Judgment in the Consolidated Action, which is reflected in the Kentucky Court of Appeals' January 28, 1994, opinion, neither D.R.T. nor New Ridge has any rights or interest arising from the original 1972 Lease from Edgel Gilliam, then or now.

However, as previously stated, this Court's previous opinion reversing the judgment did not render the leasing agreement invalid. The trial court correctly found that our decision was a complete reversal of the initial judgment and all of its factual findings. Therefore, Edgel's contention that the lease's invalidity precludes New Ridge's estoppel claims is misplaced.

Moreover, Edgel signed a lease agreement while he was only a remainderman of Edna's life estate, not the fee simple owner. However, when Edna died, he became the fee simple owner of the property and, thus, could not then deny his authority to enter into the lease agreement. *Kentucky River Coal Corp. v. Jones*, 441 S.W.2d 409, 411 (Ky. 1969); 31 C.J.S. Estoppel and Waiver § 9 (2008) (estoppel by deed protects an unwitting grantee who takes a conveyance of any interest in real property by a *valid instrument* in reliance upon the good title of the grantor when in fact the grantor does not possess legal title to the property but thereafter acquires legal title).

Edgel next contends that the trial court erred by denying his motion for prejudgment interest. Contending that his monetary award was a liquidated damage, he argues that he was entitled to prejudgment interest.

“An award of interest is a matter entrusted to the sound discretion of the trial court.” *Reliable Mechanical, Inc. v. Naylor Indus. Services, Inc.*, 125 S.W.3d 856, 858 (Ky.App. 2003). However, if damages are ascertainable with reasonable certainty and are not contested and the defendant fails or refuses to timely pay it unconditionally, or at least to tender it to the court where it may be withdrawn unconditionally, he should be charged with interest thereon. *State Farm Mut. Auto. Ins. Co. v. Reeder*, 763 S.W.2d 116, 119 (Ky. 1988).

The trial court’s judgment sets out that New Ridge was holding its debt to Edgel in escrow as a result of his refusal to accept payment. On multiple occasions, the trial court ordered various sums from this account to be paid to the creditors of the account, including to Edgel’s siblings and their counsel. Therefore, because New Ridge tendered and established an escrow in which Edgel could unconditionally withdraw from by order of the trial court, we conclude that it was not an abuse of discretion to deny the motion for prejudgment interest. *Mutual Life Ins. Co. of New York v. Hilander*, 403 S.W.2d 260, 262-64 (Ky. 1966).

For the foregoing reasons, the judgment of the Pike Circuit Court granting summary judgment in favor of New Ridge Mining Company is affirmed.

ALL CONCUR.



BRIEFS FOR APPELLANT:

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