STATE OF MICHIGAN

COURT OF APPEALS

JACKHILL OIL COMPANY,

Plaintiff-Appellee,

v

POWELL PRODUCTION, INC,

Defendant-Appellant.

UNPUBLISHED
December 3, 1996

No. 184666
LC No. 92-022239-CK

Before: White, P.J., and Griffin and D. C. Kolenda*, JJ.

PER CURIAM.

In this breach of contract action, defendant, Powell Production, Inc., appeals as of right a jury verdict in favor of plaintiff, Jackhill Oil Company. We affirm in part and reverse in part.

Plaintiff, an oil exploration company, entered into a joint development agreement and a joint operating agreement with defendant, an oil field operator. The arrangement calls for defendant to operate oil wells on land plaintiff leases and for defendant to pass the proceeds of productive wells onto plaintiff. However, pursuant to the parties' joint operating agreement, the "operator" of any well within the specifically defined "contract area" possesses a lien on the "non-operator's" interest in any other well in the "contract area." In practice, this lien provision allows a well "operator" to reduce the "non-operator's" gas proceeds from any well in the "contract area" to cover unpaid expenses incurred through operation of any other well inside the "contract area."

Plaintiff filed this lawsuit after defendant reduced plaintiff's gas proceeds from three wells, Flick 6-16, Flick 7-16, and Flick 8-16, by nearly $70,000 to cover expenses allegedly incurred on three different wells, JEM 3-21A, Fort 6-17, and Savarino-Stoll 6-21A. Defendant's officials testified that, because the joint operating agreement defines defendant as the "operator" of any well within the contract area and the JEM, Fort, and Savarino-Stoll wells are within the geographical "contract area," defendant is contractually entitled to reduce plaintiff's gas proceeds by the amount spent operating these wells. The jury disagreed and returned a verdict in plaintiff's favor for $69,953.

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* Circuit judge, sitting on the Court of Appeals by assignment.

On appeal, defendant contends that the jury verdict contravenes the great weight of the evidence. We disagree. In addressing this issue, we review the evidence to determine whether the trial court abused its discretion in ruling that the evidence in defendant's favor was not overwhelming. *Severn v Sperry Corp,* 212 Mich App 406, 412; 538 NW2d 50 (1995); *Rice v ISI Mfg, Inc,* 207 Mich App 634, 637; 525 NW2d 533 (1994). This Court gives substantial deference to a trial court's conclusion that a verdict was not against the great weight of the evidence. *Severn, supra* at 412.

After a careful and thorough review of the record, we agree with the trial court that the evidence does not overwhelmingly favor defendant's claim that it possesses a contractual right to reduce plaintiff's gas proceeds by costs spent operating either the Fort or Savarino-Stoll well. Plaintiff's president, David Dzierwa, testified that the lien provision in the joint operating agreement does not allow defendant to reduce plaintiff's proceeds from the Flick wells by costs spent operating the Savarino-Stoll well because the Savarino-Stoll well is outside the contractually-defined "contract area." Also, Dzierwa testified that, regardless of its location, plaintiff has no obligation to cover the claimed operating expenses for the Savarino-Stoll well because such expenses were incurred after plaintiff instructed defendant to stop operating the unproductive well. Furthermore, Dzierwa testified that defendant cannot be considered the "operator" of the Fort well because another oil field operator, not defendant, physically operated the well. Neither defendant's testimony nor its proofs overwhelm Dzierwa's testimony on these issues. Indeed, the relevant contractual agreements define the "contract area" differently than the more generally defined "area of mutual interest" in which defendant claims that the Savarino-Stoll well is geographically located. Also, the contracts do not support defendant's argument that it may charge plaintiff for expenses defendant incurred while operating an unproductive well that plaintiff instructed defendant to stop operating. Nor do the relevant contracts unambiguously support defendant's contention that it is the "operator" of those wells inside the "contract area" that defendant did not physically operate. Because defendant's proofs did not overwhelm plaintiff's interpretation of the ambiguous contract, we find that the trial court was within its discretion in ruling that the jury's verdict did not contravene the great weight of the evidence.

However, defendant presented undisputed evidence that the $12,599.90 it withheld based on expenses relating to the JEM well had already been credited to plaintiff. Plaintiff contends that the jury could have disbelieved defendant's evidence. We conclude that even considering issues of credibility, the jury award of $12,599.90 for the JEM offset is against the great weight of the evidence and must be reversed.

Next, defendant contends that the trial court erroneously denied the motion for summary disposition defendant brought pursuant to its affirmative defenses of setoff and collateral estoppel. However, defendant offers no relevant authority in support of its position on appeal. Therefore, the issue has been waived. A party may not merely announce a position and leave it to this Court to discover and rationalize the basis for a claim. *Goolsby v Detroit,* 419 Mich 651, 655, n 1; 358 NW2d 856 (1984); *Patterson v Allegan Co Sheriff,* 199 Mich App 638, 640; 502 NW2d 368 (1993); cf. *Froling v Carpenter,* 203 Mich App 368, 373; 512 NW2d 6 (1994). Nevertheless, not until eighteen months after its issuance did defendant object to the trial court's pretrial order stating that all affirmative defenses, claims of setoff, res judicata, or collateral estoppel were "disposed of" at the pretrial

conference "and are not a part of this action." Under these circumstances, the trial court was within its discretion in refusing to let defendant evidence its setoff or collateral estoppel claims and, hence, correctly denied defendant's motion for summary disposition. See MCR 2.116(I)(1); *Kennedy v Auto Club of Michigan*, 215 Mich App 264, 266; 544 NW2d 750 (1996).

Affirmed in part; reversed and remanded in part. We do not retain jurisdiction.

/s/ Helene N. White
/s/ Richard Allen Griffin
/s/ Dennis C. Kolenda