STATE OF MICHIGAN

COURT OF APPEALS

SHR LIMITED PARTNERSHIP, Plaintiff/Counter Defendant-Appellant,	UNPUBLISHED December 6, 2002
v	No. 232466 Otsego Circuit Court
MERCURY EXPLORATION COMPANY, DOMINION RESERVES, INC., and QUICKSILVER RESOURCES, INC., Defendants/Counter Plaintiffs-Appellees.	LC No. 99-008060-CK

Before: Hood, P.J., and Whitbeck, C.J., and O'Connell, J.

WHITBECK, C.J. (*concurring in part and dissenting in part*)

I concur in the majority's conclusion that res judicata bars the parties from relitigating whether defendants can apportion post-production costs associated with making gas marketable even though the parties have not presented this as a ground for affirming. Regardless of whether the original decision and order permitting apportionment was correct or incorrect, it was never overturned. Thus, it thus remains binding on the original parties, and, now, their privies.

I respectfully dissent from the remainder of the majority's opinion. The parties in this action have not directly presented us with issues discussing the diverse subjects the opinion mentions in passing.[1] Nor have they graced us with the adequate briefing that is so necessary to understand fully their positions on these matters, even though this Court usually counts briefing as a prerequisite for addressing an issue.[2]

Without a doubt, this case has some complexity to it. However, this Court has several clear alternatives for resolving the issues. If there are facts left to be found, then this Court should remand to the trial court for an evidentiary hearing, *retain* jurisdiction, and subsequently decide the remainder of the appeal on the basis of the supplemented record. If there are issues that the parties must develop in order for this Court to know how their positions, such as whether

[1] See MCR 7.212(C)(5).

[2] See *Shanafelt v Allstate Ins Co*, 217 Mich App 625, 643; 552 NW2d 671 (1996).

they need a division order in order, then this Court should ask the parties to brief the issue, state the relief they are requesting, and then decide the appeal in its entirety. If there are parts of the trial court's decision that fit poorly with the issues presented, but with which this Court agrees, this Court should integrate its views on these subjects in its analysis. If it is impossible for the Court to integrate its views on these subjects in a way that is meaningful for the parties, then it should make it clear that its broad observations do not require any particular action.

The majority opinion does not take this approach. Rather, I fear, the majority opinion takes a knotted ball of twine and simply tosses it back to the trial court to unwind. This is not an approach I can endorse, and I respectfully dissent as to those issues.

/s/ William C. Whitbeck