

[Cite as *Wampum Hardware Co. v. Moss*, 2015-Ohio-2564.]

COURT OF APPEALS  
GUERNSEY COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

WAMPUM HARDWARE CO.

Plaintiff-Appellee

-vs-

EDNA P. MOSS, et al.

Defendants-Appellants

JUDGES:

Hon. Sheila G. Farmer, P. J.

Hon. John W. Wise, J.

Hon. Craig R. Baldwin, J.

Case Nos. 14 CA 20 and 14 CA 17

O P I N I O N

CHARACTER OF PROCEEDING:

Civil Appeal from the Court of Common  
Pleas, Case No. 14 OG 120

JUDGMENT:

Reversed and Remanded

DATE OF JUDGMENT ENTRY:

June 25, 2015

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellants

O. JUDSON SHEAF III  
JASON R. HARLEY  
McDONALD HOPKINS LLC  
240 North Fifth Street, Suite 300  
Columbus, Ohio 43215

ERIC C. JOHNSON  
JOHNSON & JOHNSON LAW OFFICES  
12 West Main Street  
Canfield, Ohio 44406

J. RICHARD EMENS  
CRAIG J. WILSON  
EMENS & WOLPER LAW FIRM  
One Easton Oval, Suite 550  
Columbus, Ohio 43219

*Wise, J.*

{¶1} Defendants-Appellants Priscilla Grandin Mitchell, Martin H. Mitchell, Fred W. Schruers and Katherine Rocky appeal the decision of the Guernsey County Court of Common Pleas which granted default judgment against numerous defendants who failed to move, plead or otherwise respond to the Complaint for Declaratory Judgment filed by Plaintiff-Appellee Wampum Hardware Co.

### **STATEMENT OF THE FACTS AND CASE**

{¶2} This matter involves the determination of ownership of oil and gas minerals underlying 104.45 acres of land located in Richland Township, Guernsey County, Ohio pursuant to Ohio's dormant mineral statute.

{¶3} The relevant facts and procedural history are as follows:

{¶4} Plaintiff-Appellee Wampum Hardware Co. owns the surface of such lands. Edna Moss, an ancestor of Defendants-Appellants reserved one half of the oil and gas minerals under such lands via a deed recorded in 1935.

{¶5} Plaintiff-Appellee's complaint alleged claims of declaratory judgment and quiet title. Plaintiff-Appellee's prayer for relief requested that the trial court make various declarations, including that the reserved one-half interest be deemed "abandoned and that those rights are vested in Wampum as a matter of law." Plaintiff-Appellee's case is founded upon Ohio's Dormant Mineral Act codified in R.C. §5301.56.

{¶6} Prior to filing its complaint, Plaintiff-Appellant made an effort to determine the identity of various assigns or heirs of Edna Moss. Plaintiff-Appellee's complaint names multiple parties as Defendants -- many as "unknown heirs" of Edna Moss, with no address provided.

{¶7} Concerning the specific Defendants-Appellants who filed the instant appeal ("Appealing Defendants"), they were individually named and served via certified mail with the summons and complaint.

{¶8} Appealing Defendants were the only parties who responded to Plaintiff-Appellee's complaint; filing both an Answer and a Counterclaim. The Answer denied the bulk of the assertions in the Complaint and asserted various affirmative defenses, including a statute of limitations defense. The Counterclaim asserted claims of declaratory judgment and quiet title; it requested a determination that "Plaintiff holds no interest in the subject" half interest in the oil and gas. It also requested "a determination of Defendants' ownership interest in the subject minerals."

{¶9} On June 24, 2014, Plaintiff-Appellee filed a Motion for Default Judgment concerning all non-answering Defendants. Said motion was not served upon counsel for Appealing Defendants, though counsel was notified by the trial court, via its Entry of June 24, 2014, that such motion had been filed and that a non-oral hearing was set for July 17, 2014.

{¶10} On July 23, 2014, the trial court issued the Judgment Entry that is one of the subjects of this consolidated appeal. Said Judgment Entry found that the non-answering Defendants were in default and their mineral rights "are vested in Wampum as a matter of law." The decision contained Civ.R. 54(B) language indicating that "there was no just cause for delay." This decision was timely appealed.

{¶11} Subsequently, the Appealing Defendants filed a motion with this Court seeking an order remanding the case back to the trial court to consider a motion pursuant to Civil Rule 60(B). Such motion was granted.

{¶12} Upon remand, the trial court considered and denied Appealing Defendants' Rule 60(B) motion via its Entry of October 9, 2014. The trial court also declared that "pursuant to Civ.R. 60(A) that the Civ.R. 54(B) language in the [July 23, 2014 default judgment entry] is hereby vacated as the Court finds that the Judgment Entry is not a final appealable order as it does not resolve the rights and issues of all parties as the Movants/Defendants have a counterclaim, which is still pending."

{¶13} This second ruling by the trial court was also appealed by the Appealing Defendants. The two appeals have been consolidated by this Court via its Order of November 17, 2014.

{¶14} Appellants now appeal, assigning the following four errors for review:

{¶15} "I. THE TRIAL COURT ERRED BY HOLDING THAT A PROOF OF MINERAL CLAIM TIMELY RECORDED BY ONE OF EDNA MOSS' HEIRS PURSUANT TO ORC 5301.56 WAS VOID AND NOT EFFECTIVE AS TO OTHER HEIRS.

{¶16} "II. THE TRIAL COURT ERRED BY GRANTING DEFAULT JUDGMENT WITHOUT DETERMINING THAT NO ISSUES OF FACT OR LAW EXISTED AS TO PLAINTIFF'S CLAIMS.

{¶17} "III. THE TRIAL COURT ERRED BY GRANTING DEFAULT JUDGMENT IN A DECLARATORY JUDGMENT ACTION, WHERE COMPETING CLAIMS WERE PENDING CONCERNING EDNA MOSS' HEIRS' OWNERSHIP OF THE SUBJECT MINERALS AND WHERE THE STATUTE APPLICABLE TO THE PARTIES' CLAIMS IS INTENDED TO TREAT ALL MINERAL HOLDERS THE SAME.

{¶18} “IV. THE TRIAL COURT ERRED BY REFUSING TO GRANT DEFENDANT'S CIV.R. 60(B) MOTION WHERE THE DEFENDANTS HAD SATISFIED ALL ELEMENTS REQUIRED BY *GTE AUTOMATIC V. ARC INDUSTRIES*.”

I., II., III.

{¶19} In their first three Assignments of Error, Appellants challenge the trial court's judgment entry granting default judgment against the non-answering defendants in this matter.

{¶20} An appellate court will not disturb a trial court's decision regarding a motion for default judgment unless the trial court abused its discretion. *Dye v. Smith*, 189 Ohio App.3d 116, 2010–Ohio–3539, 937 N.E.2d 628, ¶ 7 (4th Dist.). A reviewing court will thus uphold a trial court's decision regarding a motion for default judgment so long as the court did not act in an unreasonable, unconscionable, or arbitrary manner. *E.g., State v. Adams*, 62 Ohio St.2d 151, 157, 404 N.E.2d 144 (1980). Furthermore, when a reviewing court applies the abuse of discretion standard, it may not simply substitute its judgment for that of the trial court. *E.g., In re Jane Doe 1*, 57 Ohio St.3d 135, 138, 566 N.E.2d 1181 (1991).

{¶21} Civ.R. 55 governs default judgments and provides as follows:

{¶22} When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules, the party entitled to a judgment by default shall apply in writing or orally to the court therefor; \* \* \* If the party against whom judgment by default is sought has appeared in the action, he (or if appearing by representative, his representative) shall be served with written notice of

the application for judgment at least seven days prior to the hearing on such application.

\* \* \*

{¶23} Civ.R. 55(A) also provides a trial court with discretion to determine whether a hearing is needed. The rule states:

{¶24} If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper and shall when applicable accord a right of trial by jury to the parties.

{¶25} Thus, Civ.R. 55(A) “ [c]learly \* \* \* makes it discretionary with the trial court to decide if a hearing is necessary. It has always been within the discretion of the trial court to determine whether further evidence is required to support a claim against a defaulting defendant.’ ” *CitiMortgage, Inc. v. Kermeen*, 2nd Dist. No. 2011CA2, 2012–Ohio–1655, ¶ 35, quoting *Buckeye Supply Co. v. Northeast Drilling Co.*, 24 Ohio App.3d 134, 136, 493 N.E.2d 964 (9th Dist.1985) (citations omitted).

{¶26} In order to find an abuse of discretion, we must determine the trial court's decision was unreasonable, arbitrary or unconscionable and not merely an error of law or judgment. *Blakemore v. Blakemore*, 5 Ohio St.3d 217 (1983).

{¶27} In the case *sub judice*, both Appellant and Appellees have requested a declaration as the respective parties' interest in the subject half interest in the oil and gas rights. In so doing, the trial court will be required to make a determination as to which version of the Dormant Mineral Act applies: the 1989 DMA or the 2006 DMA. The trial court will then have to interpret the applicable version of the statute and determine

whether Plaintiff-Appellee has a legitimate basis to make a claim pursuant to the Dormant Mineral Act.

{¶28} The July 23, 2014, Judgment Entry, proposed by Plaintiff-Appellee and signed by the trial court, granted judgment as follows:

- (a) As to Count One, the following declarations:
1. Any claim(s) or right(s) that the Defaulting Defendants may have had in the Moss Reserved ½ Oil and Gas Rights is abandoned, and those rights are vested in Wampum as a matter of law;
  2. The Defaulting Defendants have no interest in the Property or the oil and gas mineral rights in the property;
  3. The Claim to Preserve Mineral Interest recorded by Priscilla Grandin Mitchell is null and void and has no effect with respect to any claim(s) or right(s) that the Defaulting Defendants may have had in the Property; and
  4. Any claim(s) or right(s) that the Defaulting Defendants may have had in the Unreserved ½ Oil and Gas Rights has terminated, and those rights are vested in Wampum as a matter of law.
- (b) As to Count Two, a declaration invalidating the Defaulting Defendants' claim(s) as to the oil and gas rights in the Property and an order quieting Wampum's title as to all rights in the property, free and clear of any adverse claim(s) by the Defaulting Defendants;

IT IS SO ORDERED

{¶29} Initially we note that the merits of the case, i.e. the issue of who has a valid claim to the oil and gas rights, have not yet been addressed by the lower court. This Court will not address issues that arise for the first time on appeal. See *e.g.*, *Cerney v. Norfolk & W.Ry. Co.* (1995), 104 Ohio App.3d 482, 488, 662 N.E.2d 827. This Court will focus only on the default judgment and its effect on the ultimate decision in this matter.

{¶30} While this Court is cognizant that there are instances where default judgment is properly granted in declaratory judgment actions, this Court finds that such is not true in the case *sub judice*. Here, the trial court has yet to make any determination as to what version of the dormant mineral statute applies in this matter or whether Plaintiff-Appellee has a valid claim there under. We find that the trial court therefore erred in granting default judgment as set forth above because the judgment and findings therein effectively predetermine the ultimate decision in this matter as to the oil and gas rights.

{¶31} It is elementary that the trial court will ultimately decide that either Appellants or Appellee established their entitlement to the oil and gas rights. Because this issue has yet to be decided by the trial court, there is a possibility that the trial court's judgment as to the defaulting defendants could ultimately conflict with its declaratory judgment finding as to the non-defaulting defendants.

{¶32} Based on the foregoing, this Court finds Appellants' Second, Third and Fourth Assignments of Error well-taken and sustains same.

**IV.**

{¶33} In their Fourth Assignment of Error, Appellants argue that the trial court erred in failing to grant their Civ.R. 60(B) motion. Based on our disposition of Appellants' previous assignments of error, we find this issue moot.

{¶34} Appellants' Fourth Assignment of Error is overruled.

{¶35} Accordingly, the judgment of the Court of Common Pleas of Guernsey County, Ohio, is reversed and remanded for further proceedings consistent with the law and this opinion.

By: Wise, J.

Farmer, P. J., and

Baldwin, J., concur.

JWW/d 0618

