

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

IN RE: JONATHAN A. HILL AND LUCY : IN THE SUPERIOR COURT OF
M. HILL, H/W, : PENNSYLVANIA
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APPEAL OF: CHESAPEAKE :
APPALACHIA, LLC : No. 1125 MDA 2013

Appeal from the Order May 15, 2013,
Court of Common Pleas, Bradford County,
Orphans' Court at No. 7804-2012

BEFORE: GANTMAN, P.J., DONOHUE and STABILE, JJ.

MEMORANDUM BY DONOHUE, J.:

FILED APRIL 21, 2014

Appellant, Chesapeake Appalachia, LLC ("Chesapeake"), appeals from the order of the trial court dated May 15, 2013 that, *inter alia*, dismissed without prejudice Chesapeake's petition for the creation of a trust pursuant to the Pennsylvania Dormant Oil and Gas Act, 58 PS. § 701.1 *et seq.* ("DOGA"). Appellees Brenco Oil, Inc. ("Brenco") and Lancaster Exploration & Development Company, LLC ("Lancaster"), have filed a "Joint Application in the Nature of a Motion to Quash Appeal," seeking to quash this appeal as interlocutory. For the reasons that follow, in the interests of judicial economy, we hereby stay this appeal for a period of fifteen (15) days from the date of issuance of this Memorandum, with further instructions set forth hereinbelow.

Pursuant to DOGA, partial owners of oil and gas interests may develop their resources even when the remaining partial owners of oil and gas

cannot be located. 58 P.S. § 701.2. The legislative purpose of DOGA is “to protect the interests of unknown or unlocatable owners of oil and gas.” *Id.* at § 701.2. To accomplish this purpose, the DOGA permits an existing owner of an interest in oil and gas under a specific tract or parcel of property to petition the trial court for the creation of a trust and the appointment of a trustee to act on behalf of those unknown or unlocatable co-owners of oil and gas underlying that same specific tract or parcel. *Id.* at § 701.4(a). To satisfy the trial court that a trust under the DOGA is necessary, the petitioner must demonstrate that he or she undertook a “diligent effort” to find the other owners, but was unsuccessful. *Id.* at § 701.4(b)(1), (2). The petitioner must also demonstrate that the “[a]ppointment of a trustee will be in the best interest of all owners of interests in the oil and gas.” *Id.* at § 701.4(b)(3). Once created, a DOGA trust remains in force until the unknown owners of the oil and gas interests have been identified and have received their share of any funds held in trust for them. *Id.* at § 701.5(c).

On or about May 14, 2012, Chesapeake filed a “Petition to Create Trust for Known Owners and Pursuant to [DOGA]” (hereinafter, the “Petition to Create Trust”), requesting the creation of a trust for the unknown owners of various oil and gas interests. On September 24, 2012, the trial court held a settlement conference on Chesapeake’s Petition to Create Trust. At the conclusion of this settlement conference, the trial court entered an order providing that “upon agreement of the parties, a trust shall be imposed upon

any interest that is not proven within ninety (90) days” (hereinafter, the “September 24 Order”). When this ninety day period expired, Chesapeake filed a “Petition for Final Order to Create Trust for Unknown Owners of Oil and Gas Interests” (hereinafter, the “Petition for Final Order”). By order dated January 25, 2013, the trial court entered an order in a form substantially identical to that Chesapeake attached to its Petition for Final Order.

On February 1, 2013, Brenco filed a motion for reconsideration of the trial court’s January 25, 2013 order, contending that Chesapeake had knowledge of locatable owners of the oil and gas interests in question. The trial court vacated its January 25, 2013 order and scheduled a hearing on Chesapeake’s Petition for Final Order and Brenco’s motion for reconsideration. On April 5, 2013, the trial court conducted an evidentiary hearing and considered oral argument from the parties. On May 16, 2013, the trial court entered an order dismissing without prejudice Chesapeake’s Petition to Create Trusts and vacating its September 24 Order. By order dated June 13, 2013, the trial court denied Chesapeake’s motion for reconsideration of the May 16, 2013 order. This appeal followed.

The above-listed panel heard oral argument on February 25, 2014. On March 10, 2014, Brenco and Lancaster filed their “Joint Application in the Nature of a Motion to Quash Appeal,” in which they contend that the trial court’s order of May 15, 2013 was interlocutory and that as a result this

Court lacks subject matter jurisdiction to decide the appeal. After review, we conclude that the appeal is interlocutory.

A court's jurisdiction is a threshold issue that the court may consider at any time. **McCutcheon v. Philadelphia Elec. Co.**, 567 Pa. 470, 478, 788 A.2d 345, 349 (Pa. 2002). Under Pennsylvania law, this Court may reach the merits of an appeal taken from (1) a final order or an order certified as a final order by the trial court (Pa.R.A.P. 341); (2) an interlocutory order as of right (Pa.R.A.P. 311); (3) an interlocutory order by permission (Pa.R.A.P. 312); or (4) a collateral order (Pa.R.A.P. 313). **Stahl v. Redcay**, 897 A.2d 478, 485 (Pa. Super. 2006).

The trial court here did not certify its May 15, 2013 order as a final order, and Chesapeake has not sought the permission of this Court for permission to appeal. Chesapeake also does not contend that the order is an interlocutory order as of right or a collateral order. Accordingly, this Court has jurisdiction only if the trial court's order is a final order pursuant to 42 Pa.C.S.A. § 742 and Pa.R.A.P. 341. Chesapeake apparently concurs with this conclusion, as the Statement of Jurisdiction in its appellate brief provides that "Jurisdiction is conferred upon this Court pursuant to 42 Pa. Cons. Stat. Ann. § 742 (West), Pa.R.A.P. 301, 341." Chesapeake's Brief at 6.

Rule 341(b) of the Pennsylvania Rules of Appellate Procedure defines a "final order" in relevant part, as an order that "disposes of all claims and of

all parties.” Pa.R.A.P. 341(b).¹ As such, a final order is one that ends the entire case and, as a practical consequence, puts the litigants out of court. **See, e.g.**, Pa.R.A.P. 341 Note; **Pennsylvania Ass'n of Rural & Small Sch. v. Casey**, 531 Pa. 439, 442, 613 A.2d 1198, 1199 (1992). Whether an order is final cannot always be ascertained from the technical effect of the trial court’s adjudication or from the face of the trial court’s decree, and instead must be determined after an examination of the ramifications of the trial court’s action.² **Daily Express, Inc. v. Office of State Treasurer**, 683 A.2d 963, 965 (Pa. Commw. 1006). For finality to occur, the order in

¹ In its Response to Appellees’ Joint Motion in the Nature of a Motion to Quash Appeal, Chesapeake points out that Rule 3.1-1 and 7.1-1 both provide that all decrees entered in the Orphans’ Court Division “shall be final.” We do not interpret these local rules to provide that every decree entered in the Orphans’ Court Division of Bradford County is by definition a “final order” under Pa.R.A.P. 341(b), as such an interpretation would be inconsistent with the strictures of Rule 341(b). **See, e.g., Feingold v. SEPTA**, 512 Pa. 567, 572, 517 A.2d 1270, 1272 (1986) (“local rules cannot be construed so as to be inconsistent with the prevailing state-wide rules.”); **Commonwealth v. Baker**, 547 Pa. 214, 222, 690 A.2d 164, 167-68 (1997).

² The cases cited by the parties here do not compel a particular result, but rather reflect that the determination of finality must be made on a case-by-case basis. In **Mier v. Stewart**, 683 A.2d 930 (Pa. Super. 1996), this Court held that a trial court order dismissing a complaint without prejudice to file an amended complaint was not a final, appealable order. **Id.** at 930 (“For finality to occur, the trial court must dismiss with prejudice the complaint in full.”). Conversely, in **Damico v. Royal Ins. Co.**, 556 A.2d 886 (Pa. Super. 1989), we concluded that the trial court’s dismissal of a complaint without prejudice for failure to join an indispensable party was a final, appealable order because the trial court lacked jurisdiction over the matters before it that may have affected the rights of the missing party. **Id.** at 887.

question must preclude the plaintiff from further presenting the merits of the case to the trial court. ***Id.***

In this case, the trial court's May 15, 2013 order³ dismissed Chesapeake's Petition to Create Trust "without prejudice." While this designation is not, in and of itself, dispositive of finality, a review of the trial court's accompanying written opinion here confirms that it did not intend to preclude Chesapeake from continuing its efforts for the creation of a trust under DOGA. To the contrary, the trial court concluded that under DOGA, Chesapeake had the burden of due diligence to use its best efforts to locate the owners of certain oil and gas interests before a trust could be created. Trial Court Opinion, 5/15/2013, at 3. The trial court determined, however, that Chesapeake had not yet satisfied its due diligence obligations:

Here, [Chesapeake] claims generally that they performed numerous searches in the internet, phone directories and at the offices of Recorder of Deeds and Register of Wills in Sullivan, Bradford and surrounding counties. [Chesapeake] provides no specifics in its petition and no further specifics as to their efforts at the April 5, 2013 hearing. With the available resources of today to find people through internet and web searches in mind, [Chesapeake] had failed to prove diligent efforts in searching for the heirs of Jonathan and Lucy Hill. Further, from the mere fact that Respondents, [Brenco] and [Lancaster] have found and determined numerous heirs through their efforts, one can find that [Chesapeake] did not use diligent efforts.

³ We reject Chesapeake's suggestion that the trial court's September 24 Order was final and appealable, as it did not dispose of any claims or end the litigation for any of the litigants. Pa.R.A.P. 341(b).

Id. at 5.

Based upon these findings, the trial court indicated that it could not determine whether any unknown or unlocatable oil and gas interests remain in this circumstances, and thus it was not clear whether a trust under DOGA could be created. As a result, the trial court clearly indicated that it was dismissing Chesapeake's Petition to Create Trust "without prejudice" for the specific purpose of providing Chesapeake with the opportunity to exercise the due diligence found lacking to date and then, if appropriate, to refile its petition for the creation of a trust under DOGA.

Finally, as the purpose of [DOGA] is to reduce the problems caused by fragmented and unknown or unlocatable ownership of oil and gas interests and to protect the interests of unknown or unlocatable owners of oil and gas, 58 P.S. § 701.2, and it appearing that numerous heirs have been located and are now known, it is unclear whether any further unknown or unlocatable heirs continue to, or ever did exist. ***As such, [Chesapeake's Petition to Create Trust] shall be dismissed without prejudice.***

Id. at 5-6. For these reasons, we must conclude that the trial court's May 15, 2013 order did not preclude Chesapeake from further presenting the merits of its case to the trial court.

In response to the trial court's May 15, 2013 order, Chesapeake had at least two available options: either (1) file an amended petition, or (2) by praecipe or motion obtain from the trial court a modified order dismissing

the case with prejudice. It did neither, however, and thus at present we are constrained to conclude that the trial court's May 15, 2013 order was interlocutory and not appealable.

Because this appeal has been thoroughly briefed, however, and because we have heard oral argument from counsel for the parties, as a matter of judicial economy this panel is reluctant to quash the appeal as interlocutory at this late date. Accordingly, we will stay this appeal for a period of fifteen (15) days from the date of the issuance of this Memorandum. If, during this fifteen day period, Chesapeake obtains a final order from the trial court (see option (2) above) and so apprises this Court accordingly in writing, we will proceed to decide the appeal on its merits. If we are not advised that a final order has been entered by the trial court within fifteen days, we will quash this appeal as interlocutory.

Jurisdiction retained.