

**TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN**

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**NO. 03-16-00328-CV**

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**Deecye Clayton Bedell, a/k/a D. C. Bedell,  
d/b/a D. B. Oil Company, Appellant**

**v.**

**The State of Texas, Appellee**

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**FROM THE DISTRICT COURT OF TRAVIS COUNTY, 98TH JUDICIAL DISTRICT  
NO. D-1-GV-10-001226, HONORABLE LORA J. LIVINGSTON, JUDGE PRESIDING**

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**MEMORANDUM OPINION**

The State of Texas sued Deecye Clayton Bedell to collect administrative penalties the Texas Railroad Commission assessed against Bedell for violations of safety and pollution-control requirements and to recover State money paid to plug abandoned oil and gas wells. After the district court granted partial summary judgment to the State as to administrative penalties and liability for civil penalties and attorney fees, the parties tried the remaining issues (the amount of civil penalties and attorney fees due) to a jury. Based on the jury's finding that the State was entitled to zero civil penalties and \$50,000 in attorney fees, the district court rendered final judgment awarding the State \$28,000 in administrative penalties, \$260,740.41 as plugging reimbursement, and \$50,000 as attorney fees. On appeal, Bedell raises issues regarding the trial court's jurisdiction, the validity of the Railroad Commission's administrative order, and the jury charge. We will affirm the judgment.

## **Background**

In a 2002 final order, the Railroad Commission assessed \$28,000 in administrative penalties against Bedell for violations of safety and pollution-control requirements related to oil and gas wells and ordered Bedell to plug the wells at issue. The hearing examiner's proposal for decision, which was incorporated in full into the Railroad Commission's final order, included, among other matters, the following findings of fact:

- Bedell had notice of the administrative proceeding;
- Bedell had designated himself as the operator of the wells at issue in the administrative proceeding;
- the wells were not in compliance with Railroad Commission rules and regulations; and
- if left unplugged, the wells were likely to result in pollution.

The proposal for decision also noted that "Respondent Bedell appeared by telephone and presented testimony at the hearing," and the Railroad Commission's final order additionally found that the hearing had been held "after statutory notice." After Bedell failed to comply with its final order, the Railroad Commission paid \$198,385.75 to plug the wells.

In 2010, the State filed suit on behalf of the Railroad Commission to recover the money spent by the Railroad Commission to plug the wells, the \$28,000 in administrative penalties assessed by the Railroad Commission, civil penalties, attorney fees, and court costs. Bedell answered that he is not liable in the capacity in which he is sued, that he did not execute the documents by which he was deemed responsible for the wells, and that there is a defect of parties. He further asserted that he did not receive notice of the administrative hearing, did not participate

in the administrative hearing, and did not authorize anyone else to be his agent for service. He argued that the Commission's order for payment and plugging was issued against him when he was not an oil and gas operator and did not own or operate the relevant lease.<sup>1</sup>

The State filed a motion for partial summary judgment on its entitlement to administrative penalties, civil penalties, plugging expenses, costs, and attorney fees, leaving for trial the determination of the amount of civil penalties, pre-judgment interest on the plugging fees, post-judgment interest, and attorney fees. As summary-judgment evidence, the State attached authenticated documents from the administrative record, including the proposal for decision, the administrative final order, a handwritten letter from "D C Bedell" requesting to appear at the administrative hearing by telephone, and a "Notice of Intent to Appear" signed by Judy Bedell on behalf of Deecye Clayton Bedell.

Bedell replied to the State's motion for summary judgment by asserting that his father (Deecye Bruce Bedell) is the owner of the company and the operator of the lease and that "persons who are not parties to this proceeding [were] filing documents under [appellant's] name, signing his name, and purporting to act as his agent without his knowledge, permission, and consent." In an affidavit attached to his response, Bedell testified that he:

- has never done business as or been an owner or officer of D.B. Oil Company;

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<sup>1</sup> Bedell also filed a counterclaim for bill of review of the Commission's original assessment of the penalties and costs, but the district court granted the State's plea to the jurisdiction as to that counterclaim, which we affirmed. *See Bedell v. State*, No. 03-11-00502-CV, 2013 WL 2631738, at \*2-5 (Tex. App.—Austin June 5, 2013, pet. denied) (mem. op.) (holding that because Bedell had failed to exhaust his administrative remedies upon notice of Commission's order, trial court lacked jurisdiction over his bill of review).

- did not sign the documents attached to the State’s summary-judgment motion;
- never operated or owned an interest in the lease at issue in this case;
- did not receive notice of or participate in the administrative hearing at issue here; and
- did not become aware of the administrative order until approximately June 2008.

Bedell also filed his own motion for summary judgment, making essentially the same arguments and offering the same evidence as he had asserted in his reply to the State’s motion. The State objected to Bedell’s summary-judgment evidence.

The district court granted the State’s objections to Bedell’s summary-judgment evidence and struck all of the evidence attached to Bedell’s response. It also granted the State’s motion for partial summary judgment, awarding it \$28,000 in administrative penalties, \$198,385.75 as plugging expenses, plus “pre-judgment interest in an amount to be determined upon final trial,” civil penalties “in an amount to be determined upon final trial,” reasonable attorney fees “in an amount to be determined upon final trial,” and court costs. The district court did not expressly rule on Bedell’s motion for summary judgment.

The parties tried the remaining issues—i.e., the amount of the State’s civil penalties, interest, and attorney fees—to a jury. The trial court instructed the jury in the charge that Bedell had been determined to be the operator of the wells at issue in the case and that Bedell had violated the Railroad Commission’s final administrative order by failing to plug the wells. The jury returned a verdict finding that the State was not entitled to civil penalties, but that it was entitled to \$50,000 as reasonable attorney fees. Based on these jury findings and on its prior partial summary judgment

in favor of the State, the trial court rendered final judgment that the State recover \$28,000 as administrative penalties, \$260,740.41 as well-plugging costs (including interest), and \$50,000 as attorney fees. It is from this final judgment that Bedell appeals.

### **Discussion**

Bedell raises three issues on appeal: (1) the trial court lacked jurisdiction to hear the State's enforcement action; (2) the Railroad Commission violated Bedell's due-process rights by failing to give him notice of the administrative hearing; and (3) the trial court erred in refusing to allow Bedell's proffered jury questions.

### **Jurisdiction**

In his first issue, Bedell asserts that the Railroad Commission (and, in turn, the trial court) lacked jurisdiction over him because Bedell was not and had never been the operator of the wells that were the subject of the administrative proceeding and enforcement proceeding. The issue of who was the operator of the wells in question was resolved by the district court's partial summary judgment in favor of the State. Specifically, Bedell challenged this fact issue in his response to the motion for summary judgment and attached evidence supporting his assertions that he was never the operator of the wells in question. However, the district court struck Bedell's summary-judgment evidence in response to the State's objections, and Bedell has not challenged that ruling on appeal.

Regardless of the partial summary judgment, however, and even if we were to assume the truth of Bedell's factual assertions, Bedell is attempting to collaterally attack a Railroad Commission order that is now final and unappealable. A final agency order that is valid on its face

is not subject to collateral attack in a subsequent enforcement proceeding. *Jolly v. State*, 856 S.W.2d 859, 861 (Tex. App.—Austin 1993, writ denied) (citing *Corzelius v. Harrell*, 186 S.W.2d 961, 967 (Tex. 1945); *Magnolia Petrol. Co. v. New Process Prod. Co.*, 104 S.W.2d 1106, 1110 (Tex. 1937); *Texas Steel Co. v. Fort Worth & D.C. Ry. Co.*, 40 S.W.2d 78, 81 (Tex. 1931); *Combs v. State*, 526 S.W.2d 648, 649 (Tex. Civ. App.—Austin 1975, writ ref'd n.r.e.), *cert. denied*, 426 U.S. 922 (1976)). In *Combs*, this Court refused to allow a collateral attack on a final Railroad Commission order based on an almost identical argument to the one Bedell asserts here—i.e., that the appellant was not the “operator” of the wells. *See Combs*, 526 S.W.2d at 649.

Bedell argues that a collateral attack on the Railroad Commission’s order is permissible here because that order is void for lack of jurisdiction over him.<sup>2</sup> In making this argument he emphasizes again his contention that he was never the operator of the wells in question and points to subsection 81.051(a)(4) of the Texas Natural Resources Code, which provides that the Railroad Commission “has jurisdiction over all . . . persons owning or engaged in drilling or operating oil or gas wells in Texas.” Tex. Nat. Res. Code § 81.051(a)(3). According to Bedell, because he was never the operator of the wells at issue, the Railroad Commission does not have jurisdiction over him. But the entirety of section 81.051 makes it clear that the Railroad Commission has exclusive jurisdiction over all oil and gas matters in this State, not just the operators of such wells:

- (a) The commission has jurisdiction over all:

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<sup>2</sup> Although phrased in a way that suggests he is making a personal-jurisdiction challenge, Bedell acknowledges in his reply brief to this Court that he is a resident of the State subject to personal jurisdiction.

- (1) common carrier pipelines . . . in Texas;
- (2) oil and gas wells in Texas;
- (3) persons owning or operating pipelines in Texas; and
- (4) persons owning or engaged in drilling or operating oil or gas wells in Texas.

*Id.* § 81.051(a); see *Anadarko E & P Co. v. Railroad Comm’n*, No. 03-04-00027-CV, 2009 WL 47112, at \*6 (Tex. App.—Austin Jan. 7, 2009, no pet.) (mem. op.) (“The legislature has given the Commission exclusive jurisdiction to regulate oil and gas wells in Texas.”).

We overrule Bedell’s first issue.

### **Notice**

In his second issue, Bedell complains that the Railroad Commission’s failure to notify him of the administrative hearing deprived him of his due-process rights and, thus, rendered the Railroad Commission’s order void. See *PNS Stores, Inc. v. Rivera*, 379 S.W.3d 267, 272 (Tex. 2012) (holding that judgment may be challenged through collateral attack when failure to establish personal jurisdiction violates due process) (citing *Peralta v. Heights Med. Ctr., Inc.*, 485 U.S. 80, 84 (1988)). But the issue of whether Bedell had notice of the administrative hearing was resolved, just as was the operator question, in the district court’s partial summary judgment in favor of the State. The State’s summary-judgment evidence conclusively established, in the form of authenticated documents from the administrative records, that Bedell had notice of the hearing and that he appeared at the hearing telephonically. And although Bedell offered his own summary-judgment evidence potentially controverting the State’s notice and appearance evidence, the district court struck that summary-judgment evidence from the record, so it is not before us. Stated another way, on the record before us, the State has conclusively established that Bedell had notice of the

administrative hearing. As such, the Railroad Commission’s judgment is not subject to collateral attack on notice grounds.

We overrule Bedell’s second issue.

### **Jury question**

In his third issue, Bedell asserts that the district court erred in refusing to include jury questions regarding whether Bedell was liable in the capacity in which he was sued, whether Bedell executed certain forms at issue in the case, and whether he was the operator of the case. We disagree.<sup>3</sup>

Only disputed issues must be submitted to the jury. *T.O. Stanley Boot Co. v. Bank of El Paso*, 847 S.W.2d 218, 223 (Tex. 1992); *see Bel-Ton Elec. Serv., Inc. v. Pickle*, 915 S.W.2d 480, 481 (Tex. 1996) (parties to jury trial entitled to have controlling and disputed fact issues submitted to jury). Each of Bedell’s proposed questions concern the issue of whether he was liable for the penalties assessed by and the plugging costs incurred by the Railroad Commission—i.e., liability. The district court determined that Bedell was liable for the penalties, plugging costs, and attorney fees as a matter of law in its partial summary judgment and reserved for trial only the amount of civil penalties and attorney fees due. As such, Bedell’s questions were not at issue in the trial to the jury and, thus, the district court did not abuse its discretion in denying these questions.

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<sup>3</sup> We review a trial court’s decision to submit or refuse a particular jury question or instruction for an abuse of discretion. *See MEMC Pasadena, Inc. v. Riddle Power, LLC*, 472 S.W.3d 379, 388 (Tex. App.—Houston [14th Dist.] 2015, no pet.) (citing *Shupe v. Lingafelter*, 192 S.W.3d 577, 579 (Tex. 2006) (per curiam)). A trial court’s error in refusing an instruction is reversible if it either “probably caused the rendition of an improper judgment” or “probably prevented the appellant from properly presenting the case to the court of appeals.” Tex. R. App. P. 44.1(a).



We also note that the district court instructed the jury in the charge that Bedell had been determined to be the operator of the wells and that Bedell had violated the Railroad Commission's final administrative order by failing to plug those wells.

We overrule Bedell's third issue.

### **Conclusion**

Having overruled each of Bedell's issues, we affirm the district court's judgment.

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Jeff Rose, Chief Justice

Before Chief Justice Rose, Justices Field and Bourland

Affirmed

Filed: December 19, 2017