TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-22-00478-CV

Stephen Pruett and Jet-Tex Oil & Gas, LLC, Appellants

v.

River Land Holdings, LLC, Appellee

FROM THE 20TH DISTRICT COURT OF MILAM COUNTY
NO. CV-40980, THE HONORABLE JOHN YOUNGBLOOD, JUDGE PRESIDING

M E M O R A N D U M O P I N I O N

The litigation underlying this appeal arises from an oil and gas lease executed on May 27, 1976 (the "Lease" or the "1976 Lease"). Appellants Stephen Pruett and Jet-Tex Oil & Gas, LLC appeal from the trial court's summary judgment, declaring that the 1976 Lease terminated due to cessation of production. Because genuine issues of material fact exist as to whether the Lease terminated, we reverse the trial court's summary judgment and remand for further proceedings.

BACKGROUND

When the 1976 Lease was executed, it covered what was then a 550-acre tract of land in Milam County. The original lessors under the 1976 Lease were certain individuals, collectively known as heirs of the Brockenbush Estate; the original lessee was Milton James Matyastik. The 1976 Lease provided for a primary term of three years and "for so long

thereafter as oil, gas or other minerals is produced from said land or land with which said land is pooled hereunder." The 1976 Lease also states that if following expiration of the three-year primary term, "oil, gas and mineral is not being produced, . . . the lease shall remain in force so long as operations are prosecuted with no cessation of more than sixty (60) consecutive days, and if they result in the production of oil, gas or other minerals."

In 2001, Pruett and his parents purchased two tracts of land that were originally part of the 550 acres covered by the 1976 Lease. Pruett purchased a tract of approximately 323 acres, and his parents purchased a tract of approximately 194 acres. At the time of the conveyances, a total of thirty wells were operating under the Lease, and because of various assignments, there were four different operators.

In March 2021, River Land Holdings purchased the 194-acre tract from Pruett's then-widowed mother. The deed expressly reserved any "oil and gas leases . . . to the extent and only to the extent that these remain viable and in effect." According to River Land Holdings' allegations, soon after its purchase of the 194-acre tract, Pruett began to claim that he held lease rights in the tract under the 1976 Lease. In response, River Land Holdings filed suit, seeking a declaration that the 1976 Lease had terminated and that Pruett and his company, Jet-Tex Oil and Gas, LLC, "have no interest in the [194-acre tract] by way of the 1976 Lease."

River Land Holdings subsequently moved for summary judgment, arguing that as a matter of law production on the leased property had ceased for more than sixty days and that, as a result, the 1976 Lease had terminated. In the alternative, it argued that Pruett was judicially estopped from denying that the 1976 Lease had terminated. Specifically, River Land Holdings asserted that Pruett could not now deny that the Lease had terminated because he had taken a contrary position in a 2008 lawsuit brought by one of the operators, L.C. Smith.

Following a non-evidentiary hearing, and upon considering the summary-judgment evidence and the parties' arguments, the trial court granted summary judgment in favor of River Land Holdings. Later, the trial court signed a final judgment, declaring that the 1976 Lease had terminated and awarding $67,061 in attorney's fees to River Land Holdings. *See* Tex. Civ. Prac. & Rem. Code § 37.009 (providing that in proceeding for declaratory judgment, "the court may award costs and reasonable and necessary attorney's fees as are equitable and just"). This appeal followed.

STANDARD OF REVIEW

To prevail on a traditional summary-judgment motion, the movant must demonstrate that there are no genuine issues of material fact and that it is entitled to judgment as a matter of law. Tex. R. Civ. P. 166a(c). When the movant seeks traditional summary judgment on its own claim, the movant has the initial burden of establishing its entitlement to judgment as a matter of law by conclusively proving each element. *Trudy's Tex. Star, Inc. v. City of Austin*, 307 S.W.3d 894, 905 (Tex. App.—Austin 2010, no pet.) (citing *M.D. Anderson Hosp. & Tumor Inst. v. Willrich*, 28 S.W.3d 22, 23 (Tex. 2000) (per curiam)). Once the movant meets this burden, the burden then shifts to the non-movant to present evidence that raises a genuine issue of material fact, thereby precluding summary judgment. *Id.*

We review the trial court's grant or denial of summary judgment de novo. *Provident Life & Accident Ins. Co. v. Knott*, 128 S.W.3d 211, 215 (Tex. 2003). We take as true all evidence favorable to the non-movant, and we indulge every reasonable inference and resolve any doubts in the non-movant's favor. *Id.* "When the trial court does not specify the grounds for its ruling," as is the case here, "a summary judgment must be affirmed if any of the grounds on

which judgment is sought are meritorious." *Merriman v. XTO Energy, Inc.*, 407 S.W.3d 244, 248 (Tex. 2013).

APPLICABLE LAW

A Texas oil and gas lease grants a fee simple determinable to the lessee. *Anadarko Petrol. Corp. v. Thompson*, 94 S.W.3d 550, 554 (Tex. 2002). "As a result, 'the lessee's mineral estate may continue indefinitely, as long as the lessee uses the land for its intended purpose.'" *BP Am. Prod. Co. v. Red Deer Res., LLC*, 526 S.W.3d 389, 394 (Tex. 2017) (quoting *Thompson*, 94 S.W.3d at 554). "We resolve the question of when a lease terminates by ascertaining the parties' intent from the lease as a whole." *Id.*

A lease's habendum clause generally defines the mineral estate's duration. *Thompson*, 94 S.W.3d at 554. A typical habendum clause, like that in the 1976 Lease, states that the lease lasts for a relatively short, fixed term of years, commonly referred to as the primary term, and then "as long thereafter as oil, gas, or other mineral is produced," commonly referred to as the secondary term. *Id.* (quoting *Gulf Oil Corp. v. Reid*, 337 S.W.2d 267, 269 (Tex. 1960)). In Texas, the term "produce" in a lease's habendum clause impliedly means "producing in paying quantities." *Red Deer Res.*, 526 S.W.3d at 394; *Garcia v. King*, 164 S.W.2d 509, 512 (1942). "Production in paying quantities" means the production is sufficient to pay the lessee a profit, however small, over the operating and marketing expense, although the cost of drilling the well may never be repaid. *Red Deer Res.*, 526 S.W.3d at 394. A party may seek termination of a lease under the typical habendum clause when there has been a cessation of production in paying quantities, as measured over a reasonable period of time under the circumstances. *Id.*.

In addition, many oil and gas leases contain savings clauses designed to prevent the automatic termination upon cessation of production under the habendum clause. *Id.* In this

case, the 1976 Lease includes a savings clause in the form of a cessation-of-production clause, stating that the lease term will remain in force during the secondary term, despite an absence of actual production, "so long as operations are prosecuted with no cessation of more than sixty (60) consecutive days, and if they result in the production of oil, gas or other minerals." A party may seek termination of a lease under a cessation-of-production clause when there has been a total cessation of physical production for the number of consecutive days defined in the cessation-of-production clause. *Id. at* 396; *Bachler v. Rosenthal*, 798 S.W.2d 646, 650 (Tex. App.—Austin 1990, writ denied) (holding that "the reasonably prudent operator test" is not applicable in cases where there is "a total cessation of physical production for the number of consecutive days stated in the lease's cessation-of-production clause") (citing *Clifton v. Koontz*, 325 S.W.2d 684, 690-91 (Tex. 1959), and *Skelly Oil Co. v. Archer*, 356 S.W.2d 774, 783 (Tex. 1962)).

Cessation of production in paying quantities and total cessation of physical production are independent grounds for seeking termination of an oil and gas lease. *Red Deer Res.*, 526 S.W.3d at 396 (citing *Bachler*, 798 S.W.2d 646, 648-50); *see also Brown v. Reeter*, 170 S.W.3d 151, 155 (Tex. App.—Eastland 2005, no pet.) (stating that "Texas courts have made an evidentiary distinction between claims alleging 'total cessation of production' versus those involving a 'cessation of production in paying quantities'").

ANALYSIS

On appeal, Pruett contends that the trial court erred in granting summary judgment in favor of River Land Holdings because there are genuine issues of material fact as to whether the 1976 Lease terminated during the secondary term. In response, River Land Holdings argues that the summary-judgment evidence establishes, as matter of law, that the 1976

Lease automatically terminated due to a total cessation of production and, alternatively, due to a cessation of production in paying quantities. In addition, River Land Holdings asserts that Pruett is estopped from denying that the 1976 Lease terminated. We will address in turn each of these potential grounds for affirming the trial court's summary-judgment ruling.[1]

Total Cessation of Production

A party claiming that a lease has terminated under a cessation-of-production clause must prove that (1) there has been a total cessation of physical production for a period longer than that permitted in the lease's cessation-of-production savings clause (here, sixty days), and (2) no other savings provision sustains the lease. *Red Deer Res.*, 526 S.W.3d at 396. In support of its motion for summary judgment, River Land Holdings attached copies of records filed with and maintained by the Texas Railroad Commission showing that no production on the property had been reported by any operator of record for more than five years, specifically, from 2006 to 2012. According to River Land Holdings, this summary-judgment evidence establishes as a matter of law that (1) between 2006 and 2012 no production occurred on any well on the Property for more than sixty consecutive days, and (2) consequently, the 1976 Lease terminated long before its 2021 purchase of the 194-acre tract from Pruett's mother.

In response to the motion for summary judgment, and now on appeal, Pruett does not dispute that there was no physical production between 2006 and 2012 *as to most of the wells* under the Lease and that the Railroad Commission production records accurately reflect this.

[1] In its appellee's brief, River Land Holdings raises the doctrine of quasi estoppel as an alternative basis for affirming the trial court's summary judgment. However, because quasi estoppel was not raised in River Land Holdings's motion for summary judgment, we cannot affirm the summary judgment on that ground and thus will not consider the parties' arguments on that issue. *McConnell v. Southside Indep. Sch. Dist.*, 858 S.W.2d 337, 341 (Tex. 1993) ("A motion [for summary judgment] must stand or fall on the grounds expressly presented in the motion.").

Instead, Pruett asserts that there is competent evidence showing that (1) by virtue of his 2001 deed to the 323-acre tract, he became the sole owner of certain wells under the Lease, namely, the wells identified in the Railroad Commission records as "the RRC #02894 [W]ells"; and (2) he self-operated and produced oil from these wells every two months from July 2, 2005, to April 1, 2012. As a result, Pruett argues that there are genuine issues of material fact as to River Land Holdings' claim that the 1976 Lease terminated due to a cessation of production.

To his summary-judgment response, Pruett attached his own affidavit, along with supporting documents. In his affidavit, Pruett states that immediately prior to his purchase of the 323-acre tract, the RRC #02894 Wells were owned and operated by Matyastik and that under the terms of his 2001 deed from Matyastik, a copy of which he attached, he "acquired all of [Matyastik's] then existing interest in the mineral estate of the [323-acre tract], royalty, overriding royalty, leasehold and any other part of the mineral estate then owned by [Matyastik], including all his right and title and interest in any wells and related equipment on said property." According to his affidavit, Pruett was not provided any notice when, in 2002, Matyastik "transferred P-4 operatorship of the [RRC #02894] Wells to L.C. Smith." As a result, in a subsequent suit filed by L.C. Smith over his operator rights, Pruett filed a counterclaim to prohibit L.C. Smith from operating the RRC #02894 Wells. Finally, in 2012, Jet-Tex obtained from L.C. Smith a P-4 certificate of compliance and transportation authority, transferring operatorship to Jet-Tex. The P-4 certificate of compliance was subsequently approved by the Railroad Commission, and Jet-Tex immediately began to produce and sell oil from these wells on a profitable basis.

Pruett also describes in his affidavit how, between 2005 and 2012, while the lawsuit with L.C. Smith was pending, he would routinely pump oil from the RRC #02894 Wells,

using portable generators; store the oil in an existing tank battery; and gauge, calculate, and record the volume of the oil produced. According to Pruett's affidavit, the gauge reports reflect "a total produced volume in the tanks as of 391.4 bbls of oil in the tanks, as of Dec. 9, 2011"; however, "[o]n or about January 3, 2012, as a result of a criminal trespass and oil field equipment theft by a third person, the stored oil in the RRC #02894 tanks was drained to the bottom." In support of his statements, Pruett attached copies of incident reports from Milam County Sherriff's Office.

River Land Holdings argues that Pruett's summary-judgment evidence of alleged self-production contradicts the Commission records and that even if his "far-fetched claims of production" are true, they fail to create a fact issue as to production under the Lease. In support of this argument, River Land Holdings points out that L.C. Smith was the operator of record with the Railroad Commission for the RRC #02894 Wells at the time of the alleged operations. To the extent River Land Holdings suggests that any production by Pruett while he was not the operator of record was illegal and thus cannot constitute production under the Lease, we disagree. [2]

"An oil and gas lease conveys an interest in real property, as does the assignment of all or a portion thereof." *See Petro Pro, Ltd. V. Upland Res., Inc.*, 279 S.W.3d 743, 750 (Tex. App.—Amarillo 2007, pet. denied). Whether Pruett holds a leasehold interest and therefore is legally entitled to engage in operations under the 1976 Lease is a property-rights issue. The

[2] In its reply in support of its motion for summary judgment, River Land Holdings argues that any production by Pruett while he was not the operator of record does not constitute production under the cessation-of-production clause because it was illegal and thus not marketable. This argument, however, conflates termination based on total cessation of production with termination based on cessation of production in paying quantities, which are separate theories with separate requirements. *See BP Am. Prod. Co. v. Red Deer Res., LLC*, 526 S.W.3d 389, 395-97 (Tex. 2017). Consequently, we will address River Land Holdings's argument regarding marketability in reviewing its cessation-of-production claim.

Railroad Commission is a regulatory agency and has no authority to determine ownership of land or property rights. *See, e.g., Amarillo Oil Co. v. Energy-Agri Products, Inc.*, 794 S.W.2d 20, 26 (Tex. 1990). Consequently, the Commission records reflecting L.C. Smith as the "operator of record" are not dispositive of whether Pruett is legally entitled to engage in operations *under the Lease*.

Viewing the summary-judgment evidence in the light most favorable to Pruett and Jet-Tex, we conclude that there are genuine issues of material fact as to whether physical production under the 1976 Lease totally ceased for a period of at least sixty days. As a result, the trial court erred to the extent it granted summary judgment based on River Land Holdings's total-cessation-of-production claim.

Cessation of Production in Paying Quantities

In the alternative, River Land Holdings asserts that even if there is a fact issue as to termination due to total cessation of production, the Commission records establish as a matter of law that the 1976 Lease terminated under the habendum clause due to a failure of production in paying quantities.

The term "production in paying quantities" in a habendum clause refers not only to the amount of production but also to "the ability to market the product at a profit." *Gulf Oil Corp*., 337 S.W2d at 269-70. A party seeking to establish that a lease has terminated because of cessation of production in paying quantities must meet a two-prong test by showing: (1) that the well fails to pay a profit, even a small one, over operating expenses, and (2) that under all the relevant circumstances, a reasonably prudent operator would not have continued to operate the well in the manner in which it was being operated for the purpose of making a profit and not merely for speculation. *BP Am. Prod. Co. v. Laddex, Ltd*., 513 S.W.3d 476, 482-483 (Tex. 2017)

(citing *Skelly Oil*, 356 S.W.2d at 783; *Koontz*, 325 S.W.2d at 690-91). Unlike a termination claim based on total cessation of production, which is tied to the period of time permitted under a lease's savings clause, to determine whether a well has ceased to produce in paying quantities, profitability must be measured over a reasonable period of time under the circumstances. *Id*. (citing *Koontz*, 325 S.W.2d at 691). In the absence of a defined period of production-in-paying quantities in the lease, *see Ridenour v. Herrington*, 47 S.W.3d 117, 121-22 (Tex. App.—Waco, pet. denied) ("[I]f the lease defines the period for which production-in-paying quantities is to be measured, the court does not resort to a 'reasonable period of time.'"), "there can be no limit as to time, whether it be days, weeks, or months, to be taken into consideration," *Koontz*, 325 S.W.2d at 689. Whether a well is producing in paying quantities is generally a question of fact. *Laddex*, 513 S.W.3d at 482.

As the movant on summary judgment, River Land Holdings had the burden to conclusively prove that the 1976 Lease terminated due to cessation of production in paying quantities. River Land Holdings contends that it met this burden because the summary-judgment evidence shows that Pruett was not the operator of record of the RRC # 02894 Wells during the timeframe in which he claims to have engaged in self-production. River Land Holdings points out that Railroad Commission regulations require anyone performing operations, including anyone producing any oil, to register with and report production to the Commission before engaging in operations. *See* 16 Tex. Admin. Code § 3.1 (2024) (Texas Railroad Comm'n, Organization Report; Retention of Records; Notice Requirements). River Land Holdings reasons that because L.C. Smith, not Pruett, was registered as the operator of record with the Commission for the RRC #02894 Wells, any self-production by Pruett on the wells cannot constitute "production in paying quantities" because as a matter of the law the product was not

marketable. In response, Pruett asserts that the summary-judgment evidence shows that he acted as a reasonably prudent operator while the dispute with L.C. Smith over operator rights to the RRC #02894 Wells was pending. Pruett argues that he determined "that the lease could be produced at a profit if he reworked the producing wells" and that he and Jet-Tex did so as soon as they reasonably could under the circumstances.

Assuming without deciding that production by a non-registered operator is unmarketable as a matter of law, as River Land Holdings contends, we still cannot conclude that it satisfied its summary-judgment burden. River Land Holdings presented no evidence as to what timeframe would constitute a reasonable time for measuring profitability from the RRC #02894 Wells and whether the Wells were profitable during that timeframe. *See Laddex*, 513 S.W.3d at 482-83. In addition, River Land Holdings presented no evidence to show that, under the circumstances, a reasonably prudent operator would not have continued to operate the Wells in the manner in which Pruett was operating them. *See id*. Finally, we cannot conclude that, under the circumstances, the time period in which Pruett was allegedly self-producing is, as a matter of law, a reasonable time for measuring the profitability of the RRC #02894 Wells or that it would be unreasonable to also consider the time period in which Jet-Tex was producing after becoming the operator of record in 2012.

Upon considering the summary-judgment evidence, viewed in the light most favorable to Pruett and Jet-Tex, we conclude that a genuine issue of material fact exists as to whether the 1976 Lease terminated due to total cessation of physical production and, alternatively, as to whether the 1976 Lease terminated due to cessation of production in paying quantities. Consequently, the trial court erred to the extent the trial court granted summary

judgment to River Land Holdings on its claims that the 1976 Lease terminated on either of these grounds.

Judicial Estoppel

River Land Holdings also moved for summary judgment on the ground that Pruett was judicially estopped from denying that the 1976 Lease had terminated. River Land Holdings points out that in their 2008 lawsuit with L.C. Smith, Pruett sought a declaration that the 1976 Lease terminated and that L.C. Smith held "no right, title, or interest in the wells." River Land Holdings argues that by now contending that the 1976 Lease is, in fact, still valid and sustained by his own operation of the RRC #02894 Wells, Pruett attempts to gain an unfair advantage in this suit.

Judicial estoppel is a common-law doctrine that "precludes a party who successfully maintains a position in one proceeding from afterwards adopting a clearly inconsistent position in another proceeding to obtain an unfair advantage." *Ferguson v. Building Materials Corp. of Am.*, 295 S.W.3d 642, 643 (Tex. 2009). Judicial estoppel's essential function "is to prevent the use of intentional self-contradiction as a means of obtaining unfair advantage." *Peasant Glade Assembly of God v. Schubert*, 264 S.W.3d 1, 6 (Tex. 2008) (citing *Andrews v. Diamond, Rash, Leslie & Smith*, 959 S.W.2d 646, 650 (Tex. App.—El Paso 1997, writ denied)). Additionally, judicial estoppel is not limited to oral testimony "but applies with equal force to any sworn statement—whether oral or written—made in the course of a judicial proceeding." *Miller v. Gann*, 842 S.W.2d 641, 641 (Tex. 1992). However, judicial estoppel does not apply when "a party . . . did not prevail in the prior action." *Ferguson*, 295 S.W.3d at 643. "The doctrine is not intended to punish inadvertent omissions or inconsistencies but rather to prevent parties from playing fast and loose with the judicial system for their own benefit." *Id.*

In support of its motion for summary judgment, River Land Holdings attached a copy of Pruett's verified pleadings in the 2008 lawsuit with L.C. Smith. In those April 2008 pleadings, Pruett alleged that (1) he was the sole owner of the RRC #02894 Wells and was entitled to all oil and gas from such wells; (2) "[f]rom and after June 2002, the only production of oil and gas obtained by [L.C. Smith] . . . which could possibly constitute 'paying quantities' as required to maintain the original lease was the oil produced from the [RRC # 02894 Wells]"; and (3) that such oil was "fraudulently and unlawfully produced . . . without legal authority and without the effective consent of [Pruett], the lawful owner thereof." Finally, Pruett requested, in part, that the trial court "upon final hearing, enter its Order declaring the [1976 Lease] to be terminated." River Land Holdings also attached a copy of an order, signed by the trial court in June 2008, prohibiting L.C. Smith from accessing the property.

Viewing the summary-judgment evidence in the light most favorable to Pruett, we conclude that a genuine issue of material fact exists with regards to River Land Holdings' claim of judicial estoppel. Assuming without deciding that Pruett's position in the 2008 lawsuit as to termination is unambiguous and inconsistent with his position in this case, we cannot conclude that River Land Holdings met its burden to conclusively establish that Pruett successfully maintained his prior position. *See id*. That is, River Land Holdings did not submit any evidence indicating that a final judgment declaring that the 1976 Lease terminated has ever been signed by the trial court in the 2008 lawsuit or that Pruett otherwise prevailed on his request for a declaration that the 1976 Lease terminated. *See Harris Cnty. Hosp. Dist. v. Public Util. Comm'n*, 577 S.W.3d 370, 382 (Tex. App.—Austin 2019, pet. denied) (noting that "the party urging estoppel has the burden to conclusively prove each element"). To the extent the trial

court granted summary judgment in favor of River Land Holdings based on judicial estoppel, the trial court erred.[3]

CONCLUSION

Having sustained appellants' issue, we reverse the trial court's summary judgment in favor of River Land Holdings on its claim for a declaration that the 1976 Lease terminated, we reverse the award of attorney's fees and costs, and we remand the case to the trial court for further proceedings consistent with our opinion.

Chari L. Kelly, Justice

Before Justices Baker, Triana, and Kelly

Reversed and Remanded

Filed: April 24, 2024

[3] On appeal, Pruett and Jet-Tex also challenge the trial court's award of attorney's fees on the ground that the award was made without sufficient notice and without conducting a hearing. In response, River Land Holdings argues that the award of attorney's fees was proper under the UDJA but concedes that the trial court should have conducted a hearing before making the award. The trial court awarded attorney's fees to River Land Holdings under the Uniform Declaratory Judgment Act (UDJA). *See* Tex. Civ. Prac. & Rem Code § 37.009 (stating that in proceedings under UDJA, "the court may award costs and reasonable and necessary attorney's fees as are equitable and just"). Because we conclude that the trial court erred in granting summary judgment in favor of River Land Holdings on its claim for declaratory relief under the UDJA, we also reverse the trial court's award of attorney's fees. Consequently, we need not decide whether the award of attorney's fees violates notice and hearing requirements.