NO. 12-14-00250-CV

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

LARRY LONG AND WOODBINE PRODUCTION CORPORATION, APPELLANTS	***§***	***APPEAL FROM THE 4TH***
V.	***§***	***JUDICIAL DISTRICT COURT***
MIKEN OIL, INC. AND MIKE TATE, APPELLEES	***§***	***RUSK COUNTY, TEXAS***

MEMORANDUM OPINION

This is a partition action, initiated by Miken Oil, Inc. and Mike Tate, involving oil and gas properties. Larry Long and Woodbine Production Corporation appeal from the trial court's order to sell certain oil and gas leases and its appointment of a receiver to conduct the sale. We reverse and remand.

BACKGROUND

On September 1, 2000, Bonanza Production Company conveyed its interests in two oil and gas leases, known as the Young and Thrash leases, to Long and Tate. By this conveyance, Tate and Long purchased a seven-eighths interest in the two leases. The instrument expressly stated that the interests conveyed are to be divided equally between Tate and Long. Woodbine Production Corporation was the operator of the wells on the leases. On May 11, 2010, Tate assigned one hundred percent of his interest in the Young and Thrash leases to Miken Oil, Inc.

Miken Oil, Inc. and Mike Tate sued Larry Long to partition the two jointly owned oil and gas leases, asserting that the leases are susceptible to being partitioned in kind. Long filed a document entitled "Defendant Long's Original Counterclaim and Plea in Intervention by Woodbine Production Corp." Long had assigned to Woodbine his claims as a cotenant for reimbursement of expenses and his equitable claim against Tate's leasehold interest for

contribution and reimbursement. Woodbine sought a declaration of its rights against Tate, reimbursement for Tate's share of expenses incurred by Woodbine in operating the wells, and an equitable lien and constructive trust against Tate's interests in the leases.

Long and Woodbine filed a plea in abatement asserting that the case should be abated because some necessary parties were not before the court. They alleged that there are additional owners holding undivided interests in the leaseholds who must be included in the partition proceeding. The court heard argument of counsel at two hearings. At the close of the first hearing, the court granted the plea in abatement but later, after additional consideration of the issue, the court denied the plea in abatement. Three months after the second hearing, the court determined that the leases were not susceptible to fair and equitable partition in kind. The court ordered that the leases be sold and the proceeds distributed among the co-owners "in accordance with further orders" of the court. The trial court also appointed a receiver to sell the leases. Long and Woodbine appealed from this order before any further orders were rendered.

PLEA IN ABATEMENT

In their first issue, Appellants contend the trial court erred in denying their plea in abatement and proceeding to a final judgment because necessary parties were not joined in the suit. They argue that, because Tate and Long purchased a fractional interest in the Young and Thrash leases, seven-eighths, the owners of the remaining one-eighth undivided leasehold interest must also be parties to the suit. Further, they contend that not all parties owning the seven-eighths working interests in the oil and gas leases were joined. They assert that, in the absence of these necessary parties, the trial court was required to arrest all proceedings until the remaining owners were brought into the suit.

Standard of Review

We review a trial court's action on a plea in abatement for abuse of discretion. ***Wyatt v. Shaw Plumbing Co.***, 760 S.W.2d 245, 248 (Tex. 1988); ***F & S Constr., Inc. v. Saidi***, 131 S.W.3d 94, 98 (Tex. App.—San Antonio 2003, pet. denied). A trial court abuses its discretion if it acts in an unreasonable and arbitrary manner or without reference to any guiding rules or principles. ***Downer v. Aquamarine Operators, Inc.***, 701 S.W.2d 238, 241-42 (Tex. 1985). The party seeking abatement has the burden of establishing the allegations in its plea in abatement. ***Flowers v. Steelcraft Corp.***, 406 S.W.2d 199, 199 (Tex. 1966).

Applicable Law

The purpose of partition is to segregate ownership and to allow to each owner the free use, control, and possession of the interest set apart to him to the exclusion of all other former joint owners. ***Chaffin v. Hall***, 210 S.W.2d 191, 193-94 (Tex. Civ. App.—Eastland 1948, writ ref'd n.r.e.) (op. on reh'g). A partition suit must seek a division of the whole of a common property. ***Battle v. John***, 49 Tex. 202, 210 (1878); ***Gilbreath v. Douglas,*** 388 S.W.2d 279, 281 (Tex. Civ. App.—Amarillo 1965, writ ref'd n.r.e.).

The general rule is that, before property can be partitioned, all of the joint owners or cotenants must be made parties so that the court may determine the interest each party has therein and make a proper distribution of the property. ***Holloway v. McIlhenny Co***., 14 S.W. 240, 240 (Tex. 1890); ***Ward v. Hinkle***, 8 S.W.2d 641, 645 (Tex. 1928). Implicit in this rule is that the owners who must be joined are the owners of the property sought to be partitioned. ***Tex. Oil & Gas Corp. v. Ostrom***, 638 S.W.2d 231, 233 (Tex. App.—Tyler 1982, writ ref'd n.r.e.); ***Gilbreath***, 388 S.W.2d at 281. A necessary party is one who has or claims a direct interest in the object and subject matter of the suit and whose interests will necessarily be affected by any judgment that may be rendered in the suit. TEX. R. CIV. P. 39; ***Veal v. Thomason***, 159 S.W.2d 472, 477 (Tex. 1942). Rule 39(a)(1) requires the presence of all persons who have an interest in the litigation so that any relief awarded will effectively and completely adjudicate the dispute. ***Brooks v. Northglen Ass'n***, 141 S.W.3d 158, 162 (Tex. 2004).

The trial court is vested with discretion in determining joinder of parties, and the court's findings will not be set aside except for an abuse of discretion. ***MCZ, Inc. v. Smith***, 707 S.W.2d 672, 675 (Tex. App.—Houston [1st Dist.] 1986, writ ref'd n.r.e.). If at any point in the proceeding it comes to the court's attention that a cotenant exists who has not properly been made a party to the suit, the court must immediately abate the case. ***Recio v. Recio***, 666 S.W.2d 645, 649 (Tex. App.—Corpus Christi 1984, no writ). If any cotenant is left out of the case, the court's judgment is not only unenforceable against that cotenant, it is unenforceable as to all other cotenants as well. ***Partin v. Holden***, 663 S.W.2d 883, 885 (Tex. App.—Austin 1983, no writ).

Analysis

By a written "Assignment and Bill of Sale," Bonanza Production Company conveyed all of its interest in two oil and gas leases to Tate and Long. The interest assigned was to be divided

equally between Long and Tate. There is no dispute that they purchased a seven-eighths interest in the leases.

Appellees sued Long to partition the seven-eighths interest purchased by Tate and Long in 2000. This seven-eighths interest is the whole of the common property to be partitioned. *See* ***Battle***, 49 Tex. at 210. It is the largest unit in which the cotenancy of the parties to the suit exists in common. *See* ***Gilbreath***, 388 S.W.2d at 282. The one-eighth interest owner was not a party to the purchase from Bonanza and has no interest in the property sought to be partitioned. The one-eighth interest owner is therefore not a necessary party. *See* ***Veal***, 159 S.W.2d at 477; ***Ostrom***, 638 S.W.2d at 233. The suit partitioning the property concerns only the seven-eighths interest purchased by the parties. A partition order would not affect the absent one-eighth interest owner, and the absence of the one-eighth interest owner does not result in incomplete relief for Appellees and Long. *See* ***Brooks***, 141 S.W.3d at 162. Therefore, the trial court did not abuse its discretion by determining that the one-eighth owner does not need to be joined. *See* ***Smith***, 707 S.W.2d at 675.

We reach a different conclusion regarding the individuals who purchased portions of the parties' seven-eighths interest. The record shows that, on October 21, 2004, Long assigned four and one hundred twenty-five one thousandths percent (4.125%) of his interest in the Young and Thrash leases to B. Charles Spradlin and Ladonna A. Spradlin. Accordingly, the Spradlins became cotentants with Tate in the seven-eighths interest that he seeks to partition.

Additionally, on October 19, 2007, Long, together with Tate's trustee,[1] sold a one-eighth working interest in their interest in the Young lease to Oliver Garvin. Therefore, Garvin is also a cotenant in the seven-eighths interest Appellees seek to partition.

It follows that the Spradlins and Garvin have a direct interest in the subject matter of the suit and their interests will necessarily be affected by any judgment rendered in the suit. *See* TEX. R. CIV. P. 39. The trial court cannot adjudicate the rights of the Spradlins and Garvin without their presence or participation. *See* ***Ward***, 8 S.W.2d at 645. Therefore, the trial court abused its discretion in denying Appellants' plea in abatement. *See* ***Recio***, 666 S.W.2d at 649. We sustain Appellants' first issue. Due to our disposition of this issue, we need not address Appellants' remaining issues. *See* TEX. R. APP. P. 47.1.

[1] Tate, individually and d/b/a Miken Oil, Inc., had previously obtained loans using the Young and Thrash leases as security.

DISPOSITION

Because necessary parties were not joined in this suit, the trial court erred in failing to grant Appellants' plea in abatement, and its order to sell the property is unenforceable.

We ***reverse*** the trial court's judgment and ***remand*** the cause to the trial court for further proceedings.

JAMES T. WORTHEN
Chief Justice

Opinion delivered March 16, 2016.
Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.

(PUBLISH)

COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

MARCH 16, 2016

NO. 12-14-00250-CV

LARRY LONG AND WOODBINE PRODUCTION CORPORATION,
Appellants
V.
MIKEN OIL, INC. AND MIKE TATE,
Appellees

Appeal from the 4th District Court
of Rusk County, Texas (Tr.Ct.No. 2013-238)

THIS CAUSE came to be heard on the appellate record and briefs filed herein, and the same being considered, it is the opinion of this court that there was error in the judgment of the court below.

It is therefore ORDERED, ADJUDGED, and DECREED that the judgment of the court below be **reversed** and the cause **remanded** to the trial court for further proceedings.

It is FURTHER ORDERED that all costs of this appeal are hereby adjudged against the Appellees, **MIKEN OIL, INC. AND MIKE TATE**, for which execution may issue, and that this decision be certified to the court below for observance.

James T. Worthen, Chief Justice.
Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.