

STATEMENT OF THE CASE

DOWNHOLE APPEALS the ALJ's recommendation to grant the Maximum Motion to Stay the pooling application of Downhole covering Section 18, T3N, R2E, Garvin County, Oklahoma.

MAXIMUM APPEALS the ALJ's recommendation that if either party does not file a quiet title action in the District Court of Lincoln County, Oklahoma, within 30 days of the date of the order to issue in this proceeding concerning the Motion to Stay then Downhole would proceed with its pooling before the Commission.

Downhole is seeking to pool and adjudicate the rights and equities of oil and gas owners in the Pennsylvanian, Tulip Creek (Basal Bromide), Upper McLish, Lower McLish, Basal McLish, Upper Oil Creek and Basal Oil Creek common sources of supply underlying the 20-acre unit comprised of the S/2 SE/4 NW/4 of Section 18, T3N, R2E, Garvin County, Oklahoma. The leasehold rights of Downhole underlying the captioned property are under question and may be resolved through a quiet title action in the District Court of Lincoln County, Oklahoma. Maximum owns interest in the existing boreholes and claim those interests through recorded assignments in Garvin County as to specific wellbores. Downhole has indicated that it has been working on filing a quiet title suit but as of December 20, 2010 such action had not been filed in District Court.

REPORT OF THE ADMINISTRATIVE LAW JUDGE

ALJ DAVID LEAVITT heard the Motion to Stay and made an oral ruling on November 30, 2010. He stated he made his recommendation primarily in the interest of judicial economy. Maximum alleges that the applicant Downhole doesn't have any ownership interest in this section. The ALJ could not determine from the testimony and evidence that ownership issue.

The other issue has to do with whether or not a party not having an ownership interest or whose ownership interest is in dispute should pursue a quiet title action in district court or go before the Commission. It is a matter of jurisdiction. A quiet title action should be resolved in district court. See Title 52 O.S. Section 87.1. But the statute and case law also support that the Commission has the jurisdiction to determine who has the right to drill and a certain amount of jurisdiction over the nature of a mineral interest. The ALJ therefore determined in this case since he did not know what the real mineral interests were that he would recommend that an action go forward to determine whether or not Downhole had the right to drill. However, the ALJ

stated he could not recommend that the Corporation Commission had jurisdiction to quiet title. The ALJ stated that if this was a case where the quiet title involved a minor party in the section, and not involving a party that is bringing the application, then you could have a quiet title action occurring simultaneously with a pooling action.

In the present case however the issue respecting quiet title involves the applicant Downhole. If a quiet title action was filed in district court and you went forward with the Commission pooling action which involves Downhole who is bringing the pooling action, stating that they had the right to drill and wanting to be operator, then you could run into a situation where the pooling order would issue, a well could be drilled and the Commission action would be useless if the quiet title action showed that the applicant not only did not have the right to drill but they didn't have any ownership interest and therefore wouldn't have standing to bring a pooling action.

Therefore, the ALJ's recommendation was an attempt to dissect these issues and allow the parties to go forward and bring the quiet title action first. But in the absence of Downhole filing a quiet title action within 30 days of the date of the proposed order then the pooling action by Downhole could go forward to determine whether a right to drill vested with the applicant. The ALJ relied on primarily *Samson Resources Company v. Oklahoma Corporation Commission*, 859 P.2d 1118 (Okl. Civ. App. 1993).

POSITIONS OF THE PARTIES

DOWNHOLE

1) **Richard Gore**, attorney, appearing on behalf of Downhole, stated this case involves a 20 acre tract for which his client acquired a lease this summer for the east 10 acres. Maximum owns an interest in the west 10 acres. The previous operator, Midland Energy, had gotten into trouble for pollution problems and was ordered to fix the problems in January 2010. Midland failed to do so. Thereafter, Downhole acquired the lease and the Commission approved Downhole to become operator of four wellbores on the 20 acre tract. Downhole filed a pooling on July 29th, 2010, the same month Downhole became the operator, to start the clean up process. Downhole states there are many owners in this 20 acre tract. Downhole argues that Maximum is trying to get Downhole to do all the work and delay as much as possible from being pooled.

2) Maximum asserts that there has been no production for over a year on the 10 acre tract that Downhole leased. Downhole is relying on *Hunter v. Clarkson*, 428 P.2d 210 (Okl. 1967), where the court held five years is an

unreasonable length of time not to produce for an oil well. Downhole believes that the quiet title on Downhole's half is not complicated in comparison to Maximum's half, which Downhole states is complicated. Downhole argues that in the past the Commission has found that the mere filing of a lawsuit in District Court was insufficient to stay proceedings before the Commission. See *DLB Energy Corp v. Oklahoma Corp Com'n*, 805 P.2d 657 (Okl. 1991). Downhole argues because of the open holes and pollution involved in this case, public rights become an issue and therefore the stay is inappropriate. Downhole states there may be problems with title, but the mere threat of a lawsuit cannot shut down the Commission from making a decision.

MAXIMUM

- 1) **Eric King**, attorney, appeared on behalf of Maximum, stated the ALJ's decision to stay the case is correct, but disagrees with the condition the ALJ placed on the issue. The condition is if Downhole has not filed a quiet title suit within 30 days, then the pooling would proceed before the Commission. Maximum argues this effectively slows down the entire process. Maximum and Downhole had talked in October 2010 about how there was a need for a quiet title suit to be filed. Maximum makes the point that if Downhole thinks it can win on summary judgment they should go ahead and file the quiet title. If Downhole is correct, then the issue concerning new leases that were taken by Downhole will be decided and the issue of pooling then can be addressed.
- 2) Maximum also points out that David Moore is listed on the pooling as a curative respondent, but he owns the right to drill based on assignments that were filed of record. If the pooling were to proceed, Moore wouldn't have an election because he is only listed as a curative under the application.
- 3) Maximum states that the only evidence before the ALJ was provided by David Moore, who is familiar with the history of the area. He was the only witness and he was called by Maximum to testify. The testimony was that Downhole had been out to the tract and worked in the area, but the red flag issues hadn't been addressed. Maximum states that the former operator assigned a percentage interest, but with a caveat that states only the wellbore interest. The testimony was that more than 100% interest was conveyed and there needs to be a quiet title suit.
- 4) Maximum wonders why the wells are not yet clean and producing again. Maximum argues the reason why the title issue needs to be cleared up is so the real parties in interest can decide what they want to do under the pooling. Maximum states at the minimum the pooling is going to have to be

amended to show David Moore is a proper party with an interest and not just a curative party. Further, the evidence presented shows there are ownership variations both vertically and horizontally.

5) Maximum also states it is in the interest of judicial economy to have the quiet title suit decided first. Maximum is not trying to cause a delay, they simply want the title issue cleaned up. Therefore, the Commission should not discourage Downhole from filing the quiet title suit by giving 30 days to do so and then if Downhole does not, the Commission should proceed with "the pooling". Maximum believes the 30 day requirement is a disincentive for Downhole to file the quiet title suit. Maximum argues that under *Tenneco Oil Co. v. El Paso Natural Gas Co.*, 687 P.2d 1049 (Okl. 1984) title is a private rights issue that needs to be decided before the Commission proceeds with the pooling.

RESPONSE OF DOWNHOLE

1) Downhole argued that Maximum agreed that the quiet title suit could be filed by either Downhole or Maximum. Downhole argues that if Maximum wants a delay he can file a quiet title action, because in some instances quiet title suits are lengthy.

2) Downhole argues there is nothing in the rules that state anything about how a red flag issue has to be taken care of before an individual can pool. Further, Downhole, as the operator is working on taking care of the quiet title. Downhole does not believe this quiet title issue should be used as a tool to block the pooling and prevent the working interest owners from committing so that the finances can be determined. Downhole points out the Maximum's witness's legal opinion concerning title on this tract is not worth anything. Further if it turns out at the pooling hearing that Downhole is not a 50% owner, they would be considered a good faith trespasser after they have done all the work. Downhole states in that instance they would get their money back, and the other well owners would get the wells and operations back. Downhole doesn't really understand why there is a complaint.

CONCLUSIONS

The Referee finds the Oral Report of the Administrative Law Judge should be reversed.

1) The Referee finds the ALJ's oral recommendation to grant Maximum's Motion to Stay with the caveat that if Downhole has not filed a quiet title action

in district court within 30 days, then the pooling would proceed before the Commission, should be reversed as it is contrary to law and fails to protect correlative rights pursuant to 52 O.S. Section 87.1(e) by failing to timely develop this 20-acre unit.

2) Oklahoma's Conservation of Oil and Gas Act confers upon the Corporation Commission the authority to order forced pooling to protect correlative rights and mineral interest owners within a spacing unit. Section 87.1(e) of Title 52 provides in part:

When two or more separately owned tracts of land are embraced within an established spacing unit, or where there are undivided interests separately owned, or both such separately owned tracts and undivided interests embraced within such established spacing unit, the owners thereof may validly pool their interests and develop their lands as a unit. Where, however, such owners have not agreed to pool their interests and where one such separate owner has drilled or proposes to drill a well on said unit to the common source of supply, the Commission, to avoid the drilling of unnecessary wells, or to protect correlative rights, shall, upon a proper application therefor and a hearing thereon, require such owners to pool and develop their lands in the spacing unit as a unit.

The Corporation Commission "has the sole authority to adjust the equities and protect the correlative rights of interested parties. *Woods Petroleum Corporation v. Sledge*, 632 P.2d 393, 396 (Okl. 1981).

3) The determination of whether to grant a Motion to Stay a proceeding before the Commission is discretionary. *State of Oklahoma ex rel. Oklahoma Bar Association v. Gassaway*, 863 P.2d 1189 (Okl. 1993). One of the factors involved in recommending that the Motion to Stay be denied is that the Corporation Commission has always emphasized speed in its process. As the Supreme Court stated in *Halpin v. Corporation Commission*, 575 P.2d 109 (Okl. 1977):

When exercising its authority to act as a court, Commission must act in conformance with some regular method of procedure established either by statute or by Commission's promulgated rules. *H.F. Wilcox Oil & Gas Co. v. State*, supra. Commission's rules must afford basic protection for elemental procedural rights, but due to the highly technical

nature of the activities within Commission's jurisdiction, those rules need not strictly conform to the procedural safeguards applicable to courts of general jurisdiction. *Peppers Refining v. Corporation Commission*, 198 Okl. 451, 179 P.2d 899 (1947). Commission's rules must accomplish a number of objectives, not the least of which are the protection of fundamental procedural due process rights and the speedy resolution of issues where delay would work substantial prejudice.

4) Jurisdiction of the private dispute concerning the quiet title action is properly in district court. *Samson Resources Company v. Oklahoma Corporation Commission*, 702 P.2d 19 (Okl. 1985).

5) This case involves a 20-acre tract where Downhole acquired a lease in the summer of 2010 for the east 10 acres. Maximum owns an interest in the west 10 acres. Downhole asserts that there has been no production for over a year on the 10-acre tract that they have leased. After Downhole leased these 10 acres the Commission approved Downhole to become operator of four wellbores on the 20-acre tract. Downhole is relying on the case of *Hunter v. Clarkson*, 428 P.2d 210 (Okl. 1967) for the proposition that the previous oil and gas lease taken by the previous operator had terminated due to cessation of production for an unreasonable length of time, in the present case for over a year.

6) The possibility of the filing of a quiet title action does not prevent the Commission from exercising its right and duty to proceed with this pooling application. See *DLB Energy Corporation v. Oklahoma Corporation Commission*, 805 P.2d 657 (Okl. 1991). The proper development of the unit is the question at the present time and the Referee sees no reason to delay said development because of the private quiet title action being possibly filed. The Commission has a responsibility and the power to act to protect the correlative rights of Downhole and Maximum where a conflict exists between the two parties which affects their rights within a common source of supply, and thus affects the public interest and the protection of production from that common source of supply. Because of the open holes and pollution involved in this case, public rights become an issue and therefore the Motion to Stay is inappropriate.

7) In order to invoke the jurisdiction of the Corporation Commission under the oil and gas conservation statutes, Downhole must have an interest in the minerals or hold a right to drill in the common source of supply affected by the proposed pooling order. The Oklahoma Court of Appeals found in *Samson Resources Company v. Oklahoma Corporation Commission*, 859 P.2d 1118 (Okl. Civ. App. 1993) that:

The determination of ownership of minerals or the right to drill is a finding of fact to be made by the Commission, whose findings must be supported by substantial evidence....

* * *

The Commission has the power to receive evidence and determine whether an applicant owns minerals or has the right to drill in the subject unit.

* * *

The Corporation Commission does not, however, have jurisdiction to determine title.

Thus, there is no reason to delay this case awaiting the pronouncement of the quiet title action that may be filed in district court. Irregardless of what the district court might determine in the quiet title action, the Commission has jurisdiction to determine if Downhole has an interest in the minerals and a right to drill in the common sources of supply affected by the proposed pooling order and therefore the pooling application should proceed. Without a pooling order in place, this unit due to the disagreement of Downhole and Maximum cannot be properly developed nor the open hole and pollution issues be addressed. Thus, in the present case continuing with the pooling application and not awaiting the determination by the quiet title action "actually affects (correlative) rights within a common source of supply and thus affects the public interest in the protection of production from that source as a whole." *Samson Resources Company v. Corporation Commission*, supra, 702 P.2d at paragraph 9, page 22.

8) For the above stated reasons the Referee finds the Oral Report of the ALJ should be reversed and Downhole should be allowed to proceed with its pooling application.

RESPECTFULLY SUBMITTED THIS 16th day of February, 2011.


PATRICIA D. MACGUIGAN
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Murphy
Commissioner Cloud
Commissioner Anthony
Jim Hamilton
ALJ David Leavitt
Richard J. Gore
Eric King
Charles B. Davis
Charles L. Helm
Sally Shipley
Office of General Counsel
Michael L. Decker, OAP Director
Oil Law Records
Court Clerks - 1
Commission Files