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I. Introduction

In Arkansas, there were few new developments in oil and gas law during the survey period of August 1, 2016 to July 31, 2017. Two cases are highlighted below as part of this summary.

II. Legislative and Regulatory Developments

The Arkansas General Assembly met during the survey period; however, all matters concerning oil and gas dealt with funding the Arkansas Oil and

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Gas Commission and were not substantive. Despite the lack of substantive development, Arkansas notably transferred the Arkansas Energy Office to the Arkansas Department of Environmental Quality.[1]

III. Judicial Developments

A. Verdict in Class Action Suit Concerning Royalty Payments

Toward the end of the survey period a jury rendered a verdict in one of the many cases against Southwestern Energy Company and its subsidiaries alleging unpaid and/or underpaid royalties.

The jury issued a verdict on June 16, 2017, in *Smith v. SEECO, Inc.*, in favor of Southwestern.[2] The original complaint alleged that Southwestern and its affiliates violated lease provisions by creating "a system in which they fraudulently sell their services to each other, setting up a system of self-dealing . . . ," which skims money from the revenues the plaintiffs should have received.[3] The jury found no evidence of a fraudulent scheme.[4] The plaintiffs have appealed. It is unclear how this decision will affect the number of class action suits pending against Southwestern in both federal and state courts.

B. Language in Deed Shows Intent to Reserve Minerals

The Arkansas Court of Appeals held that certain language in a 1974 deed, along with the inactions of the grantee of said deed, were the determining factors in a quiet title action for mineral rights.[5]

In this case, Mayne Hawkins and Matilda Hawkins conveyed to W. J. Cargile a tract of land containing 30 acres, reserving the oil and gas underlying the land.[6] Cargile then conveyed his interest in the surface of the 30-acre tract back to Mayne Hawkins.[7] In 1974, Mayne Hawkins and Matilda Hawkins executed a warranty deed to Jerry Duvall and Wanda Duvall conveying the same 30-acre tract with the following provision: "It being understood that all oil, gas, and other minerals in or under or that may

1. *See* Act 271, S.B. 256, 91st Gen. Assemb., Reg. Sess. (Ark. 2017).

2. Case No. 4:14-cv-00435-BSM, in the U.S. District Court for the Eastern District of Arkansas, Western Division.

3. Complaint at 6, Smith v. SEECO, Inc., No. 4:14-CV-00435-BRW (E.D. Ark. July 25, 2014).

4. Verdict Form, Smith v. SEECO, Inc., No. 4:14-CV-00435-BSM (E.D. Ark. June 16, 2017).

5. Duvall v. Carr-Pool, 509 S.W.3d 661, 666-67 (Ark. Ct. App. 2016).

6. *Id*. at 663.

7. *Id*.

be produced from said land have been previously reserved or conveyed."[8] Subsequently, the Hawkins and/or their successors-in-interest executed oil and gas leases over the property in 1981, 1988, 1994, and 2005.[9] Duvall knew of such leases but did not object to them.[10] In August of 2012, XTO Energy Inc. suspended royalty payments to Vicki Elizabeth Carr-Pool, as Trustee of the TRV Irrevocable Trust, successor-in-interest to the Hawkins, and requested that she obtain a stipulation of interest from Duvall due to the questionable language in the 1974 deed.[11] When contacted by Carr-Pool regarding the interest conveyed in the 1974 deed, Duvall objected.[12] Carr-Pool filed a petition to quiet title in the mineral rights and for a declaratory judgment that Duvall owned only the surface of the property.[13]

The trial court granted declaratory judgment in favor of Carr-Pool, finding that because Carr-Pool and her predecessors in interest had entered into oil and gas leases for the mineral rights in 1981, 1988, 1994, and 2005 without objection since the 1974 deed, Carr-Pool had acquired the mineral rights through adverse possession.[14] Duvall appealed.[15]

The appeals court affirmed the lower court's order but on different grounds.[16] The appeals court said that the case could not be affirmed on the adverse possession theory because it is a settled rule in Arkansas that title to minerals cannot be acquired by adverse possession unless the minerals are actually invaded by opening mines or drilling wells and continues for the necessary statutory period.[17] In this case, there was no evidence presented that the leases were active mines or wells.[18]

The court did, however, find that the original deed from Hawkins to Duval contained language sufficient to vest the mineral rights reservation in the Hawkins, the predecessors of Carr-Pool.[19] The court focused on the following language in the deed: "It being understood that all oil, gas, and other minerals in or under or that may be produced from said land have

8. *Id*.
9. *Id*. at 663-64.
10. *Id*. at 665.
11. *Id*. at 664-65.
12. *Id*. at 665.
13. *Id*. at 663.
14. *Id*. at 665-66.
15. *Id*. at 662-63.
16. *Id*. at 663.
17. *Id*. at 666-67 (internal citation omitted).
18. *Id*.
19. *Id*. at 667.

been previously reserved or conveyed."[20] The court found that, although there are no "magic words" required to reserve mineral rights, this language clearly evidences the grantor's intentions to reserve the mineral rights.[21] The court also found as evidence of the parties' intent the fact that Duvall did not think he owned the mineral rights and never questioned their ownership from the time of the deed until 2012 when Carr-Pool sought to quiet title to the mineral rights.[22] Therefore, the court of appeals affirmed the trial court's ruling.[23]

20. *Id.* at 663.
21. *Id.* at 667.
22. *Id.*
23. *Id.*