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I. Introduction

The following is an update on Kansas legislative activity and case law relating to oil, gas and mineral law from August 1, 2016 to July 31, 2017.

II. Legislative and Regulatory Developments

There has not been any significant Legislative or Regulatory Developments affecting Kansas Oil and Gas Law from August 1, 2016, to July 31, 2017.

III. Judicial Developments

A. Supreme Court Cases

No relevant activity was reported during the survey period.

B. Appellate Activity

1. Matter of Protest of Barker[1]

In *Matter of Protest of Barker*, the Court of Appeals of Kansas addressed, *inter alia*, as a matter of first impression, whether equipment is considered part of an "oil lease" for the purposes of the low production tax exemption under K.S.A. 2016 Supp. 79-201t.[2]

a) Facts and Procedural History

The Board of Tax Appeals ("BOTA") found the Barkers' low production oil wells exempt from taxation under K.S.A. 2016 Supp. 79-201t. However, after the Barkers obtained the tax exemption, the County assessed a tax on the equipment the Barkers used to produce oil from those exempted low production wells.[3]

The Barkers appealed the equipment tax to BOTA, arguing that the equipment is exempt from taxation because it is part of an oil lease under K.S.A. 2016 Supp. 79-201t(a).[4] The County asserted that no authority conclusively addressed whether equipment is part of an oil lease for purposes of the low production tax exemption.[5] BOTA concluded that equipment is not included in the term "oil lease" as that term is used in the

1. 54 Kan. App. 2d 364, 398 P.3d 870 (2017).
2. *Id*.
3. *Id.* at 872.
4. *Id*.
5. *Id*. at 872-73.

exemption for low production leases under K.S.A. 2016 Supp. 79-201t(a).[6] The Barkers appealed the BOTA decision to the Court of Appeals (the "Court").

b) Analysis

No Kansas cases have previously determined whether equipment used in the production of oil is considered part of an "oil lease" for purposes of a tax exemption, generally, or for the purposes of K.S.A. 79-201t(a)'s exemption for low producing oil leases, specifically.[7] Therefore, the Court turned its focus to interpreting the legislative intent behind the tax exemption.

Tax exemption statutes are to be strictly construed in favor of imposing the tax and against allowing an exemption for one who does not clearly qualify.[8] All doubts against exemption are to be resolved against exemption and in favor of taxation.[9]

The plain language of K.S.A. 2016 Supp. 79-201t(a) reads as follows:

> The following described property, to the extent herein specified, shall be and is hereby exempt from all property or ad valorem taxes levied under the laws of the state of Kansas:
>
> (a) All oil leases, other than royalty interests therein, the average daily production from which is three barrels or less per producing well, or five barrels or less per producing well which has a completion depth of 2,000 feet or more.[10]

In interpreting the legislative intent of the statute the Court focused on three areas of analysis: (1) harmonization of various provisions of the tax code; (2) legislative purpose of K.S.A. 2016 Supp. 79-201t; (3) the legislature not specifically exempting equipment.

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6. *Id*. at 873.
7. *Id*. at 875.
8. *Id.* (citing In re Tax Appeal of LaFarge Midwest, 293 Kan. 1039, 1045, 271 P.3d 732 (2012)).
9. *Id.* (citing Appeal of Scholastic Book Clubs, Inc., 260 Kan. 528, at 532, 920 P.2d 947 (1996)).
10. KAN. STAT. ANN. § 79-201t(a) (West 2016).

(1) The Personal Property Statute Distinguishes Between Equipment and the Oil Lease Itself

The Court examined the personal property statute of the tax code, K.S.A. 79-329, wherein "oil and gas leases and all oil and gas wells . . . *together with* all casing, tubing or other materials therein, and *all other* equipment" used to operate wells are personal property and are to be assessed and taxed as such.[11] Giving the terms their ordinary meaning, the Court focused on two things. First, the Court examined the phrase "together with," describing it to mean "along with, or in addition to."[12] Second, the Court focused on the conjunction "and," pointing out that it serves to connect two separate items, here, oil leases and equipment used to operate wells.[13] The Court found the personal property statute to distinguish between equipment and the oil lease itself.[14]

(2) Including Equipment Within the Low Production Exemption Does Not Serve the Purpose of Statute

The Court felt the purpose of K.S.A. 2016 Supp. 79.201t was to exempt from taxation certain low producing oil leases because of low productivity and income.[15] The Court reasoned that there would be no logical reason for the exemption to apply to equipment whose taxation typically does not depend on the amount of production.[16]

(3) The Legislature Could Have Specifically Exempted Equipment If That Was Their Intent

The Court pointed to specific statutory examples in the tax code where the legislature included language to specifically exclude equipment from the equation when determining the taxable value of certain royalty interest and working interests.[17] Based on this prior use of a specific exclusion of equipment in another statute, the Court reasoned that if the legislature had intended to include equipment within the low production exemption, they would have specifically stated so in the statute.[18]

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11. *Protest of Barker*, 398 P.3d at 876 (emphasis in original).
12. *Id*.
13. *Id*.
14. *Id*. at 877.
15. *Id*.
16. *Id*.
17. *Id*.
18. *Id.*

(4) Equipment and Oil Leases are Categorized and Assessed Differently

The Court found the parallel provisions found in the exemption statute and the rate statute to be strong evidence that the legislature intended tax equipment separately from oil leases.[19] The rate statute read as follows:

> (2) Personal property shall be classified into the following classes and assessed at the percentage of value prescribed therefor:
>
> (B) mineral leasehold interest, *except oil leasehold interests the average daily production from which is five barrels or less*, and natural gas leasehold interests, the average daily production from which is 100 mcf or less, which shall be assessed at 25%, at 30%.[20]

Similar language is used in the exemption statute:

> All oil leases, other than royalty interests therein, the average daily production from which is three barrels or less per producing well, or *five barrels or less per producing well* which has a completion depth of 2,000 feet or more.[21]

The Court believed it unlikely that the legislature intended "oil lease" to include equipment because equipment and oil leases are categorized and assessed differently.[22]

c) Conclusion

Strictly construing the tax exemption, the Court concluded that equipment is not considered part of an "oil lease" as that term is used in K.S.A. 2016 Supp. 79-201t, and affirmed the decision of BOTA.[23]

2. Nickelson v. Bell[24]

In *Nickelson v. Bell* the Court of Appeals of Kansas (the "Court") addressed whether intestate descendants who have not had their interest

19. *Id*.
20. *Id.* (emphasis in original).
21. *Id*. (emphasis in original).
22. *Id*.
23. *Id*. at 878.
24. Nickelson v. Bell, 53 Kan. App. 2d 8, 382 P.3d 471 (2016).

memorialized by a judicial decree of descent constitute owners under the lapsing mineral interests statute of K.S.A. 55-1604.[25]

a) Facts and Procedural History

Ronald and Betty Nickelson (the "Nickelsons") are the surface owners of a certain tract of land situate in Graham County, Kansas. The minerals underlying said tract were previously severed and are held by numerous other individuals.[26]

K.S.A. 55-1602 provides that any interest in mineral rights will lapse and revert to the surface owner of the property if it remains unused for 20 years.[27] However, the mineral owner may prevent the lapse by filing a claim as set out in K.S.A. 55-1604.[28]

The Nickelsons brought a quiet title action as to the unused mineral rights on their land.[29] Several of the minerals owners filed claims asserting their rights under K.S.A. 55-1604.[30] The Nickelsons asserted that those mineral owners who had acquired their interests through intestate succession (the "Intestate Descendants") were not *owners* of the mineral rights as contemplated by the lapse statute because they had not obtained a judicial determination and decree of descent as to their rights.[31]

The district court disagreed, holding that "one only need to be a person claiming to be an owner of the minerals to file a claim."[32] The Nickelsons appealed.[33]

b) Analysis

The sole issue on appeal is whether the Intestate Descendants constitute owners capable of filing a claim under the Kansas mineral lapse statute.[34]

The statute provides that the owner of an unused interest may prevent the lapse by filing a claim providing "the name and address of the owner . . . and a description of the land on or under which the mineral interest is located."[35] If the owner files the claim before the 20 year period expires, "it

25. *Id*. at 473.
26. *Id*.
27. *Id*. at 474.
28. *Id*.
29. *Id*. at 473.
30. *Id*.
31. *Id*.
32. *Id*. at 474.
33. *Id*.
34. *Id*.
35. KAN. STAT. ANN. § 55-1604(a) (West 2017).

shall be considered that the mineral interest was being used on the date the statement of claim was filed."[36] A claim may be filed up to 60 days after receiving either actual or published notice of the potential lapse.[37]

In the present case, all procedural timelines put forth in the statute were met by the Intestate Descendants. However, the Nickelsons argued that (1) the Intestate Descendants are not valid owners as contemplated by the statute, but are instead only *potential owners* because they have not obtained a court decree of descent; and (2) because the 60-day time frame in K.S.A. 55-1604(b) has expired, any court decree of descent now would be untimely.[38]

The Court relied heavily on the language of the Kansas Probate Code that expressly provides that, absent certain exceptions, "the property of a resident decedent, who dies intestate, shall at the time of death pass by intestate succession,"[39] and "in all cases of intestate succession . . . the property shall pass *immediately* from the decedent to the person entitled to receive it."[40] The Court provided that a judicial decree of descent does not create title, but "simply memorializes the property transfer that occurred immediately after the ancestor owners' death."[41]

c) Conclusion

The Court held that the Intestate Descendants constituted owners capable of filing a claim under the Kansas mineral lapse statute.[42] The decision of the district court was affirmed.[43]

C. Trial Activity

No relevant activity was reported during the survey period.

36. *Id*.
37. *Id.* § 55-1604(b).
38. *Nickelson*, 382 P.3d at 474.
39. *Id*. at 475 (quoting KAN. STAT. ANN. § 59-502 (West 2017)) (emphasis in original).
40. *Id*. (quoting KAN. STAT. ANN. § 59-509 (West 2017)).
41. *Id*. (citing Jardon v. Price, 163 Kan. 294, 299, 181 P.2d 469 (1947)).
42. *Id.* at 476.
43. *Id.*