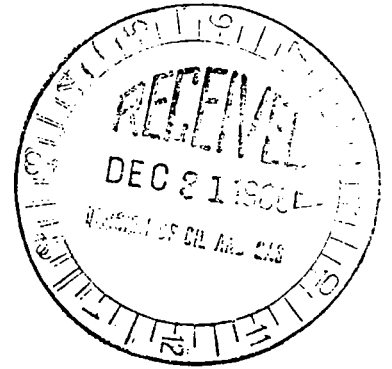


IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT



Renee J. Houser, Chief, Division of :  
Oil and Gas, Ohio Department of :  
Natural Resources, :  
Appellant-Appellant, :  
v. :  
Randy D. Brown, :  
Appellee-Appellee. :

No. 86AP-230

(REGULAR CALENDAR)

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O P I N I O N

Rendered on December 30, 1986

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MR. ANTHONY J. CELEBREZZE, JR., Attorney General,  
and MR. DOMINIC J. HANKET, for appellant.

MESSRS. MARINI & RUSSELL, and MR. FRANCIS J.  
MARINI, for appellee.

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APPEAL from the Franklin County Common Pleas Court.

MOYER, P.J.

This matter is before us on the appeal of Renee J. Houser, Chief, Division of Oil and Gas, Ohio Department of Natural Resources, from a judgment of the Franklin County Court of Common Pleas affirming an order of the Oil and Gas Board of Review (the board).

The board had reversed an order of the chief of the Division of Oil and Gas issued to Randy D. Brown requiring him to plug or put into production five oil wells. The oil wells were located on property owned by



The chief has timely appealed from that judgment and raises the following assignments of error:

"1. The trial court erred in holding that the 'owner' as that term is defined in R.C. 1509.01(K) responsible for plugging the subject wells pursuant to R.C. 1509.12 is the person who has such status at the time the chief issues the order.

"A. In enacting R.C. 1509.12, the General Assembly intended to require that persons who drill and produce oil and gas wells meet their responsibilities to plug oil and gas wells that are incapable of producing oil and gas in commercial quantities.

"B. Jurisdictions confronting the issue of whether an owner of a well may absolve himself from responsibility for plugging a well by a simple lease cancellation have held that such person cannot avoid his responsibilities in such fashion.

"C. The person who has the right to drill on a tract or drilling unit and to drill into and produce from a pool and to appropriate the oil or gas that he produces therefrom either for himself or for others is the person responsible for plugging a well that is or becomes incapable of producing oil or gas in commercial quantities.

"E. [sic] Mr. Brown could not sidestep his responsibility to plug the wells by simply assigning his interest in the wells back to the landowner prior to the issuance of the plugging order.

"F. The trial court's conclusion that safety orders should run with the land has no basis in law and constitutes judicial legislation which should be refuted by this court.

"G. To adopt the holding of the trial court that an owner of a well can avoid his responsibility to plug a well by simply transferring his interest back to the landowner prior to the issuance of the plugging order leads to absurd consequences.

"2. The trial court erred in holding that the decision of the Oil and Gas Board of Review is supported by some evidence in the record and therefore, just and reasonable.

The evidence presented at the hearing also established that the subject wells had not produced since 1973. Further, the evidence revealed that the division had been aware of the dormant condition of the wells since at least 1973.

Brown contends that he was no longer the owner within the meaning of R.C. 1509.01(K) when the order from the Division of Oil and Gas was issued on January 18, 1984 due to the cancellation of the lease.

Nonetheless, R.C. 1509.12 establishes the duty to plug any well "which is or becomes incapable of production." Thus, a new lessee or new owner may, in essence, inherit the duty to plug a well if, in fact, he leases a well which is incapable of producing. The plain language of the statute requires this result, as does the policy of requiring the plugging of unproductive wells. This result is further bolstered by the reality of the oil and gas business, where many wells were drilled during the turn of the century. Several of these companies are now out of business and to hold only the original "owner" responsible for plugging the nonproductive wells would defeat the purpose of the statute.

Additionally, the duty created by R.C. 1509.12 is a continuing duty. Once the well becomes incapable of producing in commercial quantities, the duty to plug attaches. An owner's later transfer of the right to produce does not absolve that person of the continuing obligation to plug the well. Therefore, assuming the subject wells were incapable of production in commercial quantities when Brown was assigned the lease in 1979, Brown had a duty at that time to plug the wells. Brown could not escape that duty by cancelling the lease prior to the chief's January order.

therefore, just and reasonable. The second assignment of error is not well-taken.

The first and third assignments of error are sustained in accordance with this opinion, the second assignment of error is overruled, and the judgment of the court of common pleas is reversed.

Judgment reversed and cause remanded.

WHITESIDE and MARTIN, JJ., concur.

MARTIN, J., of the Carroll County Court of Common Pleas, sitting by assignment in the Tenth Appellate District.

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85CY-05-250)

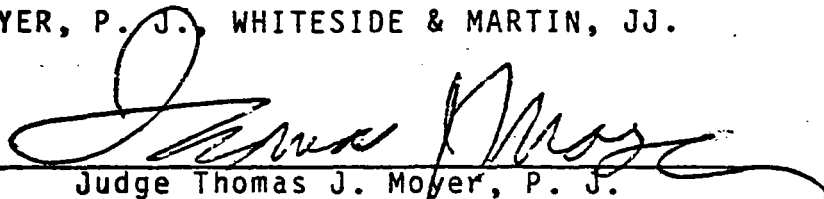
No. 86AP-230  
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FILED  
COURT OF APPEALS  
FRANKLIN CO. OHIO  
DEC 30 PM 12:17  
CLERK OF COURTS

JOURNAL ENTRY OF JUDGMENT

For the reasons stated in the opinion of this court rendered herein on December 30, 1986, the first and third assignments of error are sustained, and the second assignment of error is overruled, and it is the judgment and order of this court that the judgment of the Franklin County Court of Common Pleas is reversed, and this cause is remanded to that court for further proceedings in accordance with law consistent with said opinion.

MOYER, P. J. WHITESIDE & MARTIN, JJ.

By   
Judge Thomas J. Moyer, P. J.

MARTIN, J., of the Court of Common Pleas of Carroll County, sitting by assignment in the Tenth Appellate District.

cc: Dominic J. Hanket  
Francis J. Marini

