

COMMON PLEAS COURT
NOBLE COUNTY OHIO
IN THE COMMON PLEAS COURT
APR 7 1986 3 51
NOBLE COUNTY, OHIO



Roger J. Smith
STATE OF OHIO, ex rel
ANTHONY J. CELEBREZZE, JR.
ATTORNEY GENERAL OF OHIO

CASE NO. 85-107

Plaintiff,

v.

JUDGE EDMUND G. JAMES

THE OXFORD OIL COMPANY, et al.

Defendants.

CONSENT JUDGMENT

The Complaint having been filed by Plaintiff State of Ohio, on October 8, 1985 under Chapter 1509 of the Ohio Revised Code, and Plaintiff State of Ohio and Defendants The Oxford Oil Company and Aztec Oil Company of Ohio, having consented to the entry of this Consent Judgment without trial, this Court hereby ORDERS and DECREES:

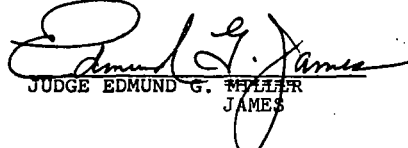
I

This Court has jurisdiction over the parties and the subject matter of this case. The Complaint states a claim upon which relief may be granted to Plaintiff against Defendants The Oxford Oil Company and Aztec Oil Company of Ohio, under Chapter 1509 of the Ohio Revised Code.

VIII

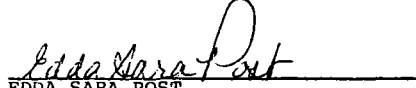
Defendants The Oxford Oil Company and Aztec Oil Company of Ohio, shall pay to Plaintiff State of Ohio a civil penalty in the amount of Six Thousand Dollars (\$6,000.00) for the violations of law alleged in the Complaint. Payment of the civil penalty shall be made by check payable to the Treasurer of the State of Ohio and delivered to Plaintiff's counsel with this Consent Judgment. Said civil penalty shall be in full satisfaction of any liability of Defendants The Oxford Oil Company and Aztec Oil Company, their shareholders, officers, agents or employees, of Ohio violations of Chapter 1509 alleged in the Complaint.

Defendants shall pay the costs of this action.

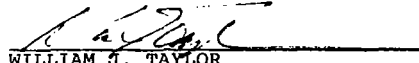

JUDGE EDMUND G. MILLER
JAMES

APPROVED:

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ATTORNEY GENERAL OF OHIO


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Attorney for Defendants

FILED

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IN THE COURT OF APPEALS FOR LICKING COUNTY, OHIO APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

ANDREW SNEDDEN, et al.,	:	JUDGES:
	:	Hon. Norman J. Putman, P.J.
Plaintiffs-Appellants	:	Hon. Earle E. Wise, J.
	:	Hon. Ira G. Turpin, J.
vs.	:	
	:	<u>O P I N I O N</u>
OXFORD OIL COMPANY, et al.,	:	Case No. CA-3007
	:	
Defendants-Appellees	:	Decided: _____

APPEARANCES:

CYNTHIA C. IRWIN
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Westerville, Ohio 43081

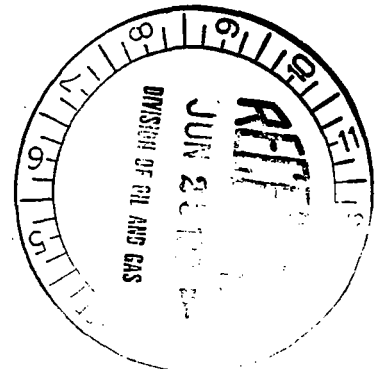
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COUNSEL FOR DEFENDANTS-APPELLEES



WISE, J.

This is an appeal from a judgment entry of the Court of Common Pleas of Licking County sustaining defendant-appellee Oxford Oil Company's (Oxford) motion for partial summary judgment pursuant to Civil Rule 54(B), and overruling plaintiffs-appellants' (appellants) motion for summary judgment.

Appellants timely appeal and argue the following assignments of error:

ASSIGNMENT OF ERROR NO. I

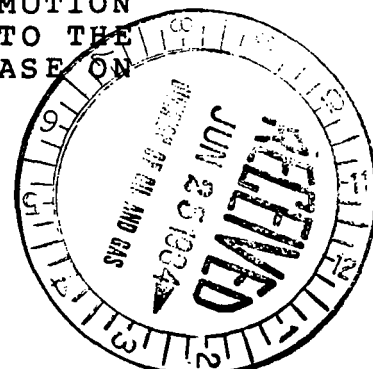
THE COURT OF COMMON PLEAS ERRED AS A MATTER OF LAW IN ITS JUDGMENT THAT PLAINTIFF'S MOTION FOR AN ORDER FOR SUMMARY JUDGMENT WENT TO ALL ALLEGATIONS THAT PLAINTIFFS MADE AGAINST DEFENDANT OXFORD OIL COMPANY.

ASSIGNMENT OF ERROR NO. II

THE COURT OF COMMON PLEAS ERRED AS A MATTER OF LAW IN OVERRULING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AS TO THE ISSUE OF TRESPASS.

ASSIGNMENT OF ERROR NO. III

THE COURT OF COMMON PLEAS ABUSED ITS DISCRETION BY SUSTAINING DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO THE VALIDITY OF DEFENDANT'S GAS AND OIL LEASE ON PLAINTIFF'S LAND.

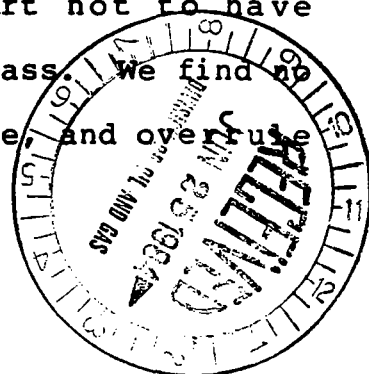


We first consider appellants' assignment of error number three. We hold that the trial court did not abuse its discretion in finding the lease valid, and thus, sustaining Oxford's motion for partial summary judgment as to that issue. Oxford presented the trial court with extensive documentary evidence to support its position "that there is no genuine issue as to any material fact on the existence of a valid lease." Oxford's evidence was not refuted or contradicted by appellants other than their unsupported allegations in their pleadings. Rule 56(E) provides that the party opposing summary judgment...

...may not rest upon the mere allegations or denials of his pleadings, but his response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. See, Harliss v. Willis Day Warehousing Co., 54 Ohio St.2d 64, at 66 (1978).

We overrule assignment of error number three.

Appellants, in their first assignment of error, argue that the trial court erred as a matter of law in its judgment that appellants' motion for an order of summary judgment went to all allegations that appellants made against Oxford. Appellants argue that the motion was one for partial judgment "as to the liability of trespass." In their second assignment of error, appellants argue that it was err for the trial court not to have granted summary judgment on the issue of trespass. We find no merit in appellants' assignment of error number one and overrule same.



If the appellants' motion was for partial summary judgment "as to the liability of trespass" only, as appellants argue in assignment of error number two, and all other issues were not the subject of the summary judgment motion, then the trial court's overruling of the motion as to all issues could not have been prejudicial to the appellants.

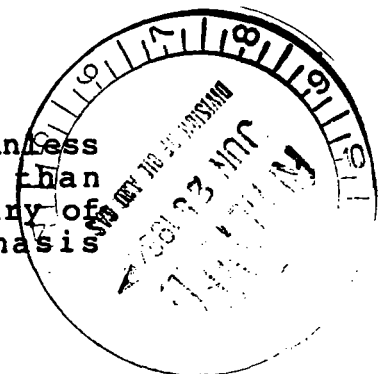
As to the issue of trespass, appellants present three arguments.

1) Whether or not Oxford had legal authority to enter upon appellants' land. The appellants are correct that the issue of trespass is a law call, and we believe that the trial court so held by finding the lease valid and granting summary judgment to Oxford on that issue. We so hold.

2) Oxford had not complied with the laws and regulations of the State of Ohio for the location and drilling of the oil well. We hold that the trial court was correct in finding that the evidence presented by Oxford (uncontraverted by anything other than appellants' mere allegation or denial of his pleadings) established that Oxford had complied with all the laws and regulations of the State of Ohio for the location and drilling of an oil and gas well.

Rule 1501:9-1-04(C)(3)(c) of the administrative code provides:

No permit shall be issued to drill... unless the proposed well is located not less than three hundred (300) feet from any boundary of the subject tract or drilling unit. (Emphasis added).



Appellants argue that the operative word is "tract" and therefore each individual piece of realty and its boundary lines must be considered in applying the 300 foot limitation. Since appellants' property is only 200 feet wide, the regulation would operate to prevent the issuance of a permit. Appellants are in error. The "subject tract" means the real estate upon which the right to drill a well exists - that being the land covered by the valid lease in the case at bar. The administrative code also provides for "drilling units." A drilling unit is the minimum acreage on which one well may be drilled. 1501:9-1-01(A)(16). Such a "drilling unit" is established when a holder of a lease on a large tract of land wishes to put more than one well on that tract, or when one who has a number of leases on small tracts of land desires to combine those leases to form a "drilling unit" containing the minimum acreage on which he may drill a well. It is the boundary of either such a "subject tract" or "drilling unit" that is envisioned in the 300 foot limitation of 1501:9-1-14(C)(3)(c), and not the boundary line of individual tracts or lots of a particular subdivision.

3) Appellants state:

State laws and regulations may reduce the boundaries of an original gas and oil lease where the statute and/or regulation has a valid purpose and its restrictions are reasonably related to that purpose.



We have no quarrel with that statement of appellants'. In effect, the State has done so in Administrative Code 1501 by proscribing certain activities, such as no well is to be located less than 300 feet from any boundary of the "subject tract" or "drilling unit," or further, that no well shall be closer than 100 feet to a private dwelling house and other restrictions. However, it does not follow that the trial court committed error in its finding:

6. The lessor may subdivide his real estate, but in doing so does not cancel the lease or reduce the boundaries for the issuance of a permit to drill or as controlled by the State of Ohio.

The lessor subdividing his real estate is quite a different matter than the State of Ohio passing laws or regulations controlling the spacing of oil wells. Should the lessor be able to change the rules by subdividing his real estate, he could obviate any lease at his choosing. Such is not the law of Ohio. We overrule assignments of error number one and two.

Having overruled all three of appellants' assignments of error, the judgment of the Court of Common Pleas of Licking County is affirmed.

Putman, P.J. and
Turpin, J. concur.

Earle E. Wins
William J. Putman
John H. Turpin

JUDGES

