12-0042

IN THE CIRCUIT COURT OF JACKSON COUNTY, WEST VIRGINIA

DOUGLAS W. WILSON, II, and
JOELLEN WILSON,

Petitioners,

vs. // Civil Action No. 09-C-5
(Judge Thomas C. Evans, III)

JOHNNY L. STAATS and
LORI A. STAATS, husband
and wife,

Respondents.

JUDGMENT ORDER

This matter came on for trial before the Court, sitting without a jury, on May 19, 2011, on the Petitioners' claim of a utility (gas line) easement or right of way across the Respondents' land in Sandyville, Jackson County, WV.

All parties were afforded an opportunity to present evidence and argument. Based thereon, the court makes the following Findings of Fact and Conclusions of Law.

Findings of Fact

1. The Petitioners Wilson own a tract of land and residence thereon of approximately 3.63 acres, identified by the Jackson County Assessor as Ravenswood District Tax Map 20, parcel 27.1. The Respondents Staats own a tract of land and residence thereon of approximately 16.44 acres, identified by the Jackson County Assessor as Ravenswood District Tax Map 20, parcel 27. These parcels adjoin and both front on Copper Fork Road, in Sandyville, Jackson County, West Virginia.

2. In the Summer of 2000, both the Petitioners and the Respondent learned that their properties were entitled to one free natural gas hookup for use at the parties' respective residences. The Petitioners claim that they brought the existence of the free gas right to the Respondents' attention, while the Respondents claim that they (the Respondents) learned of the free gas right and took steps to claim it on their own.

3. Well No. PKE 752, the well from which each party was entitled to free gas, is located on the property of a nonparty neighbor, whose parcel adjoins the Respondents' land but not the Petitioners' land. In order to run a gas line from the Petitioners' residence to PKE 752, the Petitioners could either run the line in a direct route across the Respondent's property, or could obtain the permission of three to four other adjoining landowners to run a gas supply line to PKE 752 in a highly circuitous route.

4. The Petitioners requested the Respondents' permission to lay a gas line across the Respondents' property. Prior to giving their permission, the Respondents required the Petitioners to sign, and duly acknowledge, a document entitled "AGREEMENT BETWEEEN JOHNNY L. & LORI A. STAATS AND DOUGLAS AND JOELLEN WILSON, II," which was admitted at trial as **Joint Exhibit I** (hereafter "the Agreement").

5. The Agreement, executed on or about June 27, 2000, acknowledges that any gas line laid across the Respondents' property was installed with the Respondents' permission and that the Petitioners, by reason of the agreement, acquired no "binding Right of Way" through the Respondents' property. The

parties agree that the Respondents flatly refused to allow the Petitioners to lay said line until the Agreement was signed by all four parties.

6. The Petitioners installed a residential gas line across the Defendants' property in the Summer of 2000. The line bisects the Respondent's tract roughly from west to east.

7. The Petitioners acknowledge that at no time has their gas line been situate on the Respondents' property over the Respondents' objection, and that no prescriptive rights have arisen to the Respondents' property in favor of the Petitioners. The Petitioners paid nothing for their permissive use of the Respondents' property.

8. No evidence has been offered which would suggest that the Respondents have benefitted in any way, or that the value of the Respondents' property has in any way been enhanced, by the installation of the Petitioners' gas line. The Respondent Johnny Staats testified that his land is devalued by the presence of the Petitioners' gas line, which essentially bisects his property.

9. Respondent Johnny Staats testified that he and his wife intend to build a new residence on the subject property and that the subject gas line will need to be removed to accommodate either the new residence itself or the driveway to the residence.

10. The Petitioners acknowledge that the line was laid and maintained with the Respondents' permission until December 12, 2008, at which time the Respondents demanded in writing that the Petitioners relocate the gas line off the Respondents' property no later than January 30, 2009. This writing was

admitted at trial as **Joint Exhibit J.**

11. The Petitioners did not remove the gas line from the Respondents' property, but instead filed the instant suit seeking a temporary and "permanent injunction and order against respondents precluding them from removing or interfering with petitioners (sic) gas line and permitting petitioners to maintain such gas line until such time as the well on the unit in question is plugged and abandoned". See Petitioners' Complaint, pg. 5, para. C.

12. "The burden of proving an easement rests on the party claiming such right and must be established by clear and convincing proof". Syl. Pt. 2, ***Cobb vs. Daugherty***, 693 S.E.2d 800, 215 W.Va. 435 (2010). "The law does not favor the creation of easements by implied grant or reservation." ***Id.,*** Syl. Pt. 1. "An easement may be defined as the right one person has to use the lands of another for a specific purpose and is a distinct estate from the ownership of the soil itself." ***Kelly, et. al. vs. Rainelle Coal Co.,*** 64 S.E.2d 606 at 613, 135 W.Va. 594 at 604 (1951).

13. In the Petitioners' Complaint, and at the trial of this case, the Petitioners suggest that legal authority exists which allows the Petitioners to claim an implied easement across the Respondents' lands, incident to the parties' predecessors in title executing oil and gas leases with Kaiser Exploration and Mining Company and with Peake Energy, Inc.,[1] the operator of

[1] Kaiser Exploration and Mining Company later became known as Peake Energy, Inc. Peake Energy, Inc., a Delaware corporation, was later purchased by and known as North Coast Energy, Inc., an Ohio corporation. North Coast Energy, Inc. later merged with and is now known as

PKE 752, in the early 1990's. Peake Energy subsequently declared the subject properties to be part of the same unit for purposes of drilling gas wells, including PKE 752. The subject oil and gas leases and a Declaration of Unit the Petitioners have suggested support their position in this case, were admitted as **Joint Exhibits A, B, C, D, E and F.**

14. The Court finds that Joint Exhibits A, B, C, D and E set forth only those agreements and covenants entered into between a) the named Lessors (being the owners of oil and gas interests in and to the properties which are the subject of this action), their heirs and assigns and b) the named Lessee and its successors in interest. Nowhere in Joint Exhibits A, B, C, D, E or F do said documents purport to grant any Lessor any interest in and to the lands of the Lessor's neighbors. Said Joint Exhibits are silent as to how each Lessor, his heirs or assigns, may transport "free gas" from the well head (the location of which was likely unknown at the time the Leases were executed) to the Lessor's dwelling.

15. Joint Exhibits A, B, C, D, E and F, on their face, do not purport to grant the Petitioners any utility easement across the lands of the Respondents.

16. The Petitioners acknowledged that the Respondents made them no parol promises or offers which would grant them an easement or other interest in the Respondents' property through an equitable estoppel.

17. "Though the distinction between an easement and a license may, in a particular instance, be difficult to determine and has given rise to many

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EXCO Resources (PA), LLC, a Delaware limited liability company.

conflicting decisions involving that question, the essential characteristics of the two are materially different. An easement creates an interest in land; a license does not, but is a mere permission or personal and revocable privilege which does not give the licensee any estate in the land. ***Cottrell v. Nurnberger***, 47 S.E.2d 454 at 456 (W.Va. 1948), quoting *1 Thompson on Real Estate, Permanent Edition, Section 318; Washburn on Easements and Servitudes, 5.* "A license differs very materially from an easement in that it constitutes no interest in land whatever, and is not real estate, but is a *mere authority,* usually revocable at pleasure and not transferable, to do a certain act or series of acts, for example, to hunt, upon the lands of another, without conferring any interest in the land itself. On the other hand, an easement is the very opposite of this, being an *interest in land,* which is usually *irrevocable* and *freely transferable* in connection with the dominant tenement, as other interests in land are, subject to the same limitations." ***Id.*** at 456 quoting *1 Minor on Real Property, Second Edition, Section 92.* (emphasis original)

18. The gas line laid across the Respondents' property by the Petitioners, with the Respondents' express permission, with no consideration paid by the Petitioners and with no writing granting the Petitioners any interest in the Respondents' lands, constitutes a license, not an easement, and may be revoked by the Respondents.

19. The Petitioners further claim that their expenditure of funds to convert their residence to gas utilization estops the Respondents from revoking the license granted in 2000. However, the Petitioners have failed to

prove any of the essential elements of estoppel. In the absence of a pleading specifying which type of estoppel is asserted, the Respondents note that Paragraph VII of the complaint seeks the "equitable intervention of the Court" and, therefore, infer that the Plaintiffs intend to assert equitable estoppel.

20. "The general rule governing the doctrine of equitable estoppel is that in order to constitute equitable estoppel or estoppel *in pais*, there must exist a false representation or a concealment of material facts; it must have been made with knowledge, actual or constructive of the facts; the party to whom it was made must have been without knowledge or the means of knowledge of the real facts; it must have been made with the intention that it should be acted on; and the party to whom it was made must have relied on or acted on it to his prejudice". Syl. Pt. 3, ***Folio vs. Clarksburg,*** 655 S.E.2d 143 (W.Va. 2007).

21. The evidence establishes that in 2000 the Respondents took great pains to make abundantly clear to the Petitioners the fact that they would, by laying a gas line from PKE 752 to the Petitioners' home, establish no easement or permanent rights in the Respondents' land. The Respondents cry foul and claim "irreparable harm" when, for a period of eleven (11) years, they received free gas to their residence via the use of the Respondents' property at no cost. The Respondents do not dispute that the Petitioners converted their home from wood heat and electric appliances to gas-powered heat and appliances at the cost set forth in the Petitioner's evidence. However, this cost is absolutely irrelevant unless the Respondents somehow misled the Petitioners about the

revocable nature of the license granted in 2000.

22. The Petitioners produced no evidence to establish any concealment or misrepresentation by the Respondents regarding the nature of the gas line Petitioners laid in 2000. The Petitioners knew or should have known in 2000 that they expended funds at their own risk and, in fact, the Petitioners have received a very substantial benefit from their expenditure, that being nearly ten years of free gas use for their residence.

23. The Respondent Johnny Staats testified that he considered $200 per month a reasonable average value of the free gas received by his residence. Upon inquiry by the Court, Petitioner Douglas Wilson acknowledged that, before converting to gas, his electric bill averaged $180 to $200 per month. The parties receive the same quantity of gas to their respective residences, that being 150 mcf per year. Therefore, for their initial investment of $4,111.15 established by **Petitioner's Exhibit 1**, the Petitioners have received the benefit of $21,060 (117 months at $180/mo.) to $23,400 (117 months at $200/mo.) worth of free gas in the 117 months since the Petitioner's furnace was installed on September 14, 2001. The Petitioners' claim of irreparable harm is unsupportable. The Petitioners simply want to continue using their Respondents' property for the Petitioner's financial comfort and convenience, over the Respondents' objection and with no compensation.

24. "Courts must be very careful before decreeing upon one man's land in favor of another without compensation such an encumbrance as a way, permanently impairing that man's dominion and ownership, which next to life

and liberty, is the most valuable of rights inhering in the citizen." ***Cobb vs. Daugherty, supra***, at 806, quoting ***Crosier v. Brown,*** 66 W.Va. 273 at 275, 66 S.E. 326 at 327 (1909).

25. No evidence or legal authority presented to the court supports Petitioners' claim that they have an easement over, across and through the lads of the Respondents for purposes of maintaining their free gas pipeline once the permission of the Respondents had been revoked in accordance with the clear provisions of the 2000 agreement.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is therefore ADJUDGED and ORDERED that judgment be entered upon the Complaint in favor of the Respondents.

It is further ORDERED that the Petitioners shall remove the gas line which is the subject of this action from the Respondents' property within 60 days of the entry of this Order. Counsel for the parties shall coordinate the date and time for the removal of said gas line. The Petitioners and/or their contractor effecting removal of the subject gas line shall restore the Respondent's property to the approximate original contour and shall leave the Respondent's property in as close to its current condition as possible after removal.

It is further ORDERED that the Respondents shall have their recoverable court costs in this behalf expended.

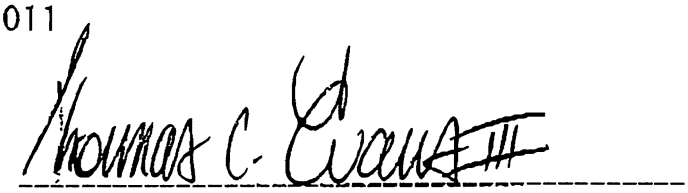
The Clerk shall forward copies of this order to Lee F. Benford, II, attorney

for Petitioners and Leah Chappell, attorney for Respondents.

The Clerk shall further dismiss this civil action from the active docket of the court.

All of which is ORDERED, accordingly.

ENTER: September 6, 2011



Thomas C. Evans, III, Circuit Judge

IN THE CIRCUIT COURT OF JACKSON COUNTY, WEST VIRGINIA

DOUGLAS W. WILSON, II, and
JOELLEN WILSON,

Petitioners,

vs.

Civil Action No. 09-C-5
Judge Thomas C. Evans, III

JOHNNY L. STAATS and
LORI A. STAATS, husband
and wife,

Respondents.

DENISE M. DEWEES
JACKSON COUNTY
CIRCUIT CLERK
P.O. BOX 2327
2011 DEC -9 A 9:24
RECORDED

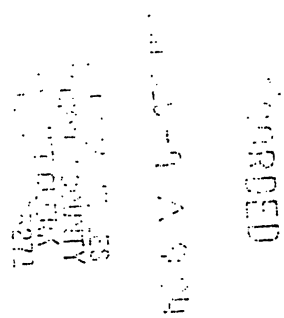
ORDER DENYING PETITIONERS' MOTION FOR NEW TRIAL
AND TO AMEND JUDGMENT

ON THIS the 23rd day of November, 2011 came the Petitioners by counsel, Lee F. Benford, II, Esq. and the Respondents by counsel, Leah R. Chappell, Esq. This matter came on for hearing on the Petitioners' Motion for New Trial and to Amend Judgment and on the Respondents' written objection thereto. Whereupon, the Court heard the argument of counsel and at the conclusion of the same, did FIND and ORDER as follows:

1. After the bench trial in this action the Petitioners cited no legal authority to support their position that they are entitled to an Order granting them an implied easement across the lands of the Respondents. Further, no such authority was provided in the Petitioners' pending motion or at the instant hearing.

2. The Court finds no basis upon which the Petitioners should be granted a new trial or upon which the Court's judgment in this matter should be amended. Therefore, the Petitioner's Motion for New Trial or to Amend Judgment is DENIED.

3. Whereupon, the Petitioners moved for a stay of the Court's Order of September 6, 2011 insofar as said Order required the Petitioners to remove the subject gas line from the Respondents' property within 60 days of said ruling. The Respondents objected to any stay, noting that the Petitioners' gas line has now remained upon the Respondent's property nearly three (3) years since December 12, 2008, the date on which the Respondents demanded in writing that the Petitioners relocate the gas line off the Respondents' property no later than January 30, 2009. (Joint Exhibit J) The Respondents further objected on the grounds that the Petitioners have allowed more than the required 60 days to pass in their pursuit of a new trial and/or amended judgment. The Petitioners' oral motion for stay is DENIED for the reasons cited by the Respondents.



The Clerk shall mail an attested copy of this Order to counsel of record.

Entered this 8th day of Dec, 2011.

The Clerk shall dismiss this civil action from the active docket.

Thomas C. Evans III

Thomas C. Evans, III, Circuit Judge
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ENTERED THE 9th DAY OF Dec 2011
ORDER BOOK 107 PAGE 327

Bruce W DeWees
CLERK CIRCUIT COURT

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A TRUE COPY, CERTIFIED THIS THE

DEC 09 2011

Bruce W DeWees
CLERK CIRCUIT COURT
OF JACKSON COUNTY, WEST VIRGINIA