FILED
May 26, 2022
EDYTHE NASH GAISER, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

Antero Resources Corporation,
Petitioner Below, Petitioner

vs.) No. 21-0119 (Doddridge County 17-AA-1)

Matthew R. Irby,
West Virginia Tax Commissioner,
David Sponaugle,
Assessor of Doddridge County, and
The County Commission of Doddridge County,
Respondents Below, Respondents

and

Antero Resources Corporation,
Petitioner Below, Petitioner

vs.) No. 21-0121 (Doddridge County 17-AA-3)

Matthew R. Irby,
West Virginia Tax Commissioner,
David Sponaugle,
Assessor of Doddridge County, and
The County Commission of Doddridge County,
Respondents Below, Respondents

MEMORANDUM DECISION

Petitioner Antero Resources Corporation ("Antero"), by counsel Lawrence D. Rosenberg, Ancil G. Ramey, and John J. Meadows, appeals two orders of the Circuit Court of Doddridge County, entered on January 13, 2021, denying its motions for relief from judgment, filed pursuant to Rule 60(b) of the West Virginia Rules of Civil Procedure. Respondents State Tax Commissioner Matthew R. Irby ("the state tax commissioner") and Assessor David Sponaugle ("the assessor") appear by counsel Katherine A. Schultz and Sean M. Whelan. Respondent County Commission of Doddridge County ("the county commission") appears by counsel R. Terrance Rodgers and Jonathon Nicol.

This Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented, and the decisional process would not be significantly aided

by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision affirming the order of the circuit court is appropriate under Rule 21 of the Rules of Appellate Procedure.

In this case, we again revisit *Steager v. Consol Energy, Inc.*, 242 W. Va. 209, 832 S.E.2d 135 (2019), in which we directed the circuit court to apply a formula equalizing operating expense deductions among natural gas producers in West Virginia. On remand, the tax commissioner's valuation revisions were complicated by the necessary consideration of dual-production wells (those producing both oil and natural gas). The tax commissioner ultimately adopted a formula prorating operating expenses based on the comparative percentages of oil and natural gas generated from each dual-production well. Antero challenged this formula on the ground that it fails to apply a "singular monetary average" to each well as directed by *Consol Energy*. The circuit court found, however, that *Consol Energy*—which addressed only the taxation of natural gas wells—did not preclude a prorated calculation to value dual-production wells. Describing the tax commissioner's re-valuation methods as "appropriate" and "reasonable" and "applied . . . fairly to those wells which produce both oil and natural gas[,]" the circuit court granted summary judgment in favor of the tax commissioner, the assessor, and the county commission by orders entered on June 15, 2020.

Antero asserts five assignments of error related to the circuit court's orders. We find that the second, third, fourth, and fifth of Antero's assignments of error were fully address by our recent decision in *Antero Res. Corp., v. Irby,* No. 20-0530, 2022 WL 1055446 (W. Va. Apr. 8, 2022) (memorandum decision).[1] We thus restrict our present consideration to Antero's first assignment of error, in which it argues that the circuit court erred when it declined to rule on Antero's motions for relief from judgment upon finding it lacked the jurisdiction to do so.

Antero filed its motions for relief from judgment on August 19, 2020, nearly two months after the circuit court's entry of summary judgment, and six days after Antero filed notices of appeal with this Court. Considering this timeline, resolution of Antero's assignment of error appears to be a straightforward endeavor. "Once this Court takes jurisdiction of a matter pending before a circuit court, the circuit court is without jurisdiction to enter further orders in the matter except by specific leave of this Court." Syl. Pt. 3, *Fenton v. Miller*, 182 W. Va. 731, 391 S.E.2d 744 (1990). Antero argues, however, that Rule 60(b) remedies "exist concurrently with and independently of the remedy of appeal" and the circuit court was thus free to consider this motion even after Antero filed its notice of appeal with this Court.

Antero frames its position using language that this Court has employed to explain that the time limitations for filing a notice of appeal are not tolled by the filing of a Rule 60(b) motion, and

[1] In those assignments of error, Antero argues that the circuit court erred in: (1) declining to apply the tax commissioner's "guidance," published in June of 2020, retroactively to clarify the state tax commissioner's position on ad valorem taxation deductions for post-production expenses; (2) arbitrarily and capriciously declining to apply the guidance; (3) failing to find that the tax commissioner's valuation methods violate dormant Commerce Clause principles; and (4) failing to find that the tax commissioner's valuation methods violate state and federal constitutional equal protection principles.

that the denial of a Rule 60(b) motion is a final, appealable order. *See Parkway Fuel Serv. v. Pauley*, 159 W.Va. 216, 219, 220 S.E.2d 439, 441 (1975); *Toler v. Shelton*, 157 W.Va. 778, 784, 204 S.E.2d 85, 89 (1974). We have never employed this language to force a circuit court to undertake consideration of a dispute that is appropriately before this Court, nor have we encouraged our courts to tread on matters jurisdictionally reserved to us. We have, however, reiterated our firm position that only our *specific* leave will permit a circuit court to enter further orders on a matter over which we have assumed jurisdiction:

> [After this Court docketed the notice of appeal, no] further proceedings should have occurred in this matter below without leave of this Court. Syl. pt. 3, *Fenton v. Miller*, 182 W. Va. 731, 391 S.E.2d 744 (1990) ("Once this Court takes jurisdiction of a matter pending before a circuit court, the circuit court is without jurisdiction to enter further orders in the matter except by specific leave of this Court."). Thus, we remind the bench and bar that, in general, circuit courts lack jurisdiction to issue rulings while a proper appeal is pending before this Court. *See* Syl. pt. 1, *State v. Doom*, 237 W. Va. 754, 791 S.E.2d 384 (2016) ("'When the Supreme Court of Appeals of West Virginia grants a petition for appeal all proceedings in the circuit court relating to the case in which the petition for appeal has been granted are stayed pending this Court's decision in the case. Such stay of proceedings is mandatory under W. Va. Code, 62-7-2 [(1923) (Repl. Vol. 2015)].' Syllabus point 2, *State ex rel. Dye v. Bordenkircher*, 168 W. Va. 374, 284 S.E.2d 863 (1981).").

Luborsky v. Carroll, No. 15-0787, 2017 WL 1293991, at *4 n. 9 (W. Va. Apr. 5, 2017). The circuit court did not have our specific leave to consider the motion for relief from judgment that Antero filed after initiating its appeal before this Court. We, therefore, find no error in the circuit court's recognition that it was divested of jurisdiction and unable to consider Antero's motion.

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: May 26, 2022

CONCURRED IN BY:

Chief Justice John A. Hutchison
Justice Elizabeth D. Walker
Justice Tim Armstead
Justice William R. Wooton

DISQUALIFIED:

Justice C. Haley Bunn