No. 29641 - Isabel J. Bryan v. Big Two Mile Gas Company, a West Virginia corporation

Maynard, Justice, dissenting:

FILED
January 8, 2002
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

RELEASED
January 9, 2002
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

I am concerned that the majority opinion will have an adverse effect on the oil and gas industry in West Virginia.

According to the *amici curiae* brief submitted on behalf of the Independent Oil & Gas Association of West Virginia, the oil and gas industry in West Virginia is responsible, directly and indirectly, for nearly 12,000 West Virginia jobs, 212 million dollars in personal incomes in the state, and 776 million dollars in total state output. In addition, during the 1996-97 fiscal year, more than 49 million dollars in tax collections were, in one way or another, attributable to the production of natural gas. I believe that the majority opinion unwittingly and unnecessarily does damage to the oil and gas industry, thus placing at risk the livelihoods of thousands of West Virginians as well as the substantial tax revenue generated by the industry.

The majority opinion errs on two fronts. First, although it pays lip service to the temporary cessation of production doctrine, it actually gives short shrift to it. Because of the high cost of exploring and drilling new wells, much of the investment in gas production in West Virginia is in the form of the purchase of existing gas wells. The duration of many of these wells is governed by “thereafter” clauses like the one in the instant case. Under the majority’s application of the law, forfeiture can now result from the slightest cessation in production. This is unrealistic, impractical, and will have a chilling effect on the continued investment in the production of natural gas in this state. Given the significant investment required in the redrilling and reworking of older wells, no one will want to invest in a well that can be taken away with such ease.

Second, in assessing damages, the majority improperly treats Big Two Mile Gas Company as a trespasser or stranger to the land, when it was, in fact, a party to a contract for the lease of the land and had made substantial capital investments in improving that land. Under the facts of this case, I believe that the continued payment of reasonable royalties was a fair measure of damages that placed both parties in the position they would have occupied had the lease never expired. Unfortunately, the majority applies a confiscatory rule which is bound to have a negative impact on the incentive to invest in gas wells in this state.

Accordingly, for the reasons stated above, I dissent.