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JUN 10 2020

IN THE CIRCUIT COURT OF BROOKE COUNTY, WEST VIRGINIA

WILLIAM K. WALDEN and
ANDREA WALDEN,

Plaintiffs,

v.

Civil Action No. 18-C-4 MJO

LEE M. RABB, Individually and as
TRUSTEE OF THE ELI RABB
REVOCABLE TRUST DATED
OCTOBER 7, 2005, et. al.,

Defendants,

and

TRINITY HEALTH SYSTEM FOUNDATION,
An Ohio non-profit corporation,

Intervener Defendant.

FILED
2020 JUN -4 P 3:34
CLERK OF CIRCUIT COURT
BROOKE COUNTY

ORDER

On a previous day, outside entity SWN Production Company, LLC (SWN) filed its *Motion to Intervene by SWN Production Company, LLC (Motion)*. After reviewing the *Motion*, Defendants' Response, the applicable law, and hearing oral arguments, the Court has determined that the *Motion* should be **DENIED**.

SWN brings the subject *Motion* in order to join this litigation. This lawsuit was originally brought by Plaintiffs in order to quiet title to ownership of the oil and gas underlying 138.75 acres of real property in Brooke County, WV. Under W. Va. R. Civ. P. 24, an outside entity can intervene in litigation through "*Intervention of Right*" or through "*Permissive Intervention*". However, in the present case, this Court believes that the interests of the original parties will be adversely affected if this litigation is extended via the addition of SWN. In order for an entity to successfully intervene through *Intervention of Right* under W. Va. R. Civ. P. 24(a), the following

criteria must be satisfied including: "... (1) the application must be timely; (2) the applicant must claim an interest relating to the property or transaction which is the subject of the action; (3) disposition of the action may, as a practical matter, impair or impede the applicant's ability to protect that interest; and (4) the applicant must show that the interest will not be adequately represented by existing parties." See State ex rel. Ball v. Cummings, 208 W. Va. 393, 396, 540 S.E.2d 917, 920 (1999).

First, SWN did not file an application until two (2) years after the initial Complaint was filed. Second, SWN did not have any interest in the property when the lawsuit was filed and only subsequently pursued an interest through an option agreement with the Plaintiffs. Thus, SWN purchased the option agreement with full knowledge that the Plaintiff did not have a "quiet title" and therefore assumed the risk that it may have no value. This Court will not allow an entity to "buy in" to litigation. Further, SWN and the Plaintiffs have represented to the Court that their interests are in line with each other. Therefore, the interest acquired by SWN through its option agreement with Plaintiffs, is identical to that of the Plaintiffs. Thus, SWN's interest is already protected by Plaintiffs. Finally, even if SWN's interests are somehow collaterally affected adversely via the underlying lawsuit, SWN can simply take legal action after this litigation has ended.

Moreover, under the specific provisions of W. Va. R. Civ. P. 24(b), in order for a non-party to join litigation through *Permissive Intervention*, there has to be a "... statute of this State [that] confers a conditional right to intervene" or "... when an applicant's claim or defense and the main action have a question of law or fact in common". Importantly, "[i]n exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." *Id.* As stated above, SWN's interests are


protected by the existing Plaintiffs; and furthermore, the original parties would be unduly prejudiced by SWN's joining this litigation over two (2) years after it was initiated. The current trial is scheduled to begin on July 29, 2020, less than two (2) months from this date.

Thus, this Court **FINDS** that the interests of SWN are not adversely affected by keeping it out of this litigation; and therefore, the underlying *Motion* is **DENIED**.

It is so **ORDERED**.

It is also **ORDERED** that the Circuit Clerk provide attested copies of this order upon entry to counsel of record.

ENTERED this 4th day of June, 2020.


HON. MICHAEL J. OLEJASZ
First Judicial Circuit Court Judge

I hereby certify that the annexed instrument is a true and correct copy of the original on file in my office.

Attest Glenda Brooks
Clerk, Circuit Court
Brooke County, West Virginia

