IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

DOCKET NO. 25-ICA-144

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Heritage Resources-Marcellus Minerals, LLC,

Petitioner,

v.

JB Exploration I, LLC,

Plaintiff Below/Respondent,

and

Lewis C. Wilson, Henry Alfred Thomas, Maude D. Thomas, Thelma W. Thomas Hitchcock, Calvin W. Thomas, James C. Thomas, Mary E. Thomas, Ruth E. Thomas, Henry A. Thomas, Safrona C. Thomas, Bertha E. Thomas, Sophrona Thomas, Tobias Wesley Thomas, James E. Thomas, Absalom M. Thomas, and the remaining unknown heirs, devisees, successors, assigns and/or creditors of any of the above and all other unknown persons or defendants who own or claim to own an unleased interest (unleased to JB Exploration I, LLC) in and to the oil and gas within and underlying that certain tract or parcel of real estate situate on the waters of Indian Creek, McElroy District, Tyler County, West Virginia, said to contain 28.25 acres, more or less,

Defendants Below/Respondents.

Appeal from Order Entered March 7, 2025, in Civil Action No. 14-P-3, in the Circuit Court of Tyler County, WV

PETITIONER'S REPLY BRIEF

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STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Oral argument is not necessary, but is appropriate to the extent desired under Rule 18(a) of the West Virginia Rules of Appellate Procedure because: 1) all parties have not waived oral argument; 2) this appeal is not frivolous; and 3) the dispositive issues have not been authoritatively decided. W. Va. R. App. P. 18(a).

This matter is appropriate for a Rule 20 argument because the matter concerns an issue of first impression for this Court and presents a constitutional question regarding the validity of West Virginia Code Section 55-12A-1, *et seq.*, to the extent said statute purports to adjudicate the known or knowable interests of owners and does not require those owners to be provided with actual notice of actions filed in accordance therewith. Moreover, the matter presents an issue of fundamental public importance because the decision of the Circuit Court below would raise concerns as to all other missing heirs' actions pursuant to West Virginia Code Section 55-12A-1, *et seq.*, that occurred prior to/concurrent with this matter, as other known or knowable owners may not have been afforded the requisite knowledge and due process of said actions.

ARGUMENT

I. PETITIONER IS NOT TIME-BARRED FROM ASSERTING ITS OWNERSHIP INTEREST IN THE SUBJECT TRACT.

Respondent argues that Petitioner's claim to an interest in the Subject Tract is time-barred pursuant to the 7-year limitation period as set forth in W. Va. Code §§ 55-12A-6(g) and 55-12A-9. This argument fails because Petitioner's predecessors-in-interest were not abandoning, unknown or missing owners of an interest in the Subject Tract and, regardless, they did not receive actual notice of the Prior Civil Action.

W. Va. Code § 55-12A-6(g) provides: "Within seven years after the date of the special commissioner's lease, ***any unknown or missing owner or abandoning owner of a mineral***

interest leased hereunder may file a motion with the court to re-open the action . . . ." (emphasis added). Likewise, W. Va. Code § 55-12A-9 provides:

> After the expiration of seven years from the date of the special commissioner's lease, ***no action may be brought by any unknown or missing owner or abandoning owner or any heir, successor or assign thereof*** either to recover any past or future proceeds accrued or to be accrued from the lease herein authorized, or to recover any right, title or interest in and to the mineral interest subject to the lease.

By its plain language, W. Va. Code § 55-12A-6(g) only applies to *unknown*, *missing*, or *abandoning* owners, and Petitioner's predecessors-in-interest at the time of the Prior Civil Action were known or reasonably knowable by the Respondent. Furthermore, even if the 7-year limitation period applies, Petitioner would only be barred from recovering lease proceeds stemming from the Unknown Heirs Lease. The Circuit Court in the Prior Civil Action did not grant relief under the Declaratory Judgment Act, and the provisions of West Virginia Code Sections 55-12A-6(g) and 55-12A-9 only prohibit, after the expiration of 7 years, claims to the proceeds accrued from the Unknown Heirs Lease.

A factual dispute exists regarding whether Respondent knew or reasonably should have known about Petitioner's interest. Resp. Brief 13. The Circuit Court erred by denying Petitioner the opportunity to establish that it was a known owner and by holding that, as a matter of law, Petitioner is barred from having its mineral rights declared pursuant to the Declaratory Judgment Act in the Current Civil Action due to the Prior Civil Action, where Petitioner was not provided with actual notice and an opportunity to protect its interests.

II. PETITIONER'S PREDECESSORS-IN-INTEREST SHOULD HAVE BEEN PROVIDED WITH ACTUAL NOTICE OF THE PRIOR CIVIL ACTION.

Respondent fails to directly refute the substantive arguments set forth in Petitioner's Brief regarding actual notice. Respondent states that the interest purportedly owned by Petitioner's

predecessors-in-interest was not known at the time of the Prior Civil Action; thus, personal service was not required. As stated above, this is a factual issue that Petitioner was barred from addressing.

Moreover, the Unknown Heirs Statute does not expressly define the manner in which known owners should be served with notice of process. Pursuant to W. Va. Code § 55-12A-5(c), "[i]f personal service of process is possible, it shall be made as provided by the West Virginia rules of civil procedure. In addition, immediately upon the filing of the petition, the petitioner shall (1) publish a Class III legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this case, and, (2) no later than the first day of publication, file a lis pendens notice in the county clerk's office of the county wherein the mineral estate or the larger portion thereof lies … [i]n addition, the petitioner shall send notice by certified mail, return receipt requested, to the last known address, if there be such, of all named defendant." W. Va. Code § 55-12A-5(c) further states that "[b]oth the advertisement and lis pendens notice shall set forth (1) the names of the petitioner and the defendants, as they are known to be by the exercise of reasonable diligence by the petitioner, and their last known addresses . . ." Thus, it is a plaintiff's responsibility to undertake reasonably diligent efforts to locate and identify *all* possible owners of the mineral interests and notify them accordingly.

Respondent asserts that it published the obligatory newspaper advertisement and filed a lis pendens with the Tyler County Clerk's Office. Resp. Brief 15. However, the publication and lis pendens do not specifically name Petitioner or its predecessors.[1] Regardless, Respondent had the responsibility to provide actual notice because very interest was subject to the Predecessor Lease.

[1] The publication and the lis pendens name the unknown heirs of Lewis C. Wilson and Henry A. Thomas, but neither the Petitioner nor its predecessors is or was an heir, successor, or assign of Lewis C. Wilson or Henry A. Thomas.

Rule 19 of the West Virginia Rules of Civil Procedure is incorporated by reference into W. Va. Code § 55-12A-5(c), and the purpose of Rule 19 is to ensure that all parties interested in the dispute are joined. Respondent's failure to join or provide actual notice to Petitioner's predecessors-in-interest in the Prior Civil Action denied their ability to protect their interests.

Respondent also failed to address Petitioner's analogy of quiet title actions to those actions filed pursuant to the Unknown Heirs Statute. The West Virginia Supreme Court of Appeals has held that "when a court proceeding directly affects or determines the scope of rights or interests in real property, any persons who claim an interest in the real property at issue are indispensable parties to the proceeding. Any order or decree issued in the absence of those parties is null and void." *O'Daniels v. City of Charleston*, 200 W. Va. 711, 716 (1997) (emphasis added). *accord* Syl. *Mfrs.' Light & Heat Co. v. Lemasters*, 91 W. Va. 1 (1922) ("Generally, all persons who are materially interested in the subject matter involved in a suit, and who will be affected by the result of the proceedings, should be made parties thereto, and when the attention of the court is called to the absence of any of such interested persons, it should see that they are made parties before entering a decree affecting their interests."). The Prior Civil Action certainly affected the rights of Petitioner and its predecessors in real property; thus, the Prior Civil Action must be null and void as to Petitioner unless, perhaps, Respondent exercised reasonable diligence in its effort to provide actual notice. Again, Petitioner was denied the ability to present evidence that Respondent failed to do so.

III. PETITIONER HAS STANDING TO ASSERT ITS OWNERSHIP INTEREST IN THE SUBJECT TRACT.

Respondent obliquely asserts that Petitioner does not have standing to assert any claim related to the Subject Tract because Petitioner was not an owner when Respondent failed to provide actual notice contrary to West Virginia statute, the West Virginia Rules of Civil Procedure, and

constitutional principles of due process. Resp. Brief 17, 20. This position has no merit and, if accepted, would essentially foreclose any present owner of real property from asserting a claim under the Declaratory Judgment Act where ownership depends on the treatment or interpretation of instruments earlier in the chain of title.

In *Findley v. State Farm Mut. Auto. Ins. Co.*, the Supreme Court of Appeals of West Virginia held: "[I]t is well-recognized . . . that [s]tanding . . . is comprised of three elements: First, the party . . . [attempting to establish standing] must have suffered an "injury-in-fact"—an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent and not conjectural or hypothetical. Second, there must be a causal connection [between] the injury and the conduct forming the basis of the lawsuit. Third, it must be likely that the injury will be redressed through a favorable decision of the court." 213 W. Va. 80, 94 (2002). *Coleman v. Sopher,* 194 W. Va. 90, 95 n. 6, 459 S.E.2d 367, 372 n. 6 (1995) (emphasis added). *Accord Lujan v. Defenders of Wildlife,* 504 U.S. 555, 560–61, 112 S. Ct. 2130, 2136, 119 L.Ed.2d 351, 364 (1992); *Valley Forge Christian College v. Americans United for Separation of Church & State, Inc.,* 454 U.S. 464, 472, 102 S. Ct. 752, 758, 70 L.Ed.2d 700, 709 (1982); *Guido v. Guido,* 202 W. Va. 198, 202, 503 S.E.2d 511, 515 (1998) (per curiam). "This requirement of the propriety of a party to assert a particular claim and his/her likelihood of success thereon is echoed in our case law discussing standing in the context of declaratory judgment actions. 'It is a primary requirement of the Declaratory Judgments Act that plaintiffs demonstrate they have standing to obtain the relief requested.' *Shobe v. Latimer,* 162 W. Va. 779, 784, 253 S.E.2d 54, 58 (1979)." *Findley*, at 95.

Standing must be evaluated with respect to Petitioner's claims under the Declaratory Judgment Act in the Current Civil Action, not with respect to the Prior Civil Action and certainly not under a direct constitutional injury analysis. Petitioner does not assert a direct constitutional

injury resulting from Respondent's failure to provide actual notice. Petitioner merely asserts that the Prior Civil Action is not binding upon Petitioner because Respondent failed to provide actual notice contrary to the requirements of the Unknown Heirs Statute and, if not expressly contrary to the Unknown Heirs Statute, contrary to principles of constitutional due process. *See* Resp. Brief 14-19. *See also Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 800 (1983) ("Notice by mail or other means as certain to ensure actual notice is a minimum constitutional precondition to a proceeding which will adversely affect the liberty or property interests of any party, whether unlettered or well versed in commercial practice, if its name and address are readily ascertainable.").

When viewing standing in the context of Petitioner's ability to resolve its ownership of minerals in a court of law, Petitioner clearly has standing as the present owner of the Subject Tract. To the extent the Unknown Heirs Statute bears on the standing issue, W. Va. Code § 55-12A-9 expressly contemplates that a "successor or assign" can assert a claim.

CONCLUSION

As discussed herein and in Petitioner's Brief, the Circuit Court's denial of Petitioner's Motion was in error. Because Petitioner was a reasonably knowable mineral interest owner, the Circuit Court misapplied the provisions of W. Va. Code §§ 55-12A-6(g) and 55-12A-9. Further, the Petitioner's predecessors-in-interest were entitled to actual notice of the Prior Civil Action, whether pursuant to the Unknown Heirs Statute or constitutional due process. Because Petitioner's predecessors-in-interest did not receive such notice, the Circuit Court should have granted Petitioner's Motion, as the current owner of the interest, regardless of the amount of time that elapsed following the Prior Civil Action.

WHEREFORE, Petitioner respectfully requests that this Honorable Court reverse that Order entered March 7, 2025, by the Circuit Court of Tyler County, West Virginia.

DATED the 24th day of July 2025.

PETITIONER

HERITAGE RESOURCES – MARCELLUS MINERALS, LLC, an Oklahoma limited liability company

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 24, 2025, the foregoing *Petitioner's Reply Brief* was electronically filed with the Clerk of Court using the File & ServeXpress System which will send notification of such filing to counsel of record:

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