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Wyoming Supreme Court Interprets Ancillary Probate Statute and Clarifies Application of Royalty Payment Act

Lon V. Smith Foundation v. Devon Energy Corporation, 2017 WY 121 (Wyo. 2017)

In a recent decision, the Wyoming Supreme Court held that: (1) W.S. § 2-11-201, Wyoming’s ancillary probate statute, merely adopts the foreign state’s decree of distribution, which then serves as a Wyoming decree and controls over and supersedes the terms of any inconsistent will; (2) only the owner of the royalty interest, or the “person legally entitled” to oil and gas proceeds, may maintain an action under the Wyoming Royalty Payment Act (WRPA), regardless of whether a violation of the WRPA has been discovered; and (3) the WRPA only applies where a preexisting legal relationship exists between the parties, and thus its attorney’s fee shifting provision is not available to an operator of oil and gas wells who was sued (and prevailed) under the WRPA by a party who was not entitled to the royalty proceeds sought.

In *Lon V. Smith Foundation v. Devon Energy Corporation, 2017 WY 121 (Wyo. 2017)*, a California foundation sued Devon Energy Corporation and Devon Energy Production Company (collectively, Devon) under the WRPA, W.S. § 30-5-301 et seq., and the theory of conversion based upon a claim of unpaid royalty proceeds. Mr. Lon Smith, a California resident and founder of the Lon V. Smith Foundation (Foundation), obtained numerous oil and gas interests in his lifetime, including an overriding royalty interest carved from a federal oil and gas lease located in Carbon County, Wyoming (the ORRI). Mr. Smith’s will called for the ORRI, along with all of his oil and gas interests, to be distributed to his wife, Marguerite Smith, for life, with the remainder to the Foundation. However, according to the terms of the California probate order, the life estate/remainder relationship only applied to the various oil and gas interests listed within the body of the order, which did not include the ORRI. The California probate order then called for the “rest, residue and remainder” of the estate to be distributed to Mrs. Smith outright. Two years later, and in accordance with W.S. § 2-11-201, the California probate order was accepted and adopted by a Wyoming court and “treated as original proceedings of [that] Court[.]”

In 2014, Devon discovered certain discrepancies in payments and sent a letter to both the Foundation and Trust (the successor to Marguerite Smith) indicating its belief, at that time, that the Foundation owned the ORRI and that the Trust was erroneously paid nearly \$750,000 over the past

decade. After the Trust refused to repay the funds to Devon or the Foundation, the Foundation sued both parties for the unpaid proceeds as well as asserting numerous claims under the WRPA against Devon seeking various interest and reporting penalties. The District Court found for Devon on summary judgment dismissing all of the Foundation's claims, but refused to grant Devon its attorney's fees under the WRPA's fee shifting provision. The Supreme Court affirmed the District Court in all regards. According the Court, under W.S. § 2-11-201 and the Wyoming probate order, the California probate order was adopted in Wyoming thereby giving its terms effect to Mr. Smith's Wyoming property. As a result, the ORRI passed to Mrs. Smith in fee simple as it was not listed among the oil and gas interests to which the Foundation received a remainder interest after her death. The Court went on to dismiss the Foundation's argument that it may still maintain a claim against Devon under the WRPA even if it is not the owner of the ORRI. According to the Court, it was irrelevant whether Devon failed to properly escrow suspended ORRI funds, or that the Foundation subsequently acquired those funds, because the Foundation cannot assert a claim under the WRPA without being the "person legally entitled" to the proceeds.

The Court then concluded by using a similar analysis to deny Devon its request for attorney's fees and costs under the WRPA. Despite the fact that the WRPA states "the prevailing party in any proceedings brought pursuant to this article shall be entitled to recover all court costs and reasonable attorney's fees," the Court held that the WRPA, and thus its attorney's fees provision, only applies in situations where the parties have a pre-existing legal relationship requiring the payment of oil and gas proceeds. Therefore, even though Devon prevailed on every claim asserted and brought by the Foundation, including several WRPA claims, WRPA's attorney's fees provision was inapplicable because Devon established that the Foundation did not own the ORRI and was not entitled to payments.

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