

BEFORE THE OIL & GAS COMMISSION

STEPHEN J. SVETLAK, LLC, : Appeal No. 896
: :
Appellant, : Review of Chief's Order 2014-498
: (Geitgey Donald #3 Well)
-vs- : :
: :
DIVISION OF OIL & GAS RESOURCES : ORDER OF THE
MANAGEMENT, : COMMISSION GRANTING
: MOTION TO DISMISS
Appellee. :

Appearances: Joseph P. Sontich, Jr., Counsel for Appellant Stephen J. Svetlak, LLC; Brian Ball, Nicole Candelora-Norman, Assistant Attorneys General, Counsel for Appellee Division of Oil & Gas Resources Management.

Date Issued: November 12, 2015

BACKGROUND

This matter comes before the Oil & Gas Commission upon appeal by Stephen J. Svetlak, LLC from Chief's Order 2014-498. Chief's Order 2014-498 requires the plugging of an oil & gas well, known as the Geitgey Donald #3 Well.

On January 9, 2015, Mr. Svetlak - without benefit of counsel - filed with the Commission a *Notice of Appeal* on behalf of Stephen J. Svetlak, LLC ["Svetlak, LLC"]. As Svetlak, LLC is a limited liability company, this appellant was required to obtain counsel. (See O.A.C. §1509-1-04.) On May 29, 2015, Attorney Joseph P. Sontich, Jr. formally entered an appearance on behalf of Svetlak, LLC.

On February 5, 2015, the Division of Oil & Gas Resources Management [the "Division"] filed a **Motion to Dismiss** this appeal, asserting that the appeal was improperly filed. Specifically, the Division argued that Svetlak, LLC was not represented by counsel (this filing occurred before Attorney Sontich's appearance) and asserted that the appeal was untimely. The Division maintains that these items constitute jurisdictional defects, requiring the dismissal of this appeal.

Svetlak, LLC responded to the Division on May 29, 2015, filing a *Combined Notice of Appearance on Behalf of Appellant Stephen J. Svetlak, LLC and Said Appellant's Response to Appellee's Motion to Dismiss and Motion to Stay Order*. Svetlak, LLC's filing did not, however, directly address the timeliness argument set forth in the Division's motion. Svetlak, LLC was permitted to make another filing, in order to more fully address the Division's arguments for dismissal. On August 14, 2015, Svetlak, LLC filed a *Supplemental Reply of Appellant to Motion to Dismiss*.

DISCUSSION & CONCLUSIONS OF LAW

O.R.C. §1509.36 sets forth the method by which an appeal is perfected to the Oil & Gas Commission. That section of law provides *inter alia*:

Any person adversely affected by an order of the chief of the division of oil and gas resources management may appeal to the oil and gas commission for an order vacating or modifying the order.

* * *

The appeal shall be in writing and shall set forth the order complained of and the grounds upon which the appeal is based. **The appeal shall be filed with the commission within thirty days after the date upon which the appellant received notice by certified mail ...**

(Emphasis added.)

Chief's Order 2014-498 is dated November 3, 2014, and was issued to Svetlak, LLC by the Division on that date, through a Certified Mailing. On December 1, 2014, the Certified Mailing of Chief's Order 2014-498 was returned to the Division as "unclaimed." The Division then placed Chief's Order 2014-498 into Ordinary U.S. Mail. A Certificate of Mailing establishes December 1, 2014 as the date of Ordinary Mailing.

Svetlak, LLC's Notice of Appeal was filed with the Commission on January 9, 2015, 39 days after Chief's Order 2014-498 was placed into Ordinary Mail.

Where a statute confers the right of appeal, adherence to the conditions imposed thereby is essential to the enjoyment of that right. *American Restaurant and Lunch Co. v. Glander*, 147 Ohio St. 147 (1946). And, this Commission has dismissed prior appeals for an appellant's failure to file a timely notice of appeal. See *Andrew & Kristi Stalker v. Division & Chesapeake Exploration LLC*, #844 (January 9, 2013); *Robert W. Barr, dba Big Sky Petroleum v. Division*, #728 (January 23, 2004); *Thomas & Belle Blair v. Division*, #791 (November 6, 2008); *Hall & Horning Oilfield v. Division & Alan H. Coogan, et al.*, #787 (October 31, 2008).

O.R.C. §1509.36 requires that appeals to the Commission be filed within 30 days of the appellant's receipt, by Certified Mail, of a contested order. Where Certified Mailing fails, a mechanism must be employed to accomplish service. In its Motion to Dismiss, the Division states that when Certified Mail service of Chief's Order 2014-498 failed, the Division applied the provisions of the Ohio Administrative Procedure Act, which provides at O.R.C. §119.07:

When any notice sent by registered mail, as required by sections 119.01 to 119.13 of the Revised Code, is **returned** because the party **fails to claim** the notice, the agency shall **send the notice by ordinary mail** to the party at the party's last known address and shall obtain a certificate of mailing. **Service by ordinary mail is complete when the certificate of mailing is obtained unless the notice is returned showing failure of delivery.**

(Emphasis added.)

The administrative appeal process requires some finality. Thus, a regulated entity's refusal of, or failure to claim, an enforcement order issued by Certified Mail should not allow that entity to avoid regulation or to delay the appeal process. See *James & Mary Riordan vs. Division*, #703 (January 18, 2002).

The Commission **FINDS** that it was not unreasonable or unlawful for the Division to apply the procedures set forth in O.R.C. §119.07, in order to obtain successful service of Chief's Order 2014-498 upon Svetlak, LLC.

The Division established that Chief's Order 2014-498 was placed into Ordinary Mail on December 1, 2014. Under O.R.C. §119.07, December 1, 2014 would then be considered Svetlak, LLC's "receipt date" for this order. Additionally, December 1, 2014 would be the date on which the 30-day appeal period commenced to run. Calculating the appeal period from December 1, 2014, Svetlak LLC's Notice of Appeal was filed **9 days past** the statutorily-mandated 30-day filing deadline.

Notably, Svetlak, LLC presented no arguments countering the Division's position relative to the timeliness of this appeal. Nor did Svetlak, LLC attempt to establish, through any means, when its actual receipt of Chief's Order 2014-498, in fact, occurred.

Initially, Svetlak, LLC was unrepresented by counsel. The Commission understands that unrepresented appellants may be unfamiliar with the procedures employed in administrative appeals.

However, certain statutory requirements are mandatory, and cannot be overlooked or waived. The law requires the Commission to dismiss appeals for such jurisdictional failures. This is true even where an appellant is unrepresented. *See Andrew & Kristi Stalker v. Division & Chesapeake Exploration LLC, supra; L.B.J. Drilling v. Division, #730 (March 19, 2014); James & Mary Riordan v. Division, supra.*

Moreover, the doctrine of *stare decisis* suggests that a body adhere to, and follow, its decisions previously made in similar cases. This Commission has a history of requiring compliance with the statutorily-mandated filing requirements of O.R.C. §1509.36. Indeed, Commission rule O.A.C. §1509-1-22(B) specifically provides:

Failure to comply with the provisions of section 1509.36 of the Revised Code governing the filing of appeals with the commission shall be sufficient basis for dismissing an appeal.

Svetlak, LLC's response to the Division Motion to Dismiss, did not bring forth any argument as to why the Commission's prior decisions should not be controlling. Thus, Svetlak, LLC has provided this Commission with no just cause to disturb its previous holdings; and it is appropriate for the Commission to issue a decision in conformity with prior decisions.

In order to invoke the jurisdiction of the Commission, an appellant must file its notice of appeal in a timely manner. By law, the failure of an appellant to file its appeal within the statutorily-mandated time period results in dismissal.

The Commission **FINDS** that Svetlak, LLC failed to comply with the statutorily-mandated filing deadline set forth in O.R.C. §1509.36. For this reason, the Commission lacks jurisdiction to hear and decide the immediate appeal.

As this matter must be dismissed on jurisdictional grounds, it is not necessary for the Commission to address the **Motion to Stay** filed by Svetlak, LLC.

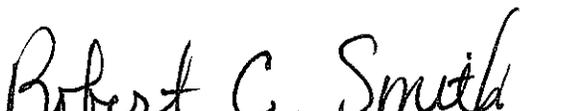
ORDER

This Commission **FINDS** that Stephen J. Svetlak, LLC did not file its appeal to the Commission in a timely manner, thereby failing to properly invoke the Commission's jurisdiction over Chief's Order 2014-498. **WHEREFORE**, the Commission **GRANTS** Appellee's motion, and this matter is hereby **DISMISSED**.

Date Issued: Nov. 12, 2015


J. BRANDON DAVIS, Chairman *WD*


JEFFREY J. DANIELS, Secretary *WD*


ROBERT C. SMITH *WD*

INSTRUCTIONS FOR APPEAL

This decision may be appealed to the Court of Common Pleas for Franklin County, within thirty days of your receipt of this decision, in accordance with Ohio Revised Code §1509.37.

DISTRIBUTION:

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