

**BEFORE THE**  
**OIL & GAS COMMISSION**

DONALD & PAULA WAYT,	:	
	:	Appeal No. 837
Appellants,	:	
	:	
-vs-	:	Review of Permit Issuance; Ohio
	:	Valley Energy Systems; Grindley #1
DIVISION OF OIL & GAS RESOURCES	:	Well
MANAGEMENT,	:	
	:	
Appellee,	:	
	:	
and	:	<b><u>ORDER OF THE</u></b>
	:	<b><u>COMMISSION DISMISSING</u></b>
	:	<b><u>APPEAL</u></b>
OHIO VALLEY ENERGY SYSTEMS,	:	
	:	
Intervenor.	:	

Appearances: Donald & Paula Wayt, Appellants *pro se*; Megan DeLisi, Assistant Attorney General, Counsel for Appellee Division of Oil & Gas Resources Management; John K. Keller, Michael J. Settineri, Counsel for Intervenor Ohio Valley Energy Systems.

On September 2, 2011, Appellants Donald & Paula Wayt filed with the Oil & Gas Commission, a notice of appeal from the Division Chief's issuance of a drilling permit to Ohio Valley Energy Systems Corporation ["Ohio Valley Energy" or "Ohio Valley"]. This drilling permit was associated with a well that was to be known as the Grindley #1 Well. The Wayts own property that was identified as part of the drilling unit for this proposed well. The Wayts' appeal alleged that the lease agreement, signed by the Wayts in July of 2008 and granting oil & gas rights to Ohio Valley Energy, was not "proper in form." On October 6, 2011, the Wayts supplemented their notice of appeal. Their supplemental filing described specific alleged irregularities with regards to the 2008 lease, and further alleged that certain properties, owned by the Wayts, but allegedly not under lease to Ohio Valley Energy, had been included within the drilling unit for the proposed Grindley #1 Well. Ohio Valley Energy has been granted intervenor status in this appeal.

## **BACKGROUND**

The Wayt appeal has a long, and somewhat complicated, history with this Commission. Indeed, three Motions to Dismiss have been filed in this matter. Therefore, for the sake of clarity, the Commission will recite some history with regards to this appeal.

The Wayts' appeal was taken from the Division's decision to issue a drilling permit for the proposed Grindley #1 Well. In their notice of appeal, the Wayts specifically asked the Commission to "revoke the permit to drill." The Wayts' did not appeal, nor did they mention in their notice of appeal, Chief's Order 2011-37 (a mandatory pooling order).<sup>1</sup> Chief's Order 2011-37 is relevant to the Wayts' appeal, in that this Chief's Order granted a mandatory pooling application, sought by Ohio Valley. Without this approved mandatory pooling application, the proposed Grindley #1 Well could not be drilled.

While the Wayts did not directly appeal the Chief's approval of Ohio Valley's mandatory pooling application, the Municipality of Sebring did appeal this Chief's Order to the Commission. On September 27, 2011, the Municipality of Sebring filed an appeal with the Commission, challenging the Division Chief's approval of Ohio Valley's mandatory pooling application. Sebring's appeal was significant to the Wayts' appeal, in that if the Commission did not affirm the Chief's decision approving Ohio Valley's mandatory pooling application, a permit to drill the Grindley #1 Well could not be issued. Acknowledging this fact, the Commission chose to proceed with the Sebring appeal, before addressing the Wayt appeal.

---

<sup>1</sup> However, it appears that the Wayts may have learned of the possibility that the Grindley #1 drilling permit would be issued through the mandatory pooling order. The Wayts' notice of appeal asserted that the permit to drill was issued on August 25, 2011 (the date on which the mandatory pooling order was issued). Chief's Order 2011-37 approved Ohio Valley Energy's application for mandatory pooling associated with the Grindley #1 Well. And, that Chief's Order stated at item (5), page 3:

A drilling permit will be issued to Ohio Valley Energy Systems Corporation  
for the Grindley #1.

On May 15, 2012, the Commission conducted a hearing in the *Sebring* appeal. On August 6, 2012, the Commission issued a decision in the *Sebring* appeal, **vacating** the Division Chief's approval of Ohio Valley's mandatory pooling application. *Municipality of Sebring vs. Division & Ohio Valley Energy Systems*, case # 839, August 6, 2012. In light of this ruling by the Commission, the proposed Grindley #1 drilling permit could not be issued.

However, on September 4, 2012, Ohio Valley appealed the Commission's decision to the Court of Common Pleas for Franklin County, Ohio. On January 29, 2013, the Franklin County Common Pleas Court **affirmed** the Commission's August 6, 2012 decision. *Ohio Valley Energy Systems Corp. vs. Municipality of Sebring, Ohio*, case # 12CV11155, January 29, 2013.

On February 7, 2013, Ohio Valley then appealed the Common Pleas Court's decision to the Court of Appeals for Franklin County, Ohio. *Ohio Valley Energy Systems Corp. vs. Municipality of Sebring, Ohio*, case # 13 AP 102. Thus, the fate of the proposed Grindley #1 Well remained in question. However, on April 2, 2013, Ohio Valley's appeal to the Franklin County Court of Appeals was voluntarily dismissed by stipulation of Ohio Valley and the Municipality of Sebring.

The voluntary dismissal of the Court of Appeals action indicates that the parties have elected to terminate their challenge to the Commission's August 6, 2012 decision vacating the Chief's approval of Ohio Valley's application for mandatory pooling. Voluntary dismissal of the Court of Appeals action also indicates that the Grindley #1 Well (the well opposed by the Wayts), as originally proposed in 2011, will not be drilled.<sup>2</sup>

---

<sup>2</sup> It is possible that Ohio Valley will propose a new well to replace the Grindley #1 Well. Such a well could be located similarly to the Grindley #1 Well proposed in 2011, but might include different leases. The Commission is not aware of any new drilling applications in this area. However, it is clear that a drilling permit for the Grindley #1 Well, as originally proposed in 2011 and as challenged by the Wayts through their appeal # 837, will not be granted.

## **THE MOTIONS TO DISMISS FILED AND PENDING IN THE WAYT APPEAL:**

Three Motions to Dismiss were filed in the Wayt appeal.

### **Ohio Valley's November 23, 2011 Motion to Dismiss:**

On November 23, 2011, Intervenor Ohio Valley filed with the Commission a Motion to Dismiss the Wayt appeal, arguing that the appeal addressed only issues of "property rights," which issues are beyond this Commission's jurisdiction.

On December 5, 2011, the Wayts responded to Ohio Valley's Motion to Dismiss. On January 19, 2012, the Commission issued an order **denying** Ohio Valley's first Motion to Dismiss.

### **The Division's December 2, 2011 Motion to Dismiss:**

On December 2, 2011, before the Commission had ruled upon Ohio Valley's November 23, 2011 Motion to Dismiss, the Division filed a Motion to Dismiss the Wayt appeal. Similar to Ohio Valley's November 23, 2011 Motion to Dismiss, the Division argued that the Commission lacked authority to hear and decide issues of property rights. The Division's Motion went on to assert that the Division had, in fact, reviewed the Wayts' 2008 lease, and had determined that the lease was proper (*i.e.*, the lease was signed, notarized and covered the amount of Wayt acreage claimed by Ohio Valley to be under lease for the drilling of the Grindley #1 Well).

On December 11, 2011, the Wayts responded to the Division's Motion to Dismiss. On January 19, 2012, the Commission issued an Order **denying** the Division's Motion to Dismiss.<sup>3</sup>

---

<sup>3</sup> The Commission's January 19, 2012 Order addressed both Ohio Valley's November 23, 2011 Motion to Dismiss and the Division's December 2, 2011 Motion to Dismiss.

**Ohio Valley's March 9, 2012 Motion to Dismiss:**

In February 2012, Ohio Valley conducted depositions of Mr. and Mrs. Wayt. Thereafter, on March 9, 2012, Ohio Valley filed its second Motion to Dismiss (the third Motion to Dismiss filed in the Wayt appeal). In this Motion, Ohio Valley argued that, based upon the information obtained by Ohio Valley through deposition, the Wayts would be unable, at hearing, to present any persuasive evidence demonstrating that the Division acted unlawfully or unreasonably with regards to the Grindley #1 Well.

On March 22, 2012, the Division **joined** in Ohio Valley's second Motion to Dismiss, and additionally argued that the Ways would not be able to establish that they had been "adversely affected" by any action of the Division Chief, since the Wayts – as lessors – were voluntary participants in the proposed Grindley #1 drilling unit.

On March 29, 2012, the Wayts filed a response to Ohio Valley's March 9, 2012 Motion to Dismiss and to the Division's March 22, 2012 Motion to join in that request for dismissal.

By March 2012, the Commission was preparing to conduct a merit hearing in the related Municipality of Sebring appeal. The Commission's decision in the related Sebring appeal would impact whether a permit to drill the Grindley #1 Well could be issued (*i.e.*, if the mandatory pooling order under appeal in the Sebring case were vacated, then a permit to drill could not be issued).

Therefore, on May 1, 2012, the Commission issued an order **postponing** ruling Ohio Valley's second Motion to Dismiss in the Wayt appeal, and **held** the Wayt appeal **in abeyance** for the period of time necessary to resolve the related Sebring appeal. (The Sebring case was finally resolved on April 2, 2013, when the Sebring appeal before the Court of Appeals was voluntarily dismissed.)

**The Division's February 12, 2013 Request for Ruling on the Pending Motion to Dismiss and Ohio Valley's February 14, 2013 Request for Ruling on the Pending Motion to Dismiss:**

On February 12, 2013, the Division filed a Motion, requesting that the Commission issue a ruling upon Ohio Valley's March 9, 2012 Motion to Dismiss. The Division argued that no drilling permit had been issued, and, thus, there is no administrative action underlying the Wayts' appeal to the Commission. The Division also noted that if the Wayts intended to appeal the issuance of the Grindley #1 drilling permit, the Commission lacks jurisdiction and authority to review permit issuances. *Chesapeake Exploration, LLC vs. Oil & Gas Commission*, (Opinion No. 2013-Ohio-224; January 30, 2013).

On February 14, 2013, Ohio Valley also filed a Motion requesting that the Commission issue a ruling upon Ohio Valley's March 9, 2012 Motion to Dismiss. Ohio Valley, basically, concurred with the Division's February 12, 2013 Motion requesting a ruling by this Commission.

On March 11, 2013, the Wayts filed two responses. One response addressed the Division's February 12, 2013 Motion requesting ruling. The other response addressed Ohio Valley's February 14, 2013 Motion requesting ruling.

**DISCUSSION**

A drilling permit for the Grindley #1 Well, as that well was proposed in 2011, has not been issued, and based upon the Commission's decision in the related *Sebring* appeal (as affirmed by the Court of Common Pleas for Franklin County on January 29, 2013), the Grindley #1 Well proposed in 2011 will not be drilled. The purpose of the Wayts' appeal to this Commission was to challenge the issuance of the 2011 Grindley #1 Well drilling permit. As that permit has not been issued, there is no agency action for the Wayts to appeal.

Moreover, in January 2013, the Ohio Supreme Court specifically considered the Commission's jurisdiction to hear and decide appeals taken from the Chief's issuances of drilling permits. The Supreme Court, applying the same statutory provisions that would apply to the Wayt appeal, held that the Oil & Gas Commission does not possess the requisite jurisdiction to hear appeals taken from the Division Chief's issuances of drilling permits. Chesapeake Exploration, LLC vs. Oil & Gas Commission, supra).

"Jurisdiction" is a term used to define the Commission's authority to act. Where jurisdiction fails, the Commission is without power to decide a matter. Jurisdiction is not a matter of choice, but rather is a matter of statutory authority. In this sense, jurisdictional limitations are uniquely important.

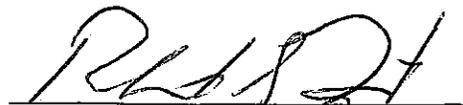
In this appeal, the event that the Wayts contested through their appeal (*i.e.*, the granting of a drilling permit for the Grindley #1 Well, as proposed in 2011) has not occurred, and will not occur. But, even if that event were to occur, this Commission would lack the jurisdiction, or authority, to review such a permit issuance.

## ORDER

Wherefore, the Commission **GRANTS** the Motions filed by Ohio Valley Energy and the Division requesting that the Commission issue a ruling on Ohio Valley's March 9, 2012 Motion to Dismiss, and the Commission hereby **DISMISSES** appeal # 837 for lack of jurisdiction.

Date Issued: 4/15/2013

  
KAREN H. FRYER

  
ROBERT S. FROST

  
J. BRANDON DAVIS

**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:**

Donald & Paula Wayt (Via e-mail [paulawayt@yahoo.com] & Certified Mail #: 91 7199 9991 7030 3132 9668)  
Megan DeLisi (Via e-mail [megan.delisi@ohioattorneygeneral.gov] & Inter-Office Certified Mail #: 6704)  
John Keller, Michael Settineri (Via e-mail [JKKeller@vorys.com, mjsettineri@vorys.com] & Certified Mail #: 91 7199 9991 7030 3132 9651)  
Andrew L. Zumbar (Via e-mail [lgzlawalliance@sbcglobal.net] & Regular Mail)