

BEFORE THE OIL & GAS COMMISSION

KERMIT HARRIS & PEARL HENDRICKS,	:	Appeal No. 670
	:	
Appellants,	:	
	:	Review of Chief's Order 99-73
-vs-	:	
	:	
DIVISION OF OIL & GAS,	:	
	:	<u>FINDINGS, CONCLUSIONS</u>
Appellee.	:	<u>& ORDER OF THE</u>
	:	<u>COMMISSION</u>

Appearances: James S. Huggins, Counsel for Appellants Kermit Harris & Pearl Hendricks;
Raymond Studer, Assistant Attorney General, Counsel for Appellee Division of
Oil & Gas.

Date Issued: December 17, 1999

BACKGROUND

This matter came before the Oil & Gas Commission upon appeal by Kermit Harris and Pearl Hendricks from Chief's Order 99-73. Chief's Order 99-73 required Mr. Harris and Mrs. Hendricks to plug six wells located in Washington County, Ohio. Harris and Hendricks are identified in Chief's Order 99-73 as "owners" of the subject wells.

On September 29, 1999, this cause came on for hearing before four members of the Oil & Gas Commission. At hearing, the parties presented evidence and examined witnesses appearing for and against them.

ISSUE

The issue presented by this appeal is: **Whether the Chief acted lawfully and reasonably in identifying Kermit Harris and Pearl Hendricks as “owners” of certain wells and ordering Harris and Hendricks to plug said wells.**

THE LAW

1. Pursuant to O.R.C. §1509.36, the Commission will affirm the Division Chief if the Commission finds that the order appealed is lawful and reasonable.

2. O.R.C. §1509.12 provides *inter alia*:

Unless written permission is granted by the chief, any well which is or becomes incapable of producing oil or gas in commercial quantities shall be plugged. . . . No owner shall fail or refuse to plug a well within the time specified in the order. . . .

3. O.R.C. §1509.01(K) defines an “owner” as:

. . . the person who has the right to drill on a tract or drilling unit and to drill into and produce from a pool and to appropriate the oil or gas that he produces therefrom either for himself or for others.

4. The Court in Houser v. Brown, 29 Ohio App. 3d 358, 360 (Franklin Cty., 1986) held:

. . . the duty created by R.C. 1509.12 is a continuing duty. Once the well becomes incapable of producing in commercial quantities, the duty to plug attaches. An owner’s later transfer of the right to produce does not absolve that person of the continuing obligation to plug the well.

FINDINGS OF FACT

1. Kermit G. Harris, Ralph E. Hendricks (the deceased husband of Pearl Hendricks), Larry B. Gale, and Julian Stanley acquired surface ownership of certain property in Washington County, Ohio in March 1968.

2. In 1968, six oil and gas wells, known as the Adkins Wells Nos. 6, 7, 8, 9, 10 and 11, existed on this piece of property.

3. In August 1968, Harris, Hendricks, Gale and Stanley obtained an assignment of the Adkins Lease, covering Wells Nos. 6, 7, 8, 9, 10 and 11. Although Harris, Hendricks, Gale and Stanley never operated any of the six Adkins Wells, by obtaining the assignment they acquired the right to drill, produce and appropriate the oil and gas. Therefore, by such assignment, Harris, Hendricks, Gale and Stanley became "owners" of the Adkins Wells Nos. 6, 7, 8, 9, 10 and 11.

4. Harris, Hendricks, Gale and Stanley intended to develop this property for residential housing. Because this use was inconsistent with the continued use of the property for the production of oil and gas, Harris, Hendricks, Gale and Stanley allowed the removal of the production equipment from the six Adkins Wells and thereby made the wells incapable of production.

5. The surface and mineral rights in the land in question have been transferred from Harris, Hendricks, Gale and Stanley.

CONCLUSIONS OF LAW

1. By assignment, Kermit G. Harris and Ralph E. Hendricks became owners of the six Adkins Wells in 1968.

2. The six Adkins Wells are incapable of producing oil and gas in commercial quantities. State of Ohio v. Baldwin Producing Corporation, No. 76AP-892 (Ct. App., Franklin Cty. [March 10, 1977]). Kermit G. Harris and Ralph E. Hendricks intentionally caused the wells to become incapable of production by allowing removal of production equipment from the wells.

3. At the time at which the Adkins Wells were rendered incapable of producing oil and gas in commercial quantities, the statutory duty to plug the wells attached to well owners Harris and Hendricks. Pearl Hendricks became an owner of these wells when she acquired title to the property from the estate of her husband.

4. Subsequent transfer of the surface or mineral rights in these wells does not absolve Harris and Hendricks of their continuing obligation to plug the Adkins Wells.

5. The issuance of Chief's Order 99-73 was not unreasonable or unlawful.

DISCUSSION

Ohio oil & gas law requires the plugging of wells that are incapable of producing oil or gas in commercial quantities. See O.R.C. §1509.12. This plugging requirement is intended to protect both the environment and other oil and gas producing strata.

There is no dispute that the Adkins Wells are currently incapable of producing oil and gas in commercial quantities. The evidence established that these wells were rendered unproductive at the time at which Harris, Hendricks, Gale and Stanley owned the wells. Moreover, Harris, Hendricks, Gale and Stanley authorized the removal of production equipment on the wells.

Once a well becomes incapable of producing oil and gas in commercial quantities, the law requires that the owner of the well plug the well and restore the well site. See O.R.C. §1509.12; O.R.C. §1509.072(B). O.R.C. §1509.12 defines a well owner as a person who has the right to produce a well.

In Houser v. Brown, *supra*, the Court stated that the duty to plug an nonproductive well is a "continuing duty," which attaches once the well is rendered incapable of production in commercial quantities. The Houser Court noted that the fact that other entities may become owners of the well in the future does not remove the plugging responsibility from the one who owned the wells at the time it became nonproductive.

The Houser Court further noted that the question of who among the various "owners" of a well will ultimately bear the responsibility to pay the cost of plugging " . . . is a private matter between them . . ." as several owners may share this statutory duty to plug. Houser v. Brown, *supra* at 360.

Appellants have argued that they have no duty to plug the wells, as they no longer hold any ownership interests in the property or minerals at issue. However, Harris and Hendricks' responsibility to plug the Adkins Wells attached when they acquired the assignment and when the wells were incapable of production in commercial quantities. That duty continues to this day. The Chief's decision to order Harris and Hendricks to plug the Adkins Wells is not unreasonable or inconsistent with law.

ORDER

Based upon the foregoing findings of fact and conclusions of law, the Commission hereby **AFFIRMS** the Division's issuance of Chief's Order 99-73 to Kermit Harris and Pearl Hendricks.



WILLIAM J. TAYLOR, Chairman

GAIL IGNATZ-HOOVER

JAMES H. CAMERON

BENITA KAHN, Secretary

ABSTAINED
JOHN A. GRAY

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ABSTAINED
JOHN A. GRAY

GAIL IGNATZ-HOOVER



BENITA KAHN, Secretary

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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IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO

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THOMAS G. TUGEND, CHIEF
DIVISION OF OIL AND GAS
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Appellee.

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CASE NO. 00 CVF 01 567

JUDGE BRUNNER

TERMINATION NO. 18
BY LMT 8-23-01

DECISION AND JUDGMENT ENTRY AFFIRMING THE ORDER
OF THE OIL AND GAS COMMISSION

Rendered this 23rd day of August, 2001.

Brunner, J.

This case is before the Court on appeal pursuant to R.C. 1509.37 from an Order of the Chief, Division of Oil & Gas, ordering Appellants to plug six oil and gas wells, known as Adkins Wells Nos. 6, 7, 8, 9, 10, and 11 located in Washington county, Ohio, which have become unproductive. A hearing was held before the Oil & Gas Commission on September 29, 1999, after Appellants appealed the Chief's Order. The Commission upheld the Order and it is from that adjudication that this timely appeal was filed.

Facts of the Case

In March of 1968, Kermit Harris, Ralph Hendricks, Larry Gale, and Julian Stanley acquired surface ownership of certain property located in Washington county, Ohio. Adkins Wells Nos. 6, 7, 8, 9, 10, and 11 existed on this piece of property at that time, however none of the wells had been in

Washington County, Ohio. Adkins Wells Nos. 6, 7, 8, 9, 10, and 11 existed on this piece of property at that time; however, none of the wells had been in production for many years. The “association” of Harris, Hendricks, Gale, and Stanley is known as Newport Acres. Newport Acres’ intent was to develop the land for residential purposes. As such, Newport Acres determined that the development of their surface rights (with respect to their intended residential development) was being impaired by the existence of the oil and gas production equipment in the wells on the property. Therefore, Newport Acres sought to remove the production equipment from the six Adkins wells thereby making the wells incapable of production. Norman Wetz, the lessee of the wells at the time, subsequently assigned the leases to the wells to Newport Acres in August 1968. Thereafter, Newport Acres, the now “owners” of the Adkins Wells, removed the production equipment from the wells.

In 1978, the association of the four individuals of Newport Acres dissolved, and the property was split. While the Appellants allege that the leases to the Adkins Wells were transferred along with a $\frac{3}{4}$ interest in the property to Larry Gale in 1978 (the Adkins Wells are located on the $\frac{3}{4}$ property interest conveyed), a specific “assignment” to Gale of the leases to the wells was never recorded. All of the original individuals who comprised Newport Acres, except Kermit Harris, are deceased. Pearl Hendricks is the widow of Ralph Hendricks.

Application of Law

Appellants argue that they should not be responsible for the plugging of the wells because they do not meet the statutory definition of "owner". R.C. 1509.12 requires an owner to plug a well that is no longer in use:

Unless written permission is granted by the chief, any well that is or becomes incapable of producing oil or gas in commercial quantities shall be plugged . . . When the chief finds that a well should be plugged, the chief shall notify the owner to that effect by order in writing and shall specify in such order a reasonable time within which to comply. No owner shall fail or refuse to plug a well within the time specified in the order.

"Owner" is defined in R.C. 1509.01 (K):

"Owner," unless referring to a mine, means the person who has the *right* to drill on a tract or drilling unit, to drill into and produce from a pool, and to appropriate the oil or gas produced therefrom either for the person or for others, except that a person ceases to be an owner with respect to a well when the well has been plugged in accordance with applicable rules adopted and orders issued under this chapter. (emphasis supplied.)

The Oil and Gas Commission held that when the production equipment was removed in 1968, the wells became incapable of producing gas in commercial quantities. At that time, despite the fact that Newport Acres never intended to use them, Appellant Harris and successor-in-interest Appellant Hendricks were the *owners* of the oil and gas leases, having acquired them in part for the purpose of removing the production equipment.

Appellants argue that they never intended to produce oil, the wells had been idle for some time before they acquired the land, and therefore the duty to plug should revert back to the prior owners. However, in ***Houser v. Brown (1986), 29 Ohio App. 3d 358***, the Tenth District Court of Appeal has ruled on the same argument and held.

A new lessee or a new owner may, in essence, inherit the duty to plug a well if, in fact, he leases a well, which is incapable of producing.

Along with the right to produce, the duty to plug a well, which is incapable of producing in commercial quantities, may also be imposed upon the new lessee or owner of the well.

Id. at 360.

Liability on the part of the new owner is imputed, because to hold only the original owner liable would be to defeat the purpose of the statute, which is to insure the safety of the public. *Id.* This rationale was developed in recognition of the fact that many wells were drilled at the turn of the century and many of those companies are now defunct. *Id.* More recently, the Tenth District reaffirmed its position in ***Houser*** holding that, as a matter of law, an owner who acquired abandoned wells acquired all the liabilities in connection therewith. ***Harmeyer v. Mason (1999), 133 Ohio App. 3d 320, 322.***

Appellants additionally argue that they transferred their interests in the leases to Larry Gale in 1978 long before the Chief ordered the wells plugged. A plain reading of the statute does not clarify when the duty to plug attaches; that duty could be interpreted to be either: 1) when the

Chief makes the order or 2) when the wells become unproductive.

However, the **Houser** Court also resolved that issue:

Once the well becomes incapable of *producing in commercial quantities*, the duty to plug attaches. An owner's later transfer of the right to produce does not absolve that person of the continuing obligation to plug the well.

Houser at 360. (emphasis supplied)

The duty to plug the Adkins wells arose, at the latest, when the production equipment was removed from the site by Newport Acres, rendering the wells incapable of producing in commercial quantities. Under the **Houser** holding, Appellants' alleged subsequent transfer of the lease rights does not absolve them of their duty to plug the wells. This is even more apparent given that they did not record the assignment of the leases to Gale, which would better support their argument that their duty to plug was transferred to Larry Gale. The Court notes that R.C. 5301.09 *requires*:

All leases, licenses, and assignments thereof, or of any interest therein, given or made concerning lands or tenements in this state, by which any right is granted to operate or to sink or drill wells thereon for natural gas and petroleum or either, or pertaining thereto, shall be filed for record and recorded in such lease record without delay, and shall not be removed until recorded.

No such lease or license is valid until it is filed for record, except as between the parties thereto, unless the person claiming thereunder is in actual and open possession.

While the Chief could have also issued orders against the subsequent “owners”¹, he did not. That dispute is between Appellants and the new owners, and cannot be resolved in this action. ***Parrill v. Division of Oil & Gas, Oil & Gas Commission Appeals Nos. 583 and 607; Doolittle et al. v. Transcontinental Oil & Gas***, Franklin County Common Pleas Case No. 94CVF02-839.

Next, Appellants argue that ***Houser*** is distinguishable on its facts because Brown, the lessee/assignee in that case, cancelled his lease rights in bad faith in anticipation of the plugging order. The Court’s reading of the ***Houser*** decision is that the underlying case law is that the owner at the time the wells become commercially unproductive continues to be responsible for plugging them. That Brown in ***Houser*** was held responsible because of bad faith would appear to the Court to be further confirmation of the underlying legal responsibility. The holding in ***Houser*** with respect to Brown’s anticipatory actions does not lend itself to the distinctions asserted by Appellants. The purpose of the statute at issue is to protect the safety of the public. The ***Houser*** holding in applying the statute is consistent with this purpose. Moreover, this Court is bound to follow the principles of *stare decisis* especially as it operates in prior decisions from the Tenth District Court of Appeals, an appellate court having direct review over the decisions of this court.

¹ In ***Houser***, the order was made against both the transferee and the transferor of the lease rights. The new owner did not appeal her liability to plug the wells and the Court held as between her and Brown, the dispute was private. *Id.* at 360-361.

Finally, Appellants argue that there is no basis for the order against Pearl Hendricks. The evidence in the record indicates that she became the owner of her late husband's share of the property when she inherited it upon his death. Appellant Hendricks signed every document in the record relating to the property after his death and, in at least one instance, reserved the oil and gas rights to her. Appellant Hendricks is listed as a grantor and is on the tax map as an owner. Therefore, the evidence circumstantially establishes that she was an owner

According to R.C. 1509.37, if the court finds that the order of the commission appealed from was lawful and reasonable, it must affirm the order. If the court finds that the order was unreasonable or unlawful, it must vacate the order and enter the order that it finds the commission should have made.

Applicable case law establishes that the entity with the right to drill at the time the wells become commercially unproductive remains liable despite later transfer of the property.² Conversely, a new owner may become liable for abandoned unplugged wells. That the Division did not choose to enforce the liability to plug the wells against the current owner is not for this Court to question.

There is no statutory requirement or case law interpretation of statute that *all* persons potentially liable for plugging wells should be

² And the Court's reading of *Houser* is that such a responsibility does not exist because one lessee summarily canceled his rights in anticipation of a plug order. Rather, the responsibility exists to protect the public safety

ordered to do so. As in *Houser* when one party appealed and the other did not, here, as between various owners and previous owners of the property, third-party issues are not before this Court and may be subject to further litigation in a separate action such as for unjust enrichment between those parties.

Since liability to plug the wells could be imputed to *either* the Appellants or to the subsequent owners *or to both*, and since there is no legal requirement that all such persons be ordered to plug unproductive wells³, this Court must simply look the lawfulness and reasonableness of the order appealed.⁴ The goal here is to plug unused wells for the protection of the public, not to determine who should do it when more than one party may be responsible. The Court finds that the Order of the Oil & Gas Commission is neither unlawful nor unreasonable. Therefore, the Order is **AFFIRMED**. Costs to Appellants.



JENNIFER L. BRUNNER, JUDGE

³ The Court notes that to require the Division of Oil and Gas to order all persons who may be held responsible for plugging commercially unproductive wells would be an invitation to an impasse between the parties that would result in no prompt action and the potential for more harm to the public. Moreover, there is no statutory or constitutional authority that would appear to imbue the Division with what would amount to legislative or even adjudicatory powers to apportion responsibility of such various “owners” of the wells with no standards or criteria such as length of possession, title to land, or other potentially relevant facets of “ownership.”

⁴ Moreover, this Court has jurisdiction only over Appellants and not subsequent owners of the property on which the wells exist.

Appearances:

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Attorney for Appellee

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Next, Appellants argue that ***Houser*** is distinguishable on its facts because Brown, the lessee/assignee in that case, cancelled his lease rights in bad faith in anticipation of the plugging order. The Court’s reading of the ***Houser*** decision is that the underlying case law is that the owner at the time the wells become commercially unproductive continues to be responsible for plugging them. That Brown in ***Houser*** was held responsible because of bad faith would appear to the Court to be further confirmation of the underlying legal responsibility. The holding in ***Houser*** with respect to Brown’s anticipatory actions does not lend itself to the distinctions asserted by Appellants. The purpose of the statute at issue is to protect the safety of the public. The ***Houser*** holding in applying the statute is consistent with this purpose. Moreover, this Court is bound to follow the principles of *stare decisis* especially as it operates in prior decisions from the Tenth District Court of Appeals, an appellate court having direct review over the decisions of this court.

¹ In ***Houser***, the order was made against both the transferee and the transferor of the lease rights. The new owner did not appeal her liability to plug the wells and the Court held as between her and Brown, the dispute was private. *Id.* at 360-361.

Finally, Appellants argue that there is no basis for the order against Pearl Hendricks. The evidence in the record indicates that she became the owner of her late husband's share of the property when she inherited it upon his death. Appellant Hendricks signed every document in the record relating to the property after his death and, in at least one instance, reserved the oil and gas rights to her. Appellant Hendricks is listed as a grantor and is on the tax map as an owner. Therefore, the evidence circumstantially establishes that she was an owner.

According to R.C. 1509.37, if the court finds that the order of the commission appealed from was lawful and reasonable, it must affirm the order. If the court finds that the order was unreasonable or unlawful, it must vacate the order and enter the order that it finds the commission should have made.

Applicable case law establishes that the entity with the right to drill at the time the wells become commercially unproductive remains liable despite later transfer of the property.² Conversely, a new owner may become liable for abandoned unplugged wells. That the Division did not choose to enforce the liability to plug the wells against the current owner is not for this Court to question.

There is no statutory requirement or case law interpretation of statute that *all* persons potentially liable for plugging wells should be

² And the Court's reading of *Houser* is that such a responsibility does not exist because one lessee summarily canceled his rights in anticipation of a plug order. Rather, the responsibility exists to protect the public safety

ordered to do so. As in *Houser* when one party appealed and the other did not, here, as between various owners and previous owners of the property, third-party issues are not before this Court and may be subject to further litigation in a separate action such as for unjust enrichment between those parties.

Since liability to plug the wells could be imputed to *either* the Appellants or to the subsequent owners *or to both*, and since there is no legal requirement that all such persons be ordered to plug unproductive wells³, this Court must simply look the lawfulness and reasonableness of the order appealed.⁴ The goal here is to plug unused wells for the protection of the public, not to determine who should do it when more than one party may be responsible. The Court finds that the Order of the Oil & Gas Commission is neither unlawful nor unreasonable. Therefore, the Order is **AFFIRMED**. Costs to Appellants.



JENNIFER L. BRUNNER, JUDGE

³ The Court notes that to require the Division of Oil and Gas to order all persons who may be held responsible for plugging commercially unproductive wells would be an invitation to an impasse between the parties that would result in no prompt action and the potential for more harm to the public. Moreover, there is no statutory or constitutional authority that would appear to imbue the Division with what would amount to legislative or even adjudicatory powers to apportion responsibility of such various “owners” of the wells with no standards or criteria such as length of possession, title to land, or other potentially relevant facets of “ownership.”

⁴ Moreover, this Court has jurisdiction only over Appellants and not subsequent owners of the property on which the wells exist.

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