

IN THE CIRCUIT COURT OF RITCHIE COUNTY, WEST VIRGINIA

ET BLUE GRASS, LLC
a Delaware limited liability company,
Plaintiff,

vs.

Civil Action No. 14-C-54

FLOSSIE AND BRUCE BLANEY, et al.
Defendants.

IN THE CIRCUIT COURT OF RITCHIE COUNTY, WEST VIRGINIA

ET BLUE GRASS, LLC
a Delaware limited liability company,
Plaintiffs,

vs.

Civil Action No. 15-C-21

ORMA M. JOHNSON, TRUSTEE
UNDER THE ORMA M. WILSON JOHNSON
DECLARATION OF TRUST,
NELSON B. WEEKLEY, AND SUSIE PERKINS,
Defendants.

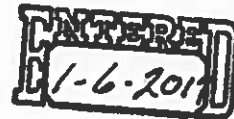
IN THE CIRCUIT COURT OF RITCHIE COUNTY, WEST VIRGINIA

ET BLUE GRASS, LLC
a Delaware limited liability company,
Plaintiffs,

vs.

Civil Action No. 15-C-20

ORMA M. JOHNSON, TRUSTEE
UNDER THE ORMA M. WILSON JOHNSON
DECLARATION OF TRUST,
NELSON B. WEEKLEY, AND SUSIE PERKINS,
Defendants.



ORDER

On the 28th day of October, 2016, came the Plaintiff, ET Blue Grass, LLC, by counsel, Matthew Casto, of Babst Calland, P.C.; and came the Defendants, Orma M. Johnson, Trustee under the Orma M. Wilson Johnson Declaration of Trust - Now known as Wilson-Johnson Family, LLC, by Counsel, Scott A. Windom, of Windom Law Offices, PLLC; the Defendants, Flossie and Bruce Blaney and Diane and James Pierce, by counsel, Meghan G. Hanlon; and Defendant Carole Hanlon, pro se; for a bench trial duly set for this date. Defendants David S. Stalnaker, Gregory A. Stalnaker, Paul R. Stalnaker, and Lori Ann Norton did not appear in person or by counsel.

Whereupon, counsel proceeded to make opening statements and take testimony from witnesses, all of which were taken down by the Court Reporter.

Thereupon, after mature consideration thereof, the Court is of the opinion to and doth accordingly make the following findings, conclusions and ruling:

Findings of Fact:

- 1) The Plaintiff, ET Blue Grass, LLC, is a subsidiary of EQT Corporation and under the corporate umbrella of EQT Corporation.

- 2) The Defendant Wilson-Johnson Family, LLC, ("Wilson-Johnson") owns oil and gas and mineral ("OGM") interests in Ritchie County as well as other counties in West Virginia.
- 3) The other defendants in these matters are also owners of various OGM interests in Ritchie County, West Virginia.
- 4) These suits involve the OGM within and underlying three (3) separate and distinct tracts in Clay District, Ritchie County, West Virginia, as follows
 - a) 627 acres, more or less, situate on the waters of Lynn Camp;
 - b) 120 acres, more or less, situate on the waters of Crane Run; and,
 - c) 250 acres, more or less, situate on the waters of Hughes River.
- 5) Wilson-Johnson owns 75% of the OGM within and underlying the 120 acre and 250 acre tracts.
- 6) Wilson-Johnson owns approximately 14.3% of the OGM within and underlying the 627 acre tract and is one of the largest single owners in that tract.
- 7) That EQT Production Company ("EQT")—also a subsidiary of EQT Corporation— possesses the leasehold rights to oil and gas producing formations below the Benson Sand in the 627 acre tract, the same being subject to the original oil and gas lease dated March 25, 1902, between E.J. Taylor and Launa Taylor, his wife, lessors, and J.L. Newman, lessee, of record in the Office of the Clerk of

the County Commission of Ritchie County, West Virginia, in Lease Book 30 at page 149.

- 8) That EQT possesses the leasehold rights in the 120 acre tract, the same being subject to the original oil and gas lease dated June 21, 1916, between Ben Wilson, et al., lessors, and Carnegie Natural Gas Company, lessee, of record in the Office of the said Clerk's office in Lease Book 41 at page 304.
- 9) That EQT possesses the leasehold rights in the 250 acre tract, the same being subject to the original oil and gas lease dated May 6, 1907, between J.M. Wilson and Rebecca Wilson, his wife, lessors, and Carnegie Natural Gas Company, lessee, of record in the Office of the said Clerk's office in Lease Book 32 at page 159.
- 10) That all three of these century old leases provided for a flat rate royalty for gas.
- 11) That all three of these leases provided for a one-eighth (1/8) royalty for oil, "free of cost".
- 12) That none of the three leases provided for pooling or unitization of numerous tracts or leases.
- 13) EQT attempted to obtain lease modifications for the subject leases from the defendants to allow for pooling and unitization which is necessary for the further development of the leases by modern horizontal drilling methods.
- 14) Wilson-Johnson has previously made similar lease modifications with other companies, including Antero

Resources Corporation, for older leases that are held by production but, similarly, do not have pooling or unitization language in the original lease documents.

15) Wilson-Johnson is not unwilling to modify the lease terms of these three particular leases under similar terms to those negotiated with other oil and companies.

16) The disagreement between the parties stems from EQT's desire to take out post-production costs from Wilson-Johnson and the other defendants' royalties from the production of oil and gas.

17) EQT takes post-production costs out of Wilson-Johnson's royalty from other leases in monthly amounts that sometimes exceed the monthly royalty.

18) That Orma Johnson, member of Wilson-Johnson, is a savvy oil and gas owner and has negotiated numerous Marcellus Shale leases in recent years and has also negotiated modifications to existing leases for development of the Marcellus Shale. She is familiar with the local oil and gas market and has knowledge and experience negotiating the terms for the same.

19) Wilson-Johnson opposes the partition by sale of the OGM within and underlying the subject tracts and desires to further develop the subject OGM with EQT under reasonable terms.

20) EQT Corporation through its subsidiary, ET Blue Grass, LLC, purchased its interest in the subject OGM with the knowledge and understanding that the Wilson-Johnson

Defendant was a savvy oil and gas owner who was not satisfied with the proposed terms to modify the existing leases. This purchase by ET Blue Grass, LLC, was a way to force the resolution of the Wilson-Johnson issue.

21) The forced sale of OGM precludes the owner the benefit of lease consideration and production proceeds, which represent the primary and perhaps exclusive value which the ownership vests. Therefore, the Defendants' interests (which are an overwhelming majority ownership in two tracts, and one of the largest owners in the other) will not be promoted by sale. EQT Corporation through its subsidiary, ET Blue Grass, LLC, certainly would not purchase minority interests in these tracts if there were not significant potential value associated with the development of the same.

22) Inasmuch as the plaintiffs effectively possess the leasehold rights to the subject minerals, the interests sought to be partitioned have no market value whatsoever to anyone but the entity seeking partition by sale. See *McMullen v. Blecker*, 64 W.Va. 88, 60 S.E. 1093 (1908) and *Consolidated Gas Supply Corporation v. Riley*, 161 W.Va. 782, 247 S.E.2d 712 (1978), Neely J. dissenting.

23) To force a sale, whether by allotment or public sale, violates the basic tenants of individual property rights and in this case forces the exchange of an interest in real property for a sum of personal property in violation of the unqualified owners' right to have such interest developed as they see fit.

Conclusions of Law:

- 1) "Oil and gas interests in land shown to contain probable deposits of oil and gas in paying quantities are not susceptible of partition in kind, but may be partitioned by sale and distribution of the proceeds to the parties in interest." *Hall v. Douglas*, 102 W. Va. 400, 135 S.E. 282 (1926).

- 2) "By virtue of W.Va.Code, 37-4-3, a party desiring to compel partition through sale is required to demonstrate that the property cannot be conveniently partitioned in kind, that the interests of one or more of the parties will be promoted by the sale, and that the interests of the other parties will not be prejudiced by the sale." Syl. Pt. 3, *Consol. Gas Supply Corp. v. Riley*, 161 W. Va. 782, 783, 247 S.E.2d 712, 713 (1978).

- 3) "In order to justify a sale of land in a partition suit it must be shown (1) that the land is not susceptible of equitable partition, and (2) that the interests of all the cotenants will be promoted by a sale and distribution of the proceeds." Syl. Pt. 1, *Loudin v. Cunningham*, 82 W.Va. 453, 96 S.E. 59 (1918); Syl. Pt. 1, *Koay v. Koay*, 178 W. Va. 280, 280, 359 S.E.2d 113, 113 (1987).

- 4) The parties have the right to have partition by sale considered as a remedy, but they are not entitled to this remedy if the aforesaid requirements are not satisfied because prejudice to owners would result and/or promotion of their interests is not demonstrated. *Consol. Gas Supply Corp. v. Riley*, 161 W. Va. 782, 783, 247 S.E.2d

712, 713 (1978).

- 5) It is predicate to the partition of oil, gas and mineral interests that there be an inability of the owners thereof to agree on how to develop the oil, gas and mineral estate. *Cawthon v. CNX Gas Co., LLC*, No. 11-1231 W.Va. Supreme Court (memorandum decision), 2012 WL 5835068, W. Va. (Nov. 16, 2012).
- 6) As a result of the 1939 statutory amendment to W.Va. Code § 37-4-1, et seq., there is a statutory right to have partition in kind considered where mineral interests are involved. If property cannot be apportioned in kind, then partition by sale may be considered. *Riley*, supra. However, partition is not an absolute and unqualified right.
- 7) The principle of promoting the alienability of property which has come into divided ownership as advanced by West Virginia law is not frustrated or diminished by a requirement that an inability on the part of the owners to agree on how to develop the mineral estate be demonstrated as a predicate to partition. Rather, the same is promotive of the fundamental rights and interests of property owners. Furthermore, such a demonstration represents a reasonable balance between such property rights and the principle of alienability.
- 8) The parties hereto agree that modification of the existing oil and gas leases is necessary to promote the efficient and thorough development of the Marcellus Shale and other oil and gas producing strata within and underlying these tracts. The Defendants have agreed to

similar modifications in the past with other oil and gas producers who are currently drilling and producing the Marcellus Shale.

- 9) The interests of the Defendants would not be promoted by the sale of their oil, gas and mineral interests. To the contrary, the parties agree on how to develop the property. However, the Lessee/co-owner simply does not want to agree to the same terms that the Defendant has already negotiated in similar matters with other oil and gas producers. To now alienate the Defendants' interests, which have been under lease for a century or more, in favor of a lessee would be prejudicial to the Defendants who have (along with their predecessors) up until this point only been able to receive minimal flat rate royalties for past gas production.
- 10) Moreover, if mineral owners, who are willing to develop their oil, gas and minerals, are forced to sell their mineral interests because of a refusal to bow to the unilateral demands of the oil and gas industry, then that would mark the end of individual ownership of oil, gas and minerals in the State of West Virginia, as oil and gas companies—with vast financial resources—could easily outbid private citizens for their oil, gas and mineral interests at a forced sale.


Ruling:

It is hereby **ADJUDGED, ORDERED** and **DECREED** that Plaintiffs' request for relief for partition by sale is hereby **DENIED** based upon the foregoing findings of fact and conclusions of law. It is further **ORDERED** that this matter is hereby dismissed, with

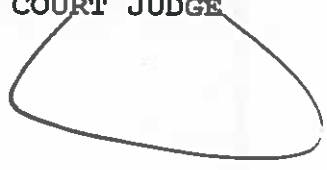
prejudice, from the docket of the Court.

The Clerk of the Circuit Court of Ritchie County, West Virginia, shall provide a certified copy of this order by regular mail to counsel of record.

ENTERED: 1/5/17



TIMOTHY L. SWEENEY, CIRCUIT COURT JUDGE



I hereby certify that the annexed instrument is a true and correct copy of the original on file in my office.

Attest: Rose Ellen Cox
Ritchie County of West Virginia

ENTERED ON Jan. 6, 2017
Rose Ellen Cox

Circuit Clerk

