

ARKANSAS COURT OF APPEALS

DIVISION II
No. CV-14-663

JENNIFER POFF TALLEY, BARRY
TALLEY, NATHAN L. POFF, ROSE M.
LEW, AND JOHN LAURENCE POFF

APPELLANTS

V.

CAROLYN PEEDIN

APPELLEE

Opinion Delivered APRIL 22, 2015

APPEAL FROM THE CLEBURNE
COUNTY CIRCUIT COURT
[NO. CV-2012-141-2]

HONORABLE TIM WEAVER,
JUDGE

DISMISSED WITHOUT PREJUDICE

DAVID M. GLOVER, Judge

We dismiss this appeal without prejudice for lack of a final and appealable order as required by Arkansas Rule of Appellate Procedure—Civil 2 (2014) and Arkansas Rule of Civil Procedure 54(b) (2014). SEECO, Inc., the designated operator of an oil-and-gas production unit, filed a complaint for interpleader and declaratory judgment to determine the appropriate recipients for royalties pertaining to natural-gas production on the following described property:

Tract 1: The North Half of the Northeast Quarter (N 1/2 NE 1/4), Southeast Quarter of the Northwest Quarter (SE 1/4 NW 1/4), and the North half of the Northwest quarter of the Northwest quarter (N 1/2 NW 1/4 NW 1/4), containing 140 acres in the aggregate, more or less.

Tract 2: The Northeast Quarter of the Northwest Quarter (NE 1/4 NW 1/4), containing 40 acres, more or less.

Tract 3: The South Half of the Northeast Quarter (S 1/2 NE 1/4), containing 80 acres, more or less.

Tract 4: The South half of the Northwest quarter of the Northwest quarter (S 1/2 NW 1/4 NW 1/4), and the North half of the Southwest quarter of the Northwest quarter (N 1/2 SW 1/4 NW 1/4), containing 40 acres in the aggregate, more or less.

All of the above described lands lying in Section 12-T10N-R8W, Cleburne County, Arkansas.

The named defendants were Carolyn Poff Peedin, Merlin Albert “M.A.” Peedin, XTO Energy, Inc., Boston Mountain Oil & Gas, LLC, Shaw Farms, Inc., Barlow Projects, Inc., Jennifer Poff Talley and Barry Talley, Nathan L. Poff, Jr., and Rose M. Lew, John Laurence Poff, BHP Billiton Petroleum (Fayetteville), LLC, and MAP2009–OK. The above persons, named by SEECO as having a possible interest in the royalties, were all traceable to Dr. Nathan Poff, Sr. Dr. Poff’s children from his marriage to Lou Veta Poff Moon are the appellants. They traced their claim in this most recent case through their mother, basing it on a 1973 warranty deed in which mineral interests were reserved by Dr. Poff and their mother, as grantors, even though the property being conveyed had been acquired solely by Dr. Poff on March 18, 1971. Dr. Poff’s second wife, Carolyn Poff Peedin, and her current spouse, Merlin Albert Peedin,¹ are the appellees.

The record indicates, although it does not conclusively establish, that all named defendants were served. Paragraphs 17–45 of SEECO’s amended complaint purports to trace the long and complicated bases for asserted ownership of the mineral interests of the named defendants. One named defendant, BHP Billiton Petroleum (Fayetteville), LLC, was

¹The Poff children and Carolyn Poff Peedin have a long history of litigation concerning ownership of Dr. Poff, Sr.’s property. *See, e.g., Poff v. Peedin*, 2010 Ark. 136, 366 S.W.3d 347; *Poff v. Peedin*, 2010 Ark. App. 365, 374 S.W.3d 879.

dismissed from the case without prejudice by order entered March 22, 2013. In its “Findings of Fact and Conclusions of Law,” filed on April 17, 2014, the trial court found in Paragraph 25 that “[o]ver the years, the subject mineral interests have been conveyed and leased to various other parties. MAP2009-OK, Boston Mountain Oil & Gas, LLC, and Shaw Farms, Inc. are successors-in-interest to some of the mineral rights held by Carolyn Poff Peedin and M.A. Peedin.” In its companion “Final Judgment,” entered the same date as the “Findings of Fact and Conclusions of Law,” the trial court found that “ownership of the undivided one-fourth (1/4th) interest in Tracts 1, 2, and 3 and a three-sixteenth[s] (3/16th) interest in the minerals underlying Tract 4 is held by Carolyn Poff Peedin and her assignees and successors-in-interest.” The court further found that the “Poff Children have no ownership interest in the subject minerals.” The trial court also awarded attorney’s fees to Carolyn Poff Peedin, plus postjudgment interest and any additional costs incurred in enforcing the judgment.

With respect to at least two remaining named defendants, XTO Energy, Inc., and Barlow Projects, Inc., there is no specific identification of ownership interest, or lack thereof, and no specific disposition concerning them—despite the fact that this is a declaratory-judgment action. It may well be possible for this court to make those determinations from an in-depth study of the pleadings and record, but that should not be necessary. SEECO’s requested determination of ownership interests with respect to each named defendant should be clear from a review of the judgment, particularly when it is a declaratory-judgment action that sought a determination of the specific ownership interests of the named defendants

so that royalties could be paid with the assurance that payments were going to the correct recipients.

As we recently explained in *Fennell v. City of Pine Bluff*, 2015 Ark. App. 216, at 3:

[W]hether an order is final for appeal purposes is a jurisdictional question that this court will raise sua sponte. Rule 2(a)(1) of the Arkansas Rules of Appellate Procedure—Civil provides that an appeal may be taken only from a final judgment or decree entered by the trial court. Under Rule 54(b) of the Arkansas Rules of Civil Procedure, an order that fails to adjudicate all the claims as to all the parties, whether presented as claims, counterclaims, cross-claims, or third-party claims, is not final for purposes of appeal.

(Internal citations omitted.) It is not only within our authority to raise the finality issue sua sponte, it is also our duty to determine whether appellate jurisdiction is present. *Tucker v. Lake View Sch. Dist. No. 25*, 323 Ark. 693, 917 S.W.2d 530 (1996). In addition, we cannot speculate or make our own findings of fact in order to satisfy our jurisdictional requirements.

We therefore dismiss this appeal without prejudice for lack of a final order.

Dismissed without prejudice.

KINARD and HIXSON, JJ., agree.

Kutak Rock LLP, by: *Samantha B. Leflar* and *Jess Askew III*, for appellants.

Gammill & Gammill, by: *Randall L. Gammill*;

Maureen H. Harrod;

Dunn, Nutter & Morgan, LLP, by: *Charles A. Morgan* and *M. Wade Kimmel*; and *Brian G. Brooks, Attorney at Law, PLLC*, by: *Brian G. Brooks*, for appellees.