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ARKANSAS COURT OF APPEALS

DIVISION I
No. CV-21-172

MARK CAMBIANO AND CHRIS CAMBIANO APPELLANTS V. ARKANSAS OIL AND GAS COMMISSION; FLYWHEEL ENERGY PRODUCTION, LLC; XTO ENERGY, INC.; AND MERIT ENERGY COMPANY, LLC APPELLEES	Opinion Delivered December 13, 2023 APPEAL FROM THE CONWAY COUNTY CIRCUIT COURT [NO. 15CV-19-263] HONORABLE DAVID H. MCCORMICK, JUDGE AFFIRMED

ROBERT J. GLADWIN, Judge

This is an administrative appeal originating from the Arkansas Oil and Gas Commission ("AOGC"). The appellants, Mark Cambiano ("M. Cambiano") and Chris Cambiano ("C. Cambiano") (collectively, "the appellants"), sought to vacate a 2007 integration order of the AOGC arguing that their predecessors in interest of certain mineral rights were not provided sufficient notice and an opportunity to negotiate their interests. The AOGC denied appellants' application to vacate, and upon judicial review, the Conway County Circuit Court affirmed the decision of the AOGC. On appeal, the appellants maintain there was no substantial evidence to support the AOGC's 2007 and 2019 orders. We affirm.

I. *Background Facts*

Louis N. Conner and Nola B. Conner (the Conners), both deceased, were the record owners of a one-half mineral interest in 124 acres of minerals in Section 13, Township 10 North, Range 15 West, Van Buren County, Arkansas. On May 2, 2007, SEECO, Inc. ("SEECO"), Flywheel's predecessor in interest, filed an application with the AOGC to integrate and pool all uncommitted and unleased mineral interest owners in Section 13, Township 10 North, Range 15 West in Van Buren County.[1] The application stated that diligent efforts had been made to negotiate with the owners of unleased mineral interests but that no agreement had been reached with them. Exhibit A, attached to SEECO's application, included the identification of all working interest owners and unleased/non-optioned mineral owners. Exhibit B contained a description of all efforts to locate the Conners. Specifically, Exhibit B noted that efforts to locate the Conners began on September 12, 2006, and further indicated that a potential contact for the family was located on May 9, 2007. Exhibit B further noted that an affidavit of heirship was sent to the suspected family contact on May 11, 2007. Also on May 9, 2007, SEECO published notice of the AOGC hearing in the Van Buren County Democrat, which included "L.N. Conner[,] Nola Conner, . . . and Joyce Minchow [sic] . . . as well as any unknown spouse, heir, devisee, personal representative, successor or assign of said owners of unleased interests." The hearing on the application was held on May 22, 2007.

[1]Flywheel purchased SEECO's interests in December 2018.

On May 30, 2007, the AOGC entered Order No. 225-2007-05 ("2007 integration order") approving the integration of mineral interests for Section 13, Township 10 North, Range 15 West, Van Buren County, Arkansas. The 2007 integration order identified the Conners and their heir, Joyce Minchow, [2] as potentially owning unleased mineral interests. The AOGC found that proper notice of the hearing was given to all parties. The 2007 integration order granted the owners of unleased mineral interests a fifteen-day election period from the effective date of the order to elect or refuse to participate in the well. No election was made by the Conner heirs or any party claiming under their interest, so the interests in question were deemed integrated as unleased mineral interests.

In 2008, a quiet-title action was filed by another integrated party against both the Conners and the Conner heirs, disputing the ownership of their mineral interest. That lawsuit was resolved in 2010 in favor of the Conner heirs. Following the conclusion of such litigation, SEECO began making royalty payments to the Conner heirs. Unbeknownst to SEECO, however, the Conner heirs had granted their attorney, George Cambiano ("G. Cambiano"), a 35 percent interest in their mineral rights as a contingency fee for the 2008 litigation. In 2010, G. Cambiano filed a mineral deed conveying his 35 percent interest in the mineral rights to M. Cambiano for life and the remainder to C. Cambiano.

In February 2014, M. Cambiano, as personal representative of G. Cambiano's estate, instituted an action against the Conner heirs to recover G. Cambiano's share of the royalty

[2]Joyce Minchew is the daughter of Louis N. Conner and Nola Conner.

payments that had been paid by SEECO to the Conner heirs, which was settled in April 2016. In addition to this settlement, appellants also received payments directly from SEECO for approximately five years.

Appellants sent a letter to the AOGC in May 2019, requesting that the AOGC vacate its 2007 integration order as to the Conner heirs in Section 13, Township 10 North, Range 15 West in Van Buren County, Arkansas, asserting three grounds for relief. First, appellants claimed that SEECO did not make reasonable efforts to negotiate a lease with the Conner heirs prior to the 2007 integration hearing. Second, appellants claimed SEECO failed to comply with the integration order regarding payment of an integration-lease bonus. Third, appellants argued that SEECO's application failed to list the Conners or their heirs as named unleased mineral owners.[3]

Flywheel filed its objection to appellants' application to vacate the twelve-year-old integration order arguing that its predecessor, SEECO, fully complied with the AOGC's rules and Order No. 225-2007-05.

The AOGC conducted a hearing on appellants' application on August 20, 2019. Ryan Sacks, a SEECO/Flywheel employee, testified at the AOGC hearing. Sacks confirmed that, at the time of the hearing on the 2007 integration application, no affidavit of heirship had been received by SEECO for the Conners' interests. Sacks testified that he did not

[3]XTO Energy Production, LLC, and XTO Energy, Inc. (jointly "XTO"), subsequently acquired a portion of the mineral interests integrated by the 2007 integration order. Merit Energy Company, LLC ("Merit"), claimed that it was not an assignee of the leases at issue.

personally know all of the efforts taken by SEECO to locate the Conner heirs but confirmed that when attempting to locate interested parties, SEECO concluded that no probate or other information had been filed of record to advise SEECO who the Conner heirs were. Appellants admitted during the 2019 AOGC proceeding that no will or probate for the Conners was ever located.

Sacks further confirmed that an abstract and a title examination were prepared by SEECO regarding the Conners' interests. Sacks stated that SEECO also hired a brokerage company to attempt to locate unleased mineral owners and that no confirmation of the Conner heirs was received prior to the 2007 integration hearing. Sacks testified that he had no reason to believe that SEECO failed to make reasonable efforts to contact the Conner heirs. Sacks confirmed that SEECO would require a document confirming title in the individuals' names before paying out an integration bonus. Sacks also testified that SEECO had paid approximately $232,000 in royalties to appellants and confirmed that all royalties and cash bonuses due under AOGC Order No. 225-2007-05 had been paid.

M. Cambiano also testified at the hearing. M. Cambiano confirmed that he first received royalty payments from SEECO in 2013. M. Cambiano acknowledged that he did not possess an interest in the well at the time of the 2007 integration and that he filed an action against the Conner heirs in February 2014 to recover royalties that were due to his father following the 2008 litigation. M. Cambiano confirmed that his interest in the royalties due under the 2007 integration order had been paid in full.

Attached as an exhibit to the hearing transcript was proof of publication of the 2007 integration hearing notice—published on May 9, 2007—in the Van Buren County Democrat, which included "L.N. Conner[,] Nola Conner, . . . and Joyce Minchow [sic] . . .as well as any unknown spouse, heir, devisee, personal representative, successor of assign of said owners of unleased interests."

At the hearing, appellants argued that the AOGC should have postponed the 2007 integration hearing because SEECO identified a potential Conner heir in exhibit B to its 2007 integration application. In response, Flywheel argued that SEECO's eight-month attempt to locate the Conners or the Conner heirs was sufficient, and there was no requirement that an operator had to pause drilling operations in order to chase down every lead prior to integration. At the conclusion of the hearing, the AOGC voted to deny appellants' application for failure to meet their burden of proof. AOGC Order No. 020-2019-06 ("2019 order") denied appellants' application to vacate the 2007 integration order.

Appellants appealed the AOGC's decision to the Conway County Circuit Court, and the court heard oral argument on appellants' petition for judicial review. After the hearing, the circuit court entered its order affirming the AOGC's 2019 order. The circuit court found that substantial evidence existed to support the AOGC's 2019 order. The circuit court noted that affidavits of heirship do not always "translate into conclusive proof of marketable title" and that the Conner heirs' interests were unclear enough that they had to be litigated following the 2007 integration order. The circuit court further concluded that because

appellants received significant royalties derived from the 2007 integration order, they were bound by the order. Appellants timely appealed.

II. *Points on Appeal*

Appellants argue that there was no substantial evidence in the record to support the AOGC's 2007 and 2019 orders because the record illustrates that the Conner heirs had been located prior to the 2007 integration hearing. The appellants additionally claim that the AOGC violated its own rules in failing to notify the Conner heirs in advance of the integration proceedings and in failing to send a copy of the integration order to the Conner heirs within thirty days.

III. *Standard of Review*

When considering an appeal of a circuit court's review of an agency decision, "[t]he appellate court's review is directed not toward the circuit court, but toward the decision of the agency. That is because administrative agencies are better equipped by specialization, insight through experience, and more flexible procedures than courts, to determine and analyze legal issues affecting their agencies." *Ark. State Police Comm'n v. Smith*, 338 Ark. 354, 357, 994 S.W.2d 456, 458 (1999) (citations omitted). Appellate review of administrative decisions is limited, and "[s]uch decisions will be upheld if they are supported by substantial evidence and are not arbitrary, capricious, or characterized by an abuse of discretion." *Id.* "[I]t is not the role of the circuit courts or the appellate courts to conduct a de novo review of the record; rather, review is limited to ascertaining whether there is substantial evidence to support the agency's decision or whether the agency's decision runs afoul of one of the

other criteria set out in section 25–15–212(h)." *Id.* "We also note that in reviewing the record, the evidence is given its strongest probative force in favor of the agency's ruling." *Id.* (citations omitted).

The Arkansas Supreme Court in *Arkansas Professional Bail Bondsman Licensing Board v. Oudin*, 348 Ark. 48, 55, 69 S.W.3d 855, 860 (2002), held that "[t]o establish an absence of substantial evidence, the challenging party must demonstrate that the proof before the administrative tribunal was so nearly undisputed that fair-minded persons could not reach its conclusion." Further, "[w]hen an agency's decision is supported by substantial evidence, it automatically follows that it cannot be classified as unreasonable or arbitrary." *Collins v. Ark. Bd. of Embalmers & Funeral Dirs.*, 2013 Ark. App. 678, at 2, 430 S.W.3d 213, 215.

IV. *Discussion*

Appellants maintain that the AOGC's 2007 and 2019 orders were not supported by substantial evidence. The crux of this appeal revolves around notice, or lack thereof, as argued by the appellants.

At the time of the 2007 integration hearing, with regard to notice, Arkansas law governing integration of royalty interests required the following:

> In addition to other notice required by any rule or order of the commission, notice of public hearings before the Oil and Gas Commission as provided for in this subchapter shall be given as follows:
>
> (1) When an application is filed with the commission pursuant to this subchapter, the commission shall give notice of the public hearing to be held upon such application by one (1) publication at least ten (10) days prior to the date of the hearing, but not more than thirty (30) days prior thereto, in a legal newspaper having a general circulation in the county, or in each county, if

> there shall be more than one (1), in which the lands embraced within the application are situated, except that, as to any public hearing pertaining to a matter of general application throughout the State of Arkansas, the notice shall be published in a legal newspaper having statewide circulation. . . .

Ark. Code Ann. § 15-72-323 (Repl. 1994). Appellants concede that notice by publication was sufficient at the time of the 2007 integration hearing.

Appellants contend that the AOGC's 2007 and 2019 orders were not supported by sufficient evidence, primarily because SEECO failed to make reasonable efforts to locate or negotiate with the Conners or their heirs. Appellants argue that SEECO misled the AOGC when it averred that it spent months attempting to locate the Conner heirs, referring to such efforts as "half-hearted." Appellants further claim that the AOGC violated its own rules in failing to provide proper notice to the Conner heirs of the integration and failed to provide the Conner heirs a copy of the integration order within thirty days following the hearing.

Appellants base their arguments on the fact that exhibit B to the integration petition indicates that a potential Conner heir, Jerry Taylor, was located and contacted on the same day of publication of the hearing notice. According to appellants, SEECO had a duty to provide written notice of the hearing directly to Mr. Taylor. Appellants also suggest that as a result of the contact with Mr. Taylor, SEECO had a duty to delay the integration proceedings to determine the identities of the Conner heirs so they could have been provided with notice of the 2007 integration proceedings.

The AOGC argues that the 2007 integration hearing was conducted in compliance with the rules and regulations in existence at that time and that sufficient notice was

provided. The AOGC notes that at the time of the 2007 integration hearing, no evidence had been received to establish that Jerry Taylor had any right to represent the Conner heirs or that any of the Conner heirs responded to SEECO following its contact with Mr. Taylor. The AOGC alleges that "the earliest point in time that the heirs of L.N. Conner had any legal interest in the mineral interest was on March 12, 2009, when the circuit court decree quieting title was entered." The AOGC contends that appellants did not produce any witnesses at the 2019 hearing to support their claim that SEECO failed to use reasonable efforts to locate the Conner heirs.

We cannot find that the AOGC's 2019 order refusing to set aside the 2007 integration order is arbitrary, capricious, or characterized by an abuse of discretion. Appellants concede that the regulations in effect at the time of the 2007 integration hearing allowed publication of notice by newspaper and that SEECO published notice of the integration hearing in the Van Buren County Democrat on May 9, 2007, which was within the required time period. As described above, the parties also agree that SEECO conducted a title examination and opinion concerning the Conner interests, noting that no conveyances, death certificates, probates, affidavits of death, or heirship filings had been recorded for the Conners prior to the integration proceedings.

SEECO/Flywheel employee Ryan Stacks testified at the 2019 hearing that an affidavit of heirship does not conclusively establish legal title under Arkansas law. Further, the mineral interests in this case were not clear because the Conner heirs' interests had to be determined by a subsequent quiet-title action. Despite his current claims that the 2007

integration of the Conner heirs' mineral interests was improper, M. Cambiano admitted that in February 2014, he began receiving royalty checks because his father's grantor had been integrated into the unit at issue.

Following our review of the record, we find that appellants failed to produce any evidence or testimony at the 2019 AOGC hearing sufficient to establish that the Conner heirs were not provided proper notice of the 2007 integration proceedings. The AOGC rules permitted notice by publication when the working interest owner established that it had exercised due diligence to locate each unleased mineral owner. The resume of efforts attached to SEECO's application for integration illustrated that SEECO had been searching for the Conner heirs for eight months, and at the time of the integration hearing, SEECO did not possess any documentation confirming the identity of the Conner heirs. Appellants further failed to establish that the evidence before the AOGC at the 2007 integration hearing and at the 2019 hearing on appellants' petition to vacate "was so nearly undisputed that fair-minded persons could not reach its conclusion" or was "not supportable on any rational basis . . . that it was willful and unreasoning action, without consideration and with a disregard of the facts or circumstances of the case." *Oudin*, 348 Ark. at 55, 69 S.W.3d at 860.

V. *Conclusion*

Accordingly, we hold that the AOGC properly concluded that appellants failed to produce evidence sufficient to establish that the Conner heirs were not provided proper

notice of the 2007 integration proceedings. Thus, because the AOGC orders were supported by substantial evidence, we affirm.

Affirmed.

THYER and MURPHY, JJ., agree.

Dale Lipsmeyer, for appellant.

Shane E. Khoury, *Michael McAlister*, and *Daniel Pilkington*, for separate appellee Arkansas Oil & Gas Commission.

Daily & Woods, P.L.L.C., by: *C. Michael Daly* and *Thomas A. Daily*, for separate appellees Flywheel Energy Production, LLC, and XTO Energy, Inc.