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ARKANSAS COURT OF APPEALS

DIVISION IV
No. CV-20-305

STROUD PRODUCTION, LLC APPELLANT V. J-LU LTD CO.; J-ROC LTD CO.; PLOUTOS, LLC; SAGELY INVESTMENTS, LLC; KEVIN SCHMIDT; AND MONICA SCHMIDT APPELLEES	Opinion Delivered April 10, 2024 APPEAL FROM THE MILLER COUNTY CIRCUIT COURT [NO. 46-CV-14-66] HONORABLE BRENT HALTOM, JUDGE AFFIRMED

RAYMOND R. ABRAMSON, Judge

This case involves a tank of oil, some production equipment, and the proceeds from wells located in the Kelly Bayou oil field in southwest Arkansas. J-Lu Ltd. Co. ("J-Lu") and Ploutos, LLC ("Ploutos"), owned and operated certain production units in the oil field between 2010 and 2014. The Arkansas Oil and Gas Commission ("AOGC") unitized parts of the oil field as of January 1, 2015, and Stroud Production, LLC ("Stroud"), took over operations on that date. A tank of oil and some abandoned equipment remained on the property on the date of unitization. Stroud also claimed it was owed production proceeds for leases it purportedly held prior to unitization. After a two-day bench trial, J-Lu and Ploutos were awarded proceeds from the sale of both the production equipment and the tank of oil. Stroud was awarded the balance of an escrow account established by the former

operators, which contained certain proceeds stemming from production before January 1, 2015. Stroud appealed. We affirm.

I. *Factual and Procedural Background*

In the 1990s, several production units in the Kelly Bayou oil field were abandoned along with equipment that was on those units. In approximately 2007 or 2008, Cynthia Wade, Jeff Roberson, and Jimmy Roberson located those units and decided to attempt to operate them. Ms. Wade is the owner of J-Lu, and Jeff is the owner of J-Roc Ltd. Co. ("J-Roc"). J-Lu adopted the wells and the abandoned production equipment through the AOGC "Orphaned Well Plugging Program." These are the wells involved in the current appeal, and they are the Nettie Phillips, Barnett, Douglass, and Vestal wells, along with the Barnett and Douglass salt-water wells. Shortly after adopting the wells, J-Lu cleared the land and began attempting to operate them. At this point, J-Lu was the operator of the relevant wells on file with the AOGC.

At some point after the wells had been adopted, Jimmy Roberson met Kevin Schmidt. Mr. Schmidt owns Ploutos and Sagely Investments, LLC ("Sagely). J-Lu, J-Roc, and Schmidt entered into an oral operating agreement that Mr. Schmidt and his wife, Monica, would take care of the paperwork for operating the units, and Jeff and J-Lu would run the field. On November 5, 2010, J-Lu, Ms. Wade, Jimmy, and Mr. Schmidt entered into a "Letter Agreement" in which J-Lu, Ms. Wade, and Jimmy agreed to transfer 20 percent of their current and future interests in the Kelly Bayou field to Mr. Schmidt or one of his entities in exchange for Mr. Schmidt's payment of $65,000 up front and then 20 percent of ongoing

production costs. On November 5, 2010, and October 13, 2011, J-Lu assigned 50 percent of its working interest in the Barnett, Vestal, Nettie Phillips, Douglass, Douglass salt-water, and Barnett salt-water wells to Sagely.

Ploutos became the AOGC-approved operator of the wells in October and November 2010 and remained in that position through December 31, 2014. Ploutos, Sagely, and J-Lu ran the fields and bought equipment for the operation. After approximately a year, the relationship between Ms. Wade, Jeff, and Mr. Schmidt soured.

Between 2010 and 2015, Stroud claims it acquired leasehold interests in some portions of the Kelly Bayou oil field. Those interests were disputed at trial. There was no dispute that someone other than J-Lu, Ploutos, or Sagely owned a portion of the mineral interests between 2010 and 2015. This is clear because J-Lu and Sagely deposited $141,414.46 into an escrow account for the mineral interests they did not lease and that were due to some other party.

During this time period, Stroud petitioned the AOGC to unitize a large tract within the Kelly Bayou field. Unitization is the process through which the legal interests in an oil field are joined "in a common plan to gain effective production from the field." *Amoco Prod. Co. v. Ware*, 269 Ark. 313, 317, 602 S.W.2d 620, 622 (1980). The AOGC granted Stroud's petition to unitize. On January 1, 2015, Stroud began operating the wells involved in this appeal.

When Stroud took over operations, there was a tank of oil on the property that had been taken from the Nettie Phillips and Barnett wells. Stroud sold this tank of oil. There was

also equipment on the oil field when Stroud took over operations. Some of the equipment remained from the time when the fields were in the Orphaned Well Plugging Program, and some of the equipment had been purchased by J-Lu and Ploutos or Sagely. Ms. Wade testified that Stroud would not allow J-Lu back on the property to retrieve any of the equipment and that some of it was fenced off and thereby inaccessible.

The litigation involving the Kelly Bayou oil field started even before the unitization in 2015. Stroud was the first party to sue. On December 5, 2013, Stroud sued Ploutos and J-Lu, alleging that they had failed to pay Stroud for the production from the Nettie Phillips and Barnett wells. J-Lu cross-claimed against Ploutos. Stroud's claims and J-Lu's cross-claims made up the action numbered 46CV-13-298 (the "First Lawsuit").

On March 19, 2014, while the parties were litigating the First Lawsuit, J-Lu and J-Roc filed a complaint in case number 46CV-14-66 (the "Second Lawsuit"). The complaint in the Second Lawsuit brought claims by J-Lu in negligence against Ploutos; and by J-Roc in suit on account, breach of contract, and quantum meruit against Ploutos. J-Lu and J-Roc further alleged that Kevin Schmidt, Monica Schmidt, and Sagely had comingled assets and failed to maintain corporate forms such that those defendants could be held liable for Ploutos's alleged actions as well. The defendants in the Second Lawsuit brought counterclaims and cross-claims.

On May 14, 2014, in the Second Lawsuit, J-Lu filed an emergency motion for immediate change of operator and an ex parte order that would remove Ploutos as operator and reinstate J-Lu. Stroud moved to intervene in the Second Lawsuit on June 5, 2014.

On June 23, 2014, Stroud moved to consolidate the First Lawsuit and the Second Lawsuit. The circuit court granted Stroud's motion and consolidated the cases on March 9, 2015. The case number became 46CV-14-66-2 (the "Consolidated Action").

The Consolidated Action was tried to the bench on May 29–30, 2019. On December 10, 2019, the circuit court entered its order.

Although the circuit court decided many legal and factual issues, Stroud has appealed only the following rulings. First, the circuit court held that Stroud did not prove "by a preponderance of the evidence with any degree of certainty as required" any amounts allegedly due under Ark. Code Ann. sections 15-74-601 or -602 (Repl. 2009). The circuit court further held that Stroud was not entitled to interest under Ark. Code Ann. section 15-74-601. The circuit court did not explicitly address any affirmative defenses brought by J-Lu and Sagely as to Stroud's claims under the statutes.

The circuit court also held that Stroud owed J-Lu and Sagely $13,470 for the tank of oil that was on the property as of the date of unitization.[1] The circuit court further ordered Stroud to pay J-Lu and Ploutos $362,550 for conversion of the equipment.

II. *Standard of Review*

Following a bench trial, our standard of review asks whether the circuit court's findings were clearly erroneous or clearly against the preponderance of the evidence. *AgriFund, LLC v. Regions Bank*, 2020 Ark. 246, 602 S.W.3d 726. Disputed facts and

[1]The circuit court ordered that 80 percent be paid to J-Lu and 20 percent be paid to Sagely, and that allocation has not been appealed.

determinations of witness credibility are within the province of the trier of fact. *Id.* For questions of law, our review is de novo. *Id.*

III. *Analysis*

Stroud raises five points on appeal, and we address each of those issues in turn below.

A. Whether the Circuit Court Erred in Awarding J-Lu and Sagely 100 Percent of the Proceeds from the Sale of Oil in the Tank Left on the Field

There were approximately 286 barrels of oil in a tank that was produced from the Nettie Phillips and Barnett units at some point while Ploutos was the operator. Stroud sold the oil after it took over operations. The circuit court held that the oil in the tank was worth $13,470 and awarded that amount to J-Lu and Sagely. Stroud's first argument on appeal is that this is reversible error.

In paragraph 16 of the order, the circuit court held:

> The Court finds that [Mr. Stroud's] testimony was flawed in that mistakes were made in calculations; his leasehold interest changed over time making the calculations incorrect, the two landmen who testified disagreed on Stroud's interests, and Stroud's testimony failed to give credit for any expenses J-Lu may have incurred before Ploutos became operator. For all of these reasons, the figures provided for Stroud Production damage claims were not proven to the Court by a preponderance of the evidence with any degree of certainty as required; therefore, the Court finds that this claim is denied as requested by Stroud Production.

Stroud would be entitled to a portion of the proceeds from the tank of oil only if it owned an interest in the minerals before unitization on January 1, 2015. It is important to note that Stroud's claims that the circuit court denied in paragraph 16 were related to earnings before it became operator of the wells. In other words, the circuit court held in

paragraph 16 of the order that Stroud did not prove by a preponderance of the evidence that he was entitled to any proceeds from oil collected before January 1, 2015.

During trial, Stroud introduced a number of leases into evidence and presented testimony about those leases by a landman named Joe McGinty. J-Lu presented competing testimony about the leases by another landman named Wayne Crank, Jr. In their posttrial briefs, the appellees all made it clear that they disputed whether Stroud had the right to collect any royalties. The circuit court considered those briefs and heard the conflicting testimony from the landmen as well as Mr. Stroud's testimony, which the circuit court characterized as "flawed." The circuit court then resolved the conflict in favor of Ju-Lu and Sagely. This court gives "due regard" to the fact-finder's determination about the credibility of witnesses. *Hetrick v. Est. of Sams*, 2023 Ark. App. 338, at 6, 670 S.W.3d 430, 434. Therefore, we find that this holding is not clearly erroneous and affirm.

B. Whether the Circuit Court Improperly Shifted the Burden of Proof from the Appellees to Stroud

Stroud's second point on appeal is that the circuit court improperly shifted the burden of proof from appellees to Stroud regarding the operator expenses that were deducted from oil-production proceeds. Stroud's argument is essentially that it proved it was entitled to some proceeds of the production before January 1, 2015, and that the appellees were claiming offsets from those proceeds. Stroud argues that offset is an affirmative defense but that the circuit court improperly required Stroud to prove that there were no offsets

owed. Stroud argues the circuit court should have required the appellees to prove the value of the offsets.

Regarding damages due to Stroud for unpaid production proceeds, the circuit court held,

> Stroud Production claims certain monies from the Nettie Phillips Unit and the Barnett units. Robert Stroud testified about the amounts he said were due Stroud Production. The Court finds that this testimony was flawed in that mistakes were made in calculations; his leasehold interest changed over time making the calculations incorrect, the two landmen who testified disagreed on Stroud's interests, and Stroud's testimony failed to give credit for any expense J-Lu may have incurred before Ploutos became operator. For all of these reasons, the figures provided for Stroud Production damage claims were not proven to the Court by a preponderance of the evidence with any degree of certainty as required; therefore, the Court finds that this claim is denied as requested by Stroud Production.

The plain language of the circuit court's order indicates there was no improper burden shifting. Stroud is correct that set-off is an affirmative defense. Ark. R. Civ. P. 8(c). The defendant has the burden of proving an affirmative defense. *Rogers v. Rogers*, 80 Ark. App. 430, 445, 97 S.W.3d 429, 439 (2003). However, the mere presence of an affirmative defense does not absolve the plaintiff of its own burden to prove its claims by a preponderance of the evidence. In reading paragraph 16 of the circuit court's order, it is clear that the circuit court weighed the evidence and the credibility of witnesses and concluded that Stroud had not met its burden of proof. Because the circuit court held that Stroud did not carry its own burden of proof, any finding with regard to the affirmative defense is irrelevant.

C. Whether the Circuit Court Erred in Determining the Value

of Equipment Awarded to Appellees

Stroud's third point on appeal is that the circuit court erred in determining the value of equipment that was awarded to the appellees.

Regarding the equipment, the circuit court held:

> [N]either side produced an independent expert to value the equipment in the field. The parties gave very different views as to the value of the equipment in the field. The Court finds that some equipment left in the field may have a low value due to its costs of removal may outweigh its value. Based on testimony and exhibits, the Court places the value of equipment on the Nettie Phillips at $212,500.00, the Douglass at $25,000.00, the Barnett at $50,000.00, the Vestal at $25,000.00, Barnett saltwater disposal at $24,000.00, the Douglass salt water disposal at $6000.00 and miscellaneous tanks, gun barrels at $20,000.00 for a total cost of $362,550.00. The Court finds that no rental will apply to the conversion of property as requested by J-Lu. The value of the equipment will be divided by the agreement in place with J-Lu and Sagely at the time of conversion.

Conversion is the wrongful "dominion over the property of another, which is a denial of or is inconsistent with the owner's rights." *C.A.R. Transp. Brokerage Co. v. Seay*, 369 Ark. 354, 359, 255 S.W.3d 445, 449 (2007). The first hurdle, therefore, is determining whether J-Lu and Sagely owned the equipment that was present on the oil field as of January 1, 2015.

It is undisputed that J-Lu and Sagely purchased some of the equipment. As to the equipment J-Lu and Sagely did not bring onto the field, Ms. Wade testified on behalf of J-Lu that the company owned all the remaining equipment that was abandoned in the 1990s. Part of Stroud's argument is that J-Lu could not have owned the equipment that was abandoned in the 1990s because the ownership of that equipment had reverted to surface

owners. For this point, Stroud relies on *Louisiana Oil Refining Corp. v. Haltom*, 188 Ark. 117, 64 S.W.2d 98 (1933). *Haltom* does not apply here.

In *Haltom*, an operator closed and abandoned an oil well around June 1, 1931. On August 16, 1932, the operator attempted to reenter the property and remove its oil-well equipment, but the property owner stopped the operator from removing the equipment. The operator then brought an action in replevin, and the equipment was removed and delivered to the operator. After trial, the circuit court held that the equipment should be returned or its value should be paid to the property owner. *Id.* at 118, 64 S.W.2d at 99. The supreme court did affirm the circuit court's holding, but the supreme court did not hold that ownership of the equipment had passed to the landowner the moment the operator stopped operating the well. Instead, the supreme court noted that the owner of the property had suffered injury and inconvenience because the equipment was standing in his cotton field. Additionally, the operator operated another well in close proximity to the abandoned well, which drained the well on the owner's property. Considering these factors, the supreme court held that the operator could have retrieved its equipment only if its delay of fourteen months had been justified. In the end, the circuit court did not err in finding the delay was unjustified. *Id.* at 123, 64 S.W.2d at 101. There is no such delay in this case. The parties were fighting over the operation of the well before and after January 1, 2015.

Further, AOGC regulations undercut Stroud's contention that J-Lu could not have owned the abandoned property. The regulations governing the Orphan Well Plugging Program defines "well site equipment" as "the equipment, including but not limited to an

associated tank battery, production and injection facility equipment, hydrocarbons from the [abandoned] well that are stored in tanks located on the lease, and hydrocarbons recovered during the plugging operation." 118.03.1-G-1 Ark. Admin. Code § (b)(2) (WL current through Jan. 15, 2024). When remediating the orphaned or abandoned well, the AOGC "may dispose of all well site equipment. . . . Proceeds from any public sale, auction or private sale of all well site equipment or hydrocarbons shall be deposited into the Plugging Fund or used to offset plugging costs." *Id.* § (f). If ownership of the equipment had reverted to the surface owner, then the AOGC would be required to pay said surface owner for taking the equipment.

Further, when adopting an abandoned or orphaned well, the proposed new operator shall "pay a salvage value for the tanks, pumping units, and other related equipment, as determined by submission of 2 independent salvage value estimates from commercial salvage oil and gas production equipment dealers and approved by the Director or his or her designee[.]" 118.03.1-G-3 Ark. Admin. Code § (c)(2) (WL current through Jan. 15, 2024).

There was testimony at trial that J-Lu had become the owner of the abandoned equipment through the Orphaned Well Program. Stroud did not present any contrary evidence. In its role as fact-finder, the circuit court did not err in finding that J-Lu and Sagely owned certain equipment that was on the oil field as of January 1, 2015.

We now turn to the valuation of the equipment. As the circuit court noted in its order, neither party produced an independent valuation of the equipment by an expert. Instead, J-Lu submitted evidence that the equipment was worth $657,000, and Mr. Stroud

testified that he thought the equipment was worth $130,000. The lack of an expert witness on this issue is fatal in this case because, as the owner of equipment, J-Lu was qualified to testify as to its value. *See Bill C. Harris Constr. Co., Inc. v. Powers*, 262 Ark. 96, 107, 554 S.W.2d 332, 337 (1977).

In a bench trial, "[f]acts in dispute and determinations of credibility are solely within the province of the fact-finder." *Robinson v. Murphy*, 2020 Ark. App. 293, at 3, 601 S.W.3d 450, 452. The circuit court was not required to choose between the two numbers proposed by the parties. Instead, the fact-finder can "draw reasonable inferences from the facts presented at trial." *Balentine v. Sparkman*, 327 Ark. 180, 186, 937 S.W.2d 647, 651 (1997). Here, the circuit court held that "some equipment left in the field may have a low value due to its costs of removal may outweigh its value." The circuit court determined that the value of the equipment left at the various individual wells was $362,550. The circuit court's analysis is based on reasonable inferences as well as the credibility of witnesses and weight of the evidence. The damages assessed by the circuit court for conversion are not clearly erroneous or against the preponderance of the evidence.

D. Whether the Circuit Court Applied the Incorrect Standard of Proof to Stroud's Claims

Stroud's next point on appeal is that the circuit court applied the wrong standard of proof to its claims. The circuit court wrote in its order that "the figures provided for Stroud Production damage claims were not proven to the Court by a preponderance of the evidence

with any degree of certainty as required[.]" Stroud argues that the circuit court applied a higher standard of proof by adding "with any degree of certainty" to the sentence.

It is clear from the order that the circuit court applied the proper standard of proof to Stroud's claim for additional production proceeds. In support of this finding, the circuit court cited credibility issues with Stroud's main witness and the landmen. "Facts in dispute and determinations of credibility are solely within the province of the fact-finder." *Robinson*, 2020 Ark. App. 293, at 3, 601 S.W.3d at 452. A fair reading of the paragraph is that the circuit court held that Stroud had failed to carry its burden and could not have carried even a lighter burden of proof if one existed. Because of this, we hold that the circuit court applied the correct burden of proof.

E. Whether the Circuit Court Erred in Failing to Award 12 Percent Interest to Stroud under Ark. Code Ann. § 15-74-601

For its final point on appeal, Stroud argues that the circuit court erred when it did not assess 12 percent interest on the production proceeds that were awarded to it. The argument is that Arkansas Code Annotated section 15-74-601 requires anyone withholding oil proceeds from someone who is legally entitled to said proceeds to pay 12 percent interest per annum from the date of delinquency.

Under Arkansas's oil and gas laws, the proceeds from the sale of oil or gas production "shall be paid to persons legally entitled thereto, commencing no later than six (6) months after the date of first sale and thereafter no later than sixty (60) days after the end of the calendar month within which subsequent production is sold[.]" Ark. Code Ann. § 15-74-

601(a) (Repl. 2009). If this is not done, then the first purchaser "*shall* pay interest to those legally entitled to the withheld proceeds commencing on the payment due date at the rate of twelve percent (12%) per annum on the nonpaid amounts unless a different rate of interest is specified in a written agreement between the payor and the payee." Ark. Code Ann. § 15-74-601(e) (emphasis added).

As discussed above, the circuit court held in paragraph 16 of its order that Stroud did not prove it was entitled to damages from the appellees. In paragraph 17, the circuit court ruled, "Based on the findings in #16 above, Stroud Production is not entitled to 12% interest claimed by ACA 15-74-601." Stroud argues that the holding in paragraph 17 is erroneous because the circuit court proceeded to award Stroud certain funds in paragraph 21 of the order. Paragraph 21 states:

> Notwithstanding the ruling made in #16 above, the Court makes a specific finding that J-Lu, Sagely Investments and Ploutos acknowledged that at times they were owners of a working interest and as operators of the wells in question, they knew that they did not have 100% of the minerals leased. The testimony presented convinces the Court to find that the $141,414.46 held in escrow was money set aside to cover unleased minerals. No one other than Stroud has made a claim to this money in escrow. The Court awards Stroud Production this account balance. The Court does not take any specific accounting findings but does find that J-Lu, Sagely and Ploutos knowingly set this money aside for others so it is presumed and found by the Court that each received what it was entitled to from production during the time this money was placed in escrow.[2]

[2]The holdings in this portion of the order were not appealed by any party nor did any party make arguments regarding any findings of the AOGC. Therefore, in this opinion, we do not address whether paragraph 21 complies with Arkansas law with regard to the escrow account.

Because Stroud was awarded the escrowed funds, he now claims he is legally entitled to 12 percent interest on the escrowed funds from the appellees. However, the statutory scheme mandates the payment of 12 percent interest only when the first purchaser violates Arkansas Code Annotated section 15-74-601(a) by withholding proceeds from someone who is legally entitled to said proceeds. Here, J-Lu and Sagely did not withhold oil proceeds from Stroud as contemplated by the statute. Instead, they were in possession of oil proceeds that were produced from wells that could have been the subject of leases or other agreements between multiple producers or entities. J-Lu and Sagely were aware a portion of the proceeds was payable to unknown others, so they determined and retained their interest and placed the balance of $141,414.46 into escrow. This would allow the other multiple producers or other entities to establish and resolve their respective interests, if any. As it turned out, only Stroud made a claim for these escrowed funds, and because Stroud was the only claimant, the circuit court granted Stroud the escrowed funds. The parties to the litigation neither objected to this award nor appealed from it. Therefore, in this appeal, we do not address whether Stroud was legally entitled to the money in escrow. That said, just because Stroud was awarded the escrowed funds does not mean the circuit court found that Stroud was legally entitled to it as contemplated by section 15-74-601(a).

Under these circumstances, we do not agree with Stroud's argument that the appellees withheld oil proceeds from someone who was legally entitled to them. Thus, the circuit court was not clearly erroneous in denying Stroud's request for 12 percent interest. We affirm the circuit court's order on this issue.

Affirmed.

GRUBER and HIXSON, JJ., agree.

Jonathan W. Beck, for appellat.

Harrelson Law Firm, P.A., by: *Steve Harrelson*, for separate appellants J-Lu Ltd. Co. and J-Roc Ltd. Co.