Cite as 2012 Ark. 418

SUPREME COURT OF ARKANSAS

No. 12-146

ZELDA WALLS; RICHARD GAWENIS
APPELLANTS

V.

ARKANSAS OIL & GAS COMMISSION; SEECO, INC.
APPELLEES

Opinion Delivered November 8, 2012

APPEAL FROM THE VAN BUREN COUNTY CIRCUIT COURT
[NO. CV-10-65]

HONORABLE MICHAEL A. MAGGIO, JUDGE

AFFIRMED IN PART; DISMISSED IN PART; COURT OF APPEALS OPINION VACATED.

PAUL E. DANIELSON, Associate Justice

Appellants Zelda Walls and Richard Gawenis appeal from the decision of the Van Buren County Circuit Court, which upheld an order of appellee Arkansas Oil and Gas Commission granting certain relief to appellee SEECO in connection with a proposed drilling and production unit. The Arkansas Court of Appeals first heard this appeal and affirmed the Commission's interpretation of the statute and found that the Commission's decision was supported by substantial evidence; however, it dismissed for lack of jurisdiction the portion of the appeal in which appellants argued that the circuit court erred by not allowing them to present additional evidence to the Commission.

The relevant facts are these. The Commission established a drilling unit in Section 19, Township 10 North, Range 15 West, in Van Buren County, Arkansas. Section 19 lies within a large reservoir of natural gas known as the Fayetteville Shale Formation. Numerous

oil-and-gas companies, including SEECO, obtained mineral leases from landowners in section 19 for the purpose of exploring and drilling. However, appellants, who own approximately 135 acres in section 19, declined to lease their mineral interests to those companies or to otherwise participate in the drilling unit.

On February 23, 2010, the Commission granted appellee SEECO, Inc.'s application to pool and integrate unleased mineral interest and uncommitted leasehold working interest owners. The Commission had denied previous applications from SEECO seeking compulsory integration. One of the first applications had proposed that unleased mineral owners be integrated and be compensated at the rate of $500 per net mineral acre and a one-eighth royalty. SEECO attached an affidavit from petroleum landman Michael English stating that those figures represented the "best terms (bonus and royalty) paid in the unit." The Commission denied that application without deciding the issues surrounding forced integration. SEECO then filed a subsequent, similar application. In advance of the hearing on that application, appellants discovered that the Arkansas Game & Fish Commission (AGFC) had leased its mineral interests in 5273 acres in Van Buren County to Chesapeake Exploration, L.L.C., and had received $1601.51 per acre and a twenty-two-percent royalty for its interests in section 19. With this application, Michael English's affidavit stated that the best terms paid by SEECO were $800 per net mineral acre and a one-sixth royalty. During the hearing for that application, appellants told the Commission that they would lease their interests to SEECO for the AGFC price, which they considered the fair market value. However, in response, SEECO's witness, Alan Perkins, explained that the value of "a lot of acres scattered over different areas" was more valuable to an operator and would garner a

better price than an individual lease for a smaller number of acres. Perkins also testified that public agencies are often paid a premium for their leases—markedly above what would otherwise be the market price—based on public-relations and goodwill considerations. After the hearing, the Commission again denied SEECO's application.

When SEECO filed the application ultimately granted, Michael English's affidavit identified the best lease terms in the unit as $800 per net mineral acre with a one-sixth royalty, or, alternatively, $225 per acre with a three-sixteenths royalty. His affidavit mentioned the $1601.51 per acre and 22 percent royalty paid to the AGFC by Chesapeake but did not designate that amount as the highest and best rate paid in the unit. During the hearing before the Commission, English testified that he did not consider the AGFC lease to be a representative transaction because a state agency's interests could not be forcibly integrated, and the agency had to be induced into a voluntary transaction (although he stated that he had not witnessed any state-agency "bullying"). English also said that SEECO had not paid more than $800 per acre on the land it leased in the unit. At the close of the hearing, the commissioners discussed the AGFC lease at length but ultimately refused to award compensation to appellants based on that lease. Instead, the Commission approved SEECO's final application and ruled that appellants had the option to enter into a one-year lease as part of the integration order for a price of $800 per net mineral acre with a one-sixth royalty.

On March 26, 2010, appellants petitioned the Commission's decision to the Van Buren County Circuit Court, seeking judicial review and asking the court to modify the Commission's order to reflect a compensation of $1601.51 per acre and a 22 percent royalty—the same price paid to the AGFC. The Commission denied appellants' material

allegations and asked that its order be upheld. SEECO moved to intervene pursuant to Ark. Code Ann. § 25-15-212(b)(3) (Repl. 2002), which gives the circuit court in judicial-review proceedings discretion to permit intervention by "other interested persons." The record does not contain an order from the circuit court granting SEECO's intervention, but SEECO filed a "response in intervention" and actively participated in the judicial-review proceeding.

While the review was pending, appellants sought leave to present additional evidence to the Commission. They proffered a 2008 order in which the Commission approved integration payments of $1601.51 per acre and a 22 percent royalty to private landowners in nearby section 13. The Commission responded that prices paid in another section were immaterial and that appellants had not shown a good reason for failing to present the proffered evidence during the administrative hearings. See Ark. Code Ann. § 25-15-212(f) (Repl. 2002).

On November 18, 2010, the circuit court affirmed the Commission's ruling, concluding that it was supported by substantial evidence and was not arbitrary, capricious, or characterized by an abuse of discretion. In a subsequent order entered on January 19, 2011, the court denied appellants' petition to present additional evidence to the Commission. The court of appeals affirmed in part and dismissed in part. *See Walls v. Arkansas Oil & Gas Comm'n*, 2012 Ark. App. 110, at 2–5, 390 S.W.3d 88, 90–92. Appellants then petitioned this court for review, which we granted on May 31, 2012. When we grant review following a decision of the court of appeals, we consider the case as though it had been originally filed in this court. *See Tyson Poultry, Inc. v. Narvaiz*, 2012 Ark. 118, 388 S.W.3d 16.

It is important to discuss our standard of review for cases arising from decisions of the

Commission before addressing the merits of the arguments raised. It is well established that this court views the evidence and all reasonable inferences therefrom in the light most favorable to the Commission's decision and affirms that decision when it is supported by substantial evidence. *See Johnson v. Bonds Fertilizer, Inc.*, 375 Ark. 224, 289 S.W.3d 431 (2008). It is for the Commission to determine where the preponderance of the evidence lies; on appellate review, we consider the evidence in the light most favorable to the Commission's decision and uphold that decision if it is supported by substantial evidence. *See id.* Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion. *See id.* There may be substantial evidence to support the Commission's decision even though we might have reached a different conclusion if we had sat as the trier of fact or heard the case de novo. *See id.* It is exclusively within the province of the Commission to determine the credibility and the weight to be accorded to each witness's testimony. *See id.* We will not reverse the Commission's decision unless we are convinced that fair-minded persons with the same facts before them could not have reached the conclusions arrived at by the Commission. *See id.* We turn now to the merits.

Appellants first argue that they and all other unleased mineral-interest owners should be paid $1601.51 per net mineral acre as a lease bonus and should receive a royalty of 22 percent, the same price that was received by the AGFC in the same unit. Appellees aver that the Commission should be affirmed because its decision was not arbitrary and capricious or characterized by an abuse of discretion; the Commission acted within its authority; the appellants were afforded a fair opportunity to be heard; all evidence submitted was fully considered; and the decision was supported by substantial evidence.

Arkansas Code Annotated sections 15-72-302 to -303 (Repl. 2009) gives the Commission the authority to form a drilling unit for an exploratory well and to integrate separately owned tracts therein. However, unleased mineral owners, such as appellants, who do not elect to participate in the drilling "shall transfer [their] rights in the drilling unit and the product from the unit well to the parties who elect to participate therein *for a reasonable consideration and on a reasonable basis, which in the absence of agreement between the parties, shall be determined by the commission*." Ark. Code Ann. § 15-72-304 (Repl. 2009) (emphasis added).

Appellants simply argue that the Commission was not reasonable when it ruled that the appellants had the option to enter into a one-year lease as part of the integration order for a price of $800 per net mineral acre with a one-sixth royalty rather than awarding a compensation of $1601.51 per acre and a twenty-two-percent royalty—the price paid to AGFC.

The following evidence, which supports the finding that was made, was presented to the Commission. Michael English, a landman for T.S. Dudley Land Company, which supervised the acquisition of oil and gas leases in this project on behalf of SEECO, testified that SEECO, at the time of the hearings, had approximately 265 acres under lease and that the best terms paid were the following: $800 and 1/6th royalty; $500 and 1/8th royalty; and $225 and 3/16th royalty. Aside from the terms of the AGFC contract, he was unaware of any lease in section 19 by any other party that exceeded those terms. Appellants' attorney indicated that the only offer that exceeded $500 that they had received from other parties was around $700 or $750. Alan Perkins, who had represented AGFC for several years on various matters, also testified before the Commission. He stated that he and his firm had developed

a process and procedure for leasing the Commission lands that would both protect the environmental integrity of their property and also would maximize their income. He indicated that a big part of that process was based on the premise that the value of the whole when there is a lot of acreage scattered over different areas is much greater to an operator than the sum of the individual parts. In other words, if one were to lease those individually, the same price would not be garnered as if they can be obtained all together in a bidding process. Additionally, Perkins testified that he personally had worked with companies that would pay a premium for those types of leases to promote public relations and good will. He claimed that the entire process of the AGFC leases was designed to achieve a value, a price for those leases that was markedly above what would otherwise be the market price for that lease in that locality. Finally, AGFC had two kinds of leverage going for it in negotiations that the appellants here did not: (1) 5273 acres available to lease and (2) AGFC was not subject to integration and could have decided to walk away if an agreement was not reached.

The statute simply does not require the Commission to award the highest bonus historically paid. It requires only reasonable consideration and a reasonable basis. While appellants contend that reasonable consideration equates to fair market value, that is not the language used in the statute and that language could have easily been used had that been the intention of the legislature. We acknowledge appellants' argument that the Commission's rules and regulations do require that an applicant seeking to force pool and integrate an unleased mineral owner provide what the highest and/or best cash bonus and royalty terms that they have knowledge of within the unit. However, again, there is no rule that it is that specific price that must be awarded. This court would essentially be changing the applicable

statute were we to hold that it requires that fair market value be awarded every time, no matter the circumstances.

When we consider the evidence presented to the Commission, we find that its decision was supported by substantial evidence and cannot say it was arbitrary and capricious. Therefore, we affirm the Commission.

Appellants additionally argue that the circuit court erred by not remanding the case to the Commission after they filed a motion to have additional evidence presented to the Commission—a prior decision of the Commission which specifically found the AGFC lease to be relevant to a determination of the reasonable lease bonus and royalty to be paid in a drilling unit adjacent to the unit involved in the instant case. Appellees aver that the circuit court properly denied appellants' request because they failed to present a good reason for their failure to present that evidence, the evidence is immaterial and irrelevant, and the information contained in the evidence was already considered in full by the Commission.

We do not have proper jurisdiction of this issue. The circuit court entered its order upholding the Commission on November 18, 2010. However, that order failed to address the appellants' petition to present additional evidence. Appellants timely filed their notice of appeal on December 20, 2010. Later, on January 19, 2011, the circuit court, recognizing that its previous order "did not approve or deny the Petitioner's prayer for leave to present additional evidence," entered an order denying that request. The record is void of a notice of appeal from that January 19, 2011 order. Without a notice of appeal from the January 19, 2011 order, we lack jurisdiction to consider an appeal from that order. *See Lindsey v. Green*, 2010 Ark. 118, 369 S.W.3d 1 (holding that an order not mentioned in a notice of appeal is

not properly before an appellate court). Because we lack jurisdiction of this portion of the appeal, we dismiss it.

Affirmed in part; dismissed in part; court of appeals opinion vacated.

BAKER, J., not participating.

Blakney Law Office, by: *Brett Blakney*; and *Tilley & Thomas*, by: *Albert J. Thomas III*, for appellants.

Shane E. Khoury, Arkansas Oil & Gas Commission, for separate appellee Arkansas Oil & Gas Commission.

Daily & Woods, PLLC, by: *C. Michael Daily*, for separate appellee SEECO, Inc.