

MEMORANDUM

TO: DAOGTL
FROM: Sheryl Howe
DATE: March 6, 2017
RE: March 2017 Report

Nonconsenting Owner Must First Pursue Claim for Payment of Proceeds of Production at Colorado Oil and Gas Conservation Commission, and Claim Brought in District Court Should be Dismissed Without Prejudice

Grant Brothers Ranch, LLC v. Antero Resources Piceance Corporation, ___ P.3d ___ (2016), 2016 COA 178, involves two parts of the statutes regarding the Colorado Oil and Gas Conservation Commission (Commission): the pooling statute and the statute regarding payment of proceeds of production. The Court of Appeals held that the nonconsenting owner was required to exhaust its administrative remedies by pursuing its claim at the Commission, and that the nonconsenting owner's claim brought in district court should have been dismissed without prejudice.

Antero Resources Piceance Corporation (Antero) got approval from the Commission to establish drilling and spacing units to produce oil and gas from two formations under lands in in Garfield County. Grant Brothers Ranch, LLC (Grant Brothers) owned property in the units. *Id.* Grant Brothers refused Antero's offer to lease the minerals or participate in their production. *Id.* Thus, Antero requested orders from the Commission pooling all nonconsenting interests in the units. Hearings were held and the Commission issued orders pooling all of the nonconsenting interests in the units.

As a result of the Commission's pooling orders, Grant Brothers was a nonconsenting owner according to section 34-60-116(7), C.R.S. 2016. Grant Brothers "would receive payment only after these wells reach 'payout,' in other words, after Antero recovered the costs allowed by section 34-60-116(7)." *Id.* ¶ 5.

The pooling orders required Antero to furnish Grant Brothers with monthly statements containing information about its costs and its proceeds. *Id.* ¶ 5. Grant Brothers later asked Antero for permission to audit its books and records regarding the wells. *Id.* ¶ 6. Antero refused, noting it had been sending Grant Brothers the required monthly statements. *Id.*

Grant Brothers sued Antero and its successor Ursa Operating Company, LLC (collectively Operators), requesting an equitable accounting and asserting the wells had reached payout. The

district court entered summary judgment in favor of Operators and dismissed the case with prejudice. *Id.*

The Act “provides that ‘[a]bsent a bona fide dispute over the interpretation of a contract for payment, the oil and gas conservation commission shall have jurisdiction to determine . . . [t]he date on which payment of proceeds is due’ and any ‘amount of proceeds’ or interest due. § 34-60-118.5(5)(a) and (c), C.R.S. 2016.” The next subsection provides

Before hearing the merits of any proceeding regarding payment of proceeds pursuant to this section, the oil and gas conservation commission shall determine whether a bona fide dispute exists regarding the interpretation of a contract defining the rights and obligations of the payer and payee. If the commission finds that such a dispute exists, the commission shall decline jurisdiction over the dispute and the parties may seek resolution of the matter in district court.

§ 34-60-118.5(5.5). *Id.* ¶ 17.

The court noted that there was no contractual dispute involved in this case, since there was no contract between the parties. The court held that Grant Brothers was required to exhaust its administrative remedies before bringing a claim in district court. The court found that Grant Brothers’ claim was one for payment of proceeds under § 34-60-116 and -118.5 of the Act, these statutes provide a remedy for the claim, and under the statutory scheme primary jurisdiction of Grant Brothers’ claim remains with the Commission. *Id.* ¶ 23, ¶ 25. For these reasons, Grant Brothers was required to exhaust its administrative remedies, and the district court should have dismissed the case with prejudice.

Treasurer’s Deeds are Voidable for Lack of Required Publication or Notice to Occupant

In *Redflower, Inc. v. McKown*, __ P.3d ____, 2016 COA 160 (2016), the Court of Appeals held that a treasurer’s deed was invalid because it was issued less than three months after the required publication was completed. The validity of another deed involved in the case, covering minerals with a lesser value, for which publication was not required, was remanded for further consideration of whether the notice to the “person in actual possession or occupancy” of the property was adequate. The property in question did not have any buildings on it and was farmed by someone who visited the property only once a week, at most, or once every two weeks, in the winter season. The court noted that when the premises are actually occupied, the county treasurer may serve notice on the occupants at the property. The court discussed the difference between treasurer’s deeds that are void, because the taxing entity had no jurisdiction or authority to issue it, or voidable, when the county treasurer’s notice is statutorily insufficient. The court stated that in this case the deed was voidable and the case had been brought within the five year statute of limitations applicable to a challenge to a voidable deed.