

Marcellus Case Law Update

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Cases

- Kentucky
 - *Yost Energy, LLC v. Gaines*
- New York
 - *Drake v. Fox*
 - *Frank v. Fortuna Energy*
- Ohio
 - *City of Munroe Falls v. Division of Mineral Resources Management*

Yost Energy, LLC v. Gaines, 2008 WL 3876008 (Ky. App.) (Aug. 22, 2008)

- Facts

- On August 17, 2004, Yost Energy and Gaines entered into a lease agreement with a primary term of one year
- Lease terms provided that if the drilling of a well commenced within the one year primary term, the lessee would have the right to drill the well to completion with “reasonable diligence and dispatch”

Yost Energy, LLC v. Gaines

- Facts

- The first well was drilled on January 5, 2005
- The well was then shut-in for several months, due to “inclement weather and other delays”
- The well was completed and production resumed on November 18, 2005

Yost Energy, LLC v. Gaines

- Issue
 - The Gaines sought a declaration that the oil and gas lease had terminated for failure to comply with its express terms
 - At the trial level, the jury had found that Yost Energy had not pursued production with “reasonable diligence and good faith”

Yost Energy, LLC v. Gaines

- Holding

- The Court of Appeals of Kentucky held that the verdict was not so flagrant as to warrant reversal
- Factors considered by the jury, and subsequently, the Court:
 - Inclement weather
 - Yost's operation of wells on nearby tracts
 - Testimony of Yost's employees
 - Financing delays

Yost Energy, LLC v. Gaines

- Holding

- However, the Court found the jury instructions to be in error
 - The instructions erroneously confined the issues to the completion of the well
- Therefore, the Court reversed and remanded the case for a new trial

Drake v. Fox, 70 A.D.3d 1326, 894 N.Y.S.2d 306
(Feb. 11, 2010)

- Facts

- Two tracts of land owned by Drake and a neighbor, Powell, had been leased in their entireties, twice
 - First by Fault Line Oil Corporation in 1983
 - Then by Fox and Fox in 1996 and 1997
- The second set of leases contained a provision which stated that the lessor would be required to pay for any damages to the leasehold resulting from its operations

Drake v. Fox

- Issues
 - Before the Supreme Court of New York, Appellate Division, Plaintiffs sought damages for physical and environmental damage to their properties resulting from the installation and use of access roads for oil and gas operations
 - Further, Plaintiffs sought declaration that leases were terminated for failure to comply with express terms of the leases

Drake v. Fox

- Holding
- The Supreme Court found that “[a] mineral estate in a tract of land carries with it the right to such access over the surface that may be reasonably necessary to carry on mining activities”
 - Further, the Court found that the plaintiffs had failed to establish that the defendants had acted unreasonably in their operations, or that they were entitled to full restoration of their property prior to the completion of oil and gas production
- The Court affirmed the lower court’s dismissal of the case

Frank v. Fortuna Energy, 49 A.D.3d 1294, 856
N.Y.S.2d 322 (March 14, 2008)

- Facts

- Frank purchased the surface rights to the subject property from the Uhls
- The Uhls had conveyed only the surface of the property
 - Had reserved to themselves and their heirs title to all of the subsurface minerals, including oil and gas
- Frank's interest was characterized as a "longstanding use of the surface of the property"

Frank v. Fortuna Energy

- Issue
 - Frank sought a determination that he was the lawful owner of subsurface oil and gas on the property

Frank v. Fortuna Energy

- Holding

- The Supreme Court of New York, Appellate Division, held that the Uhls' reservation of title to the subsurface minerals constituted a fee simple interest and the right to reasonable access to the surface of the land
- Therefore, Frank could not adversely possess the mineral estate based on his residential use of the surface
- Therefore, the Court affirmed the trial court's summary judgment grant

City of Munroe Falls v. Division of Mineral Resources Management, 2010 WL 3641543 (Ohio App. 10 Dist.) (Sept. 21, 2010)

- Facts

- The Chief of Ohio's Division of Mineral Resources Management granted a permit to D & L Energy, Inc. allowing D & L to drill for gas and oil near the Cuyahoga River
- The permit allowed D & L to drill on property approximately 400 feet from the Cuyahoga River and approximately 1350 feet upriver from the Cuyahoga Falls, the source of Munroe Falls drinking water

City of Munroe Falls v. Division of Mineral Resources Management

- Issue
 - Munroe Falls filed suit against the Chief of the Division of Mineral Resources Management, alleging that the permit's grant was unlawful and unreasonable
 - Munroe Falls argued that (1) the sensitive nature of the environmental setting, (2) the risk of adverse impacts resulting from drilling for oil and gas, and (3) that no conditions can be imposed to completely eliminate all risks associated with drilling posed an imminent danger to the public health and safety to require the drilling permit to be denied

City of Munroe Falls v. Division of Mineral Resources Management

- Issue
 - Ohio Revised Code 1509.06(F) requires the denial of a drilling permit where “there is a substantial risk that the operation...will present an imminent danger to public health or safety or damage to the environment”

Munroe Falls v. Mineral Resources Management, cont'd.

- Holding

- The Court of Appeals found that requiring the elimination of all drilling risks would frustrate the O.R.C.'s statutory purpose enabling oil and gas drilling
- Further, the Ohio Department of Natural Resources had taken adequate steps to minimize drilling risks, steps that could “be expected to prevent any harm to the environment”
- The Court of Appeals upheld the permit's grant, finding that the issuance of drilling permits requires *minimization*, not complete *elimination* of drilling risks



Thank You