



ORIGINAL

NOT FOR OFFICIAL PUBLICATION

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA
FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA

DIVISION IV

JUL 20 2023

TRIBUTARY RESOURCES, LLC,)
)
Plaintiff/Appellee,)

JOHN D. HADDEN
CLERK

vs.)

Case No. 120,040

MONTY L. HOTT PRODUCTION)
CORP.; KAISER-FRANCIS OIL)
COMPANY; L.R. MCBRIDE, INC. (as)
Successor to L.R. McBride Engineering,)
Inc.); BE-JA, LLC; CASA CORTEZ)
HOLDINGS, INC.; D&T OIL, LLC;)
VOORTMAN OIL & GAS, LLC; and)
DEWAARD OIL, LLC,)

Defendants/Third-Party)
Plaintiffs/Appellants,)

CHAPARAL ENERGY, LLC,)
)
Third-Party Defendant.)

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APPEAL FROM THE DISTRICT COURT OF
KINGFISHER COUNTY, OKLAHOMA

HONORABLE LANCE E. SCHNEITER, TRIAL JUDGE

REVERSED AND REMANDED
PURSUANT TO SUPREME COURT RULE 1.201

Michael S. Booze
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For Plaintiff/Appellee
Tributary Resources, LLC

Ralph A. Sallusti
Oklahoma City, Oklahoma

For Defendants/Third-Party
Plaintiffs/Appellees
Monty L. Hott Production;
Corp.; L.R. McBride, Inc.;
Be-Ja, L.L.C.; Casa Cortez
Holdings, Inc.; D&T Oil,
L.L.C.; and Voortman Oil &
Gas, LLC

Mike Mordy
Carrie Pfrehm
MORDY, MORDY,
PFREHM & WILSON P.C.
Ardmore, Oklahoma

For Defendant/Third-Party
Plaintiff/Appellee
Kaiser-Francis Oil Company

John M. "Jake" Krattiger
GABLEGOTWALS
Nicholas V. Merkley
Tulsa, Oklahoma

For Third-Party Defendant

OPINION BY GREGORY C. BLACKWELL, PRESIDING JUDGE:

The plaintiff, Tributary Resources, LLC, holder of a leasehold interest under a top lease, brought suit seeking a declaration that the defendants' rights under a prior oil and gas lease ("base lease") had terminated for want of production. Tributary filed a motion for summary judgment arguing that because there was no production for a period exceeding the time allowed by the base lease's cessation-of-production clause, the base lease had expired. The defendants argued that the cessation-of-production clause had not been triggered because the well remained capable of producing in paying quantities and offered evidence of the same in their response to the plaintiff's motion.

The trial court granted summary judgment in favor of the plaintiff, specifically finding that the cessation-of-production clause had been triggered:

“In the case at bar, Plaintiff included [production in paying quantity] analysis from November 2015 to August 2016 in its Motion which showed that the Subject Well was not producing in paying quantities in a time period exceeding the cessation clause, therefore, the *Hoyt* case controls the outcome of this case.” ROA, Doc. 31, *Order*, pg. 4.

The defendants appealed, arguing that the trial court erred in applying the cessation-of-production clause when the question of whether the well was capable of production remained in dispute. In response, the plaintiff repeated its argument that “the cessation of production for greater than 60 days served to terminate the lease pursuant to unambiguous language.” *Response to Petition in Error*, Exhibit A.

While this appeal was pending, the Oklahoma Supreme Court decided *Tres C v. Raker Resources*, 2023 OK 13 (mandate issued July 20, 2023). The case definitively decides the dispositive question on appeal in favor of the defendants, and thus requires reversal. The Court held: “[T]he cessation-of-production clause and the 60-day time period contained therein have no bearing on anything that is done before the cessation occurs, including the assessment of whether a cessation has occurred.... We conclude the trial court erred when it relied upon the cessation-of-production clause to establish a 3-month time period for assessing whether a cessation of production in paying quantities had occurred.” *Id.* ¶¶ 28, 36 (footnote omitted). The trial court’s holding to the contrary in this case, and its reliance on *Hoyt*, which the Court found unconvincing in *Tres C* for three separate reasons, *see id.* ¶¶ 32-35, was in error. It is further clear that

question of whether the habendum clause was satisfied under the analysis set forth in *Tres C* was not performed by the trial court, and could not have been decided on summary judgment, as the parties vigorously dispute whether the well in question remained capable of production during the relevant timeframe, which must be “over ‘a time [period] appropriate under all of the facts and circumstance” *Id.* ¶ 37 (quoting *Barby v. Singer*, 1982 OK 49, ¶ 16, 648 P.2d 14, 16-17).

In this case, the trial court tied the accounting period used to determine whether a well remains capable of production under a lease’s habendum clause directly to time period set forth that lease’s cessation-of-production clause. Pursuant to *Tres C*, this was legal error necessitating reversal. The trial court’s order granting summary judgment to the plaintiff is reversed, and the case is remanded for further proceedings in light of *Tres C v. Raker Resources*, 2023 OK 13.

REVERSED AND REMANDED PURSUANT TO SUPREME COURT RULE

1.201.

FISCHER, J., and HUBER, J., concur.

July 20, 2023