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Court of Appeals of Tennessee,
AT NASHVILLE.

Charles Currence
v.
Harrogate Energy, LLC

No. M2014–01263–COA–R3–CV
|
April 07, 2015 Session
|
Filed May 11, 2015

Appeal from the Chancery Court for Fentress County, No. 1320; Andrew R. Tillman, Chancellor

Attorneys and Law Firms

James Frank Wilson, Wartburg, Tennessee, for the appellant, Harrogate Energy, LLC.

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J. STEVEN STAFFORD, P.J., W.S., delivered the opinion of the Court, in which ARNOLD B. GOLDIN, J., and KENNY ARMSTRONG, J., joined.

OPINION

J. STEVEN STAFFORD, P.J.

***1** This is an appeal from the decision of the trial court that certain separated mineral interests reverted to the surface owner of the land due to abandonment by the purported holder of the mineral interests. Discerning no error, we affirm.

Background

On April 25, 2013, Plaintiff/Appellee Charles Currence filed a complaint for claim of abandoned mineral interest regarding real property located in Fentress County. The complaint indicated that Appellee Harrogate Energy, LLC ("Harrogate Energy") filed a statement of claim to the separated mineral rights underlying a portion of Mr. Currence's property on August 21, 2008. In the statement of claim, Harrogate Energy asserted that it owned the mineral rights underlying 98 parcels of property in Fentress County, including property owned by Mr. Currence. Specifically, the statement of claim asserted that Harrogate Energy retained the mineral interests to the property located at Fentress County Tax Map 30, parcels 31 and 35. Mr. Currence asserted that he was the owner of the surface rights of these parcels. [1] In his complaint, Mr. Currence alleged that the taxes on the alleged mineral interest went unpaid from 1995 until 2008, when Harrogate Energy filed its statement of claim. Mr. Currence further alleged that any claim that Harrogate Energy had to the property under existing leases, if any, was too vague to enforce, and was abandoned through non-use for over twenty years pursuant to Tennessee Code Annotated Section 66–5–108(c).

1 There is no dispute on appeal that Mr. Currence is the legal owner of these parcels.

Harrogate Energy filed an answer on June 27, 2013, denying that its interest in Mr. Currence's land was too vague to be enforceable. Further, Harrogate Energy asserted that it paid all taxes owed on the property, which Harrogate Energy contended was a proper use of the property pursuant to Tennessee Code Annotated Section 66–5–108(c).

The trial court heard the matter on March 25, 2014. Much of the parties' proof was entered through stipulated exhibits. At trial, Harrogate Energy asserted that it was the successor-in-interest to a lease of the mineral rights underlying Mr. Currence's property, which lease constituted a valid use of those mineral rights within twenty years of the filing of its statement of claim, as required by Tennessee Code Annotated Section 66–5108(c). This lease, referred to as the Heatherly lease, was executed in 1980, by Mr. Currence's alleged predecessor-in-interest. The Heatherly lease was for a six-month term, which could be extended upon the construction of a well on the property and payment of $30,000.00. If extended, the Heatherly lease would run for a term of ten years, expiring in 1990. Harrogate Energy asserted that the Heatherly lease was extended and that their filing of a statement of claim in 2008 was timely. At the conclusion of trial, the trial court ruled that the Heatherly lease was extended, and as such, did not expire until 1990. The trial court further ruled that because Harrogate Energy filed its statement of claim within twenty years of the last use of the property, its claimed mineral interests were not extinguished.

***2** Prior to the entry of a final written order memorializing the trial court's oral ruling, Mr. Currence, on March 27, 2014, filed a motion to alter or amend the trial court's decision on the

basis of newly discovered evidence. Mr. Currence alleged that an affidavit recorded in the Fentress County Register's Office indicated that the Heatherly lease had not been extended. Accordingly, Mr. Currence argued that because the Heatherly lease expired in 1981, it was insufficient to show a use of the mineral rights underlying Mr. Currence's property in the twenty years preceding 2008. Attached to Mr. Currence's motion was a copy of a 1981 affidavit from the owner of the land subject to the Heatherly lease that indicated that the lease had not been extended, and therefore, expired in 1981.

On April 8, 2014, the trial court entered a final order finding that Harrogate Energy has a legal claim to the mineral rights underlying Mr. Currence's property and that the Heatherly lease, extended to 1990, was a valid use of those mineral rights within twenty years of the filing of Harrogate Energy's statement of claim. Accordingly, the trial court entered judgment in favor of Harrogate Energy.

On May 12, 2014, Harrogate Energy filed a response to Mr. Currence's motion to alter or amend, admitting that the Heatherly lease had not been extended. Harrogate Energy asserted, however, that its interest in the mineral rights underlying Mr. Currence's property had not been extinguished because it held another valid lease showing a use of the property within twenty years of the date of filing their statement of claim. Specifically, Harrogate Energy asserted that it was the successor-in-interest to a lease, referred to as the Wynn lease, which was executed in 1983. The Wynn lease purported to lease the mineral interest underlying property in Fentress County, described as undetermined parcels found on Fentress County Tax Map 40, and parcel 38.01 found on Fentress County Tax Map 30. Harrogate Energy asserted that the Wynn lease was extended until 1992, which Harrogate Energy asserted showed a use of the property well-within twenty years of its filing of a statement of claim in 2008.

The trial court heard the motion to alter or amend on May 13, 2014. The trial court reopened proof to consider the affidavit indicating that the Heatherly lease was not extended, [2] and ultimately set the original final decree aside due to the undisputed evidence that the Heatherly lease had not been extended. The trial court then heard Harrogate Energy's evidence regarding the Wynn lease. At the conclusion of the proof, the trial court found that the Wynn lease actually leased only two tracts of land that were not a part of Mr. Currence's property, [3] but that it also contained an option to lease the mineral rights underlying additional lands, which included Mr. Currence's property. The trial court further found that no proof was presented that this option was ever exercised. Based on this evidence, the trial court concluded that a lease of the mineral rights underlying two unrelated parcels and an unexercised option to lease the mineral rights underlying Mr. Currence's property was not a sufficient use of the mineral rights at issue so as to satisfy Tennessee Code Annotated Section 66–5–108(c). Finally, the trial court concluded that Harrogate Energy's payment of back taxes was an insufficient use of the property. As such, the trial court ruled that the mineral interests underlying Mr. Currence's property reverted back to him.

2 Harrogate Energy does not raise as an error on appeal the trial court's decision to reopen the proof.

3 As previously discussed, Mr. Currence owns property located at Fentress County Tax Map 30, parcels 31 and 35. These parcels were included in Harrogate Energy's statement of claim. The Wynn lease, however, purports to lease property described as undetermined parcels found on Fentress County Tax Map 40, and parcel 38.01 found on Fentress County Tax Map 30. Harrogate Energy does not assert on appeal that the trial court incorrectly found that the Wynn lease did not actually lease any of Mr. Currence's property.

***3** On June 20, 2014 the trial court entered a final written order setting aside its previous ruling. Therein, the trial court found that Harrogate Energy failed to show a required statutory use of the property within the relevant time period; therefore, the trial court ruled that the mineral interests at issue would revert back to Mr. Currence. Harrogate Energy filed a timely notice of appeal.

Issues Presented

On appeal, Harrogate Energy raises one issue, which is taken from its appellate brief:

> Whether a 1983 oil and gas lease [the Wynn lease] which term was extended until 1992 which leased a few of many tracts of lessor's lands with an option to lease all of the remaining tracts of land was sufficient non-tax use of the mineral estate to delay to 2012 the time for filing a statement of claim of mineral interest on all tracts pursuant to Tennessee Code Annotated Section 66–5–108(b), (c), and (d), to Tennessee Code Annotated Section § 66–5–804(b), and to Tennessee Code Annotated Section § 66–5–809(c) and (d). [4]

4 We note that Harrogate Energy confines its argument to whether the trial court erred in finding that there was not a sufficient "non-tax use of the mineral estate[.]" Although Harrogate Energy devotes considerable attention in its appellate brief to whether the alleged payment of taxes on the subject property constitutes a sufficient use, any argument that the trial court erred in finding no "tax-use" of the property during the relevant time period is clearly not raised in Harrogate Energy's statement of the issues presented. This Court has previously determined a party's failure to designate an argument as an issue in the statement of issues section of the party's appellate brief results in a waiver on appeal. *E.g., Forbess v. Forbess*, 370 S.W.3d 347, 356 (Tenn.Ct.App.2011); *see also* Tenn. R.App. P. 13(b) ("Review

generally will only extend to those issues presented for review."). Accordingly, any argument that the alleged payment of taxes was a sufficient use to satisfy Tennessee Code Annotated Section 66–5–108(c) is waived on appeal.

In his brief, Mr. Currence divides the issues into eleven distinct issues. However, as we perceive it, there is one dispositive issue in this case: Whether the trial court correctly concluded that Harrogate Energy failed to show a sufficient non-tax use of the mineral rights underlying Mr. Currence's property in the twenty years preceding the filing of the statement of claim.

Standard of Review

The trial court heard this case sitting without a jury. Accordingly, we review the trial court's findings of fact de novo with a presumption of correctness, unless the evidence preponderates otherwise. Tenn. R.App. P. 13(d). No presumption of correctness, however, attaches to the trial court's conclusions of law and our review is de novo. *Blair v. Brownson*, 197 S.W.3d 681, 684 (Tenn.2006) (citing *Bowden v. Ward*, 27 S.W.3d 913, 916 (Tenn.2000)).

Analysis

On appeal, Harrogate Energy asserts that the trial court erred in finding that the Wynn lease [5] did not establish a non-tax use of the mineral rights underlying Mr. Currence's property, pursuant to Tennessee Code Annotated Section 66–5–108(c).

5 Harrogate Energy appears to have abandoned any claim that a use of the mineral rights underlying Mr, Currence's property was established by the Heatherly lease.

In 1987, the Tennessee General Assembly enacted new legislation governing the use of mineral interests. The purpose of the enactment was to ensure that owners of real property were not "hindered in fully developing the surface of land" by unused, unregistered, and generally undiscoverable mineral interests in their property. *See* Tenn.Code Ann. 66–5–108(a). Accordingly, the General Assembly enacted Tennessee Code Annotated Section 66–5–108 to require owners of mineral interests to publicly identify their interests in property by filing a statement of claim.

***4** Specifically, the statute provides that a statement of claim "shall be filed by the owner of the mineral interest prior to the end of the twenty-year period set forth in subsection (c) or within three (3) years after July 1, 1987, whichever is later." Tenn.Code Ann. § 66–5–1008(d)(1). In turn, subsection (c) defines the time period for filing the statement of claim: "Any interest in coal, oil and gas, and other minerals shall, if unused for a period of twenty (20) years, be extinguished, unless

a statement of claim is filed in accordance with subsection (d), and the ownership of the mineral interest shall revert to the owner of the surface." Tenn.Code Ann. § 66–5–108(c). Generally, the use of the word "shall" in a statute indicates that the action is mandatory rather than discretionary. *See Bellamy v. Cracker Barrel Old Country Store, Inc.*, 302 S.W.3d 278, 281 (Tenn.2009). Accordingly, subsections (c) and (d) require that a statement of claim must be filed, at the latest, within twenty years of the date of the last use of the mineral interest, otherwise the mineral interest reverts back to the surface owner. *See also* Tenn.Code Ann. § 67–5804(b) ("All mineral owners shall be required to identify their mineral interests with the property assessor in the county in which the interest is located."); Tenn.Code Ann. § 675–809(d) ("[A]ny mineral interest owner failing to identify the location of the mineral interest according to § 67–5–804 shall not claim payment of taxes as a use of mineral interest as provided in title 66, chapter 5.").

Here, Harrogate Energy undisputedly filed its statement of claim on August 21, 2008. Accordingly, it must establish an appropriate use of the property within the twenty years preceding that date, or after August 21, 1988. [6] If, however, Harrogate Energy cannot establish a statutory use of the property at issue during the relevant time period, Harrogate Energy's interest in the mineral rights of such property will be extinguished, and the separated mineral interests will revert to the surface owner, Mr. Currence.

6 The trial court mistakenly states in its order that Harrogate Energy was required to file a statement of claim within twenty years of July 1, 1987, or July 1, 2007. Both parties agree that the operative question is whether Harrogate Energy could establish a use of the allegedly leased mineral rights within the twenty years preceding August 21, 2008.

Based on the above law, it is clear that the question of whether property is used during the relevant period is essential to the determination of whether mineral rights revert to the surface owner. Fortunately, the Tennessee General Assembly has offered guidance as to when mineral rights are used for purposes of Tennessee Code Annotated Section 66–5–108. Tennessee Code Annotated Section 66–5–108(b)(3) states that:

> [A] mineral interest shall be deemed to be used when there are any minerals being produced thereunder or when operations are being conducted thereon for injection, withdrawal, storage or disposal of water, gas or other fluid substances, or when rentals or royalties are being paid to the owner thereof for the purposes of delaying or enjoying the use or exercise of such rights, or when any such use is being carried out on any tract with which such mineral interest may be unitized or pooled for production purposes, or when taxes are paid on such mineral interest by the owner of the land.

Nothing in the trial court or on appeal suggests that Harrogate Energy or its predecessor-in-interest ever engaged in any mining or drilling on Mr. Currence's property. Instead, Harrogate Energy's argument on appeal is two-fold. First, Harrogate Energy asserts that the Wynn lease was extended until 1992, well within the twenty-year period at issue. Next, Harrogate Energy argues that the option to lease the mineral rights underlying Mr. Currence's property contained in the Wynn lease qualifies as "rentals or royalties are being paid to the owner thereof for the purposes of delaying or enjoying the use or exercise of such rights" so as constitute an appropriate use of the property. Tenn.Code Ann. § 66–5–108(b)(3). Because this option was held by Harrogate Energy's predecessor-in-interest within twenty years of the filing of its statement of claim, Harrogate Energy argues that the requirements of Tennessee Code Annotated Section 665–108(c) and (d)(1) have been met.

***5** Mr. Currence's argument in opposition is also two-fold. First, Mr. Currence argues that the unexercised option to lease the mineral rights underlying Mr. Currence's property does not constitute a "use" of the property pursuant to Tennessee Code Annotated Section 66–5–108(b)(3). In the alternative, Mr. Currence argues that Harrogate Energy failed to establish that the option contained in the Wynn lease actually encompassed Mr. Currence's property; thus, Mr. Currence argues that Harrogate Energy failed to establish that it had any right to the minerals underlying Mr. Currence's property, regardless of whether a statement of claim was timely filed. [7]

7 Mr. Currence states in his brief that "the trial court never reached the question" of whether Harrogate Energy actually established any legal interest in Mr. Currence's land through the option contained in the Wynn lease. However, Mr. Currence indicates that such question is "of no importance because of the [trial] court's eminently correct decision that Harrogate Energy failed" to establish a timely use of the property. Because we also dispose of this issue on the basis that Harrogate Energy failed to establish a use of the property in the relevant time period, we likewise do not resolve this issue.

The question of whether the unexercised option to lease the mineral rights underlying Mr. Currence's property qualifies as "rentals or royalties [that] are being paid" requires this Court to interpret Tennessee Code Annotated Section 66–5–108(b)(3). Accordingly, we must apply the familiar rules of statutory construction:

> Our role is to determine legislative intent and to effectuate legislative purpose. [*Lee Med., Inc. v. Beecher*, 312 S.W.3d 515, 526 (Tenn.2010)]; *In re Estate of Tanner*, 295 S.W.3d 610, 613 (Tenn.2009). The text of the statute is of primary importance, and the words must be given their natural and ordinary meaning in the context in which they appear and in light of the statute's general purpose. *See Lee Med., Inc.*, 312 S.W.3d at 526; *Hayes v. Gibson Cnty.*, 288 S.W.3d 334, 337 (Tenn.2009); *Waldschmidt v. Reassure Am. Life Ins. Co.*, 271 S.W.3d 173, 176 (Tenn.2008). When the language of the statute is clear and unambiguous, courts look no farther

> to ascertain its meaning. *See Lee Med., Inc.*, 312 S.W.3d at 527; *Green v. Green*, 293 S.W.3d 493, 507 (Tenn.2009). When necessary to resolve a statutory ambiguity or conflict, courts may consider matters beyond the statutory text, including public policy, historical facts relevant to the enactment of the statute, the background and purpose of the statute, and the entire statutory scheme. *Lee Med., Inc.*, 312 S.W.3d at 527–28. However, these non-codified external sources "cannot provide a basis for departing from clear codified statutory provisions." *Id.* at 528.

Mills v. Fulmarque, 360 S.W.3d 362, 368 (Tenn.2012).

We first consider the language of the statute. As previously discussed, Harrogate Energy asserts that the option to lease additional property contained in the Wynn lease constitutes a use because it involves "rentals or royalties [that] are being paid to the owner thereof for the purposes of delaying or enjoying the use or exercise of such rights." Tenn.Code Ann. § 66–5–108(b)(3). In our view, two phrases in subsection (b)(3) are important to our analysis: (1) that the payments represent "rentals or royalties"; and (2) and that such rentals or royalties "are being paid[.]" *Id.* We begin first with the requirement that the payments represent "rentals or royalties[.]"

The terms "rental" and "royalty" are terms of art in the context of mineral interests. For example, this Court in *Mitchell Energy Corp. v. Windle*, 1992 WL 163401 (Tenn.Ct.App.1992), quoted with approval a Texas case that held that royalty and rentals "have a well-understood meaning in the oil and gas business." *Id.* at *7 (quoting *Schlittler v. Smith*, 101 S.W.2d 543, 544 (Tex.Comm.App.1937)). The *Schlittler* Court held that the term "royalty" referred to "an interest in oil, gas, or minerals paid, received, or realized." *Windle*, 1992 WL 163401, at *7 (quoting *Schlittler*, 101 S.W.2d at 544). In addition, the term "royalty" in the mineral context has been defined as "the continuing right to participate in production." 38 Am.Jur.2d *Gas and Oil* § 33; *see also* 38 Am.Jur.2d *Gas and Oil* § 1 (noting that "Gas and oil are generally classified as minerals[.]"). Accordingly, the use of the term "royalty" indicates that this is a payment related to oil, gas, or minerals produced by the subject property. In this case, there is no dispute that no oil, gas, or minerals were ever produced by Harrogate Energy from Mr. Currence's property. Accordingly, if any payments were made during the statutory period, the payments simply cannot constitute "royalties" as that term is used in Tennessee Code Annotated Section 66–5–108(b)(3).

***6** The *Windle* Court also considered the term "rental" in the context of a mineral transaction. *See Windle*, 1992 WL 163401, at *7. In that case, the *Windle* Court concluded that the "commonly used and accepted meaning in the oil and gas industry" of the term "rental" is "money paid to the lessor during the primary term of the lease to defer drilling." *Id.* Harrogate Energy appears to argue that the payment in consideration of the extension of the Wynn lease constitutes a payment to delay the owner from utilizing the mineral rights underlying the property subject to the option in the Wynn lease. We note that Harrogate Energy cites no law to support its assertion that a payment to extend a lease containing an unexercised option to lease the pertinent property constitutes a

"rental" as that term is defined in the mineral and gas industry, nor has our research revealed any. However, assuming arguendo that the payment could constitute a "rental," that conclusion does not necessarily result in a finding that Harrogate Energy established an appropriate use of the property in the relevant twenty year period. Instead, we must also consider whether the one-time payment qualifies as "rentals [that] **are being paid**" during the relevant time period. Tenn.Code Ann. § 66–5–108(b)(3) (emphasis added).

The Tennessee Supreme Court has recognized the "importance of verb tense in a phrase" when interpreting a statute, but has cautioned that such words must be read in the context of the statute as a whole. *Amos v. Metro. Gov. of Nashville & Davidson Co.,* 259 S.W.3d 705, 714 (Tenn.2008) (citing *Baker v. Donegan*, 164 Tenn. 625, 52 S.W.2d 152, 153 (1932)). In *Baker*, for example, the Tennessee Supreme Court observed that the future tense of the verb at issue indicated that the statute applied to some event taking place in the future. *Baker*, 52 S.W.2d at 153.

Courts outside our jurisdiction who have considered similar language to Tennessee Code Annotated 66–5–108(b)(3)'s requirement that the rentals "are being paid" have concluded that such language specifies that the action involved must be ongoing. For example, in *Phoenix Life Ins. Co. v. LaSalle Bank N.A.*, No. 2:07–CV–15324, 2009 WL 877684 (E.D.Mich. Mar. 30, 2009), the Federal District Court for the Eastern District of Michigan held that the verb "[i]s ... being utilized" was "cast ... in the present progressive tense." *Id.* at *9. Similarly, the United States Court of Appeals for the Seventh Circuit held that the present progressive tense is "formed by pairing a form of the verb 'to be' and the present participle, or '-ing' form of an action verb." *U.S. v. Balint*, 201 F.3d 928, 933 (7th Cir.2000) (citing Robert Perrin, *The Beacon Handbook* 146–47 (4th ed.1997)); *see also Sorel v. Capital One Services, LLC*, No. 3:11–cv–703 (SRU), 2012 WL 3596487 (D.Conn. Aug. 20, 2012) (noting that language requiring that contracts are "currently being reviewed" indicates the present progressive tense) (citing *Dewees v. Legal Servicing, LLC*, 506 F.Supp.2d 128 (E.D.N.Y.2007)); *see also Central Oregon Independent Health Services, Inc. v. State*, 211 Or.App. 520, 156 P.3d 97, 103 (Or.App.Ct.2007) (noting that the construction of the statute that rates "are being calculated" places the statute in the present progressive tense). The present progressive tense generally connotes ongoing activity. *See Balint*, 201 F.3d at 933 (holding that present progressive tense "generally indicates continuing action"); *Barry v. Lyon*, No. 13–cv–13185, 2015 WL 1322728 (E.D.Mich. March 24, 2015) (noting that the use of the phrase "is fleeing" is "used to indicate action that is ongoing in present time") (citing Verb Tenses, Oxford Dictionaries, http://www.oxforddictionaries.com/words/verb-tenses #continuous (last visited March 23, 2015)); *State v. Rodriguez*, 27 Conn.App. 307, 606 A.2d 22, 29 (Conn.Ct.App.1992) (noting that use of the present progressive tense indicates "continuing activity"); *State v. Hart*, 66 So.3d 44, 50 (La.Ct.App.2011) (holding that use of the present progressive tense indicates " 'some activity in progress, something not finished, or something continuing' ") (quoting *State v. Hannon*, 736 So.2d 323, 330 n.3 (La.Ct.App.1999));*Verizon New Jersey Inc. v. Hopewell Borough*, 26 N.J.Tax 400, 417 (N.J.Tax 2012) (finding persuasive an

argument that "words ending in "ing" as meaning ongoing or continuing action") (citing *Laube v. Allen*, 506 F.Supp.2d 969, 980 (M.D.Ala.2007) (distinguishing "proving" from "having proved"); *Sabeti v. J.R.*, 80 Wash.App. 947, 912 P.2d 1062, 1067 (Wash.App.Ct.1996) (present participle form of verb, i.e, "examining" "connotes a continuing process or activity, not one that has a finite beginning and end"); *Pohl v. Commercial Ins. Co. of Newark, N.J.*, 36 Misc.2d 173, 232 N.Y.S.2d 92, 95 (N.Y.Sup.Ct.1962) (insurance contract using the present participle "falling" expresses a state of action in progress)); *Rummel v. Lexington Ins. Co.*, 123 N.M. 752, 945 P.2d 970, 978 (N.M.1997) ("[T]he present perfect progressive tense describes action in progress in the past that could possibly continue into the future."); *Central Oregon Independent Health*, 156 P.3d at 103 (noting that present progressive tense connotes "ongoing activity"). As such, the requirement that the rentals "are being paid" generally indicates that these payments must be ongoing or continuous.

***7** Based on our interpretation of Tennessee Code Annotated Section 66–5–108(b)(3), we conclude that Harrogate Energy has failed to establish a statutory use of the mineral rights underling Mr. Currence's property during the relevant period. First, we note that no payments of any kind were made during the twenty years preceding the filing of the statement of claim. Instead, the most recent payment made under the Wynn lease occurred in 1986—a $10.00 payment in consideration for extending the lease until 1992. This payment occurred approximately two years prior to the start of the relevant twenty-year period. Clearly, this payment does not qualify as a payment of rentals within the relevant period.

Harrogate Energy argues, however, that the one-time payment extended the lease until 1992, well within the relevant twenty year period, and that the lease's option is sufficient to constitute "rentals ... [that] are being paid" to prevent the owner of the surface rights from enjoying the mineral interests underlying the property. Respectfully, we cannot agree. While the lease clearly did not expire until after the start of the relevant period, the extension of the lease itself is simply insufficient to qualify as a use of the property under Tennessee Code Annotated Section 66–5–108(b)(3), as the Wynn lease does not actually purport to lease any of the mineral rights underlying Mr. Currence's property. Instead, the Wynn lease contains only an option to lease additional property that may include Mr. Currence's property. However, this option was never exercised, either before or during the statutory period. Accordingly, there were no payments made at any time during the relevant period that could possibly constitute the payment of rentals regarding Mr. Currence's property. Moreover, even if we were to conclude that a onetime payment to extend a lease constitutes the payment of rentals regarding the mineral interests underlying property contained in an unexercised option in the lease, this onetime payment clearly does not qualify as an ongoing or continuous payment. Therefore, Harrogate Energy has presented no evidence that shows that there were any "rentals ... being paid to [Mr. Currence or his predecessor-in-interest] thereof for the purposes of delaying or enjoying the use or exercise of such rights." Tenn.Code Ann. § 66–5108(b)(3).

Further, our interpretation of Tennessee Code Annotated Section 66–5–108(b)(3) for purposes of this case fully comports with the legislative purpose for enacting that statute. As previously discussed, the Tennessee General Assembly enacted Tennessee Code Annotated Section 66–5–108 in order to prevent the holders of separated mineral interests from sleeping on their rights without actually developing the property, causing "undue hardship and title uncertainty for surface owners." Tenn.Code Ann. § 66–5108(a)(3); *see also Hudson v. Evans*, 21 Tenn.App. 535, 113 S.W.2d 407, 414 (Tenn.Ct.App.1937) ("Equity aids the vigilant, not those who sleep on their rights.") (quoting *Winters v. Allen*, 166 Tenn. 281, 62 S.W.2d 51, 52 (Tenn.1933)). From the evidence presented in this case, it is clear that, at most, Harrogate Energy had an option to lease additional property in Fentress County, but that it did not choose to exercise that right. Clearly, Harrogate Energy cannot claim to have used the property at issue within the relevant period. To hold otherwise would be to frustrate the purpose of Tennessee Code Annotated Section 66–5–108.

Based on the foregoing, we conclude that Harrogate Energy failed to show a use of the property in the twenty years preceding the filing of its statement of claim. Pursuant to Tennessee Code Annotated Section 66–5–108(c) and (d), the trial court correctly concluded that Harrogate Energy abandoned its interest, if any, in Mr. Currence's property, and that such interests reverted to Mr. Currence.

Conclusion

***8** The judgment of the Chancery Court of Fentress County is affirmed and this cause is remanded to the trial court for further proceedings as may be necessary and are consistent with this Opinion. Costs of this appeal are taxed to Appellant Harrogate Energy, LLC, and its surety.

All Citations

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