IN THE SUPREME COURT OF THE STATE OF NEVADA

MOUNDHOUSE, LLC, A NEVADA LIMITED LIABILITY COMPANY,
Appellant,
vs.
DECOMMISSIONING SERVICES, LLC, A NEVADA LIMITED LIABILITY COMPANY,
Respondent.

No. 41119

FILED

OCT 18 2004

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting respondent title to all mineral rights on a fifty-two acre parcel of real property. Third Judicial District Court, Lyon County; David A. Huff, Judge.

FACTS

On May 1, 1986, Nevex Gold Company, Inc. conveyed to Lyon County the surface rights to approximately fifty-two acres of real property. Nevex reserved all mineral rights to the property with the right to remove those minerals interfering with Lyon County's use of the surface. Lyon County purchased the surface rights to the property with the intent to use it as a garbage dump. Because Nevex owned the surrounding property, Nevex also granted Lyon County an easement to access the property for dumping purposes. The specific terms of their agreement stated, "Lyon County wishes to acquire the Property for use as a public garbage dump, and Nevex is willing to convey the Property to Lyon County." The deed reserved to Nevex "[a]ll mineral rights associated with the above-described property, including oil, gas, and other hydrocarbons, together with the

right to remove such minerals in a manner which does not interfere with Lyon County's use of the surface."

In 1999, Nevex sold its mineral rights interest in the fifty-two acre parcel to Sierra Mining and Engineering, LLC. Sierra Mining later conveyed its interest in the property to Decommissioning. On October 4, 2001, Lyon County conveyed its interest in the property to Christopher Bawden. Bawden subsequently conveyed his interest to Moundhouse.

The dispute arose when Moundhouse contacted Frehner Construction Company, Decommissioning's lessee, and informed it that Moundhouse owned the mineral rights to the property and attempted to form a contract with Frehner. Frehner and Moundhouse did not come to an agreement regarding the mineral rights. Decommissioning filed a lawsuit to determine the respective property rights of the parties and sought to obtain damages for minerals that Moundhouse had previously removed from the property. Moundhouse denied the allegations and counterclaimed for the right to extract minerals from the surface of the property and damages for minerals Frehner had previously removed.

After a half-day trial, the district court ordered that the minerals on the property were reserved under the original conveyance from Nevex to Lyon County and that Decommissioning or its lessee could mine the surface estate to acquire those minerals. The district court also concluded that Moundhouse failed to establish that the property was dangerous and refused to award damages to Moundhouse. Moundhouse appealed the district court's order.

DISCUSSION

Standard of review

When reviewing a district court's order, we review its conclusions of law de novo.[1] We will not disturb the district court's findings of fact on appeal "if they are supported by substantial evidence."[2] Additionally, the district court has wide discretion in awarding damages, and unless the district court abused its discretion, the damages award will not be disturbed on appeal.[3]

Diorite is a mineral contemplated under the deed reservation

Moundhouse argues that the district court erred in holding that diorite was a mineral reserved under the original Nevex/Lyon County conveyance. Moundhouse contends that diorite is a construction rock and not a mineral. Because Moundhouse owns the surface rights, it also alleges that it should have title to the diorite because diorite is a surface material. We disagree.

According to the American Law of Mining, "if an otherwise common substance does possess some property giving it special value, such as limestone suitable for manufacture of cement, then it may be considered to be a mineral for purposes of the grant or reservation."[4]

---

[1]Clark County v. Sun State Properties, 119 Nev. 329, 334, 72 P.3d 954, 957 (2003).

[2]Id.

[3]Diamond Enters., Inc. v. Lau, 113 Nev. 1376, 1379, 951 P.2d 73, 74 (1997).

[4]American Law of Mining § 84.02[2][b] (2d ed. 2002).

In the instant case, Decommissioning provided an expert witness, Lawrence Martin, who specifically testified that the diorite mined on the property was a valuable locatable mineral. Kappes also testified that Frehner mined the diorite to make it into asphalt. Although diorite might be a common substance, the fact that it is suitable for manufacturing asphalt makes it valuable. Based on the expert testimony and the American Law of Mining, substantial evidence from the record indicates that diorite is a mineral. Consequently, we will not disturb the district court's findings in this regard.

Under the Nevex/Lyon County agreement, Nevex conveyed its entire interest except mineral rights. The Nevex/Lyon County deed similarly reserved to Nevex "[a]ll mineral rights associated with the above-described property, including oil, gas, and other hydrocarbons, together with the right to remove such minerals in a manner which does not interfere with Lyon County's use of the surface." Because the agreement and deed unambiguously reserved all mineral rights, including removal rights, to Nevex and it was commercially viable for Frehner to mine diorite from the property, diorite was reserved by Nevex under the original conveyance. Accordingly, the district court did not err in holding that diorite was a mineral contemplated under the deed reservation.

Surface destruction

Moundhouse argues that the district court erred in allowing Decommissioning to remove diorite from the property because the property's surface will be destroyed as a result. Moundhouse contends that because the surface estate will be destroyed, title to the diorite should vest in Moundhouse. We disagree.

Moundhouse relies on Christensen v. Chromalloy American Corp., which states that "title to surface or subsurface minerals vests in

the surface estate owner unless the mineral estate owner can remove the minerals in question by methods of extraction which will not consume, deplete or destroy the surface estate."[5]

Although in Chromalloy we held that title to surface minerals vests in the surface estate owner, Chromalloy is distinguishable. In Chromalloy, Derral and Barbara Christensen purchased the Winecup Ranch subject to a mineral rights reservation. AZL Minerals, Inc., Superior Oil Company, and Patsy R. Grube owned "any and all mineral rights" on the Winecup Ranch and leased them to Chromalloy.[6] Chromalloy mined barite through an open pit mine on the property and sued the Christensens to establish that it had a right to mine barite based on the mineral rights reservation. The Christensens counterclaimed, alleging that they owned the surface estate and that Chromalloy was destroying their ranch land through its open pit mine. After failing to obtain a preliminary injunction, the Christensens appealed to this court.[7] We reasoned that a mineral rights reservation should not be construed to allow depletion or consumption of the surface estate unless the contrary intent is expressed.[8] We further concluded that the reservation clause in Chromalloy was ambiguous because it did not state the permissible mining methods intended by the original grantor.[9] Because the

---

[5]99 Nev. 34, 37, 656 P.2d 844, 847 (1983).

[6]Id. at 35, 656 P.2d at 845.

[7]Id. at 35-36, 656 P.2d at 845-46.

[8]Id. at 36-37, 656 P.2d at 846.

[9]Id. at 40, 656 P.2d at 848.

reservation did not "clearly establish that the parties intended to allow open-pit or strip mining of the 'other minerals' referred to in the reservation," we remanded the case with instructions to grant the preliminary injunction and allow extrinsic evidence regarding the original parties' intent.[10]

The intent of the original parties in this case is unambiguous. Although we held in Chromalloy that a deed was ambiguous when the parties did not specifically state the manner of mining, the surrounding circumstances of the instant case leaves no doubt as to the parties' intent. The agreement stated that Lyon County would use the property as a garbage dump. Nevex engaged in open pit mining before and after the original conveyance of surface rights. Additionally, Nevex's successors continued to conduct open pit mining on the property as well. Evidence at trial established that Moundhouse had the right to use the surface estate for garbage dump purposes based on the Nevex/Lyon County deed. We conclude that substantial evidence supports the district court's determination.

Damages award

Moundhouse states that witnesses on both sides testified that Frehner had removed minerals from the property. Moundhouse also states that during trial, Decommissioning did not object to Bawden's testimony that Frehner created a dangerous condition on the property. Based on this evidence, Moundhouse argues that the district court should have awarded it damages. We disagree.

---

[10]Id.

The district court has wide discretion in awarding damages, and unless the district court abused its discretion, the damages award will not be disturbed on appeal.[11] After reviewing the record, we determine that not only did Moundhouse not have a basis for damages on this claim but, even if it did, the basis was speculative. Therefore, the district court did not abuse its discretion.[12] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Becker, J.
Becker

Agosti, J.
Agosti

Gibbons, J.
Gibbons

cc: Hon. David A. Huff, District Judge
Marshall Hill Cassas & de Lipkau
Harold A. Swafford
Lyon County Clerk

---

[11]Diamond Enters., Inc. v. Lau, 113 Nev. 1376, 1379, 951 P.2d 73, 74 (1997).

[12]We have reviewed Moundhouse's other arguments and determine they are without merit.