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IN THE COURT OF COMMON PLEAS  
HOLMES COUNTY, OHIO

RONDA P. STEIN, CLERK  
COURT OF COMMON PLEAS  
HOLMES COUNTY, OHIO

**DARRELL E. HELMS, et al.,**  
**Plaintiffs,**  
**V.**  
**THOMAS C. WHITNEY, et. al.,**  
**Defendants.**

**CASE NO. 12CV145**

**DECISION & JUDGMENT ENTRY**

Journalized: Journal \_\_\_\_\_, Page(s) \_\_\_\_\_

This cause came on for bench trial on July 19, 2013 and August 14, 2013, with Plaintiffs appearing with their counsel, Thomas D. White, and Defendant appearing with their counsel, Robert W. Eckinger.

A Complaint for Declaratory Judgment was filed by Plaintiffs on November 27, 2012.

A Motion for Default Judgment was filed by Plaintiffs on January 4, 2013 and was scheduled for non-oral hearing on January 29, 2013.

A Motion for Leave to Plead was filed on January 8, 2013 by Attorney Eckinger on behalf of Defendant, Thomas C. Whitney. Said motion was scheduled for non-oral hearing on January 29, 2013, at 4:00 p.m. On January 18, 2013 a Memorandum in Opposition of Defendant's Motion for Leave to Plead filed by Attorney White on behalf of Plaintiffs.

A Motion for an Extension of Time to Plead was filed by Attorney Eckinger on January 23, 2013, on behalf of Defendant, Donald E. Ridgeway.

On January 24, 2013, the order granting Defendant Donald E. Ridgeway's Motion for an Extension of Time to Plead was granted.

I HEREBY CERTIFY THAT THIS IS A TRUE COPY TO THE ORIGINAL DOCUMENTS IN MY OFFICE. WITNESS MY HAND AND SEAL OF THE COMMON PLEAS COURT

NOV - 6 2013

*Ronda P. Stein*  
Clerk of Courts, Holmes County

On January 25, 2013 Attorney Eckinger filed a Reply to Plaintiffs' Memorandum in Opposition to Motion for Leave to Plead.

On January 29, 2013 a Supplemental Memorandum in Opposition of Defendant Thomas Whitney's Motion for Leave to Plead was filed by Attorney White on behalf of Plaintiffs.

On January 30, 2013 an order was signed and filed by the Court granting Defendant, Thomas Whitney's Leave to Plead.

On February 22, 2013 Answers were filed by Eckinger on behalf of Defendants Thomas C. Whitney and Donald E. Ridgeway.

On February 28, 2013, a Civil Case Management Conference was held wherein the trial date and other scheduling dates were established.

On June 21, 2013 a Motion for Default Judgment was filed by Attorney White against Defendants Virginia Ridgeway, deceased 12/01/1981; George M. Gernhardt, deceased 04/19/2002; Ira B. Workman, deceased 05/27/2012; Violet Workman, deceased 03-18-2007; The Ohio Cities Gas Company, last address unknown; Killbuck & Millersburg Oil and Gas Company, last address unknown; and The Mutual Oil and Gas Co., c/o B & McD, Inc., 388 S. Main Street, Ste. 500, Akron, Ohio 44311.

On June 24, 2013, the order was signed granting Plaintiffs' June 21, 2013 Motion for Default Judgment vacating the lease, Plaintiff's Exhibit B.

On July 3, 2013, Plaintiffs' Pretrial Statement was filed.

On July 8, 2013, Defendants' Pretrial Statement was filed.

On July 12, 2013, a Motion in Limine was filed on behalf of Plaintiffs by Attorney White and the motion was scheduled for hearing at 8:30 a.m. on July 19, 2013 prior to the commencement of the trial.

This case came on for the first day of trial on July 19, 2013, at 9:00 a.m. with Plaintiffs appearing with their counsel, Thomas D. White. And Defendants appeared with their counsel, Robert W. Eckinger.

The Court heard testimony of three witnesses, to-wit: Defendant Thomas Whitney as on cross examination, Defendant Donald Ridgeway as on cross examination, and Plaintiff Dortha Helms on direct examination. The parties stipulated to Plaintiffs' Exhibits A, B, C, D, and F. The Court admitted Plaintiffs' Exhibits A – I except for H, and Joint Exhibits C & F, and the Plaintiffs rested their case.

The Court then scheduled the case for a second day of hearing on August 14, 2013, at 1:00 p.m. with Plaintiffs appearing with their counsel, Thomas D. White and Defendants appearing with their counsel, Robert W. Eckinger.

On August 14, 2013, the Court heard three witnesses on behalf of Defendant, to-wit: Plaintiff Darrell E. Helms as on cross examination; Defendant Thomas Whitney, and Defendant Donald Ridgeway. The Court also heard a rebuttal witness on behalf of Plaintiffs, to-wit: Dortha Helms. The Court admitted Defendants' Exhibits 1 & 2 and Plaintiffs' Exhibit J.

On September 3, 2013 Plaintiffs filed their Proposed Findings of Fact and Conclusions of Law.

On September 4, 2013, Defendants filed their Proposed Findings of Fact and Conclusions of Law.

### **DECISION**

The Court finds that the Crider No. 4 well was completed on or around April 29, 1918. This well was drilled pursuant to the lease marked Plaintiffs' Exhibit B. The Defendants, Thomas C. Whitney and Donald E.

Ridgeway, claimed interest in the Plaintiffs' land pursuant to an oil and gas lease marked Plaintiffs' Exhibit C. Said oil and gas lease was executed by the parties in 1976. The Court finds that the lease that was recorded as Plaintiffs' Exhibit B was terminated by the Court pursuant to a Motion for Default judgment filed on June 21, 2013 and executed by the Court on June 24, 2013. Therefore, the Court finds that the only lease that is in question is the 1976 lease marked Plaintiffs' Exhibit C.

The Court finds that pursuant to the terms of said lease that a well was to be commenced within six (6) months. The Court finds that the well that is considered the Crider No. 4 was drilled pursuant to the 1918 lease and, therefore, no well has been drilled pursuant to this lease. The lease required that the lease could be held if oil and gas was produced on the property, and royalties were to be paid.

The Court finds from 1976 to approximately the end of 2008 and a portion of 2009 that some oil and gas were produced and royalties were paid. The Court finds that as a matter of law that absolutely no royalties have been paid nor oil and gas produced from 2009 to the present.

The Defendants state that the grounds for nonpayment were the direct result of a storm that blew a goat pen down in 2009. There was a dispute between the Plaintiffs and Defendants about placing an electric utility pole to provide electricity to the well. The Defendants state that because of the lack of electricity the well could not be produced. The Court finds there was definitely a storm in 2009 that resulted in the disruption of electric power to the well. The Court finds that the Plaintiffs' only objection to the electrical line was that the new pole be placed in their yard.

The Court further finds that the parties both agreed that there was a new electric line pole that was set sometime in the year 2011 or 2012 and that power could have been run to the well at that time. In addition, the Court finds that even with the electrical supply terminated that a generator could have been supplied by the Defendants to produce this well.

The Court finds that it is not the fault of the Plaintiffs that production has been ceased.

The Court finds pursuant to Ohio Revised Code section 1509.062(A) (1):

The owner of a well that has not been completed, a well that has not produced within one year after completion, an existing well that is not a horizontal well and that has no reported production for two consecutive reporting periods as reported in accordance with section 1509.11 of the Revised Code, or an existing horizontal well that has no reported production for eight consecutive reporting periods as reported in accordance with section 1509.11 of the Revised Code shall plug the well in accordance with section 1509.12 of the Revised Code, obtain temporary inactive well status for the well in accordance with this section, or perform another activity regarding the well that is approved by the chief of the division of oil and gas resources management.

Therefore, the Court finds as a matter of law that the following oil and gas leases

1. Oil and Gas Lease to Eugene Ridgeway from Robert Crider containing 20 acres, more or less, recorded in the Holmes County Lease Records #44952, Vol. 46, Page 407 on October 3, 1952.
2. Oil and Gas Lease to Donald E. Ridgeway and Virginia Ridgeway from Alva and Charles Crider containing 45 acres, more or less, recorded in the Holmes County Lease Records #51884, Vol. 49, Page 281 on March 28, 1957.

are forfeited and that a certified copy of this judgment entry may be filed with the recorder's office and said leases shall be cancelled of record.

The Court finds that pursuant to Ohio Revised Code section 1509.06(2)(A)(1) that the well has an inactive status and therefore must be plugged by the Defendants.

The Plaintiffs said that and the Court finds that it is correct, that there is absolutely no assignment of the well to the Defendant Ridgeway and Defendant Whitney. There is in Plaintiffs' Exhibit J an assignment from Ridgeway and Whitney to Mr. Ridgeway's wife, Sara Ridgeway, who is now deceased. There was no evidence produced that this assignment was ever transferred from her estate to the Defendants.

The Defendants state, according to the records of the Ohio Department of Natural Resources, that the Robert Crider Well #4 was drilled on the Plaintiffs' property on April 28, 2918. (See Plaintiffs' Exhibit F).

In addition, on Plaintiffs' Exhibit J it shows that on December 31, 1965 that Sara Ridgeway, who is now deceased, purchased two leases, including the Crider well from the estate of Alva and Charles Crider. The bill of sale for this purchase was recorded in the Holmes County Recorder's Office in Vol. 2, Page 259. The Plaintiffs' previously had purchased the property pursuant to land contract in 1969 and then subsequently the property was transferred to them at the conclusion of the land contract.

The Plaintiffs did enter into an oil and gas lease with Donald Ridgeway (Plaintiffs' Exhibit C) recorded in Lease Vol. 79, Page 438 on March 2, 1977. As previously stated, the Plaintiffs did receive gas and royalties from this well until approximately the end of 2008-2009. On March 15, 1976, Defendant Ridgeway transferred rights pursuant to the lease of the well to Mr. Whitney (See Defendants' Exhibit 2). According to the Ohio Department of Natural Resources Defendant Whitney is the title owner of the Crider well (See Defendants' Exhibit F). In addition it is clear that the Plaintiffs felt that the owner of the well was the Defendants.

In addition, the Plaintiffs never claimed any ownership in the well in question. Therefore, the Court concludes that, even though the assignments are not properly recorded, it was clear that the intent of the parties was that the Defendants did own this well.

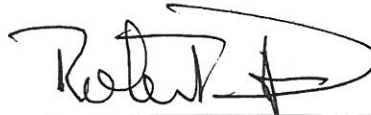
Therefore, pursuant to Ohio Revised Code section 1509.062 the Court feels that the well is inactive, has not been properly produced and therefore must be plugged immediately by the Defendants. The Ohio Revised Code shall govern the terms and conditions of the plugging, but

shall be completed no less than four months from the date of this final decision.

The Defendants are permitted to enter onto the property of the Plaintiffs for the sole purpose of the plugging of this well and for no other purpose.

This is a final order.

SO ORDERED,



ROBERT D. RINFRET, JUDGE

Dated: November 6, 2013

cc: Atty. Thomas D. White – on behalf of Plaintiffs  
Atty. Robert W. Eckinger – on behalf of Defendants

[ ] Copies distributed on \_\_\_\_\_, by \_\_\_\_\_.