

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

AMANDA S. SIMS and GEORGE W. SIMS,

Petitioners-Appellants,

vs.

NO. 7 2 0 6

HON. EDWIN L. MECHEM, Chairman;
E. S. (JOHNNY) WALKER, Member,
A. L. PORTER, JR., Member, Secretary
of the Oil Conservation Commission of
the State of New Mexico; OLSEN OILS,
INC., and TEXAS PACIFIC COAL AND OIL
COMPANY, Successor to Olsen Oils, Inc.,

Respondents-Appellees.

APPEAL FROM THE DISTRICT COURT OF LEA COUNTY

NEAL, JUDGE

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Texas and Pacific Coal & Oil Co.

O P I N I O N

COMPTON, Chief Justice.

This appeal involves Order No. R-1310 of the oil conservation commission, the validity of which is challenged here on jurisdictional grounds.

reviewing the record, in August, 1955, the commission issued Order No. R-677 pooling contiguous acreage in Section 25, Township 22 South, Range 37 East, N.M.S.A., Lea County, consisting of 40 acres in the southeast quarter of the northwest quarter and 120 acres in the northeast quarter of the southwest quarter, and south half of the southwest quarter of Section 25 as a 160-acre non-standard production unit and approved the drilling of a well. In September, 1957, the appellants, being owners of the mineral interests in the above-described production unit, and the then holder of the outstanding oil and gas leases thereon, entered into a communitization agreement pooling the leasehold estate for development. In January, 1958, a well was completed in the center of the 40 acres in the southeast quarter of the northwest quarter and its production attributed to the 160-acre production unit as provided in Order R-677 and the communitization agreement.

subsequently, the successor in interest to the leasehold estate applied to the commission for a 160-acre non-standard gas proration unit consisting of the balance of the acreage in the northwest and southwest quarters of Section 25, on which it held leases or, in the alternative, for an order force-pooling the northwest quarter of Section 25 and the southwest quarter of Section 25 as two separate standard 160-acre production units. It was proposed in this application that if the two standard units were force-pooled that a second well would be drilled in the northeast quarter of the southwest quarter of the section.

After a hearing on the application, the commission found that the most efficient and orderly development of the acreage in

1 the west half of Section 25 could be accomplished by force-pooling
2 it into two standard units and, on December 17, 1958, entered
3 Order No. R-1310 establishing the northwest quarter and the south-
4 west quarter of Section 25 as two separate 160-acre standard
5 production units, and rescinded its previous Order No. R-677. The
6 production from each pooled unit was allocated to each tract in
7 that unit in the same proportion that the acreage in said tract
8 bore to the total acreage in the unit.

9 Pursuant to Order R-1310 the production from the first
10 well was attributed to the acreage in the northwest quarter of
11 Section 25 in which appellants held only a 1/15th royalty interest,
12 and a second well was drilled in the northeast quarter of the
13 southwest quarter and its production attributed to the acreage in
14 the southwest quarter of which appellants were principal owners.
15 The second well was a smaller producer than the first, resulting
16 in diminished royalties to appellants.

17 Thereafter, in October, 1960, appellants filed an
18 application before the commission for an order to vacate and set
19 aside as void Order R-1310 and to reestablish the non-standard
20 160-acre production unit in conformity with Order R-677 and the
21 communitization agreement. The basis of this application was the
22 alleged concealment from the commission of the agreement between
23 the parties, and it challenged the jurisdiction of the commission
24 to enter Order R-1310 in violation of the agreement and of the
25 rights of appellants. The denial of this application is the basis
26 of appellants' petition for review.

27 On the hearing of the petition for review, the trial court
28 denied appellants' petition and from such ruling they have appealed
29 to this court for review.

30 Appellants have argued several points, but, in view of our
31 disposition of this appeal, we need only concern ourselves with a
32 determination of a basic jurisdictional question.

1 They now urge that the commission was without jurisdiction
2 to enter Order R-1310 because the commission failed to find that
3 waste was being committed under Order R-677 or that waste would be
4 prevented by the issuance of Order R-1310. Insofar as can be
5 ascertained from the record, the lack of jurisdiction of the
6 commission to enter Order R-1310 is raised here for the first time.
7 Consequently, this jurisdictional question must first be determined.
8 Davidson v. Enfield, 35 N. M. 580, 3 P. 2d 979; State v. Eychaner,
9 41 N. M. 677, 73 P. 2d 805; Brown v. Brown, 58 N. M. 761, 276 P. 2d
10 899; In re Conley's Will, 58 N. M. 771, 276 P. 2d 906. Also compare
11 Driver-Killer Corp. v. Liberty, 69 N. M. 259, 365 P. 2d 910; Warren
12 Foundation v. Barnes, 67 N. M. 187, 354 P. 2d 126; Section 21-2-1
13 (20)(1), N.M.S.A. 1953.

14 Unquestionably the commission is authorized to require
15 pooling of property when such pooling has not been agreed upon by
16 the parties, § 65-3-14(c), N.M.S.A. 1953, and it is clear that the
17 pooling of the entire west half of Section 25 had not been agreed
18 upon. It is also clear from sub-section (e) of the same section
19 that any agreement between owners and leaseholders may be modified
20 by the commission. But the statutory authority of the commission
21 to pool property or to modify existing agreements relating to
22 production within a pool under either of these sub-sections must
23 be predicated on the prevention of waste. Section 65-3-10, 1953
24 Comp.

25 The statutory authority of the Oil Conservation Commission
26 was thoroughly considered by this court in the recent case of
27 Continental Oil Company v. Oil Conservation Commission, 70 N. M.
28 310, 373 P. 2d 909, wherein we said:

29 "The Oil Conservation Commission is a creature
30 of statute, expressly defined, limited and empowered
31 by the laws creating it. The commission has juris-
32 diction over matters related to the conservation of
oil and gas in New Mexico, but the basis of its
powers is founded on the duty to prevent waste and
to protect correlative rights. * * * Actually, the

1 prevention of waste is the paramount power,
2 inasmuch as this term is an integral part of
3 the definition of correlative rights."

4 Appellees contend that the commission's finding that

5 "... the most efficient and orderly
6 development of the subject acreage can be
7 accomplished by force pooling the NW/4 of
8 said Section 25 and the SW/4 of said Section
9 25 to form two standard gas proration units
10 in the Tubb Gas Pool, and that such an order
11 should be entered."

12 is equivalent to a finding that this pooling will prevent waste.
13 We do not believe the finding is susceptible to such construction.
14 There is nothing in evidence before the commission tending to
15 support a finding of waste or the prevention of waste by pooling
16 the property into two standard units.

17 We conclude, therefore, that since commission Order A-1310
18 contains no finding as to the existence of waste, or that pooling
19 would prevent waste, based upon evidence to support such a finding,
20 the commission was without jurisdiction to enter Order A-1310, and
21 that it is void. Continental Oil Company v. Oil Conservation
22 Commission, supra.

23 The order denying appellants' petition for review should
24 be reversed, with directions to the trial court to enter an order
25 declaring Order A-1310 of the commission void.

26 IT IS SO ORDERED.

27 s/ J. C. Compton
28 Chief Justice

29 WE CONCUR:

30 s/ M. E. Noble J.

31 s/ Irwin E. Moise J.

IN THE DISTRICT COURT OF LEA COUNTY

STATE OF NEW MEXICO

AMANDA E. SIMS AND
GEORGE W. SIMS,

Petitioners,)

V.)

No. 12,860

HONORABLE EDWIN L. MECHEM,
CHAIRMAN, E. S. (JOHNNY)
WALKER, MEMBER, A. L. PORTER,
JR., MEMBER, SECRETARY OF THE
OIL CONSERVATION COMMISSION OF
THE STATE OF NEW MEXICO; AND
TEXAS PACIFIC COAL AND OIL
COMPANY,)

Respondents.)

J U D G M E N T

THIS MATTER having come on for trial before the Court on the 17th day of November, 1961, pursuant to agreement of the parties, and the Court having heard the testimony, considered the evidence, arguments and brief of counsel and having filed its Decision herein containing the findings of fact and conclusions of law of the Court, finding the issues for respondents,

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that the petitioners' Petition for Review be and the same is hereby denied.

AND IT IS FURTHER ORDERED BY the Court that the respondents have and recover their costs, if any, in the above entitled action, to all of which petitioners except.

Done this _____ day of December, 1961.

DISTRICT JUDGE

APPROVED AS TO FORM:

Attorney for Petitioners

Assistant Attorney General
State of New Mexico
Attorney for
Oil Conservation Commission

GIRAND, COWAN & REESE and
CAMPBELL & RUSSELL
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