

RENDERED: OCTOBER 22, 2010; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2009-CA-001553-MR

JIMMY RELIFORD, DBA RELIFORD
DRILLING COMPANY; JIMMY
RELIFORD, INDIVIDUALLY; JOYCE
RELIFORD; TERRY W. GOFF
IRREVOCABLE TRUST #1; CLINTON C.
GOFF IRREVOCABLE TRUST #1;
AND LONNIE MELTON

APPELLANTS

v. APPEAL FROM RUSSELL CIRCUIT COURT
HONORABLE VERNON MINIARD JR., JUDGE
ACTION NO. 08-CI-00535

JUDY LLOYD HELM, GUARDIAN OF
SNOW LLOYD; RONALD E. MITCHELL,
INDIVIDUALLY; RONALD E. MITCHELL
REVOCABLE LIVING TRUST; RONALD
E. MITCHELL, TRUSTEE; AND MARGENE
INVESTMENT GROUP, INC., A MICHIGAN
CORPORATION

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CAPERTON, THOMPSON, AND VANMETER, JUDGES.

VANMETER, JUDGE: Jimmy Reliford, et al.¹ (hereinafter collectively referred to as “Reliford”) appeal from the order of the Russell Circuit Court dismissing with prejudice their complaint against Ronald E. Mitchell, et al.² (hereinafter collectively referred to as “Mitchell”). For the following reasons, we affirm.

This action arises from transactions involving real property owned by Snow Lloyd and situated in Russell County, Kentucky. The trial court took judicial notice of two prior cases involving parties to this appeal and the Lloyd property that are relevant for our review.

The first case involved an action filed by Snow Lloyd against Jimmy Reliford, et al.³ to quiet title to an oil and gas lease (No. 06-CI-00011). Snow Lloyd and her husband had granted an oil and gas lease to Landtron Energy Corporation in 1988. The lease covered 350 acres of the Lloyd’s property and was granted for a period of one year, or as long thereafter as oil and gas were produced. In 2008, the parties settled the lawsuit, a new lease covering a portion of the original 350 acres was executed by Judy Helm, guardian of Snow Lloyd, to Margene Investment Group, Inc., and an order was entered that distributed the royalty proceeds earned under the lease. Reliford did not appeal this order.

¹ Jimmy Reliford, dba Reliford Drilling Company, Joyce Reliford, Terry W. Goff Irrevocable Trust #1, Clinton C. Goff Irrevocable Trust #1, and Lonnie Melton.

²

Judy Lloyd Helm, Guardian of Snow Lloyd, Ronald E. Mitchell Revocable Living Trust, Ronald E. Mitchell, Trustee, and Margene Investment Group, Inc., a Michigan Corporation. We note that although Judy Lloyd Helm is an Appellee to this action, it does not appear from the record that the trial court’s order dismissed Helm from the underlying action.

³

Landtron Energy Corporation, Gulf Coast Oil and Gas, Harry George, Ronald E. Mitchell, Greyhorse Enterprises, Inc., Joyce Reliford, Star Rock, Inc., Terry W. Goff Irrevocable Trust #1, Clinton C. Goff Irrevocable Trust #1, Lonnie Melton, and Kentucky Energy.

In the second case, the Division of Oil and Gas Conservation for the Commonwealth of Kentucky filed a lawsuit against Jimmy Reliford, dba Reliford Drilling Company, alleging that the company had illegally drilled wells on the Lloyd property without the proper permits (No. 06-CI-00344). Reliford filed a third party complaint alleging the wells were drilled on Mitchell's behalf. An agreed judgment was entered and approved by the trial court that held Reliford responsible for plugging certain wells. The judgment held Mitchell not responsible for the violations.

In 2008, Reliford filed the underlying complaint alleging that Mitchell was indebted to him for expenses he incurred for plugging the aforementioned wells in the amount of \$7,514.40. The complaint further alleged that Reliford owned an overriding royalty interest in the original Lloyd oil and gas lease to Landtron Energy. The complaint alleged that as a result of the new lease executed by Helm, Reliford's interest was defeated and as a result Reliford was entitled to collect the unpaid royalties under the new lease.

Mitchell moved to dismiss the complaint for failure to state a claim under CR⁴ 12.02, or alternatively for judgment on the pleadings under CR 12.03, or alternatively for summary judgment under CR 56. On July 17, 2009, the court entered an order dismissing the complaint. The court held that Reliford was precluded by *res judicata* from claiming Mitchell is indebted to Reliford for the plugging of certain wells and that Mitchell is required to account for the division of royalty proceeds received by court order in case No. 06-CI-00011. Additionally,

⁴ Kentucky Rules of Civil Procedure.

the court held that no contractual relationship existed between Mitchell and Reliford under which reimbursement for the plugging of the wells could be recovered. This appeal followed.

Reliford argues the trial court erred by dismissing the complaint under CR 12.02, CR 12.03, and CR 56. We disagree.

As an initial matter, the Kentucky Supreme Court has held that CR 12.03 “contemplates a relationship between these procedural vehicles and contemplates that a motion for judgment on the pleadings may be treated as one for summary judgment and disposed of in that manner.” *Hoke v. Cullinan*, 914 S.W.2d 335, 338 (Ky. 1995). Here, the trial court properly treated Mitchell’s motion as one for summary judgment.

Summary judgment shall be granted only if “the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” CR 56.03. The trial court must view the record “in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor.” *Steelvest, Inc. v. Scansteel Serv. Ctr., Inc.*, 807 S.W.2d 476, 480 (Ky. 1991). Further, “a party opposing a properly supported summary judgment motion cannot defeat it without presenting at least some affirmative evidence showing that there is a genuine issue of material fact for trial.” *Id.* at 482.

On appeal from a granting of summary judgment, our standard of review is “whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law.” *Lewis B & R Corp.*, 56 S.W.3d 432, 436 (Ky.App. 2001) (quoting *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky.App. 1996)). Because no factual issues are involved and only legal issues are before the court on a motion for summary judgment, we do not defer to the trial court and our review is *de novo*. *Hallahan v. Courier-Journal*, 138 S.W.3d 699, 705 (Ky.App. 2004).

The Kentucky Supreme Court described the doctrine of *res judicata* as follows:

The rule of *res judicata* is an affirmative defense which operates to bar repetitious suits involving the same cause of action. The doctrine of *res judicata* is formed by two subparts: 1) claim preclusion and 2) issue preclusion. Claim preclusion bars a party from re-litigating a previously adjudicated cause of action and entirely bars a new lawsuit on the same cause of action. Issue preclusion bars the parties from relitigating any issue actually litigated and finally decided in an earlier action. The issues in the former and latter actions must be identical. The key inquiry in deciding whether the lawsuits concern the same controversy is whether they both arise from the same transactional nucleus of facts. If the two suits concern the same controversy, then the previous suit is deemed to have adjudicated every matter which was or could have been brought in support of the cause of action.

For claim preclusion to bar further litigation, certain elements must be present. First, there must be identity of the parties. Second, there must be identity of the causes of action. Third, the action must have been resolved on the merits. The rule that issues which have been once litigated cannot be the subject matter of a later action is

not only salutary, but necessary to the speedy and efficient administration of justice.

Yeoman v. Commonwealth, Health Policy Bd., 983 S.W.2d 459, 464-65 (Ky. 1998)
(citations omitted).

In the case at bar, Reliford alleges he is owed \$7,514.40 from Mitchell as a result of the prior judgment against Reliford that required him to plug certain wells that were drilled under improper procedures employed by Mitchell. However, pursuant to the agreed judgment entered in No. 06-CI-00344, in which Reliford was a defendant and Mitchell was a third-party defendant, the parties agreed Mitchell was not responsible for the violations which required Reliford to plug certain wells. Any claim against Mitchell arising out of the violations should have been asserted in the previous action (No. 06-CI-00344) and thus is now barred by the doctrine of *res judicata*.

With further respect to Reliford's claim of ownership of an overriding royalty interest in the original lease between the Lloyds and Landtron Energy, all proceeds for oil royalties earned under the lease were paid out according to the court's order in the previous lawsuit to quiet title (No. 06-CI-00011). Reliford was a party to that action as well and therefore any claim relating to royalties earned under that lease should have been raised at that point. Thus, any claim to those royalties now asserted by Reliford is barred by *res judicata*. Accordingly, the trial court did not err by dismissing Reliford's complaint against Mitchell.

The order of the Russell Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANTS:

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BRIEF FOR APPELLEES RONALD
E. MITCHELL, INDIVIDUALLY;
RONALD E. MITCHELL
REVOCABLE LIVING TRUST;
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