

**SUPREME COURT OF MISSISSIPPI
COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

SPECTRUM OIL, LLC

APPELLANT

V.

CAUSE NO: 2008-CA-02155

**IN THE MATTER OF THE APPOINTMENT OF
A RECEIVER FOR THE MINERAL INTEREST OF
THOMAS (BOB) DAVIS, DECEASED, HIS UNKNOWN
HEIR(S), ADMINISTRATORS(S), EXECUTOR(S), LEGAL
REPRESENTATIVE(S), SUCCESSOR(S) AND ASSIGN(S)
APPELLEES**

BRIEF OF APPELLANT

**ON APPEAL FROM THE CHANCERY
COURT OF WAYNE COUNTY, MISSISSIPPI**

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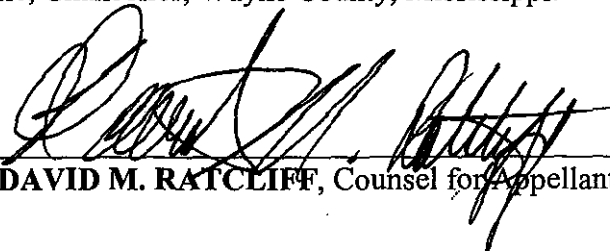
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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record for Appellant, Spectrum Oil, LLC, certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Court may evaluate possible disqualification or refusal.

1. Spectrum Oil, LLC
2. Trinity USA Partnership L.P.
3. Unknown heirs, administrators, executors, legal representative, successors and assigns
4. David M. Ratcliff, Attorney for Appellant
5. Jefferson D. Stewart, Attorney for Appellee
6. J. Shannon Clark , Attorney for Appellee
7. The Honorable Frank McKenzie, Chancellor, Wayne County, Mississippi.

This the 1 day of July, 2009.



DAVID M. RATCLIFF, Counsel for Appellant

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STATEMENT OF THE ISSUES

I.

THE CHANCERY COURT OF WAYNE COUNTY MISSISSIPPI HAS NO AUTHORITY TO GRANT PARTIAL SUMMARY JUDGMENT AGAINST APPELLANT, SPECTRUM OIL, LLC, DISSOLVING ITS RECEIVORSHIP LEASE AND EFFECTIVELY DISSOLVING THE RECEIVORSHIP FOR THE HEIRS OF THOMAS (BOB) DAVIS ESTABLISHED BY DECREE OF THE WAYNE COUNTY CHANCERY COURT ON THE BASIS THAT PROCESS BY PUBLICATION HAS FAILED TO PRODUCE AN HEIR OR DESCENDANT OF THOMAS (BOB) DAVIS.

II.

THE STATE OF MISSISSIPPI IS A NECESSARY PARTY PURSUANT TO MISSISSIPPI RULES OF CIVIL PROCEDURE RULE 19 AND §11-17-34 OF THE MISSISSIPPI CODE OF 1972 AS ANNOTATED AND AMENDED TO ANY EFFORT TO DISSOLVE A RECEIVORSHIP OR RECEIVORSHIP LEASE GRANTED BY PREVIOUS DECREE BY THE WAYNE COUNTY CHANCERY COURT.

STATEMENT OF THE CASE

Pursuant to section 11-17-33 Ms. Code of 1972 a Receiver was appointed on April 8, 2008 for the heirs of Thomas (Bob) Davis by Decree of the Chancery Court of Wayne County Mississippi, dated April 8, 2008. Further said Receiver executed an oil, gas and mineral lease to Spectrum Oil, LLC on minerals located in Wayne County, MS., also pursuant to the aforementioned Decree.

Subsequent to the aforementioned Decree Trinity, USA Partnership, LP at al filed its complaint against Spectrum and others to remove clouds on the aforescribed minerals requesting numerous awards of relief including dissolution of the Receivership Lease. Defendant, Spectrum, filed its Motion to Dismiss reciting section 11-17-34 Ms. Code of 1972 as requiring the State of Mississippi as a necessary party pursuant to Mississippi Rules of Civil Procedure Rule 19. Plaintiff filed its Motion for Default Judgement and for Summary Judgement requesting Default against the heirs of Thomas (Bob) Davis and Summary Judgement against Defendant Spectrum based on the Default. The Chancery Court denied Spectrum's Motion to Dismiss and granted Default and Summary Judgement against Appellant Spectrum. All of the above, except for the first paragraph, occurred in Wayne County Chancery Court cause number 2008-202, Supreme Court cause number 2008-TS-01124. The above cited case is the companion case to this case.

In this case the Decree was entered appointing a Receiver on April 8, 2008 and a lease granted to Appellant, Spectrum Oil, LLC, as stated above. Subsequent to the proceedings stated in paragraph 2 above Appellee filed its Motion to Intervene and for Relief from Order and Counterclaim requesting the Receivorship formed be dissolved for numerous reasons.

Appellant filed its Motion to Dismiss, Answer and Defenses, and Answer to Counterclaim; however, the Court allowed Appellee to Intervene. Subsequent thereto Appellee

filed a Motion for Partial Final Summary Judgement, which was granted over the objection and Response of Appellant on the sole ground of its decision made in Wayne County Chancery Court cause number 2008-202, Supreme Court Number 2008-TS-01624, i.e., there were no heirs or descendants of Thomas (Bob) Davis.

SUMMARY OF ARGUMENT AND LAW

The existence of an heir or descendant of Thomas (Bob) Davis is simply not required as a matter of law to sustain a Receiver or Receivership Lease pursuant to Section 11-17-33 Ms. Code of 1972. Appellee insists on maintaining the pretense that applicable law supports the lower courts ruling despite its own attorney issuing four (4) title opinions each of which repeatedly required Appellee to obtain a Receivership Lease for the interest of Thomas (Bob) Davis, the last of which was issued after this Receivership Lease was obtained. These title opinions were introduced into evidence by Appellant, not by Appellee, at the Rule 60 Motion hearing in the companion case to this one being 2008-TS-01624, and are a matter of record in this case .

Mississippi Rule of Civil Procedure Rule 19(a) is applicable to this matter and states in pertinent part:

- (a) **Persons to Be Joined if Feasible.** A person who is subject to the jurisdiction of the court shall be joined as a party in the action if:
- (1) in his absence complete relief cannot be accorded among those already parties, or
 - (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest.

If he has not been so joined, the court shall (emphasis ours) order that he be made a party. If he should join as a plaintiff but refuses to do so, he may be made a defendant or, in a proper case, an involuntary plaintiff. **Id.**

There is absolutely no question that the State of Mississippi qualified under (1) and (2) of Rule 19 due to its obligations arising under section 11-17-34 MS code of 1972, and no question as to the easy availability of the State being made a party. The case law clearly supports the State of Mississippi being made a party in this case (Ladner v. Quality Exploration Company 505 So 2d 288). In the Ladner case this Court ruled that the twenty-five percent (25%) mineral interest owners not in Court should be joined if feasible affirming the trial court opinion. The Court stated that a co-tenant's damages were not severable. Once the Receivorship was established in the present case the State of Mississippi was vested with a future contingent interest in the minerals in the Receivorship. Such an interest could not be taken from the State of Mississippi any more than the present interest of Appellant without the State being made a party. A future contingent interest in real property exists at the time it vests (i.e. at the time Decree was entered and bonus money received by Receiver) and is only extinguished by the contingency occurring (i.e. Thomas (Bob) Davis or descendants appearing and making claim). The accrued bonus and royalty proceeds shall escheat to the State (not may as stated by Appellee) at the end of ten (10) years from the date of the Decree. It is clear that the State was a necessary party easily joined and became a necessary party at the time the Decree establishing the Receivorship was entered despite Appellee's specious argument that they were necessary before the Decree was entered. Equally untenable is the assertion by Appellees that the State only has an interest if "it is proven that there were in fact descendants of Thomas (Bob) Davis;" absolutely nothing could be further from the truth. The State has to prove nothing in order to receive the proceeds in the

Receivorship at the end of ten (10) years. In truth that is the essence of this case - Once the Receivorship is established the Receiver and the State need prove nothing; conversely any challenger to the Receivorship other than descendants must prove by a preponderance of the evidence that no descendants exist. The Court in granting Partial Summary Judgment for Appellee effectively denied Appellant's Motion to Dismiss presumably on the same grounds

The Court erred in making the foregoing rulings on the simplistic basis that process by publication as to unknown heirs had not been successful in producing an heir or descendant of Thomas (Bob) Davis therefore there were no descendants of Thomas (Bob) Davis. It appears to Appellant that the learned Chancellor did not appreciate the statutory scheme created by the Legislature or the obvious purpose and intent.

Section 11-17-33 MS. Code of 1972 provides a method by which oil, gas and minerals may be developed efficiently and as expeditiously as possible which is still the stated policy of the State of Mississippi as stated in Section 53-1-1 Ms. Code of 1972 by creating an entity (Receivorship) where minerals whose title is uncertain can be placed properly, and reasonably leased and a development project moved forward; while at the same time providing protection for claimants that may come forward in the future thereby creating what is absolutely necessary in development of oil, gas and minerals and that is certainty of title before large sums of money are expended; otherwise no risk taker will invest in the effort.

The Chancellor's ruling in this case creates total uncertainty as to this particular project. It presumes that in order to satisfy the statute an unknown heir or descendant must be found by publication process, no such intent or authority is found in section 11-17-33 MS. code of 1972. The statute states that all interested parties shall be made defendants " and all such defendants shall have been served with process of the Court provided by law for causes in Chancery Court."

The statute then gives the form for process by publication. The record in this case reflects that all defendants were served with process by publication. The requirements of the statute were met, the Receiver appointed, the Receivors Lease issued pursuant to the Decree of the Court.

As this Court has ruled repeatedly and very recently reiterated in Mississippi State University and the Iams Company v People for the Ethical Treatment of Animals, Inc. 992 So2d 595, quoting a previous ruling,

“In considering a statute passed by the legislature, . . . the first question a court should decide is whether the statute is ambiguous, if it is not ambiguous, the Court should simply apply the statute according to its plain meaning and should not use principles of statutory construction.”

Nothing in §11-17-33 of the Mississippi Code of 1972 as Annotated and Amended is ambiguous, its plain meaning is obvious, and does not require proof of a descendant of Thomas (Bob) Davis subsequent to a Receivorship being established and a Lease given or that the failure of process by publication to find a person whose “whereabouts or identity is unknown” authorized a Chancellor to dissolve a Receivorship and its Lease.

Appellees Complaint being filed subsequent to the foregoing events should have , pursuant to Mississippi Rules of Civil Procedure, given Appellant, Spectrum, the opportunity to file its response, assert all legal and factual defenses, initiate and receive discovery, gather witnesses, make investigation as to appellee’s claim and move forward to trial with the burden of proof solidly on Appellee’ s shoulders. Instead presumptively and summarily the Chancellor disregarded his previous Decree and findings. Nowhere in the Mississippi Rules of Civil Procedure is such action allowed or contemplated under the same factual circumstances. If this ruling is allowed to withstand appellate scrutiny and remain unchanged it will cause a reduction in future development as title work has become increasingly more challenging as time goes on

due to factual circumstances such as the one before this Court. It is essential to provide certainty in titles in order to encourage development. The decision of the lower Court creates uncertainty while leaving a trail of Mississippi Rules of Civil Procedure violations in its wake.

Further, the failure to allow the State of Mississippi to protect the State's interest with regard to, not only the escheat possibility, but as to the stated policy of the State as provided in Section 53-1-1 of the Mississippi Code of 1972 as Annotated and Amended to encourage development and production of oil and gas is fatal in and of itself.

CONCLUSION

The most telling evidence before this Court as to the correctness of Appellant's argument exists in the record of this case. That evidence is four (4) title opinions issued by the attorney for the Appellee's advising them repeatedly that a Receivorship Lease must be obtained for this interest even after this Receivorship lease was obtained by Appellant. Appellee's lawyer certainly realized and understood the statutory scheme to provide certainty of title and also realizes if this decision is affirmed all of their future title opinions regarding Receivorship Leases will of necessity be qualified that title is good unless and except some interested party comes in and sues to dissolve the Receivorship because no unknown heir or descendant has appeared.

Appellee's seem to have the odd notion that after a Receivorship has been established and a Lease entered that the Receiver has to prove (the burden of proof) to all challengers that, as in this case, there are descendants of Thomas (Bob) Davis. Such a notion is utterly illogical in that the statute is designed to establish a Receivorship for persons whose "whereabouts or identity" is unknown. If those two facts are prerequisites for establishing a Receivorship how can any Receiver withstand such a challenge when the burden of proof is placed on the Receiver or the Lessee and why have a Receivorship statute? Again no authority exists for the Chancellor's ruling and the need for certainty in the oil and gas industry is paramount.

Simple solutions are always enticing. Appellant believes the learned Chancellor was enticed by this seemingly simple solution to the case before him while not considering the future detrimental impact on oil and gas development and law and the detrimental effect to this project.

I have had the pleasure of practicing before this Chancellor since he took office and very much respect his ability and knowledge, however, in this instance he is in error and manifestly so.

I am sure the Court realizes this is essentially the same brief as that filed in Cause Number 2008-TS-01624 and it is because the key issues are exactly the same and just as important.

RESPECTFULLY SUBMITTED,
Spectrum Oil, LLC

By:


DAVID M. RATCLIFF, Attorney for
Spectrum Oil, LLC

CERTIFICATE OF SERVICE

I, David M. Ratcliff, Attorney at Law, do hereby certify that I have this date, mailed by
United States First Class Mail, a true and correct copy of the above and foregoing *Brief of*

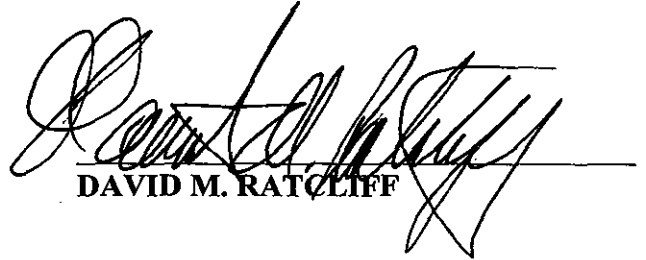
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Honorable Frank McKenzie, Chancellor
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This the 1 day of July, 2009.



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