

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

CIVIL CAUSE NO.: NO. 2010-CA-00369

**CONNIE MACK DOUGLAS AND WIFE CHARLENE DOUGLAS,
APPELLANTS**

VS.

**DENBURY ONSHORE, LLC,
APPELLEE**

APPELLANT'S BRIEF IN SUPPORT OF APPEAL

ORAL ARGUMENT REQUESTED

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CERTIFICATE OF INTERESTED PARTIES

CIVIL CAUSE NO.: 2010-CA-00369

**CONNIE MACK DOUGLAS AND WIFE CHARLENE DOUGLAS,
APPELLANTS**

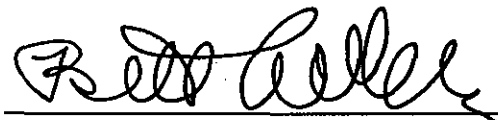
VS.

**DENBURY ONSHORE,LLC,
APPELLEE**

The undersigned counsel of record 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 this Court may evaluate possible disqualification or recusal.

**Honorable Edward E. Patten, Lincoln County Chancery Court Judge
Connie Mack Douglas, Appellant
Charlene Douglas, Appellant
Bill Waller, Sr., Attorney for Appellant
Denbury Onshore, LLC, Appellee
William F. Blair, Esq., Attorney for Appellee
Troy Farrell Odom, Esq., Attorney for Appellee**

CERTIFIED, this the 16th day of July, 2010.



BILL WALLER, SR.

**Attorney of Record for Appellants,
Connie Mack Douglas and wife Charlene Douglas**

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I. STATEMENT OF ISSUES

1. An original and first impression on an issue concerning the ownership of an abandoned oil well bore and improvements and to determine whether the owner of the surface land or the owner of the mineral estate owns or controls the abandoned well. It was error for the Chancery Court to rule that since the mineral estate is the dominate estate the mineral owners independently own the well bore to the exclusion of the surface owner even though the subject well bore had been abandoned for 34 years continuously, and no lease was executed by the surface owners. The real owner of this asset is Denbury with no value, directly or indirectly, being given to the owners of the mineral estate.

2. The authority of the Oil and Gas board acting through an order granting a Compulsive Fieldwide Unit to grant the ownership and use of an abandoned oil well bore. It was error for the Chancery Court to rule that the Oil and Gas Board had the authority to grant the exclusive use of an abandoned oil well to the field operator, Denbury, the appellee in this case.

3. Whether or not the Chancery Court had jurisdiction to determine issues concerning nuisance and personal injury arising out of the operation of the subject oil wells on the land owners residential premises. It was error for the Chancery Court to dismiss these claims stating that it did not have jurisdiction.

II. STATEMENT OF THE CASE

The Douglasses own 86.37 acres of land and a fraction of the minerals located in Section 11, Township 6 North, Range 8 East in Lincoln County, Mississippi and which land is located within the East Mallalieu Oil Field. Situated on the land owned by the Douglasses is a well bore of 8,734 feet containing improvements including tubing and casing. The Douglasses contend that they are the sole owner of the well bore which was abandoned by Chevron on April 9, 1968. All mineral leases owned by Chevron expired at about the same time.

In 2002, or 34 years after the abandonment, Denbury began taking new oil and gas leases in Section 11. The object or goal of Denbury was to reenter the East Mallalieu Field and inject it with CO₂ to produce additional oil that was not produced in the period of time that the field was operated by Chevron. In keeping with the overall plan, Denbury sent representatives to see the Douglasses and offer them a Standard Form Lease with an addendum. The addendum is an important fact because it provided the following language: "...the right to re-enter and use plugged and abandoned well bores, casing, tubing and other facilities on or under said land..." Denbury proposed to build an access road and pipeline across the Douglas' property and tendered \$1,800 as consideration for the use of the land and submitted a proposed Damage Release and Easements. This document also contained the same language and conveyed the right to Denbury to the exclusive use of the well bore. Neither document was executed, no consideration was paid, and no approval was granted by the surface owners.

The Douglasses declined to sign the Oil and Gas Lease or to sign the Release and did not take any part in the reentry of the East Mallalieu Field.

The ownership of the minerals was conveyed to many separate owners in the period

following 1947, however, the Douglasses do own a fraction of the minerals in Section 11 and following the re-entry by Denbury in the East Mallalieu Field the Douglasses have been paid working interest income of about \$300,000, however, it is noteworthy that Denbury has a net income of several hundred million from the East Mallalieu Field.

The Douglasses maintained there dwelling house on this property and outbuildings including a dairy barn, cattle pasture, vegetable garden and related uses. There is one abandoned well in front of their dwelling house that Denbury elected not to use, but chose to use the one situated near the back of the dwelling house and adjacent to the bedroom. There was no agreement and no ratification of the acts of Denbury when it built a pipeline and an access road off of the public road and placed a fence around the well head, encompassing about ½ an acre of land. The Douglasses contend that the 7/24 activity around the oil well disturbed their peaceful use of the dwelling house and gave them an unusual amount of stress based upon the noise and the activities plus the fact that Denbury was in essence, trespassers.

Accordingly, the Douglasses filed suit in the Chancery Court of Lincoln County, Mississippi to recover the value of the well bore, surface damages, and personal injury damages arising from the arbitrary and capricious use of the abandoned well situated adjacent to and a few feet from their dwelling house.

Both parties filed Motions for Summary Judgment (R. 208, 499, 503, 507, 510) and the hearing was conducted before the Chancery Court of Lincoln County on January 15, 2010, following which the Chancery Court denied Douglas' Motions and granted Denbury's Motion for Summary Judgment. In the bench opinion, the lower court referred to an 1891 Pennsylvania coal mining case as authority for its ruling, but when the written opinion was given on February 27, 2010 that

authority was not used. (R. 635, R.E. 004).

Dismissal of the Complaint was based upon the lower court's opinion that the severed mineral owners had the exclusive and independent right to use or ownership of the well bore because the mineral estate is dominant and the land surface estate is subservient. (R.635, R.E.004). That was error because the dominant right of mineral owners pertains only to exploration and production of the minerals. It has nothing to do with the surface ownership or assets or fixtures connected therewith. As stated in the Statement of Issues, the question before the Court is an original and first impression and the Court is called upon to enter a new rule of law clarifying and/or defining the ownership of abandoned property such as an oil well bore.

The Douglasses take the position that there is absolutely no precedent in this or any other state that sets gives the ownership and control of abandoned oil field equipment to the mineral owners. There are cases holding that abandoned oil wells become the exclusive property of the surface owner.

III. STATEMENT OF FACTS

In making a decision on this appeal, it will be necessary for the Court to consider whether or not the Chancery Court of Lincoln County has jurisdiction to hear issues involving an abandoned oil well bore; damages arising from the unnecessary and extraordinary use of the Douglas' land; and whether or not the lower court has jurisdiction to award damages for personal injuries arising out of the same subject matter.

Certain material facts in this case are not disputed, including the fact that the Douglasses own a homestead 86.37 acres of land in Section 11 and that they are the fee simple title owners of the surface of that acreage which encompasses on all sides of the abandoned oil well bore. Furthermore, they own a fraction of the minerals in Section 11 and have received working interest income from the production in East Mallalieu Field totaling more than \$300,000. State law requires all mineral owners to be paid regardless of no lease.

There are two wells on this homestead acreage, one in front of the house and one immediately behind or in the rear of the house. Denbury arbitrarily chose to use the well bore at the back door of the Douglas' premises and they commenced a 7/24 re-entry operation building a rode, pipeline and servicing the well which is used as a well to inject CO₂ into the East Mallalieu well area, forcing additional oil to be produced. It was more convenient and less expensive for Denbury to use this well as opposed to numerous other wells located in the unitized field.

There is no dispute that most of the minerals in Section 11 were split up and partited with the ownership going to non-resident oil speculators with some being retained by the surface owners in Section 11 and surrounding area. One of the mineral owners in Section 11 was Mr. Douglas' mother who did not lease and who died after the re-entry in the well. He is an heir to a part of these

minerals also. The land records of Lincoln County, Mississippi verify that the mineral ownership was split up and is now owned by numerous individuals and entities. Denbury did not lease 100% of the minerals in Section 11 and filed a Forced Integration Petition with the Oil and Gas Board. In due course, they obtained an Order granting a compulsory field wide unit which the lower court used as a backup or second reason for allowing the mineral estate owners exclusive ownership and/or use of the abandoned well bore. (R.185, R.E.034). The Douglasses take the position that the jurisdiction and/or authority of the Oil and Gas Board deals with their right to grant drilling permits on exact locations and to force integrate mineral owners who have not signed oil and gas leases. There is no dispute that such an Order was entered in this case and that the Douglasses had notice by mail of a hearing to grant the Order. (R.185, R.E.034). The Petition to force integrate mineral owners who have not signed leases is both incomplete and misleading because the legal description and the exact number of mineral acres owned is not stated in the Petition. However, the Petition in and of itself establishes the fact that Denbury was the lessee of only a part of the mineral ownership. Denbury did not mention old "abandoned oil wells" in the Petition or Order forcing the conclusion that the Order has no connection or bearing upon the subject well.

Among the rather unique facts involving this oil well is the fact that it is an "injection well", that is a "pipe line" to transport CO₂ gas from a surface pipeline through a vertical underground pipeline (the oil well) to petroleum reserves located somewhere in the East Mallalieu Field. An "injection well" cannot be classified as an exploration or oil producing well. Add to this undisputed use is the existence of many other abandoned wells available to Denbury and upon which they had surface owners leases. The subject well is not included in any document signed by either a surface or mineral owner.

The Douglasses offered by deposition the testimony of two experts who were well qualified and who studied the relative value of this abandoned oil well bore. That testimony establishes that this improvement is worth in the range of \$700,000 and that it was a very valuable and substantial instrument or pipeline in the re-entry and production of oil from the East Mallalieu Field.

Denbury has acknowledged that the Douglasses own the subject well bore and attempted to obtain an easement for a nominal sum, having made personal contacts and written letters to the Douglasses. (R.227, 229, 233, R.E. 039, 041, 045). In approaching the Douglasses to sign a Standard Form Producers 88 Oil and Gas Lease on their land, Denbury added an addendum which transferred the right of use of the abandoned well from the Douglasses to Denbury. (R. 233, R.E. 045). This lease was not signed. Likewise, the same language was incorporated in a Release when Denbury offered to pay a sum of money to the Douglasses for surface use in exchange for the General Release.

The undisputed facts regarding the history of this oil well are that Chevron opened production of the East Mallalieu Field in 1947, drilling numerous wells throughout a large area including the two wells located on the Douglas' property. On April 9, 1968, Chevron plugged and abandoned the subject oil well. Noteworthy is the fact that there is no transfer of title or control of this well and the abandonment was complete and continuous for this well and the East Mallalieu Field until sometime in the early part of 2002 when Denbury attempted to obtain new oil and gas leases and reenter and establish production in the field. The original oil and gas leases held by Chevron expired and 100% of the mineral interest reverted back to the mineral owners, some of whom owned surface rights and some of whom did not. After 34 years, the Douglasses take the position that the well bore and improvements became their property, and since it had been abandoned for that period of time, the mineral interest owners had no right or ownership in the well bore. The Texas and Oklahoma cases

rule that an operator has a reasonable amount of time to remove oil well equipment meaning that failure to remove within a reasonable time results in abandonment and transfers ownership of the fixture to the surface owner. We found no cases holding that the abandoned wells become the property of or were controlled by the mineral owners.

Assume for comparison with the case law in several oil producing states that Chevron had obtained new leases and unitized the East Mallalieu Field, a land owner lease on th well site might have vested Chevron with the right to reuse the well. Such comparison cannot be made in the subject case because the benefactor is not Chevron and there is no lease from the surface owner. Several reported cases in Texas hold that the operator has a right to use the abandoned well where the surface owner has signed a Standard Form Oil and Gas Lease. The issues raised are usually between the surface- mineral owner lessor and reentry by the original operator lessee.

IV. SUMMARY OF THE ARGUMENT

The lower court granted summary judgment in favor of Denbury holding that the mineral estate owners, as the dominant estate, owned the well bore and equipment to the exclusion of the owner of the surface rights. The rationale for this ruling is quite different and uses support from both the theory that the mineral estate is the dominant estate and that the Order of the Oil and Gas Board integrating the unit gave Denbury the right to use the well bore in question. However, we find no precedent in this or in any other State to support the lower court's ruling, thereby the question is one of original impression and a new and distinctly different rule of law was made by the lower court if the court's ruling is upheld.

On page 10 of the February 22, 2010 Opinion of the lower court, the conclusions of law are set out:

Based on the foregoing recitation of undisputed facts and law, this Court finds that the well bore in issue is clearly part of the mineral estate. The well bore and casing are clearly part of the subsurface. Nothing in question is above ground. The well bore and casing have no use other than for the development of the mineral estate and the surface owner has no ability to utilize the well bore and casing for any surface use. Any utilization of the well bore and casing by the surface owner would be to the detriment, or benefit, of the mineral estate which the surface owner has no interest. Therefore, the Well and casing cannot be owned by the surface estate. A well bore and well casing, once abandoned, has only one potential use, and that is reentry for the exploration and production of oil, gas and other minerals or as in this case, a part of a tertiary recovery effort. As part of the mineral estate, Denbury has the right to use the Well and casing in any manner appropriate in their operations. The Court specifically finds plugged and abandoned well bores are part of the mineral estate and as part of the mineral estate, the dominant estate owners have the right to use it in any manner that is appropriate, and which have been approved by the Mississippi State Oil and Gas Board, which, in this case, was approved by a drilling permit to drill this well and use it in tertiary recovery efforts.

(R.645, R.E.013).

The lower court offered a second basis for ruling in favor of Denbury when it referred to the Compulsory Fieldwide Unit, stating that the Order combines all leases into a common lease. The lower court pointed out that the Douglasses had received notice, but failed to appear and that Denbury had acquired the requisite percentage of royalty working interest owners' approval within the unit and that it was properly approved by the Oil and Gas Board. Quoting the court, "the court must consider that, at no point, did the Plaintiffs object to the plan of unitization, the formation of the unit and the eventual implementation of the unit even though they enjoyed the statutory right to so object." (R.645, R.E.013). However, there is no way that a fractional mineral interest owner could prevent the formation of a fieldwide unit and prevent the production of oil and gas at a given location. Since a majority of the mineral interest owners had approved of the fieldwide unit, the minority interest had no standing to stop, alter, or delay the granting of the Order. Nevertheless, there is no authority and none was cited, holding that an administrative board's right to regulate the production of oil and gas includes the granting of auxillary to transfer the use or title of an abandoned well to a "new oil and gas lessee" and we emphasize that 100% of the value of this improvement went directly to a multinational oil and gals conglomerate. Mineral owners are paid "royalty" on production and are not charged with cost of production. This valuable asset benefitted only Denbury- not the mineral lessors.

On the issue of the ownership of the abandoned oil well bore, there are no authorities cited and no law journal articles or publications referred to that excludes the surface owner right and ownership of this type of asset and moves the ownership and control over to the mineral owners exclusively.

There are no oil and gas cases rendered by any court in Mississippi touching upon this issue,

therefore, we are required to use the law of real property related to other fixtures and improvements.

The rule regarding separate mineral interest as creating a separate and distinct estate with dominant control over the exploration and production of the minerals is not a question to be decided by the Court because that rule of law stands alone and is not controlling in this case.

Improvements placed in the ground become the property of the owner of the ground.

We agree that the mineral estate gives an exploration company the right to use as much of the surface over and around the minerals as necessary to explore and gain production of the minerals. As in customary use, "explore" means to locate commercial quality of oil and gas. The use scope of the law deals only with "use of the surface to explore" and does not include valuable assets affixed to the surface. Again, that rule has no application here since the use of the land by Denbury went further when it confiscated and assumed control and ownership of a well bore and improvements worth several hundred thousand dollars without compensation to either the surface owner or the mineral owners. Bear in mind that when an owner of minerals signs a standard form oil and gas lease, he receives two valuable considerations, namely, a bonus payment upon the execution of the lease; and a free cost of exploring the minerals to determine if oil or gas can be produced; and a royalty which is paid based upon the gross quantity produced with no drilling, completion or operating cost charged against this royalty. Taking that into consideration the mineral owner has transferred its assets to the operator for very valuable consideration. That being true, then what rationale can be conjured up to give a well bore improvement worth several hundred thousand dollars to the production company free and clear. Since Denbury did not have to drill a new well and provide the hardware required to make it an injection well, they gained a valuable return independent of any interest by the mineral owners. Stated another way, Denbury has profited from an abandoned

oil well and has paid nothing whatsoever for that valuable asset. The law does not approve or condone confiscation or wrongful conversion of private property.

V. STATEMENT REGARDING ORAL ARGUMENT

In view of the fact that a new rule of law regarding the ownership of abandoned improvements and fixtures must be adopted by the Court and in doing so it must rewrite the law of real property if improvements placed on the land escheat to the mineral owners.

A backup support or basis used by the trial court to transfer the oil well improvements to the mineral owners was its interpretation of the authority of the Oil and Gas Board when granting a unitization order. That ruling must be approved or rejected by the Court.

The Court is called upon to decide the jurisdiction of the Chancery Court on issues ancillary to the determination of the ownership of the oil well and improvements, namely, surface damages and personal injury damages arising from the negligent, arbitrary and capricious use of the Douglas' land.

Oral argument on these issues will be helpful to the Court in reaching a decision on these issues.

VI. ARGUMENT

1. **An original and first impression on an issue concerning the ownership of an abandoned oil well bore and improvements and to determine whether the owner of the surface land or the owner of the mineral estate owns or controls the abandoned well. It was error for the Chancery Court to rule that since the mineral estate is the dominate estate the mineral owners independently own the well bore to the exclusion of the surface owner even though the subject well bore had been abandoned for 34 years continuously, and no lease was executed by the surface owners. The real owner of this asset is Denbury with no value, directly or indirectly, being given to the owners of the mineral estate.**

The trial court ruled that the surface owner of the land on and around the abandoned oil well had no interest in the ownership or right to use this improvement. The decision of the lower court went on to say that even if the land owner was given the exclusive and independent ownership of this oil well improvement, it had no use for the same and the only possible use would be for the production (injection of CO₂) of oil from the East Mallalieu unit. Any asset owned by the landowner is not determined by the possible, potential use of that asset since the owner may sell, trade, lease, or offer this asset as consideration for some future gain, cash or other compensation. Even if it has no value to the land owner, that does not give an oil operator such as Denbury, free use and ownership but as the facts developed this device was used as a vertical pipeline to inject a different mineral, CO₂ gas, into the geological formation which contributed to a net return to Denbury of several hundred millions of dollars then the uselessness or valueless nature of this fixture evaporated. The question is not whether or not that land owner can use the asset since there is no law requiring that any asset owned by the surface owner has to be used for any purpose at any time or for any value.

In a very concerted effort to find all of the law, pro and con, on this subject, the Appellants have been unable to find any case in any state exactly on point except the case of *Garr-Woolley v.*

Martin, 579 P.2d 206 (Ok. App. 1978):

If lessee's machinery is not removed within reasonable time after termination of oil and gas lease, equipment becomes property of landowner on the theory that casing in wells, derricks, engines and other machinery placed upon land by lessee for development and operating land for oil and gas purposes are considered trade fixtures and failure to remove trade fixtures within reasonable time results in a forfeiture, making fixtures part of realty investing ownership of fee in title thereto.

Id.

The question of ownership of the equipment contained in the well bore, that is, tubing, casing, as fixtures due to their accession becomes part of the realty. Basic real property law undisturbed through the years emphatically states that any fixture attached to the surface and/or the subsurface of the land becomes a part of the land. There is no document, bill of sale, release, or any other right given by Chevron to Denbury or anyone to continue ownership of the abandoned equipment, therefore, title vested in the surface owner, the Douglasses, herein.

This rule was recently confirmed in the cases of *Simmons v. Bank of Mississippi*, 539 So.2d 40, 42 (Miss. 1992) and *Wright v. Rub-A-Dub Car Wash, Inc.*, 740 So.2d 891, 896 (Miss. 1999).

The absence of precedent for this ruling is acknowledged by the trial court on page 10 of its bench opinion granted January 10, 2010. (R.657, R.E. 026). On page 10, it refers to the Pennsylvania case argued by Denbury's counsel in his closing argument, namely, *Lillibridge v. Lackawanna Coal Co.*, 22 A. 1035 (Penn. 1891), involved a coal mine and who owned a tunnel from which the coal was being removed 200 feet below the surface. The Pennsylvania court in 1891 ruled that the coal company could continue to use the tunnel. However, the 1891 coal mining case was not cited in the lower court's official opinion styled Findings of Facts and Conclusions of Law dated February 22, 2010. (R. 635, R.E. 004). This Pennsylvania case is pointed out to show the Court how far reaching

the effort was by Denbury to convince the lower court that the surface owner had no ownership interest in the oil well bore.

Beginning on page 9 of the February 22, 2010 opinion of the court, the rule of law referred to in Oklahoma is distinguished by the court using the following language: "In Mississippi, it is a real thing, a real interest owned in the ground." (R. 644, R.E. 012). As so, for that reason Oklahoma law is not precedent in Mississippi for cases involving mineral ownership. The rule of law controlling the interest of surface owners of land in Mississippi is no different from those rules of law in the State of Oklahoma. Mineral interest or dominant estate is not a question in this case since the oil well fixture became part of the real property, it is not a mineral, and there is no lease or document by any mineral owner giving such interest as they may have in the well bore to Denbury. Speaking rather seriously, if the mineral owners owned the M.R. Douglas No. 1, Unit 2, located in Section 11, a part of the fieldwide unit, then why did Denbury not include that fixture in the Standard Oil and Gas Leases signed by some, but not all, mineral owners in Section 11.

There is no oil well law dealing with this subject, either as to the ownership of surface estate by the mineral estate owner or by the surface estate owners, except the Oklahoma case cited which we contend is good law. On other subjects on question of ownership of abandoned improvements clearly rule that the surface owner becomes the owner by ascension. To begin with, there is no question that Chevron owned this oil well bore and the equipment located therein. It paid all of the cost of drilling and completing this oil well, therefore, it, not the mineral owners, was the exclusive owner of the hole and all improvements attached. Thirty-four years after they had abandoned that well, Denbury acquired oil and gas leases from some of the mineral owners in Section 11, not all. As previously stated, the mineral owners did not assign or transfer the well bore to Denbury and

there is no mention in any document of record in the Chancery Clerk's office in Lincoln County that Chevron or any other entity attempted to transfer that fixture to Denbury.

Precedent to award the ownership of the subject oil well to the surface owner can be gleaned from numerous cases whereby oil wells were reentered for production (not injection) and the surface owner lost a claim to an abandoned well on his property that was reentered for production. In all of these cases, the surface owner had signed a lease and the lessee was operating under a written right to produce the minerals. Such a case is that of *Browning v. Mellon Exploration Co.*, 636 S.W.2d 536 (Tex. App. 1982). In that case, Browning signed a Standard Oil and Gas Lease which included the right of the lessee to reenter the subject oil well. The comparison of the subject case with the *Browning* case cannot be made because no document signed by a surface owner or signed by a partited mineral owner mentioned this well or gave Denbury any authority to use it.

Another question which the Court will be called upon to answer is whether or not the well bore and fixtures attached in the ground are trade fixtures or if they became a part of the realty and owned by the surface owner. Denbury takes the position the Oklahoma law is different from Mississippi law and it would appear that they are trying to make the improvements trade fixtures so that they are personal property and no owned by the Douglasses. The 2007 case of *Check Cashers v. Crowell*, 950 So.2d 1035 (Miss. App. 2007) summarized "trade fixtures" law in Mississippi. The dispute in that case arose when the tenants vacated the premises a few months prior to the expiration of the lease, while continuing to make lease payments and proceeded to move their business to another location. At this time, tenants removed and/or destroyed all of the interior walls, doors, windows, lights, security system and the new air conditioning unit. The lower court awarded damages and attorney's fees for the acts by the defendants, ruling that the building became a part of

the realty. As we all know, the general rule in Mississippi has been that once a tenant has fixed an item to the premises it becomes part of the realty. *Weathersby v. Sleeper*, 42 Miss. 732, 741-42 (1869); *Simmons v. Bank of Mississippi*, 593 So.2d 40, 41 (Miss. 1992); *Stillman v. Hamer*, 8 Miss. 421, 422 (1843). In some cases, “trade fixtures” are placed on the premises by the lessee for the purpose of trade or manufacture and not intended to irrevocably become a part of the realty and these items are generally considered personal property. See *Wright v. Rub-A-Dub Car Wash*, 740 So.2d 891, 896 (Miss. 1999).

It is not disputed that this well has casing, tubing and cement and it would be impossible to remove these fixtures from the ground without doing great damage and without disturbing a large tract of land in an effort to do so. Consequently, the oil well improvements are fixtures being a part of the land and owned by the Douglasses. Assuming arguendo that the oil well improvements were originally personal property and if Chevron had elected to do so, it probably could have transferred title by Bill of Sale or other document to the mineral owners to the exclusion of the land owners. Since that was not done, accession occurred when they abandoned these fixtures and left them abandoned continuously and uninterruptedly for a period of 34 years.

The Douglas’ homestead entity included two abandoned oil wells and without any authority, there were no steps through eminent domain or otherwise, Denbury arbitrarily and capriciously entered onto the Douglas’ land, built a road, a pipeline and assumed control of the abandoned well. No where in the reported cases throughout the United States, including discussions in treatises, is there any authority approving this action by Denbury or assuming that the well and the fixtures located therein were the property of the mineral owners to the exclusion of the surface owner. If the abandoned well became a part of the real property then what legal theory exists for Denbury to

commandeer this property and surrounding access and use it to its exclusive benefit. For purposes of emphasis, we repeat the fact that the mineral owners are not charged with the cost of production, they are paid on the gross production with no production costs deducted. In reality, a fixture and land improvements having a value of several hundred thousand dollars was transferred to Denbury with absolutely no consideration into the detriment and damage of the land owners.

2. The authority of the Oil and Gas board acting through an order granting a Compulsive Fieldwide Unit to grant the ownership and use of an abandoned oil well bore. It was error for the Chancery Court to rule that the Oil and Gas Board had the authority to grant the exclusive use of an abandoned oil well to the field operator, Denbury, the appellee in this case.

Miss. Code Ann. § 53-1-1, *et. seq.* creating the Oil and Gas Board was first adopted in 1948 and reenacted several times without any substantial change.

Miss. Code Ann. § 53-1-17 sets forth the powers and jurisdiction of the Board. Its authority includes jurisdiction over waste; make reasonable rules, regulations and orders as may be necessary for the enforcement of all provisions of the Oil and Gas Board; to require that the drilling, casing and preparing be done in a proper manner; require reports showing the location of oil and gas wells; to require proof of financial responsibility; to prevent the drowning by water of any stratum or part thereof capable of producing oil and gas; to require the operation of wells in an efficient manner; to prevent blowouts, cavings and seepage; to prevent the creation of unnecessary fire hazards; to identify the ownership of all oil and gas wells producing; to regulate the shooting, perforating; and chemical treatment of wells; to regulate secondary recovery including the introduction of gas, air, or other substances into producing formations; to regulate the special of wells; to alleviate and apportion the production of oil and gas; to prevent waste; require the making of settlements with owners of oil and gas interests; to require with respect to particular areas, certificates of clearance;

to promulgate rules for safety of storage; and to take such action as necessary to enforce the Boards' rules and regulations.

We recited the contents of the statute to show the Court that there is nothing in the law that gives them any control or authority over existing and abandoned oil well units except a license or permit to use it- - without regard as to the owners of the well bore and improvements. See reference to new laws passed subsequent to Denbury's action. That conclusion is fully supported by the fact that it is a licensing and management agency, which means that they have authority to grant permits or not to grant permits to explore for oil and gas. Once a discovery is made, the rules and regulations require certain control and reports to protect against "waste" and "pollution".

As often repeated in this Brief, we again state to the Court that this rather farfetched use of the Oil and Gas Board law as authority to transfer the ownership of an abandoned oil well is beyond the scope of prior reported cases or treatises dealing with the same subject. Consequently, the Appellants herein are unable to cite cases, pro or con, exactly on point and dealing with such type of authority of an oil and gas board because that precedent does not exist either in words and phrases or through an interpretation of an intent of the legislature in passing those laws. In looking at the extent of the authority of the Oil and Gas Board, we note the fact that two new laws were passed effective July 1, 2009, Miss. Code Ann. §§ 53-3-29 and 53-3-31 dealing with "injection wells". Miss. Code Ann. Section 53-3-29 gives the Board authority to approve applications for the drilling of "injection wells" and Miss. Code Ann. § 53-3-31 gives the Board authority to grant a permit to reenter an abandoned well for injection purposes. The intent of the Legislature is licensing, waste management, and protection of mineral owners. Nowhere in the statutes or in the cases construing these statutes is the Board given any authority to control or transfer ownership over property, real

or personal. It appears that there are no laws dealing specifically with injection wells, new or abandoned, prior to July 1, 2009. Denbury's operation started up around 2005 and the injection well was commandeered before the new laws were passed. All of this seems to point up legislative intent, namely, that the Board act as a licensing agency to permit oil and gas production and then to protect against waste and public hazards. There is no precedent for an administrative agency such as this Board to transfer or vest title in fixed assets to an oil and gas company applying for a fieldwide unitization order.

As stated, Denbury has not cited any authority supporting its position that the Unitization Order gave them authority to use the abandoned well.

3. Whether or not the Chancery Court had jurisdiction to determine issues concerning nuisance and personal injury arising out of the operation of the subject oil wells on the land owners residential premises. It was error for the Chancery Court to dismiss these claims stating that it did not have jurisdiction.

The lower court's action in dismissing the claim for property damages and personal injuries was basically given *sua sponte* because there was no Motion before the court for such dismissal.

To bifurcate and divide out the various issues involving the Douglas' homestead would be extremely costly and would result in protracted litigation covering a long period of time. Actually, the issues are inseparable in that the use of the well by Denbury created the nuisance, and the injury to the property as well as to the quality of life enjoyed by the Douglasses prior to the use of the well including extreme mental anguish, stress and emotional problems arising through the harassment resulting from the use of the subject well.

In the event the Douglasses are required to go to Circuit Court on these issues then the entire factual situation and all circumstances connected with the ownership and use of the well has to be

repeated, thereby creating a need for two different lawsuits with identical facts and circumstances. The court should not be beyond the reach of all citizens and should not require unusual and unnecessary expenses such as multiple litigation dealing with one subject matter.

There is no argument that the Chancery Court has exclusive jurisdiction over issues related to the ownership of real property. Chapter 17 of the Mississippi Code Annotated beginning with Section 11-17-1 through 11-17-37 relates to and deals with controversy related to real property. Therefore, the Chancery Court of Lincoln County had exclusive jurisdiction of the title, ownership, or any damages arising out of the wrongful confiscation of the property, all to the exclusion of the Circuit Court.

We have long recognized the procedural rule, “pendant jurisdiction”. In the subject case pendant jurisdiction is whether or not the court can award damages arising out of and connected with the use and control of real estate and assets situated thereon which include the subject oil well. That principal of law is recognized in *Remax v. Lindsley*, 840 So.2d 709 (Miss. 2003), quoting from that case as follows: “Because the chancery court had original jurisdiction of the accounting, it has pendant jurisdiction to hear Lindsley’s remaining claims. A claim invokes the court’s pendant jurisdiction if it arises out of the same transaction or occurrence as a principal claim or, as others put it, out of a common nucleus of operating facts.” This rule of law was also recognized in *McDonald Corp. v. Robinson*, 590 So.2d 727 (Miss. 1991); *Hall v. Corbin*, 478 So.2d 253 (Miss. 1985).

Many of these cases affirmed by the Supreme Court approving transfer of tort claims from the Chancery Court to the Circuit Court relied upon the inviolate and mandatory provision of our Constitution that all litigants are entitled to a trial by jury. These cases include *Robertson v. Evans*, 400 So.2d 1214 (Miss. 1981) and *Southern Leisure Homes v. Hardin*, 742 So.2d 1088 (Miss. 1999).

These cases involved torts with *Robertson* being an intersectional collision with two automobiles and *Southern Leisure* being a breach of contract regarding the sale of a home in which actual and punitive damages were sought.

With the adoption of the Tort Claims Act, the mandatory jury provision was removed and a bench trial was authorized with a maximum amount of money that the trial judge can award. Therefore, it was in our court procedural changes the Constitutional provisions have been substantially deluded and so much so that in most courts the plaintiff files a separate request for jury trial, otherwise, the litigants expect to have a bench trial.

The lower court dismissed the damage issues in the Complaint on its own Motion. Denbury did not ask that it be dismissed and the Douglasses essentially waived a jury trial when alleging these claims in Chancery Court.

In many of the recent Supreme Court decisions emphasis has been given to judicial efficiency and economy as well as the right of the litigants to a speedy trial. If these claims are bifurcated it is obvious that the litigation will be extended for years to come since the trial dockets in most Circuit Courts are advanced by 1-2 years before you can obtain a setting. As stated above, in order to try the damages claims all of the facts and circumstances surrounding those claims which are identical to and the same as the suit to recover the value of the oil well requires the Douglasses to present all evidence in each of the two lawsuits. Unless and until a party litigant files a motion to transfer these claims from Chancery Court to Circuit Court, we believe that the Chancery Court has jurisdiction and can make a final decision on all issues.

The Complaint in this cause was filed on the 12th day of March, 2009. (R. 3). After court appearances and extensive costly discovery including expert witness depositions, Denbury filed its

Motion for Summary Judgment which was granted on January 10, 2010. After a protracted delay in filing the record, the briefing schedule starts in the month of July, 2010. Given the Courts turn around time of 270 days more than two (2) years will have passed since this suit was filed. After rendering an opinion another long interval of time will be required to conclude the litigation.

VII. CONCLUSION

The subject matter of this litigation creates very interesting economic and legal issues. Minerals have become extremely valuable and once partited there is no reversion provision in our law and some of the minerals in areas of our State that have been in production through the years are now scattered among residents and entities of many states and in some cases 50 years or more removed from the original owner. This unfortunate and costly removal of value to the surface owner creates a need to fairly and carefully construe the rights of the surface owners.

In the event the ruling of the trial court is affirmed, that establishes the right of any entity to sequester an old abandoned oil field and arbitrarily take over any existing well bore for either injection or production. That rule would permit the arbitrary and damaging activity by an oil production entity that has paid nothing and as frequently pointed out throughout this Brief, the use of abandoned oil wells inure 100% to the benefit of the producing company with neither the surface owner nor the partited mineral owners receiving any consideration therefrom because the production company is required to pay all of the costs necessary to produce the oil and gas and to pay royalty based on gross revenue as opposed to net revenue. A rule espoused by Denbury would result in indescribable unjust enrichment to the producer and such would be a gross and continuing miscarriage of justice and would not fulfill the Constitution provisions giving land owners the use of all improvements situated on their land whether those improvements initiated as "trade fixtures"

or as permanent improvements. Possession and control is the basis for the law of adverse possession which cannot be defeated by making claims to the land through heirship or paying the taxes.

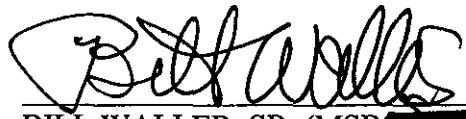
If, as customary, this Court gives a high level of credence to conclusions of law by the trial court and affirms ownership of the subject well in the mineral owners as set out on Page 10 of the February 22, 2010 Opinion of the trial court, it will give Denbury exclusive use/ownership of the well without any authority from any mineral owner to do so. Since only some, not all, mineral owners in Section 11 signed leases that theory will not work in this case. It is important to recognize that the subject well was not mentioned in any documents, leases, releases, petitions and orders of the Oil and Gas Board.

Summary judgment was inappropriately granted and the Court should reverse the lower court's ruling.

Respectfully submitted this 16th day of July, 2010.

CONNIE MACK DOUGLAS AND WIFE
CHARLENE DOUGLAS, APPELLANTS

BY:



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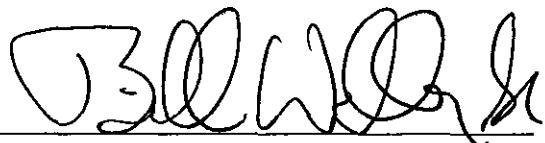
CERTIFICATE OF SERVICE

I, Bill Waller, Sr., the undersigned counsel of record for the Appellants, do hereby certify that I have this day mailed a true and correct copy of the above and foregoing document via United States mail, postage prepaid, to the following:

Honorable Edward E. Patten, Jr.
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So Certified this 16th day of July, 2010.


BILL WALLER, SR.