

091704 - Wilcox - 1st pdf

KANSAS CORPORATION COMMISSION
OIL & GAS CONSERVATION DIVISION

Form T-1
June 2000

Form must be Typed
Form must be Signed
All blanks must be Filled

REQUEST FOR CHANGE OF OPERATOR
TRANSFER OF INJECTION OR SURFACE POND PERMIT

DOR 111828

Check Applicable Boxes:

☒ Oil Lease: No. of Wells 1 **

☐ Gas Lease: No. of Wells _____ **

** Side Two Must Be Completed.

☒ Saltwater Disposal Well - Docket No. D 21401

Spot Location: 4950 feet from N / S Line

4620 feet from E / W Line

☐ Enhanced Recovery Project Docket No. _____

Entire Project: ☐ Yes ☐ No

Number of Injection Wells _____ **

Field Name: EASTHAM

Effective Date of Transfer: Sept 17, 2004

Lease Name: Wilcox

Sec. 15 Twp. 34 R. 6 ☐ E ☒ W

Legal Description of Lease: NW1/4, NE4, N1/2 NW1/4, SW1/4 NW1/4 & SW1/4

County: HARPER

Production Zone(s): _____

Injection Zone(s): Stallaker Sand

Surface Pond Permit # _____
(API # If Drill Pit)

Identify: ☐ Emergency Pit ☐ Burn Pit ☐ Storage Pit ☐ Drill Pit

Past Operator's License No. 5038

Past Operator's Name & Address: Robinson Energy Exploration
300 W. Douglas #420, Wichita, KS. 67202

Title: President - Bruce Robinson

Contact Person: _____ CONSERVATION DIVISION
WICHITA, KS

Phone: _____

Date: _____

Signature: Attached Court order is with original T-1.

New Operator's License No. 33253 ✓

New Operator's Name & Address: Herbert L. Wilcox
462 SE 40th Ave, Anthony, KS 67003

Title: President

Contact Person: HERBERT L. Wilcox

Phone: 620 842-3367

Oil / Gas Purchaser: _____

Date: 9-20-04

Signature: Herb L Wilcox

Acknowledgment of Transfer: The above request for transfer of injection authorization, surface pond permit # _____ has been noted, approved and duly recorded in the records of the Kansas Corporation Commission. This acknowledgment of transfer pertains to Kansas Corporation Commission records only and does not convey any ownership interest in the above injection well(s) or pond permit.

* Herbert Wilcox is acknowledged as the new operator and may continue to inject fluids as authorized by

Docket # D-21401 . Recommended action: Please

submit WCC's from '00 - '04

Date: 3/2/05 Bryan Roland
Authorized Signature

_____ is acknowledged as the new operator of the above named lease containing the surface pond permitted by # _____.

Date: _____
Authorized Signature

* as per legal on 3/2/05

Mail to: KCC - Conservation Division, 130 S. Market - Room 2078, Wichita, Kansas 67202

CP&R 9/23/04 MAR 07 2005 3/2/05

Must Be Filed For All Wells

* Lease Name: _____ * Location: _____

[illegible]

A separate sheet may be attached if necessary

* When transferring a unit which consists of more than one lease please file a separate side two for each lease. If a lease covers more than one section please indicate which section each well is located.

IN THE SUPREME COURT
OF THE STATE OF KANSAS

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SEP 17 2004

Per.....

TIMOTHY E MCKEE
TRIPLETT WOOLF & GARRETSON
2959 N ROCK RD STE 300
WICHITA KS 67226

CASE NO. 03-90781-A

HERBERT L. WILCOX, JR. AND
CAROLE N. WILCOX,
V.
ROBINSON ENERGY AND EXPLORATION, INC.
D/B/A ROBINSON OIL COMPANY,
JULIET WORSHAM D/B/A WORSHAM
PETROLEUM, AND ROBERT AND WILLIAM KUHN
D/B/A KUHN OIL COMPANY,
AND DAN BIEBERLE,

APPELLEES,

APPELLANTS,
APPELLEE.

COPY

YOU ARE HEREBY NOTIFIED OF THE FOLLOWING ACTION TAKEN BY THE COURT:

PETITION FOR REVIEW BY ROBINSON ENERGY/R & W KUHN.

CONSIDERED BY THE COURT AND DENIED. RESPONSE AND REPLY TO RESPONSE
NOTED.

DATE: 09/14/2004.

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SEP 20 2004

CONSERVATION DIVISION
WICHITA, KS

CAROL G. GREEN
CLERK

NOT DESIGNATED FOR PUBLICATION

No. 90,781

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

HERBERT L. WILCOX, JR. and CAROLE N. WILCOX,

Appellees,

v.

ROBINSON ENERGY and EXPLORATION, INC., d/b/a ROBINSON OIL COMPANY,
JULIET WORSHAM d/b/a WORSHAM PETROLEUM, and ROBERT and WILLIAM
KUHN d/b/a KUHN OIL COMPANY,*Appellants,*

and DAN BIEBERLE,

*Appellee.*RECEIVED
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SEP 23 2004

CIVIL

MEMORANDUM OPINION

Appeal from Harper District Court; LARRY T. SOLOMON, judge. Opinion filed

May 28, 2004. Affirmed.

Thomas A. Wood, of Wichita, for appellants.

Timothy E. McKee and Sean C. Brennan, of Triplett, Woolf & Garretson, LLC, of
Wichita, for appellees Herbert L. Wilcox, Jr. and Carole N. Wilcox.

Before HILL, P.J., JOHNSON and McANANY, JJ.

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CONSERVATION DIVISION
WICHITA, KS

Per Curiam: Robinson Energy and Exploration, Inc. d/b/a Robinson Oil Company (Robinson Energy) claims the district court erroneously terminated an oil and gas lease it operated in Harper County. It wants this court to reinstate the lease. Robinson Energy argues the court improperly included some expenses while making its cost analysis when deciding whether the lease was being operated prudently. It also alleges the district court harshly imposed a forfeiture of its lease when damages would have been an adequate remedy for its alleged failure to diligently market oil and gas. Finally, Robinson Energy maintains the court should not have awarded over \$50,000 in attorney fees to Herbert and Carole Wilcox (the Wilcoxes), even if their lease is terminated.

Giving deference to the district court that must pass on the credibility of witnesses, where we cannot, we think there is substantial competent evidence supporting the trial court's findings of fact and that its findings are sufficient to support its conclusions of law. Robinson Energy did not operate the lease prudently, and the lease failed to produce oil and gas in paying quantities. Therefore, the district court did not erroneously terminate the lease. Having determined that the lease should be terminated under its own

terms, we need not address whether forfeiture is the correct remedy for failure to market oil and gas diligently. We find no abuse of discretion by the trial court in its award of attorney fees in this case.

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CONSERVATION DIVISION
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Most of the facts of this case are undisputed. The significance of some of them, however, is disputed. The history of the lease reveals that it was created in 1977 between the Wilcoxes and Harry Worsham. The lease had a 3-year primary term and continued "as long thereafter as oil, gas, casinghead gas, casinghead gasoline or any of the products covered by this lease is or can be produced." The lease has one well, Wilcox #4, capable of producing oil and gas, and a saltwater disposal well. The lease was operated by Robinson Oil Company until 1988, when Bruce Robinson formed Robinson Energy and Exploration, Inc., d/b/a Robinson Oil Company; Robinson Energy took over operation at that time. Juliet Worsham, Harry's widow, became the sole owner of the working interest in the lease after Harry's death, and Robinson Energy had operated the lease for Juliet until it was sold to Robinson Energy in June 2001.

This action started as a lawsuit brought by the Wilcoxes to terminate the oil and gas lease on real estate they own in Harper County. A letter demanding a release of the lease had been sent to Robinson Energy previously but to no avail. The Wilcoxes alleged that the lease terminated according to its own habendum clause for failure to produce oil

and gas in paying quantities since January 1999. They also contended that the operator of the lease had not acted prudently and that its equipment on the lease had been abandoned. The Wilcoxes also wanted an award of attorney fees under K.S.A. 55-202 because Robinson Energy had refused to execute a release and thereby had forced them to file the lawsuit.

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Juliet Worsham answered the lawsuit by disclaiming any interest in the lease. CONSERVATION DIVISION
WICHITA, KS
Assignees of fractional portions in the working interest owned by Robinson Energy, Robert and William Kuhn, d/b/a Kuhn Oil, and Dan Bieberle were made defendants in the case. This matter was tried to the court. Juliet Worsham testified that she had paid Robinson Energy \$100 per month for the operation of Wilcox #4 and \$100 per month for the operation of the saltwater disposal well.

Herbert Wilcox testified. He stated that when he had executed the lease in 1977, he had reserved the right to some of the gas to heat his home. However, in November 2000, Wilcox began having problems heating his home because of the low gas pressure. He inspected the well and discovered a defect in the packing gland. Wilcox said he had called Robinson Energy asking when the defect would be fixed. Robinson Energy never fixed the problem, and Wilcox eventually had to pay \$20 to a pumper for the repair.

In further testimony, Wilcox stated the pumping unit used no electricity in 1999 or 2000. According to Wilcox, by 2001 the lease was not producing anything. He also stated that sometime after July 13, 2001, the gas pipeline was vandalized and was leaking, but Robinson Energy had failed to make any repairs. Wilcox testified that by August 2001 the equipment at the well site was in bad condition and he even pointed out in a photograph where a bird's nest had been built in the top of the pumping unit. He believed that 79.99 barrels of oil were sold in 1999 and 108.32 barrels sold in 2000, despite the fact that the pumping unit had not run in 1999 or 2000.

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CONSERVATION DIVISION

Kenton Hupp, a licensed petroleum engineer, testified on behalf of the Wilcoxes.

He evaluated the lease to determine if it was commercially healthy. In doing so, he examined the public records about the lease found at the Kansas Corporation Commission, all litigation documents, gas assessment rendition forms compiled for tax assessment, interrogatory answers, and payments from Worsham to Robinson. He made a physical examination of the well in order to inspect the condition of the equipment and the overall condition of the lease. In his opinion, the lease was not commercial in 2000. He concluded that by deducting expenses from income produced, the lease lost about \$350 in 2000. He went on to say that if "prudent operator expenses" (defined by Hupp as the annual pumping expense and ordinary operating maintenance expenses) were deducted, the lease lost more than \$2,700.

Hupp also testified that there was no record of any oil production in the years 1998, 1999, or 2000 for the lease. He stated that some oil was sold in October 2001 and that there had been some oil production from the lease that year. He also thought that the operator of the lease had failed to maintain the equipment in a prudent manner.

In contrast to this testimony, Bruce Robinson testified on behalf of Robinson Energy. He testified that he had operated the Wilcox lease and two other leases for Worsham (the Robb lease and the Eastham lease). Worsham paid him \$100 per month for the producing well and \$100 per month for the saltwater disposal well. The disposal well on the Wilcox property served as a disposal well for the Robb lease as well. Robinson testified that he billed the Robb lease \$900 per year for the use of the disposal well on the Wilcox lease. But, because of a clerical error made by his secretary, Robinson split the \$900 between the Robb lease and the Wilcox lease for 1999 and 2000, thereby billing each lease \$450 for those years.

Robinson stated the production figures on the tax rendition forms were not accurate. The data required on the forms was in no way intended to be representative of the actual production. He offered higher production figures in discovery and in his testimony. Robinson thought the lease could return to profitability, depending upon the

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price of oil and gas, after some repairs and a minimum payout of 6 to 8 months to pay for the repairs.

Robinson Energy argues that the district court erred by including the expenses associated with the saltwater disposal well as a part of the expenses of this lease. Robinson Energy thinks this miscalculation led the court to the erroneous conclusion the company had failed to produce oil and gas in commercial or paying quantities and forfeited its lease.

In order to address this issue, we must determine whether the trial court's findings of fact are supported by substantial competent evidence and whether the findings are sufficient to support the court's conclusions of law. See *Unrau v. Kidron Bethel Retirement Services, Inc.*, 271 Kan 743, 747, 27 P.3d 1 (2001). Substantial evidence is such legal and relevant evidence as a reasonable person might accept as sufficient to support a conclusion. 271 Kan. at 747. "The appellate court does not weigh conflicting evidence, pass on credibility of witnesses, or redetermine questions of fact. [Citation omitted.]" *State ex rel. Stovall v. Meneley*, 271 Kan. 355, 387, 22 P.3d 124 (2001). This court exercises unlimited review over the district court's conclusions of law. *Lindsey v. Miami County National Bank*, 267 Kan. 685, 689-90, 984 P.2d 719 (1999).

Courts in Kansas have been given directions to employ an objective test when deciding if an oil and gas lease is producing "in paying quantities." *Reese Enterprises, Inc. v. Lawson*, 220 Kan. 300, 314, 553 P.2d 885 (1976). It is a straightforward profit and loss mathematical computation.

"To avoid termination of the lease we start with the proposition that the lessee must operate the lease to produce those quantities of oil or gas which will produce a profit, however small, over operating expenses, after eliminating the initial cost of drilling and equipping the well or wells on the lease which are required to prepare the lease for production.

....

"Expenses which are taken into account in determining 'paying quantities' include current costs of operations All direct costs encountered, whether paid or accrued, in operating the lease as a prudent operator are taken into account." 220 Kan. at 314.

Robinson Energy argues that the monthly charge of \$100 per month for the operation of the salt water disposal well should have been excluded from the district court's computation. If those costs are deducted, the \$345.49 loss becomes a \$854.52 profit. Although it would indeed be a small profit, it would be within the ruling in *Reese*

Enterprises. Robinson Energy goes on to argue that the annual expense of the saltwater disposal rental was improperly considered an expense by the district court. If the \$450 is deducted from the overall expenses, the loss becomes a \$104.52 profit. If both operations and rental expenses for the saltwater disposal well are deducted, the profit would climb to \$1,304.52. The Wilcoxes counter this argument with the simple statement that expenses associated with the saltwater disposal well were actually charged to the lease and paid by Worshams.

The district court questioned Bruce Robinson's credibility in this case, and the record supports the court's findings. Robinson was in the unenviable position of attempting to convince a court that he is credible after admitting that he had filed tax rendition statements containing false information. Courts want the truth, not a smorgasbord of lies.

The district court did not err when it attributed \$450 expenses to the lease. Reese instructs that the calculations should include "all direct costs encountered." The costs relied upon by Hupp were the costs encountered by Worsham. Substantial competent evidence in the form of Robinson's own billing records support the district court's finding. The district court correctly ruled that the oil and gas lease terminated because of a failure to produce oil and gas in paying quantities.

Since we are upholding the termination of the oil and gas lease on these grounds, we need not address the issue of whether forfeiture is the proper remedy for a failure to market oil and gas diligently.

The district court granted the Wilcoxes \$50,830 in attorney fees and expenses under the authority of K.S.A. 55-202, despite the fact that it ruled in favor of Robinson Energy concerning its equipment on the lease. K.S.A. 55-202 says:

"Should the owner of such [oil and gas] lease neglect or refuse to execute a release as provided by this act, then the owner of the leased premises may sue in any court of competent jurisdiction to obtain such release, and the owner may also recover in such action of the lessee, his or her successors or assigns, the sum of one hundred dollars as damages, and all costs, together with a reasonable attorney's fee for preparing and prosecuting the suit, and he or she may also recover any additional damages that the evidence in the case will warrant. In all such actions, writs of attachment may issue as in other cases."

Our Supreme Court has ruled: "The awarding of damages, costs, attorney fees and additional damages under K.S.A. 55-202 is discretionary with the trial court. Where the lessee claims the trial court has abused its discretion by such award, the burden of proving

the abuse is upon the lessee." *Adolph v. Stearns*, 235 Kan. 622, 631, 684 P.2d 372 (1984).

Furthermore: "It is not required that one seeking forfeiture, statutory damages and attorney fees under [K.S.A. 55-201 or K.S.A. 55-206] shall follow the notice procedures provided in 55-201, but compliance with the demand prescribed in 55-206 is a condition precedent to bringing such an action in court. [Citations omitted.]" *Nelson v. Hedges*, 5 Kan. App. 2d 547, 550, 619 P.2d 1174, *rev. denied* 229 Kan. 670 (1980). K.S.A. 55-206 provides: "At least twenty days before bringing the action provided for in this act, the owner of the leased land, either by himself or herself or by his or her agent or attorney shall demand of the holder of the lease . . . that said lease be released of record. . . ." The Wilcoxes attorney sent a demand letter dated July 13, 2001, to Robinson Energy before filing their lawsuit on August 21, 2001. They have complied with all statutory requirements for seeking attorney fees under these statutes.

Here, the trial court carefully examined the time sheets of the attorney requesting fees. The court also reviewed the discovery, the trial transcripts, and the court's own trial notes. The trial court made an educated estimate that 80% of the fees and expenses were spent on the issue of whether the lease should be terminated and 20% on the issue of abandoned equipment. The court then lowered the request for fees by 20%.

In response, Robinson Energy argues that no attorney fees should be awarded because the trial court erred and, if reversed, the award of attorney fee should also be reversed. It also alleges that since the Wilcoxes demand letter was incorrect in alleging the termination date of January 1, 1999, this litigation would have been inevitable. Finally, Robinson Energy contends that since it was alleged to have abandoned their equipment, this lawsuit would have followed anyway.

The trial court is not being reversed. Our reading of the demand letter reveals no alleged termination date. Robinson Energy fails to show how the district court abused its discretion. The trial court already reduced the attorney fee request for the time and expenses incurred over the litigation about the allegedly abandoned equipment. It is a large award, but we cannot say that no reasonable person would rule as the court did here. We find no abuse of discretion.

Affirmed.