

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICANT: MEWBOURNE OIL COMPANY)
RELIEF SOUGHT: POOLING)
LEGAL DESCRIPTION: SECTION 1, TOWNSHIP 20)
NORTH, RANGE 24 WEST,)
ELLIS COUNTY,)
OKLAHOMA)

) CAUSE CD NO.
) 200604826



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CORPORATION COMMISSION
OF OKLAHOMA

HEARING BEFORE APPELLATE REFEREE:

September 17, 2021 in Virtual Courtroom D
2101 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105
Before Jan Preslar, Oil and Gas Appellate Referee

HEARING BEFORE ADMINISTRATIVE LAW JUDGE:

March 24 & 25, 2021 in Courtroom F
2101 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105
Before Kendal Huber, Administrative Law Judge

APPEARANCES: Dale Cottingham and Dean Luthey, on behalf of Mewbourne Oil Company; and Andrew J. Waldron and Russell J. Walker, on behalf of Optima Oil & Gas Company, LLC

**REFEREE'S REPORT ON MEWBOURNE'S EXCEPTIONS TO ALJ'S
RECOMMENDATION TO GRANT OPTIMA'S MOTION TO REOPEN TO
DETERMINE SANCTIONS AND RESTITUTION AND ALJ'S RECOMMENDATION
TO DENY MEWBOURNE'S MOTION TO DISMISS OPTIMA'S MOTION TO REOPEN
TO DETERMINE SANCTIONS AND RESTITUTION**

This case comes before the Oil and Gas Appellate Referee on the exceptions of Applicant Mewbourne Oil Company to the Administrative Law Judge's recommendations to grant Protestant Optima Oil & Gas Company, LLC's Motion to Reopen and Determine Sanctions and Restitution, and to deny Mewbourne's Motion to Dismiss Optima's Motion to Reopen and Determine Sanctions and Restitution.

I. SUMMARY OF REFEREE'S RECOMMENDATION

The Referee affirms the ALJ's recommendation to grant Optima's Motion to Reopen and Determine Sanctions and Restitution and to deny Mewbourne's Motion to Dismiss Optima's Motion to Reopen and Determine Sanctions and Restitution.

II. PROCEDURAL HISTORY

1. On June 1, 2006, Mewbourne filed its application seeking to pool the interests of owners in the 640-acre drilling and spacing units for the Morrow Sand, Tonkawa, Cottage Grove, Cleveland, Big Lime, Oswego, Cherokee Group, Atoka, Springer, and Chester separate common sources of supply underlying Section 1, Township 20 North, Range 24 West, Ellis County, Oklahoma. Optima was the only named respondent in the application.
2. On June 27, 2006, the cause was heard uncontested before ALJ Michael Porter and recommended for approval.
3. On August 9, 2006, Optima filed a Motion to Stay Issuance of Order and to Reopen the proceedings, claiming it owned 85% of the oil and gas interest in the subject units and was not aware of the filing of Mewbourne's pooling application.
4. On August 10, 2006, the Commission entered Order No. 528230, granting Mewbourne's pooling application in this cause.
5. Also on August 10, 2006, Optima filed a Motion to Vacate Order No. 528230.
6. On August 15, 2006, Optima's Motion to Reopen and Motion to Vacate Order No. 528230 were heard and recommended by ALJ Michael Decker. On the same day, Mewbourne announced oral exceptions to the ALJ's recommendations to grant Optima's motions.
7. On August 22, 2006, Appellate Referee Randolph Specht recommended the ALJ's recommendation to grant Optima's Motion to Reopen and Motion to Vacate Order No. 528230 be affirmed.
8. On September 8, 2006, the Commission issued Order No. 529450, rejecting the ALJ's and Referee's recommendations, and denying Optima's Motion to Reopen and Motion to Vacate Order No. 528230, saying, "Optima signed for and accepted certified mailing but contends that its manager in Oklahoma City was not made aware of such fact by the employee who signed for the mailing."
9. Optima appealed the Commission's Order No. 529450 to the Oklahoma Supreme Court.
10. On April 8, 2008, the Oklahoma Court of Appeals vacated Order No. 528230 and reversed Commission Order No. 529450 in a 20-page opinion, stating, "it is undisputed that Mewbourne did not present the Corporation Commission a complete disclosure of facts to allow

the Corporation to make an informed decision."¹ Mewbourne filed a petition for writ of certiorari to the Oklahoma Supreme Court.

11. On September 8, 2008, the Supreme Court denied Mewbourne's petition for writ of certiorari and withdrew the Court of Appeal's April 8, 2008 opinion from publication.
12. On January 17, 2014, Optima filed a Motion to Reopen to Determine Sanctions and Restitution Arising from Applicant's Adjudicated Misconduct.
13. On February 2, 2017, Mewbourne filed a Motion to Dismiss Optima's Motion to Reopen to Determine Sanctions and Restitution, and on June 20, 2017, Optima filed a response thereto.
14. On July 17, 2017, Mewbourne's Motion to Dismiss was heard by ALJ Andrew Dunn, who recommended Mewbourne's Motion be heard with Optima's Motion to Reopen to Determine Sanctions and Restitution because the motions would present much of the same material. The Referee agreed, and the Commission entered Order No. 714709, consolidating for hearing Optima's Motion to Reopen to Determine Sanctions and Restitution and Mewbourne's Motion to Dismiss such motion.
15. On March 1, 2021, Mewbourne filed an Amended Motion to Dismiss Optima's Motion to Reopen to Determine Sanctions and Restitution.
16. On March 23 and 24, 2021, Optima file a response to Mewbourne's Amended Motion to Dismiss and the motions were heard by the ALJ, who issued her report on August 12, 2021, recommending Optima's Motion to Reopen to Determine Sanctions and Restitution be granted and recommending Mewbourne's Motion to Dismiss Optima's Motion to Reopen to Determine Sanctions and Restitution be denied.
17. On August 16, 2021, Mewbourne filed written exceptions to the ALJ's August 12, 2021 report, which were heard by the Referee on September 17, 2021.

III. ANALYSIS

It is well-settled that the Commission is a tribunal of limited jurisdiction, having only those powers conferred upon it by the Constitution and statutes, either expressly or by necessary implication. *Amarex, Inc. v. Baker*, 1982 OK 155, 655 P.2d 1040, 1045; *Corporation Com'n v. Phillips Petroleum Co.*, 1975 OK 11, 536 P.2d 1284, 1290; *Choctaw Gas Co. v. Corporation Com'n*, 1956 Ok 110, 295 P.2d 800, 802; *Cities Service Gas Co. v. Peerless Oil & Gas Co.*, 1950 OK 4, 220 P. 2d 279, 288.

¹ Optima's operations manager in Oklahoma City had testified, that in February, 2006, he informed Mewbourne's landman and only witness at the uncontested hearing on its pooling application, that Optima would protest any attempt to pool and that Optima intended to operate the unit.

The question presented here is "whether the imposition of sanctions for intrinsic fraud committed on the Commission when acting as a court of record is one of the inherent powers conferred upon the Commission by necessary implication?"

Mewbourne argues the Commission is not a court and does not have authority to impose sanctions for intrinsic fraud, *citing State ex rel. Edmondson v. Corporation Com'n*, 1998 Ok 118, 971 P.2d 868 (Commission is not part of the judicial branch and the Commissioners are not judges for purposes of compensation); and *Vogel v. Corporation Com'n*, 1942 OK 14, 121 P.2d 586, syl. 7 (the Corporation Commission is not a court for purposes of Okla. Const. art. 2, § 25). However, Mewbourne acknowledged that in *Monson v. Corporation Com'n*, 1983 OK 115, 673 P.2d 839, the court said "when acting in an adjudicative capacity the Commission is to be treated as the functional analogue of a court of record."

Although the Oklahoma Supreme Court has said that for some purposes the Commission is not treated as a court and the Commissioners are not treated as judges, in *Leck v. Continental Oil Company*, 1989 OK 173, 800 P.2d 224, the court said the Commission has inherent power, as a court of record, to hear allegations of intrinsic fraud and rule upon them. In *Leck*, appellees obtained a location exception to drill an off-pattern well, and were granted a normal production allowable. Subsequently, appellants/mineral owners filed a district court action, alleging, *inter alia*, that appellees made misrepresentations to the Commission in order to secure the location exception. Appellees removed the case to federal district court, which found it did not have subject matter jurisdiction and dismissed the case. Appellants appealed, and the Tenth Circuit Court of Appeals certified the following question to the Oklahoma Supreme Court:

Does the district court have subject matter jurisdiction to hear and decide an action for damages brought by mineral interest owners against the owner and operator of an oil and gas lease where the mineral interest owners allege... misrepresentations by the operator to the Oklahoma Corporation Commission during a hearing on the application of the mineral interest owners to restrict the allowable production from the other oil and gas well?

Id. at 225.

The Oklahoma Supreme Court found "[i]n essence, the appellants are asking for damages because the appellee made misrepresentations to the commission during the hearing on plaintiffs' application." *Leck*, 800 P.2d at 239. "Since the Oklahoma Corporation Commission has the power and authority of a court of record in this state, it naturally follows that if intrinsic fraud occurred during an adversarial trial before the commission, then under our holding in *Chapman*, the proper forum to hear allegations of the intrinsic fraud and rule upon them is the commission." *Leck*, 800 P.2d at 240.

Mewbourne argues it is well-settled the Commission cannot try a case for damages, citing *Kingwood Oil Company v. Hall-Jones Oil Corp.*, 1964 OK 231, 396 P.2d 510; and *Texas Oil and Gas Corporation v. Rein*, 1974 OK 8, 534 P.2d 1277, 1279. It argues Optima's Motion to Reopen to Determine Sanctions and Restitution should be dismissed because the only proper sanction the Commission may impose for intrinsic fraud is vacation of the ill-gotten order and

the Court of Appeals has already vacated Order No. 528230. In support, Mewbourne relies on *Chapman v. Chapman*, 1984 OK 89, 692 P.2d 1369 (relief from intrinsic fraud must be by direct attack in the same case in which fraud was committed).

The Referee disagrees with Mewbourne's argument that the only relief the Commission may impose for intrinsic fraud is vacation of Order No. 528230 because the Commission may not try a case for damages. This is not a case for damages, but for sanctions. As part of a court's inherent power to hear allegations related to intrinsic fraud is the inherent power to fashion an appropriate sanction. *See Chapman v. NASCO, Inc.* 501 U.S. 32, 44-45. "It has long been understood that '[c]ertain implied powers must necessarily result to our courts of justice from the nature of their institution,' 'powers' 'which cannot be dispensed with in a Court because they are necessary to the exercise of all others.'" *Id.* at 43.

In *Leck*, the Oklahoma Supreme Court has already recognized the Commission's inherent power to hear allegations of intrinsic fraud perpetrated on the Commission. It naturally follows the Oklahoma Supreme Court would also recognize the Commission's inherent power to fashion an appropriate sanction for such fraud. The Supreme Court did not expressly say the Commission could impose monetary sanctions for intrinsic fraud, but it certainly acknowledged "[i]n essence, the appellants are asking for damages because the appellee made misrepresentations to the commission during the hearing on plaintiffs' application," *Leck*, 800 P.2d at 239, and said, "the proper forum to hear allegations of the intrinsic fraud and rule upon them is the commission." *Leck*, 800 P.2d at 240.

The Referee finds imposition of an appropriate sanction for intrinsic fraud committed on the Commission when acting as a court of record is one of the inherent powers conferred upon the Commission by necessary implication, and affirms the ALJ's recommendations to grant Optima's Motion to Reopen for Determination of Sanctions and Restitution, and to deny Mewbourne's Motion to Dismiss Optima's Motion to Reopen for Determination of Sanctions and Restitution.²

IV. FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Commission has jurisdiction over these matters pursuant to the provisions of Okla. Const. art. 9, § 19, and 52 O.S. § 87.1.
2. Due and proper notice of these proceedings was given as required by law and the rules of the Commission.

² Whether or not any fraud was perpetrated on the Commission in the course of the proceedings on Mewbourne's application is not before the Referee, and was not before the ALJ. Also, the merits of any defense Mewbourne may have to allegations of intrinsic fraud or sanctions are also not before the Referee, and were not before the ALJ. What is an appropriate sanction, if any, in addition to vacation of Order No. 528230, is also not before the Referee and was not before the ALJ. Those question may be addressed upon reopening of the record in this cause.

3. The Commission is the proper forum to hear allegations of intrinsic fraud and rule upon them.
4. The imposition of sanctions for intrinsic fraud committed on the Commission when acting as a court of record is one of the inherent powers conferred upon the Commission by necessary implication.
5. The ALJ's recommendations to grant Optima's Motion to Reopen for Determination of Sanctions and Restitution, and to deny Mewbourne's Motion to Dismiss such motion, is affirmed and the record should be reopened for the purpose of determining if intrinsic fraud was committed and, if so, an appropriate sanction, if any.

Respectfully submitted, this 6th day of October 2021.

Jan Preslar

Jan Preslar
Oil & Gas Appellate Referee

C:

Commissioner Dana Murphy
Commissioner Bob Anthony
Commissioner J. Todd Hiatt
Nicole King
Matt Mullins
Elizabeth A.P. Cates
Ben Jackson
Curtis Johnson
Mary Candler
Michael Norris
Dale Cottingham
Dean Luthey
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