

IN THE SUPREME COURT OF TEXAS

=====
No. 10-0887
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WENDELL REEDER, PETITIONER

v.

WOOD COUNTY ENERGY, LLC, WOOD COUNTY OIL & GAS, LTD., NELSON
OPERATING, INC., DEKRFOUR, INC., BOBBY NOBLE, EXZENA OIL CORPORATION,
DAVID FRY AND PATRICIA FRY, RESPONDENTS

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ON PETITION FOR REVIEW FROM THE
COURT OF APPEALS FOR THE TWELFTH DISTRICT OF TEXAS
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Argued February 27, 2012

JUSTICE WAINWRIGHT delivered the opinion of the Court.

This case involves the duties and standard of care of an oil and gas operator under an exculpatory clause in a joint operating agreement (JOA). The language of the exculpatory clause in the JOA exempts the operator from liability for activities under the agreement unless it arises from gross negligence or willful misconduct. Based on that language in the exculpatory clause, the trial court instructed the jury that to find a breach of the JOA the operator's conduct must have risen to the level of gross negligence or willful misconduct. The jury found that the operator, Petitioner Wendell Reeder (Reeder), breached his duties under the JOA to the working interest owners. The trial court signed a final judgment that Reeder take nothing on his claims for exclusive possession

of the wellbores, and instead awarded damages to Patricia Fry, Dekrfour, Inc., Nelson Operating, Inc., Bobby Noble, Wood County Energy, LLC, and Wood County Oil & Gas, Ltd.¹

The court of appeals disagreed that the exculpatory clause applies to the claims, holding that the “standard[] of care provided in the exculpatory clause do[es] not apply to what this case was all about—a breach of contract. Thus, the gross negligence and willful misconduct instruction should not have been included in the charge.” 320 S.W.3d 433, 444.

We decide whether 1) the exculpatory clause in the JOA applies to the claims against Reeder, and if so, 2) whether there is legally sufficient evidence that Reeder was grossly negligent or acted with willful misconduct. We hold that the clause applies to the claims against Reeder. Because there is legally insufficient evidence that Reeder acted with gross negligence or willful misconduct, we reverse the judgment of the court of appeals.

Background Facts and Procedural History

The Forest Hill Field in Wood County encompasses two oil-bearing formations, the Sub-Clarksville Unit and the Harris Sand Unit. The two units overlap, and oil was being produced from both units. Through his company, Dekrfour, Inc. (Dekrfour), David Fry bought a working interest in the Sub-Clarksville Unit. The next year Dekrfour entered into a mutual agreement with Secondary Oil Corporation (Secondary) and the mutual agreement became part of a JOA that the parties executed eleven days later. *Id.* at 439. Under the JOA, Dekrfour, Secondary, and Secondary’s sister

¹ Wood County Energy, LLC and Wood County Oil & Gas, Ltd. no longer wish to prosecute any claims in this lawsuit or to execute on or otherwise enforce any judgment in their names. They consider their claims resolved and we do not address any of their claims in this opinion. Bobby Noble passed away during the pendency of this appeal and his wife is the estate’s independent executrix pursuing this appeal on his behalf. *See* TEX. R. APP. P. 7.1(a)(1).

corporation would share the existing wellbores in the production of the Sub-Clarksville and the Harris Sand Units. Dekrfour transferred an 85% working interest to Secondary, transferred a 10% carried working interest to Nelson Operating, Inc. (Nelson), another of David Fry's companies, and transferred its interest in all other formations in the wells to Nelson. Wendell Reeder became the operator of the Harris Sand Unit when he and Don Dacus purchased 87.5% of the working interest in the unit wells previously transferred to Secondary. Reeder then formed a limited partnership, Wood County Oil and Gas, Ltd. (Wood County), with James Wade and Hattie Scherbach in which Reeder and Wade each owned 45% and Scherbach owned 10%.

Reeder continued to act as operator, but the relationship with his partners and David Fry became strained. Reeder alleged that four wells required expensive testing or repairs and he sought funding from Wood County. Wade, as President of Wood County, denied his requests. Reeder claims that because those repairs were not made, the Texas Railroad Commission (Commission) severed the Harris Sand Unit and eventually suspended its production. Reeder alleges that he spent at least \$150,000 of his own money in an attempt to pay bills and preserve operations.

In May 2004, Reeder filed suit against Dekrfour, Nelson, and Bobby Noble (collectively the "Fry Interests"),² asserting he was the operator and had the exclusive right of possession of the wellbores for the purpose of producing oil. *Id.* at 440. Reeder sued on claims of trespass, ouster, conversion, violation of the Theft Liability Act, physical damage to existing wells, and sought both declaratory and injunctive relief.

² In April 2003, Bobby Noble purchased a portion of Dekrfour's and Nelson's Sub-Clarksville interest. Noble aligned himself with Dekrfour and Nelson throughout the trial, and he is, therefore, included in the "Fry Interests." 320 S.W.3d at 439 n.2.

The Fry Interests filed a counterclaim against Reeder, alleging that Reeder “illegally produced oil from the Sub-Clarksville formation” and “fraudulently reported it as production from the Harris Sand Unit to the Railroad Commission.” They claimed that Reeder removed oil and concealed production in the Harris Sand Unit, giving rise to claims for conversion and violations of the Theft Liability Act. They alleged that Reeder failed to obtain production in paying quantities, as required by the JOA, and converted their personal property. Patricia Fry alleged that she had been fined by the Commission because Reeder failed to file a document with the Commission. They claimed that while Reeder promised to comply with the Commission and get the unit producing again, he did nothing.

Wood County later asserted that if the Fry Interests suffered any damages, those damages were caused by Reeder as operator of the Harris Sand Unit. *Id.* Wood County filed a cross claim against Reeder, seeking damages for his actions as operator, lost leases, and loss of the unit. Wood County also nonsuited its damages claims against the Fry Interests but continued to seek declaratory relief. Reeder’s partner Wade asserted that he invested time and money to increase production, only to have Reeder squander the effort, knowing that he would cause the loss of millions of dollars worth of valuable leasehold rights.

The case proceeded to trial, and a jury found that Reeder breached his duty as operator “by failing to maintain production in paying quantities or other operations in the Forest Hill Field.” The trial court entered a final judgment ordering Reeder take nothing, awarding damages to Dekrfour, Nelson, Noble, Patricia Fry, and Wood County, and declaring that Reeder owned no mineral interest in the leases covering the Harris Sand Unit or the Sub-Clarksville Unit.

Reeder timely appealed the damages award against him, raising seventeen issues challenging the trial court's conclusion that he was bound by the JOA, the jury's findings that he breached the JOA, and the award of damages. *Id.* at 439. The court of appeals disagreed that the exculpatory clause applied to the claim, instead holding that the gross negligence and willful misconduct instruction should not have been included in the charge. *Id.* at 444. The court of appeals held that the evidence is legally and factually sufficient to support the jury's findings that Reeder breached his duty as operator when measured against the elements of breach of contract. *Id.* at 452–53. The court also held that the evidence is legally and factually sufficient to support the damage awards, but held that the trial court's judgment did not conform to the jury's damage awards. *Id.* at 453.

The court of appeals affirmed the trial court's judgment but modified the prejudgment interest, suggested a remittitur in attorneys' fees, and conformed the damage awards to the jury's findings. *Id.* Reeder filed a petition for review with this Court challenging the court of appeals' judgment.

Discussion

A. Applicability of the Joint Operating Agreement's Exculpatory Clause

We begin by deciding whether the exculpatory clause in the JOA sets the standard to adjudicate the breach of contract claims against Reeder. An exculpatory clause is a “clause in a contract designed to relieve one party of liability to the other for specified injury or loss incurred in the performance of the contract.” Howard Williams & Charles Meyers, *Manual of Oil and Gas Terms* 372, 373 (12th ed. 2003, updated and revised by Patrick Martin & Bruce Kramer); *see, e.g., Interstate Contracting Corp. v. City of Dallas*, 135 S.W.3d 605, 612–13 (Tex. 2004); *Dresser Indus.*,

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