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Daniel Woody

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Hydro Res. Corp. v. Gray, 173 P.3d 749 (N.M. 2007)

Jonathan Hiller

NEW MEXICO

Hydro Res. Corp. v. Gray, 173 P.3d 749 (N.M. 2007) (holding: (1) New Mexico follows the doctrine of prior appropriation and beneficial use and does not recognize a mining operation exception to these doctrines; and (2) absent any language in the deed to the contrary, the relationship between lessor and lessee does not implicate the agency doctrine).

A complicated transactional history led to two separate entities claiming ownership of a mining lessee's water rights developed in connection with the mining claims of the lessor. Plaintiff, Hydro Resources Corporation ("Hydro"), claimed ownership of the water rights through the lessee, Inspiration Development Company ("Inspiration"). Defendants, Harris Gray and William J. Frost (jointly, "Gray"), claimed ownership through the lessor, Copper Flat Partnership ("CFP"). On competing motions for summary judgment, the Seventh Judicial District Court for the State of New Mexico ruled in favor of Hydro without issuing an opinion. The New Mexico Court of Appeals affirmed. Upon review to the Supreme Court of New Mexico, both parties stipulated that no factual dispute existed and that the court could resolve this issue as a matter of law, as each party claimed principles of New Mexico water law entitled them to ownership of the water rights.

Gray argued the court should rule New Mexico law states "(1) a lessee can acquire water rights on leased land by appropriating water and placing it to beneficial use, and [that] (2) a lessee does not generally act as the agent of the lessor." However, Hydro argued a mining operation's water rights become "necessarily linked" and indispensable to the land and revert to the lessor upon termination of the lease. In addition, Hydro claimed because CFP, the lessor, used the water in connection with a mining operation, CFP developed water rights as Inspiration's, the lessee's, agent.

After review, the court reversed the Court of Appeals and remanded with instructions to quiet title to the water rights in favor of Gray. The court held developing water rights and putting them to beneficial use did not make them appurtenant to the mineral rights, and CFP did not qualify as an agent of Inspiration.

New Mexico law, not federal law, governs water rights in New Mexico, and, in allocating water rights, New Mexico adheres to the doctrine of prior appropriation and beneficial use. While the legislature created an exception to this rule, for water used for irrigation, the court ruled that the judiciary could not take the place of the legislature and expand the law (and the exemption) to include mining. In specific cases, water used for irrigation is appurtenant to the irrigated land and remains with conveyed property unless the deed specifies otherwise. In the context of mining interests, however, New Mexico does

not consider the water rights appurtenant to the land under lease. *McCasland v. Miskell* states New Mexico's general rule that water rights not appurtenant to the land constitute separate pieces of property, which the owner may convey separately from the land.

The court emphasized its ruling in *Walker v. United States*, where the court overruled prior case law that stated that the right to use water "is indispensable to the enjoyment of the land." Furthermore, the court refused to distinguish between ground water rights and surface water rights, stating that the same body of substantive law governs both sources. Next, the court stressed that in order for a landowner to obtain the right to use from either source, the landowner must appropriate and apply the water to beneficial use before the landowner can obtain a water right. Lastly, the court reinforced its ruling by citing New Mexico water policy, which describes water as a scarce resource in New Mexico that must adapt to changing societal needs. The court further discredited Hydro's argument by explaining that water will always be "necessary" to the enjoyment of the land because it remains a scarce resource in the West. The court believed that its ruling would not force drastically negative consequences onto Hydro, who can simply purchase or lease "necessary" water rights on the free market.

Regarding Hydro's argument that it is entitled to the water rights through the doctrine of agency, the court recognized that the relationship of lessee and lessor does not implicate agency. In *Hansler v. Bass*, the New Mexico Court of Appeals stated that agency exists when one party (the principal) authorizes another party (the agent) to act on his behalf, so long as the principal retains control over the acts and decisions of the agent. However, in this case, CFP did not act as Inspiration's agent because Inspiration never controlled CFP's mining operations.

In addition, a lease creates merely a contractual relationship, not a fiduciary relationship that indicates agency. While agency can arise if the principal bears the responsibility for the acts of the agent, the lease in this case expressly stated that CFP bore all risk under the lease. Finally, no language existed in the lease that either expressly, or indirectly, indicated that the parties intended to create an agency relationship. Absent any language to the contrary, New Mexico law presumes that no agency relationship exists between lessor and lessee.

Because the parties stipulated that no factual dispute existed and petitioned the court to determine the dispute as a matter of law, the court ruled that it could not remand the case back to the trial court for any reason but to enter judgment in favor of Gray.

Daniel Woody

NORTH DAKOTA

Buchholz v. Barnes County Water Bd., 755 N.W.2d 472 (N.D. 2008)
(holding that an downstream landowner does not have a general duty