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Polo Ranch Co. v. City of Cheyenne, 61 P.3d 1255 (Wyo. 2003)

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Polo Ranch Co. v. City of Cheyenne, 61 P.3d 1255 (Wyo. 2003)

stream. Over time, the lower pond gradually filled in with sediment creating a secondary wetland. Felder applied for a permit to dredge the ponds. The DNR denied the permit based upon the fact that the dredging would lead to a raise in the temperature of the water above the legal limit, thereby endangering fish downstream.

Two years later, the DNR was informed that Felder created a new pond where he originally sought to obtain a permit to dredge. The DNR cited Fedler for two violations of state statute for the enlargement of a waterway without a permit. Fedler claimed that he had not created a new pond, but merely cleaned out the lower pond that was gradually filling with sediment.

Fedler claimed that the DNR did not have jurisdiction to issue citations under the statute. Additionally, Fedler argued that his actions were “grandfathered” under the statute, as the statute was enacted after the creation of the ponds in 1963. The court rejected Fedler’s claims and found that the DNR had jurisdiction to require permits under the statute. The statute existed before Fedler owned the property and therefore applied to his actions.

Fedler further contended that he was not in violation of the statute in that he was not trying to connect to a “navigable stream.” The court found that the statute merely required an “ultimate connection” of a private waterway to a navigable waterway and did not require a “direct connection.”

Colleen M. Cooley

WYOMING

Polo Ranch Co. v. City of Cheyenne, 61 P.3d 1255 (Wyo. 2003)

(holding developer had no right to drill for water because agreement granted city the exclusive right to water and said agreement was not in violation of public policy).

Developer, Polo Ranch Company, John N. Morris, and Norma B. Morris (“PRC”) filed a complaint against the City of Cheyenne Board of Public Utilities (“City”) seeking recovery for hay crop losses caused when the City refused to provide irrigation water. The City refused to provide water based on a water use agreement (“Agreement”) entered into by the City and the previous landowner of PRC’s property. The agreement granted the City the exclusive right to water on stipulated lands. The District Court, Laramie County, entered a partial summary judgment in favor of the City and against PRC. PRC appealed to the Supreme Court of Wyoming. The court affirmed the district court’s holding that *res judicata* barred defining the “exclusive” right the City possessed under the Agreement as unenforceable due to public policy, and that PRC had no right to drill for water because of the City’s exclusive right under the Agreement.

On August 2, 1990, in a previously litigated case, the City filed a complaint against PRC for pumping expenses PRC owed under the Agreement. PRC included in its claim a request for a declaration of the time period under the Agreement that the City had the exclusive right to drill for water. PRC also asserted an affirmative defense that the Agreement violated public policy and was therefore void. The district court found that the City had exclusive right to drill and use the water from the subject land in the Agreement, and that PRC was constrained from using their share of the water on any land other than the land described in the Agreement. PRC appealed the judgment to the Supreme Court of Wyoming, however, PRC neglected to appeal the issue of City's exclusive right to water and the issue that the Agreement violated public policy.

On October 7, 1997, PRC commenced the present litigation seeking a declaratory judgment regarding the breadth of the exclusive right to drill clause found in the Agreement. The district court held that *res judicata* barred PRC from relitigating the issue of the "exclusive" nature of the City's rights stated in the Agreement, and granted injunctive relief to the City because PRC had no right to drill for water on lands subject to the Agreement.

On appeal, the Wyoming Supreme Court found that PRC was precluded from relitigating these issues because they were necessarily decided amongst the same parties in the previous litigation. The court came to this conclusion because in the previous litigation the district court issued a declaratory judgment explicitly declaring that the City had the exclusive right to drill and use water on lands subject to the Agreement. Furthermore, in a counterclaim during the previous litigation, PRC requested a declaration of the specific time of the City's exclusive right, thereby admitting that the City had the exclusive right. PRC also failed to raise either of these issues on appeal.

Next, the court found the district court did not abuse its discretion by permanently enjoining PRC from drilling wells on the land covered by the Agreement. PRC had no right to drill on the lands subject to the agreement because of the City's exclusive right. Irreparable harm would have continued if the court did not grant injunctive relief to prevent PRC's violation of the City's exclusive right to drill and use the land under the Agreement. Finding the district court did not err in barring the relitigation of the term "exclusive" in the Agreement, nor did the district court abuse its discretion in granting the City injunctive relief, the Wyoming Supreme Court affirmed the district court's judgment.

Karen L. Golan