

IN THE SUPREME COURT OF OHIO

State of Ohio ex rel. Claugus Family Farm, L.P.,	)	Case No. 2014-0423
)	
Relator,	)	IN MANDAMUS AND PROHIBITION
)	
v.)	
)	
Seventh District Court of Appeals, et al.,)	
)	
Respondents,)	
)	
and)	
)	
Clyde A. Hupp, et al.,	)	Case No. 2014-1933
)	
Plaintiffs/Appellants,	)	On Appeal from the Monroe County
	)	Court of Common Pleas, Seventh
v.	)	Appellate District
)	
Beck Energy Corporation,	)	Court of Appeals Case Nos. 12 MO 6
	)	13 MO 2
Defendant/Appellee.	)	13 MO 3
	)	13 MO 11

**RELATOR CLAUGUS FAMILY FARM, L.P.'S MOTION FOR
CLARIFICATION AND TO ENLARGE TIME FOR ORAL ARGUMENT**

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Now comes Relator Claugus Family Farm, L.P, by and through its undersigned counsel, to file its Motion to for Clarification and to Enlarge Time for Oral Argument.

I. PROCEDURAL BACKGROUND

These consolidated cases arise from a class action lawsuit which sought a declaration that a form lease used by Beck Energy Corporation should be held void *ab initio* because it constitutes a lease in perpetuity. The trial court estimated that there were 615 to 715 members of the class. On September 26, 2013, the Seventh District Court of Appeals (“Seventh District”)

issued an order purporting to toll the lease terms of the proposed class members as of October 1, 2012, although none of these class members were provided with notice of the class action lawsuit by either the trial court or the appellate court. The tolling period was to end either upon the resolution of the appeal in the Seventh District or upon this Court either accepting or declining any jurisdictional appeal.

On March 16, 2014, Relator filed a Complaint in Prohibition and Mandamus seeking writs prohibiting the Seventh District from enforcing the tolling order against it and directing the Seventh District to vacate the tolling order to the extent that it applied to Relator. In seeking these writs, Relator argued that tolling the oil and gas leases of absent class members who were not provided with notice of the class action lawsuit, not provided an opportunity to opt out of the lawsuit, and not provided with notice of the tolling order violates the absent class members' due process rights. On September 3, 2014, this Court granted an alternative writ setting a briefing schedule.

On November 7, 2014, Appellants filed a jurisdictional appeal from the opinion issued by the Seventh District on September 26, 2014. On January 28, 2015, this Court accepted the jurisdictional appeal as to Proposition of Law Nos. I and II. Proposition of Law No. I addresses whether an oil and gas lease which purports to establish a fixed lease term, but which can be maintained indefinitely without development, is a perpetual lease void as against public policy. Proposition of Law No. II addresses whether an oil and gas lease which includes a general disclaimer of implied covenants should nonetheless be subject to an implied covenant of reasonable development, where the lease would otherwise effectively allow the lease to be continued indefinitely without any development.

In the Entry accepting the jurisdictional appeal, the Court *sua sponte* consolidated the jurisdictional appeal with the original action filed by Relator. On February 3, 2015, the Court announced that it had granted the motions seeking oral argument in the original action. On October 7, 2015, the Court issued a Notice of Oral Argument in the consolidated cases allowing each side 15 minutes to present oral argument.

II. MOTION FOR CLARIFICATION

Given the consolidation of the jurisdictional appeal with the previously pending original action, Relator is unsure as to the order in which the Court intends to receive oral argument from the parties. In preparing for the oral argument, it would assist Relator to know whether the Court intends to hear all argument on the jurisdictional appeal prior to hearing argument on the original action (or vice versa). If the Court intends for both the Appellants and the Relator to present their oral argument prior to hearing argument from the Appellees and Respondents, Relator would request clarification as to whether the Appellants or Relator will be asked to present first.

Relator suggests that it may be most efficient for the Court to hear all argument on the jurisdictional appeal before hearing argument on the original action. The facts underlying the jurisdictional appeal constitute the background facts of the original action, and duplication may be avoided by arguing the issues presented in that case first. Regardless of the order in which the Court chooses to hear argument, however, Relator would like to know in advance how the Court intends to address this issue.

III. MOTION TO ENLARGE TIME FOR ORAL ARGUMENT

Pursuant to S. Ct. Prac. R. 17.05(B), a party may file a motion requesting that the Court vary the time for oral argument permitted by rule. In this case, although the jurisdictional appeal and the original action spring from the same underlying case, the legal issues presented by the

cases are unrelated. Substantively, Appellants' argument deals with natural resources jurisprudence and what constitutes a lease in perpetuity. In contrast, Relator is advancing a constitutional argument involving the interplay of the due process clause with Ohio Rule of Civil Procedure 23, which could arise in any class action lawsuit.

In order to fully consider the disparate issues raised by Relator and the Appellants, Relator requests that the Court enlarge the time for oral argument to 15 minutes per side in *each* of the consolidated cases, for a total of one hour. The requested enlargement would provide the parties with the same amount of time that they would have had for oral argument but for the consolidation of the cases. This will allow the Court to fully consider both the substantive issues of natural resource law presented by the jurisdictional appeal and the constitutional and civil procedure issues presented by the original action.

IV. CONCLUSION

Given the unique procedural posture of this case, Relator is requesting guidance on how the Court intends to proceed at the oral argument. Relator requests that the Court allot fifteen minutes to each side in the two consolidated cases (for a total of one hour). Relator further requests that the Court clarify that it will hear half an hour of oral argument on the jurisdictional appeal before hearing half an hour of oral argument on the original action. If the Court elects to allot each of the sides less than fifteen minutes or to hear from both the Appellants and Relator before hearing from either the Appellees or Respondents, Relator would request that the Court make this known as soon as possible to allow the parties to properly prepare for oral argument.

Respectfully submitted,

Daniel H. Plumly, Counsel of Record

/s Daniel H. Plumly

Daniel H. Plumly

COUNSEL FOR RELATOR, CLAUGUS FAMILY
FARM, L.P.

