

SUPREME COURT OF APPEALS OF WEST VIRGINIA

McElroy Coal Co. v. Michael and Patricia Schoene

McElroy Coal Co. · No. No. 17-0641 · Decided April 12, 2018

SUMMARY

Justice Ketchum partially concurred with and partially dissented from the West Virginia Supreme Court of Appeals' decision in a certified-question case concerning whether a 1902 deed's waiver of subjacent support barred a common-law claim for subsidence damage. He concluded that the waiver did not encompass longwall mining because that method was not within the parties' contemplation when the deed was executed, while agreeing with the majority's answers to the other certified questions.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Justice Ketchum
JURISDICTION	West Virginia
DECIDED	April 12, 2018
DOCKET	No. 17-0641
DISPOSITION	other
PROCEDURAL POSTURE	Certified questions from a federal district court concerning whether a 1902 deed's waiver of subjacent support barred a common-law claim for subsidence damage caused by longwall mining.
PRECEDENTIAL VALUE	Separate concurring and dissenting opinion; nonbinding as to the matters on which it disagrees with the majority.
PARTIES	McElroy Coal Company v. Michael and Patricia Schoene

TOPICS

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PRACTICE AREAS

[mining law](#) [real property](#) [deeds](#) [torts](#)

QUESTIONS PRESENTED

1. Whether a broad waiver of subjacent support in a 1902 coal severance deed barred the plaintiffs' common-law claim for subsidence damage caused by longwall mining.
2. Whether a deed waiver of subjacent support applies to mining methods that were not within the contemplation of the parties when the deed was executed.

HOLDINGS

1. In Justice Ketchum's view, the waiver did not bar the claim because longwall mining was unknown in Marshall County in 1902 and therefore was not within the contemplation of the parties when the deed was executed.

KEY QUOTATIONS

“A release ordinarily covers only such matters as may fairly be said to have been within the contemplation of the parties at the time of its execution.” (1)

“Thus, a waiver of subjacent support is only valid when the type of mining activity was “within the contemplation” of the original parties to the deed containing the waiver.” (1)

“This Court holds that the broad form waiver of subjacent support is not a valid waiver against the subsidence damage caused by longwall mining.” (2)

“Longwall mining was unknown in Marshall County and to the lessors at the time the instrument was executed.” (2)

FACTUAL BACKGROUND

The plaintiffs' property was subject to a 1902 coal severance deed containing a broad waiver of subjacent support. McElroy Coal conducted longwall mining beneath the property, using large machines and continuously running conveyor belts; the asserted consequences included significant subsidence and loss of natural water sources. Justice Ketchum emphasized that longwall mining was unknown in Marshall County in 1902, when coal was generally mined with picks and shovels and removed by wagons or rail carts pulled by mules.

PROCEDURAL HISTORY

The federal district judge determined that the broad-form waiver of subjacent support in the 1902 deed was not enforceable against subsidence damage caused by longwall mining because that mining method was unknown and therefore not within the parties' contemplation when the deed was executed. Justice Ketchum disagreed with the majority's answer to the first certified question but agreed with the majority's answers to the other certified questions.

DISPOSITION

other

CASES CITED

- Cogar v. Sommerville, 180 W. Va. 714, 379 S.E.2d 764 (1989)
- Brown v. Crozer Coal & Land Co., 144 W. Va. 296, 107 S.E.2d 777 (1959)
- West Virginia-Pittsburgh Coal Co. v. Strong, 129 W. Va. 832, 42 S.E.2d 46 (1947)
- Winnings v. Wilpen Coal Co., 134 W. Va. 387, 59 S.E.2d 655 (1950)
- Conley v. Hill, 115 W. Va. 175, 174 S.E. 883 (1934)
- Thornton v. Charleston Area Medical Center, 158 W. Va. 504, 213 S.E.2d 102 (1975)
- Schoene v. McElroy Coal Co., 2016 WL 397636 (N.D. W. Va. Jan. 29, 2016)

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