

SUPREME COURT OF NORTH DAKOTA

Statoil Oil & Gas LP v. Abaco Energy, LLC

2017 ND 148, 897 N.W.2d 1 · Decided June 16, 2017

OPINION

CROTHERS, J.

Crothers, Justice. [¶ 1] Statoil Oil & Gas LP appeals from judgments dismissing without prejudice its actions against numerous defendants, seeking a determination of the proper distribution of oil and gas revenues from Williams and McKenzie County wells on land adjacent to the Missouri River and under Lake Sakakawea.

We affirm, concluding the district court did not abuse its discretion in dismissing the actions because Statoil failed to join the United States as an indispensable party. I [¶ 2] Statoil filed two lawsuits against various defendants seeking a determination of the proper distribution of revenues from oil and gas wells it operated in western North Dakota, after the State in 2011 redetermined the location for the ordinary high water mark of the Missouri River before the creation of Lake Saka-kawea.

As a result of the redetermination, the State claimed a larger interest in some spacing units and, for the first time, an interest in others. The United States claims an interest in the disputed property, but was not joined as a defendant.

The defendants moved to dismiss the complaints for failure to join the United States as an indispensable party under N.D.R.Civ.P. 12(b)(7) and 19, because the United States cannot be sued in state court over property title disputes.

The district court granted the motions and dismissed the actions without prejudice. The cases were consolidated for appeal. Because the judgments effectively foreclose litigation of Statoil's actions in its chosen forum of the state courts, the judgments are appealable even though the dismissals are without prejudice. See, e.g., *Sanderson v. Walsh Cty.*, 2006 ND 83, ¶ 6, 712 N.W.2d 842; *Winer v. Penny Enters., Inc.*, 2004 ND 21, ¶ 6, 674 N.W.2d 9.

II [¶ 3] Statoil argues the district court erred in dismissing the actions because it misinterpreted and improperly weighed the factors in deciding whether the actions should be dismissed for failure to join an indispensable party under N.D.R.Civ.P. 19(b). [¶4] It is undisputed that the United States claims an interest in the property and, although the United States waives sovereign immunity regarding real property title disputes, see 28 U.S.C. § 2409a(a), those actions against the United States must be brought and resolved in a federal court.

See 28 U.S.C. § 1346(f). The parties therefore agree that joinder of the United States is not feasible for purposes of N.D.R.Civ.P. 19(a). *7[¶ 5] In these circumstances, the provisions of N.D.R.Civ.P. 19(b) come into play: “(b) When Joinder Is Not Feasible. If a person who is required to be joined if feasible cannot be joined, the court must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed.

The factors for the court to consider include: (1) the extent to which a judgment rendered in the person’s absence might prejudice that person or the existing parties; (2) the extent to which any prejudice could be lessened or avoided by; (A) protective provisions in the judgment; (B) shaping the relief; or (C) other measures; (3) whether a judgment rendered in the person’s absence would be adequate; and (4) whether the plaintiff would have an adequate remedy if the action were dismissed for non-joinder.” [¶ 6] In *Erdmann v. Thomas*, 446 N.W.2d 245, 249-50 (N.D.

1989), we said: “[T]he four interests embodied in Rule 19(b) must be considered in determining whether a person is an indispensable party and whether in his absence it would be preferable to dismiss the action rather than retain it. Those interests are: the plaintiffs interest in preserving his judgment; the defendant’s interest in avoiding multiple litigation, inconsistent relief, or sole responsibility for a liability shared with others; the interest of the courts and the public in the complete, consistent, and efficient settlement of controversies; and the absent party’s interest in the extent to which the judgment may impair or impede his ability to protect his stake in the subject matter of the suit.” See also *Cudworth v. Cudworth*, 312 N.W.2d 331, 334 (N.D.

1981). A district court’s decision on a motion to dismiss for failure to join an indispensable party is reviewed for an abuse of discretion. See *In re Estate of Murphy*, 554 N.W.2d 432, 438 (N.D. 1996); *Revoir v. Kansas Super Motels of N.D., Inc.*, 224 N.W.2d 549, 552 (N.D. 1974). [¶ 7] Considering N.D.R.Civ.P. 19(b)(1), the district court noted the United States would be prejudiced to some extent by its absence in the proceedings because, although it would not be bound by a state court judgment, see, e.g., *Tavis v. Higgins*, 157 N.W.2d 718, 727 (N.D.

1968), a judgment in favor of other mineral owners would cloud its record title to the disputed property. This could force the United States to institute a proceeding to protect its interests in the property, resulting in a waste of judicial and party resources. See *Nat’l Farmers Union Prop. & Cas. Co. v. Schmidt*, 219 N.W.2d 111, 114 (N.D. 1974) (“The spirit and purpose of Rule 19(a) and 19(b) are to protect the interest of parties who might be deprived of due process by the trial of an action in their absence and... to protect those parties already before the court from the harassment and hardship of multiple litigation.”).

The court relied on the United States Supreme Court’s interpretation of Fed.R.Civ.P. 19(b) in *Republic of Philippines v. Pimentel*, 553 U.S. 851, 128 S.Ct. 2180, 171 L.Ed.2d 131 (2008) for the proposition that an absent party’s sovereign immunity is an important consideration. See, e.g., *White v. T.P. Motel, L.L.C.*, 2015 ND 118, ¶20, 863 N.W.2d 915 (“When a state rule is derived

from a corresponding federal - rule, the federal courts' interpretation of the federal rule may be persuasive authority when interpreting our rule.”).

The court concluded “there is a risk of substantial prejudice to the United States—including both its mineral interests and its sovereignty— if this matter proceeds in its absence, and therefore the first factor favors dismissal.” The court rejected Statoil’s focus on the absence of prejudice to the defendants, concluding “[r]egardless of whether the Moving Defendants will be prejudiced, the impact on the United States suggests this case should be dismissed.” [¶ 8] Statoil argues the district court misconstrued the United States Supreme Court’s decision in *Pimentel*, 553 U.S. 851, 128 S.Ct.

2180. In that case, creditors who obtained a \$2 billion judgment against the estate of Ferdinand Marcos and his wife sought to enforce its judgment by attaching \$35 million in a brokerage account in New York held by Arelma, a corporation created by Marcos. *Id.* at 857-58, 128 S.Ct. 2180.

The brokerage firm filed an interpleader action in federal court naming the Republic of the Philippines and the Philippine Presidential Commission on Good Governance as two of the defendants. *Id.* at 859, 128 S.Ct. 2180.

The Republic and the Commission asserted sovereign immunity and moved to dismiss the action under Fed.R.Civ.P. 19(b), claiming the action could not proceed without them. *Pimentel*, at 859, 128 S.Ct. 2180. Reversing the Ninth Circuit Court of Appeals’ decision to allow the action to proceed without the Republic and the Commission, the Supreme Court reasoned: “The Court of Appeals erred in not giving the necessary weight to the absent entities’ assertion of sovereign immunity.

The court in effect decided the merits of the Republic and the Commission’s claims to the Arelma assets. Once it was recognized that those claims were not frivolous, it was error for the Court of Appeals to address them on their merits when the required entities had been granted sovereign immunity.

The court’s consideration of the merits was itself an infringement on foreign sovereign immunity; and, in any event, its analysis was flawed. [Image here] “Though this Court has not considered a case posing the precise question presented here, there are some authorities involving the intersection of joinder and the governmental immunity of the United States.

See, e.g., *Mine Safety Appliances Co. v. Forrestal*, 326 U.S. 371, 373-375, 66 S.Ct. 219, 90 L.Ed. 140 (1945) (dismissing an action where the Under Secretary of the Navy was sued in his official capacity, because the Government was a required entity that could not be joined when it withheld consent to be sued); *Minnesota v. United States*, 306 U.S. 382, 386-388, 59 S.Ct.

292, 83 L.Ed. 235 (1939) (dismissing the action for nonjoinder of a required entity where the United States was the owner of the land in question but had not consented to suit). The analysis of the joinder issue in those cases was somewhat perfunctory, but the holdings were clear: A case may not proceed when a required-entity sovereign is not amenable to suit.

These cases instruct us that where sovereign immunity is asserted, and the claims of the sovereign are not frivolous, dismissal of the action must be ordered where there is a potential for injury to the interests of the absent sovereign.” *Id.* at 864, 866-67, 128 S.Ct. 2180. [¶ 9] Statoil argues the Pimentel reasoning should be limited to cases involving foreign sovereign immunity.

Although some cases interpreting Pimentel might support this distinction, we do not find them persuasive. While Pimentel involved foreign sovereign immunity, the Supreme Court relied on *Forrestal* and *Minnesota*,⁹ two cases involving the governmental immunity of the United States, which is the precise situation here.

We agree with the courts holding the Pimentel rationale applies to foreign sovereigns, domestic sovereigns, states and Indian nations. See *Ali v. Carnegie Inst.*, 306 F.R.D. 20, 29 n.6 (D. Ct. D.C. 2014), and cases collected therein. Statoil also claims any prejudice to the United States is mitigated because its interests are aligned with its lessees who are defendants in this case.

Not only is the record insufficient to determine whether those interests are “aligned,” but Statoil’s argument ignores the importance of the prejudice to the sovereignty of the United States itself. The district court did not misinterpret the first prong of the test. [¶ 10] Considering N.D.R.Civ.P. 19(b)(2), the district court rejected Statoil’s suggestions for shaping relief to lessen prejudice to the United States by placing its disputed royalties in escrow or omitting its claimed land from the judgment.

The court noted it could not order the royalties placed in escrow because the United States is not a party and it would not be bound to honor any order requiring the deposit of its disputed production proceeds with the court.

The court also reasoned it could not “simply carve out” the United States’ interest from the judgment because there are multiple, conflicting claims to a finite amount of produced oil and gas and “there is not enough property to satisfy all of the parties’ claims.” As the court stated in *Wichita and Affiliated Tribes of Oklahoma v. Hodel*, 788 F.2d 765, 776 (D.C.

Cir. 1986): “But when, as in this case, the parties’ interest is in a specified percentage of the pie, and the combined requests of the parties exceed 100% of the pie, the court cannot afford one relief without affecting the rights of the others.

In that instance, the claims are mutually exclusive, and the problem of indispensability of an absent party is accentuated.” We reject Statoil’s argument that the court misapplied the law in

finding the second factor favored dismissal. [¶ 11] Considering N.D.R.Civ.P. 19(b)(3), the district court found “[n]o judgment can be adequate to’ all stakeholders, including the public’s interest in ‘settling disputes by wholes? and the United States’ interest in protecting its sovereignty, unless the United States is joined.” The court once again relied on *Pimentel*, 553 U.S. at 870-71, 128 S.Ct.

2180: “As to the third Rule 19(b) factor— whether a judgment rendered without the absent party would be adequate, Fed. Rule Civ. Proc. 19(b)(3)—the Court of Appeals understood ‘adequacy’ to refer to satisfaction of the *Pimentel* class’ claims. But adequacy refers to the ‘public stake in settling disputes by wholes, whenever possible.’ This ‘social interest in the efficient administration of justice and the avoidance of multiple litigation’ is an interest that has ‘traditionally been thought to support compulsory joinder of absent and potentially adverse claimants.’ Going forward with the action without the Republic and the Commission would not further the public interest in settling the dispute as a whole because the Republic and the Commission would not be bound by the judgment in an action where they were not parties.” (Internal citations omitted.)

Consequently, the possibility a judgment might satisfy Statoil or other parties does not make the judgment “adequate” where the claims of the United States are left unresolved and the judgment would not be binding on the United States.

We conclude the court did not misapply the law in finding the third factor favored dismissal. *10[¶ 12] Considering N.D.R.Civ.P. 19(b)(4), the district court found a “possible availability of an alternative forum” exists in federal court if- the State waived its Eleventh Amendment immunity from suit. See *Leadbetter v. Rose*, 467 N.W.2d 431, 437 (N.D. 1991) (“[T]he Eleventh Amendment of the United States Constitution bars a citizen from bringing suit against that citizen’s own state in federal court unless the state waives its immunity and consents to suit in federal court.”), overruled on other grounds, *Bulman v. Hulstrand Constr.*

Co., Inc., 521 N.W.2d 632 (N.D. 1994). Statoil argues there must be certainty that an alternative court would exercise jurisdiction. Statoil relies on *Hoffman v. Blaski*, 363 U.S. 335, 344, 80 S.Ct. 1084, 4 L.Ed.2d 1254 (1960), in which the United States Supreme Court, construing the change of venue provisions under 28 U.S.C. § 1404(a), held that a federal district court may not transfer an action on the defendant’s motion to a district in which the plaintiff did not have a right to bring the action.

However, change of venue provisions necessarily contemplate the existence of an alternative available forum. That is not always the case in indispensable party dismissal determinations. In *Pimentel*, 553 U.S. at 872, 128 S.Ct. 2180, the Supreme Court pointed out that “[d]is-missal under Rule 19(b) will mean, in some instances, that plaintiffs will be left without a forum for definitive resolution of them claims.

But that result is contemplated under the doctrine of foreign sovereign immunity.” [¶ 13] The district court here reasoned the possibility of a forum where all the parties’ interests can be considered is better than a forum where it is certain not all the parties’ interests can be considered: “Because it is at least possible that there is another forum available where Statoil could join all the required parties, the fourth factor also favors dismissal of this action.

The analysis of the fourth factor may be different if Statoil had attempted to bring this action in federal court and the State had objected on sovereign immunity grounds or the Eighth Circuit had held that Statoil must plead an interest in the property adverse to the United States. But Statoil has never attempted to bring this case, or a similar one, in federal court.

As a result, the possible availability of an alternative forum favors dismissal of this suit.” We conclude the court did not misapply the law in analyzing the fourth factor. [¶ 14] Statoil raised cogent arguments in opposition to dismissal of these actions. But a district court abuses its discretion only “if it acts in an arbitrary, unreasonable, or unconscionable manner, its decision is not the product of a rational mental process leading to a reasoned decision, or if it misinterprets or misapplies the law.” *Datz v. Dosch*, 2014 ND 102, ¶22, 846 N.W.2d 724 (quoting *Wolt v. Wolt*, 2011 ND 170, ¶26, 803 N.W.2d 534).

The court did not misinterpret or misapply the law, and it did not abuse its discretion in dismissing the actions without prejudice for failure to join the United States as an indispensable party. III [¶ 15] We do not address other arguments raised because they are unnecessary to the decision or are without merit.

The judgments are affirmed. [¶ 16] Daniel J. Crothers Jerod E. Tufte John T. Paulson, S.J. Thomas E. Merrick, S.J. Lisa Fair McEvers, Acting C.J. *11[¶ 17] The Honorable John T. Paulson, S.J., sitting in place of VandeWalle, C.J., disqualified. [¶ 18] The Honorable Thomas E. Merrick, S.J., sitting in place of Kapsner, J., disqualified.