

**Commonwealth Of Kentucky**  
**Court of Appeals**

NO. 2006-CA-001936-MR

HOPKINS COUNTY COAL, LLC

APPELLANT

v. APPEAL FROM WEBSTER CIRCUIT COURT  
HONORABLE C. RENE' WILLIAMS, JUDGE  
ACTION NO. 05-CI-00188

THOMAS L. SKINNER; RHOADA SKINNER;  
JAMES T. SKINNER; HELEN S. LOGSDON;  
MARCUS LOGSDON; JULIA S. TEAGUE;  
BARRY TEAGUE; FRANK J. SKINNER; AND  
EARLETTA B. SKINNER

APPELLEES

OPINION  
REVERSING AND REMANDING

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BEFORE: ACREE, CAPERTON AND LAMBERT, JUDGES.

ACREE, JUDGE: Hopkins County Coal, LLC (Hopkins) appeals from a declaratory judgment of the Webster Circuit Court construing the language of a surface mining lease to prohibit Hopkins from filling in a pit on property owned by members of the Skinner family with refuse from its mining operations on other lands. Hopkins argues the trial court misinterpreted the plain language

of the lease. We agree and reverse this case with directions for the trial court to enter a new order consistent with this opinion.

Hopkins was performing strip mining operations on several adjacent tracts of land, one of which was owned by members of the Skinner family. Hopkins' predecessor, Lodestar Energy, Inc., entered into a surface mining lease with the Skinners which governed the coal mining operations permitted on their property. After Lodestar filed for bankruptcy, its interest in the Skinner lease was assigned to Hopkins.

At the conclusion of its mining operations on the Skinners' lands, Hopkins sought to fill in strip mining pits with coal refuse from other properties as part of its state-sanctioned reclamation plan. The Skinners objected, asserting that the surface mining lease did not give Hopkins the right to use coal refuse from other properties on their land. Hopkins argued the lease did give it such a right. The parties filed cross-motions for summary judgment.

The trial court's initial order granted declaratory judgment in favor of the Skinners; however, Hopkins filed a motion to alter or amend, arguing the language was unclear. After a hearing, an amended declaratory judgment was entered which specified that

[Hopkins] has no right to use lands covered by the Surface Mining Lease dated August 2, 2001, for the disposal of coarse waste materials generated from properties other

than the property which is the subject of that Surface Mining Lease.

Hopkins now appeals from this order.

On appeal, Hopkins argues the surface mining lease clearly and unambiguously granted it the right to use coal refuse from other properties to fill in the strip mining pit on the Skinners' land. The first question when interpreting a contract is whether the terms are ambiguous. In the absence of ambiguity, "a court will interpret the contract's terms by assigning language its ordinary meaning and without resort to extrinsic evidence." *Frear v. P.T.A. Industries, Inc.*, 103 S.W.3d 99, 106 (Ky. 2003). "Generally, the interpretation of a contract, including determining whether a contract is ambiguous, is a question of law for the courts and is subject to *de novo* review." *Cantrell Supply, Inc. v. Liberty Mut. Ins. Co.*, 94 S.W.3d 381, 385 (Ky.App. 2002).

The particular paragraphs of the surface mining lease that are at issue in this case are paragraphs one, two, and twenty-six. The first paragraph details specific rights granted to the lessor, including the right to pile refuse on the Skinners' property. The second paragraph specifies that Hopkins has the right to operate its mining operation on the Skinners' property in conjunction with its mining operations on adjacent property. Paragraph twenty-six deals with reclamation and contains a provision preventing the property owners from interfering with Hopkins' state-approved reclamation efforts.

During the hearing held by the trial court, Hopkins stated that it would take several million tons of coal refuse to reclaim the surface mining pit and that the state had granted approval for Hopkins to use coal refuse from adjoining lands to reclaim the strip mining pit on the Skinners' property. Hopkins argued that that the Skinners were prevented, by paragraph twenty-six of the surface mining lease, from opposing any aspect of the reclamation plan approved by the state. The Skinners argued that paragraph one of the lease did not grant Hopkins the right to use waste from adjacent land for the reclamation of their property. Nor did they consent to such a usage of their property. Thus, they contested the state's authority to approve a reclamation plan which allowed coal refuse from adjacent land to be dumped on their property without their consent.

The trial court's order contained the following paragraph discussing the underlying rationale for its decision:

Upon closer scrutiny of the terms of the 2001 lease, the Court still reaches the same conclusion it intended in its prior Order although agreeably it was not clearly stated. Paragraph 1 of the lease, in this Court's opinion, does not grant disposal of waste materials from other properties. It contains the specific language of "said lands"—meaning the land subject to the 2001 lease. Even though the argument may be made that the last two words of the paragraph of "adjacent lands" coupled with the language of paragraph 2 supports [Hopkins'] position, the Court is of the opinion that these apply to the mining and marketing of coal, not reclamation. A whole separate paragraph (#26) is set aside to address the issue of

reclamation. [Hopkins] argues the [Skinners] have no right to interfere with any of the reclamation process and the "State" has approved such use of coal refuse. Approving that such coarse waste material may be used in the reclamation process is quite different from "requiring" it be used. Paragraph 26 basically mandates that the Lessee must comply with State requirements as to reclamation. Exhibit H submitted by [Hopkins] is a copy of the Agreed Order entered into by [Hopkins] and the Natural Resource and Environmental Protection Cabinet. It basically sets forth at least the minimum requirements that must be complied with for the reclamation process to restore land. The [Skinners] were not parties to this agreement and the order does not address landowners' rights. Further, [Hopkins] has presented no evidence from the State that "requires" it to use coal refuse from other mining locations even over landowner objection.

On appeal, Hopkins points to language in the three paragraphs of the surface mining lease mentioned above to support its contention that it was entitled to dispose of coal waste from other properties on land owned by the Skinners.

Paragraph one reads as follows:

1. MINING RIGHTS GRANTED: LESSOR does hereby grant unto LESSEE, its successors and assigns, the sole and exclusive right, privilege and license to enter upon the leased premises at any and all times during the term of this Lease and to use so much of the surface thereof as may be necessary or desirable for the purpose of removing by the strip mining method, or process all coal in or underlying the leased premises. LESSEE shall have the right to use said lands for the piling of dirt, overburden and refuse, and for preparing and marketing coal, together with the right to construct, maintain, operate and remove on the leased premises buildings, power lines, telephone

and telegraph lines, roads, machinery, equipment and other improvements or structures of all kinds necessary or convenient for the purpose of mining, removing and marketing coal and the right to make excavations, openings, pits, stockpiles, ditches, drains, dams and ponds upon said premises and to use water in the operations of LESSEE hereunder and to do all things necessary, convenient or helpful in efficiently conducting the mining operation on said lands and the marketing of the coal from said lands and adjacent lands.

This paragraph explicitly grants the lessee permission to pile "dirt, overburden and refuse" on the land subject to the lease without any restrictions as to the source of the refuse. The words "said lands" referred to in the trial court's order appear in paragraph one three times. The first time is in the sentence granting the lessee permission to pile refuse on "said lands." The second time the words appear as a limitation, allowing the lessee to "do all things necessary, convenient or helpful in efficiently conducting the mining operation on **said lands** and the marketing of the coal from **said lands** and adjacent lands." (Emphasis added.) None of that language limits the source of the refuse that Hopkins may pile on the Skinners' land.

The trial court's order gave scant consideration to paragraph two of the lease. This paragraph deals with Hopkins' right to operate its mining operation on the Skinners' property in conjunction with operations on adjacent lands. It reads as follows:

2. OPERATION WITH ADJACENT LANDS: It is specifically understood and agreed that this

Lease is or may be taken, held or operated in conjunction with adjacent lands owned or leased by LESSEE, and if this Lease be so taken, held or operated it may be worked in conjunction with such other neighboring lands and leases, and all mining on said leased lands by LESSEE may be conducted in such a manner as the LESSEE may deem most efficient and effective, and LESSEE shall have during the term of this Lease the right to transport production of coal from other lands and leases over the leased premises and to do on the leased premises all things that may be necessary or desirable or helpful in the efficient operation of the leased premises and other lands as a single mining operation. The rights of LESSEE to use the leased premises for any of the purposes herein specified shall continue so long as necessary or convenient to the actual operations of LESSEE on such adjacent or neighboring lands whether before or after the termination of operations on the leased lands.

Although the trial court's order acknowledged that the language of paragraph two arguably supported Hopkins' position, ultimately, the trial court held that paragraph two was limited to mining, rather than reclamation. We disagree.

Under the applicable statutes and regulations governing strip mining, reclamation is a required part of the mining process. A valid permit, obtained from the Natural Resources and Environmental Protection Cabinet, is a prerequisite to any lawful mining operations. 405 KAR 1:020, Section 5(1)(a). Kentucky Revised Statute (KRS) 350.090(1) requires a permittee to prepare and carry out "a method of operation, plan of grading and backfilling, and a reclamation plan for the area of land affected by his operation." Further,

the final sentence of paragraph two specifically grants Hopkins the right to use the Skinners' property for "so long as necessary or convenient to the actual operations of LESSEE on such adjacent lands" and regardless of whether or not Hopkins' mining operations on the Skinner property have terminated.

Finally, we turn to paragraph twenty-six in which the Skinners relinquished their right to interfere with the reclamation process.

26. RECLAMATION: LESSEE reserves the right, with respect to the surface of the Leased Premises, to do any and all things that may be required of it by the State of Kentucky and/or the United States in conforming to the reclamation laws affecting mining of coal by its surface mining operations, for so long as required by said laws or regulations regardless of whether said period is greater than the term provided for herein and the LESSOR shall not in any way interfere with or disturb the required reclamation until such time as the LESSEE has received a full release on its reclamation bonds. LESSEE shall have the right to perform all work and reclamation required by law or regulation on this and adjoining, adjacent and nearby properties, after the cancellation or expiration of the term of this lease for any reason without payment of additional consideration.

As previously mentioned, KRS 350.090(1) requires operators of strip mining operations to obtain a permit which includes a reclamation plan approved by the Natural Resources and Environmental Protection Cabinet. The Kentucky Department for Surface Mining Reclamation and Enforcement issued Hopkins a surface coal and reclamation operations permit which was valid

between June 2, 2004 and September 17, 2006. The permit stated that Hopkins agreed "to conduct surface coal mining and reclamation operations according to the approved plans and conditions of the permit. . . ." One of those conditions prohibited Hopkins from disposing of "hazardous waste and solid waste other than 'coal mining solid waste' . . . unless a permit is obtained from the Division of Waste Management." Thus, Hopkins' reclamation permit explicitly permits it to dispose of coal refuse as part of its reclamation without reference to the source of the coal refuse. Moreover, the Skinners gave up any right to interfere with Hopkins' efforts to comply with the requirements of the reclamation plan by agreeing to the language in paragraph twenty-six of the lease.

In addition to the paragraphs already discussed, we note paragraph twenty-seven of the surface mining lease clearly states that the entire agreement between the parties is set forth within the lease. As already discussed in more detail above, the lease specifically gives Hopkins the right to pile refuse--regardless of the source--on the leased property, the right to operate the leased property as a single mining operation with adjacent properties, and the right to perform reclamation free of interference by the property owners. Nowhere within the lease is there any mention of the property owners retaining any right to dispute the reclamation plan approved by the State. "Any contract or agreement must be construed as a whole, giving effect to all parts and every word

in it if possible." *City of Louisa v. Newland*, 705 S.W.2d 916, 919 (Ky. 1986). The trial court's order incorrectly interpreted the surface mining lease as unduly limiting Hopkins' right to use coal refuse from its other mining operations during reclamation of the leased property. For this reason, the judgment of the Webster Circuit Court is reversed, and this case is remanded for further proceedings consistent with this opinion.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Charles B. West  
Henderson, Kentucky

BRIEF FOR APPELLEES:

Harry L. Mathison  
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