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COAL LEASES HELD REAL PROPERTY

MINING LAW—LEASES: Coal leases, which granted an exclusive, 20-year right to mine and dispose of coal, and provided for 20-year renewal options, held community real property so that any lease conveyance was void unless joined in by both spouses. *Padilla v. Roller*, 94 N.M. 234, 608 P.2d 1116 (1980).

New Mexico's coal reserves are becoming more important as America gradually weans itself from imported petroleum. Ten years ago, only negligible amounts of coal were produced in New Mexico. This year, production will probably exceed 13 million tons, and an estimated 43 million tons of coal will be mined in the state by 1990.¹ The growing significance of domestic coal resources illuminates the importance of the legal status of leases for coal and other minerals. For example, the question of whether such a lease is real or personal property obviously can affect the transferability and price of the lease, as well as the cost of the commodity itself. Further, the classification of a lease as real or personal property can determine the very existence of a valid right to mine in New Mexico and other community property states. The New Mexico Supreme Court held that coal leases constitute real rather than personal property.² Consequently, where New Mexico's community property laws are applicable, the conveyance of a coal lease now requires the joinder of both spouses.³

In *Padilla v. Roller*,⁴ the court confronted the question of whether the transfers of a coal lease were void for the failure of the conveyor's wife to sign the transfer document. Appellees, Gilbert and Nora Padilla, brought suit to quiet title to two separate coal leases⁵ located in Sandoval County, New Mexico. Both appellants, Roller and

1. See Nathan, *N.M.'s Coal to Become More Important*, Albuquerque Journal, Sept. 3, 1980, at B-11, Col. 1.

2. Other courts have reached the same decision with respect to other mineral leases. See, e.g., *Phillips Petroleum Co. v. Adams*, 513 F.2d 355, 363 (5th Cir. 1975); *Casper v. Neubert*, 489 F.2d 543, 546-47 (10th Cir. 1973); *Martin v. Eslick*, 229 Miss. 234, 90 So. 2d 635, 641 (1956).

3. See N.M. STAT. ANN. § 40-3-13 (1978).

4. 94 N.M. 234, 608 P.2d 1116 (1980).

5. The leases granted to the lessee the exclusive right to mine and dispose of the coal for a period of 20 years and also provided for options to renew for successive 20-year periods, upon readjustment of royalties, terms, and conditions at the end of each 20-year period.

Ametex Corporation, and appellees claimed ownership of the coal leases under conveyances executed by Florentino Padilla. The transfer to Roller and Ametex had been made prior to the transfer to Gilbert and Nora Padilla. The controversy grew out of one crucial difference between the two claims: the transfer to Ametex and Roller was from Florentino Padilla alone, while the transfer to the younger Padillas had been signed by both Florentino Padilla and his wife, Amalia.⁶ The district court granted summary judgment for the younger Padillas; Roller and Ametex appealed to the New Mexico Supreme Court.

Under New Mexico law,⁷ any transfer or conveyance of real community property attempted by either the husband or wife alone is void,⁸ but either spouse alone may dispose of personal community property.⁹ Roller and Ametex contended that a coal lease constitutes personal property: specifically, a *profit a prendre* in gross.¹⁰ As such, the conveyance of the coal leases executed by Florentino Padilla alone were alleged to be valid. The Padillas, however, argued that the coal leases could only be characterized as real property, and that a valid transfer of the leases required the joinder of both spouses. Appellees believed theirs was the only valid title to the leases because their title bore the signatures of both transferring spouses.

In a terse opinion written by Justice Federici, the New Mexico Supreme Court analogized the *Padilla* case to earlier cases involving other mineral leases. The court pointed out that oil, gas, and mineral leases had been held to be real property. The case of *Terry v. Humphreys*¹¹ established that an oil or gas lease extending over a period of more than five years represents real property of the community and, consequently, requires the joinder of both spouses for its valid conveyance.¹² Similarly, in *Staplin v. Vesely*,¹³ the Supreme Court ruled that "[a]n oil lease is not what is ordinarily denominated a lease, it is a sale of an interest in land."¹⁴ Subsequent decisions rein-

6. At all relevant times, Florentino Padilla was married to Amalia.

7. The Court considered the *Padilla* question under N.M. STAT. ANN. § 57-4-3 (1953). The current version of the 1953 law is found at N.M. STAT. ANN. §§ 40-3-13, and 40-3-14 (1978).

8. N.M. STAT. ANN. § 40-3-13 (1978).

9. N.M. STAT. ANN. § 40-3-14 (1978).

10. Appellants' Brief in Chief, at 10.

11. 27 N.M. 564, 203 P.539 (1922).

12. *Id.* at 575-76, 203 P. at 543.

13. 41 N.M. 543, 72 P.2d 7 (1937).

14. *Id.* at 545, 72 P.2d at 8.

force the *Humphreys* rule.¹⁵ Most notably, in *Bolack v. Hedges*,¹⁶ the court stated that the oil industry in New Mexico had adjusted itself to the rule announced in *Terry v. Humphreys*,¹⁷ and that the rule should stand unaltered. More recently, the *Humphreys* rule was applied to the resolution of a dispute over uranium rights. In *Sachs v. Board of Trustees*,¹⁸ the court noted that "a mineral lease is considered to be real property in New Mexico."¹⁹ The *Padilla* court concluded from these precedents that the coal lease in question was real property, and that its conveyance required the joinder of both Florentino and Amalia Padilla.

CONCLUSION

The *Padilla* decision, in light of relevant case law, represents a consistent extension of the *Humphreys* rule, which has been applied in New Mexico since 1922. The terms of the leases²⁰ involved in *Padilla* were similar to the terms of the leases construed in earlier cases. A departure from *Humphreys* and its progeny would only have been justified on the facts or equities of this case. The court found no such justification. The fact that coal, rather than oil or gas, was at issue afforded no reason for barring the application of the rule. The *Padilla* decision, then, is a reasonable extension of well-established law into an increasingly significant area of resource development.

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15. *Heath v. Gray*, 58 N.M. 665, 274 P.2d 620 (1954); *Bolack v. Hedges*, 56 N.M. 92, 240 P.2d 844 (1952); *Vanzandt v. Heilman*, 54 N.M. 97, 214 P.2d 864 (1950); *Duvall v. Stone*, 54 N.M. 27, 213 P.2d 212 (1949); *Sims v. Vosburg*, 43 N.M. 255, 91 P.2d 434 (1939).

16. 56 N.M. 92, 240 P.2d 844 (1952).

17. 27 N.M. 564, 203 P.539 (1922).

18. 89 N.M. 712, 557 P.2d 209 (1976).

19. *Id.* at 721, 557 P.2d at 218.

20. *See* note 2, *supra* and accompanying text.