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ALABAMA

Edward “Ted” Holt, George Hayek, and Brandt Hill

I. CASE LAW

A. State Courts

1. Ex parte Alabama Surface Mining Commission

This case reviewed and conclusively determined the proper venue in which to file appeals from decisions by the Alabama Surface Mining Commission (the “Commission”). The Commission issued a surface-coal-mining permit to Black Warrior Minerals, Inc. (“Black Warrior”), allowing Black Warrior to mine land in northern Jefferson County, Alabama.¹ In response, three individuals who owned property nearby appealed the permit’s issuance with the Commission’s Department of Hearings and Appeals, and a hearing

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1. *Ex parte Ala. Surface Mining Comm’n v. Ex parte Black Warrior Minerals, Inc.*, No. 1170222, 2019 WL 168405 at *1 (Ala. Jan. 11, 2019).

officer affirmed the issuance.² The property owners then petitioned the Commission for review of the officer's decision, but their petition was never taken up and thus was denied by operation of law.³

With no remaining alternatives, the property owners sought judicial review of the Commission's decision, opting to file their suit in the Circuit Court for Jefferson County (home to the subject property) rather than in the Circuit Court for Walker County (the Commission's headquarters).⁴ In response, the Commission and Black Warrior each moved to dismiss the case or, alternatively, transfer the appeal to the Walker County Circuit Court.⁵ The Jefferson County Circuit Court denied both motions, prompting Black Warrior and the Commission to petition the Alabama Court of Civil Appeals for writs of mandamus, specifically on the issue of venue.⁶ However, the Court of Civil Appeals denied those petitions.⁷ With the tables now turned, Black Warrior and the Commission petitioned the Supreme Court of Alabama, hoping to finally have the matter transferred to Walker County.⁸

The Supreme Court began its analysis by discussing the contours of the Federal Surface Mining Act and its interplay with Alabama's own iteration of this regulatory framework.⁹ On its passage in 1981, the Alabama Surface Mining Act ("ASMA") allowed parties to seek judicial review of Commission decisions but, critically, the ASMA prescribed no specific venue to bring these lawsuits, leaving the issue to the courts.¹⁰ As a result, various parties over the years litigated the venue issue until, in 2015, the Alabama legislature amended the ASMA to clarify that the only proper venue for judicial review of Commission decisions is "in the circuit court of the county in which the commission maintains its principal office"—in other words, Walker County.¹¹

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Ex parte Ala. Surface Mining Comm'n v. Ex parte Black Warrior Minerals, Inc.*, 254 So.3d 904 (Ala. Civ. App. 2017), *rev'd*, 2019 WL 168405 (Ala. Jan. 11, 2019).

8. *Ala. Surface Mining Comm'n*, 2019 WL 168405, at *1.

9. *Id.* at *1–2.

10. *Id.* at *3.

11. *Id.* at *4 (quoting ALA. CODE § 9-16-79(4)b).

However, this 2015 amendment did not resolve the venue issue entirely. The property owners argued that at the time they filed suit in Jefferson County Circuit Court in January 2017, the amendment was not yet effective.¹² The Federal Surface Mining Act provides that any “change to laws or regulations that make up the approved State [surface mining regulatory] program” must be approved by the Office of Surface Mining Reclamation and Enforcement (the “OSM”) before taking effect.¹³ Seizing on this language, the property owners argued that because the 2015 amendment to the ASMA had not yet been approved by the OSM when they sued in January 2017, its venue provision was not yet effective—and thus Jefferson County was a proper venue.¹⁴

In response, the Commission and Black Warrior argued that the 2015 amendment did not require OSM approval because it did not constitute a “change to laws or regulations” to Alabama’s regulatory program; it merely prescribed the proper venue and does not address the regulation of mining itself.¹⁵ In a 5-3 split, a majority of the Supreme Court of Alabama agreed.

Specifically, the court found that the Federal Surface Mining Act only required states to provide a “court of competent jurisdiction” to adjudicate appeals; it did not require states to include a particular venue provision.¹⁶ The court further noted that when the ASMA was originally enacted, it did not include a venue provision but was still approved by the OSM. Thus, the 2015 amendment “did not alter Alabama’s state program and did not require the approval of the

12. *Id.*

13. *Id.*

14. *Id.* The property owners’ argument that Jefferson County was a proper venue relied on the Alabama Administrative Procedures Act, which was enacted in 1982, just one year after the ASMA. *See* ALA. CODE § 41-22-27. Among other things, the AAPA detailed “the procedure for soliciting judicial review of final decisions of administrative agencies within the State.” *Ex parte* Worley v. Worley, 46 So.3d 916, 919 (Ala. 2009). It specifically provided that venue for such judicial proceedings is proper “either in the Circuit Court of Montgomery County or in the circuit court of the county in which the agency maintains its headquarters, or unless otherwise specifically provided by statute, in the circuit court of the county where a party . . . resides.” ALA. CODE § 41-22-20(b) (1975). Because the pre-amendment version of the ASMA did not contain a specific venue provision, and because its 2015 amendment was not yet effective, the property owners argued that venue was proper in Jefferson County under the AAPA.

15. *Ala. Surface Mining Comm’n*, 2019 WL 168405, at *5.

16. *Id.*

OSM,” meaning the venue provision became valid on its effective date in June 2016—before the property owners filed suit.¹⁷ Accordingly, the Supreme Court held that the Commission and Black Warrior “have demonstrated a clear legal right to have the underlying action transferred to the Walker Circuit Court.”¹⁸

Justices Shaw, Parker, and Bryan dissented.¹⁹ In Justice Shaw’s dissent (which Justice Bryan joined), he noted: “It is clear that the 2015 amendment itself is part of the state program, despite the fact that it does not directly regulate mining operations.”²⁰ Specifically, he observed that the 2015 amendment’s venue provision affects the judicial procedures and remedies involved with challenging the Commission’s decisions, which are federally mandated aspects of the state program, “despite the fact that those procedures may not directly impact mining operations.”²¹ Furthermore, Justice Shaw observed that the Commission itself believed the 2015 amendment was a change to Alabama’s state program, as evidenced by the agency’s explicit characterization of it as such.²² Since the provision constituted a change to the state program, it needed to be approved by the OSM before becoming valid, which never occurred.²³ Accordingly, Justice Shaw concluded that “the 2015 amendment was not in effect when the underlying administrative appeal was commenced and did not control venue in this case.”²⁴

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.* at *10 (Shaw, J., dissenting).

21. *Id.*

22. *Id.* at *11 (Shaw, J., dissenting).

23. *Id.*

24. *Id.*