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Murray v. BEJ Minerals, LLC

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Murray v. BEJ Minerals, LLC, 908 F.3d 437 (9th Cir. 2018)

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Part of a dispute some 66 million years in the making, *Murray v. BEJ Minerals, LLC* considered for the first time whether dinosaur fossils—specifically a one-of-a-kind specimen containing entombed "dueling dinosaurs"—qualified as "minerals" for the purposes of a property transaction under Montana law. Finding no consistent statutory or dictionary definition for "mineral," the Ninth Circuit relied on a test previously utilized by the Montana Supreme Court to hold that the dinosaur fossils constituted minerals due to their rare and exceptional qualities and were therefore part of the property's mineral estate. The decision was promptly nullified, however, as the Ninth Circuit granted a rehearing en banc and the Montana legislature passed a measure declaring dinosaur fossils part of the surface estate under state law.

I. INTRODUCTION

Through a series of property transactions over several decades, George, Jerry, and Robert Severson (the "Seversons") divided ownership of their ranch in Garfield County, Montana (the "Ranch") with Mary Ann and Lige Murray (the "Murrays").[1] Eventually, the Murrays acquired the Ranch's entire surface and shared ownership of the mineral estate with the Seversons.[2] Starting in 2006, the Murrays began discovering a number of unique dinosaur fossils on the property.[3] Once informed of the discoveries, the Seversons asserted an ownership interest, prompting the Murrays to seek a declaratory judgment deeming the fossils part of the surface estate.[4] The Seversons counterclaimed, arguing the fossils were part of the mineral estate.[5]

Sitting in diversity, the United States District Court granted summary judgment for the Murrays, holding that dinosaur fossils did not fit the ordinary and natural meaning of mineral and therefore were not included in the mineral estate under Montana law.[6] The Ninth Circuit Court of Appeals reversed, relying on a test previously utilized by the Montana Supreme Court to determine whether a substance is a mineral in the context of property transactions.[7]

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1. Murray v. BEJ Minerals, LLC, 908 F.3d 437, 440 (9th Cir. 2018).
2. *Id*.
3. *Id*.
4. *Id.* at 441.
5. *Id.*
6. *Id*.
7. *Id*. at 446, 448; *see* Farley v. Booth Bros. Land & Livestock Co., 890 P.2d 377 (Mont. 1995).

II. FACTUAL AND PROCEDURAL BACKGROUND

In 1983, George Severson began leasing the Ranch to the Murrays, who worked for George as ranchers.[8] George later transferred parts of his property interest to his sons, Jerry and Robert, and sold the rest to the Murrays.[9] In 2005, the parties executed a mineral deed ("the Deed") through which the Seversons sold their surface rights and one-third of their mineral rights to the Murrays.[10] The Deed stated that the Seversons and Murrays would own the remaining two-thirds of the mineral estate as tenants in common, sharing "all right title and interest in and to all of the oil, gas, hydrocarbons, and minerals in, on and under, and that may be produced from the [Ranch]."[11]

In 2006, commercial bone diggers mistakenly entered the Ranch and discovered fossil remains of two dinosaurs locked in combat.[12] The diggers partnered with the Murrays and excavations began.[13] Over the next few years, multiple fossils were discovered on the Ranch, including the "dueling dinosaurs," a nearly complete Tyrannosaurus Rex skeleton and "one of the best . . . Triceratops skull[s] ever found."[14] The fossils (collectively "the Montana Fossils") are considered to contain "huge scientific value" and were appraised at millions of dollars.[15]

In 2008, the Murrays informed the Seversons of the discoveries and the Seversons claimed an ownership interest. In response, the Murrays sought a Montana state court judgement declaring that "as owners of the surface estate . . . they [were] the sole owners of the Montana Fossils."[16] The Seversons, as residents of Florida, removed the action to federal court through diversity and filed a counterclaim asserting that the Montana Fossils were instead part of the mineral estate.[17]

The United States District Court for the District of Montana granted summary judgment for the Murrays, ruling that the Montana Fossils were "not included in the ordinary and natural meaning of 'mineral' under Montana law, and therefore [were] not part of the mineral estate."[18] The Seversons appealed and a three-judge panel reviewed the matter de novo, analyzing the issue under Montana law.[19] Despite the

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8. *Id*. at 440.
9. *Id*.
10. *Id*.
11. *Id*.
12. Mike Sager, *Will the Public Ever Get to See the "Dueling Dinosaurs"?*, SMITHSONIAN MAGAZINE, July 2017, https://www.smithsonianmag.com/science-nature/public-ever-see-dueling-dinosaurs-180963676/.
13. *Id.*
14. *Murray*, 908 F.3d at 440–441.
15. *Id*.
16. *Id*. at 441.
17. *Id.* at 439, n.2.
18. *Id*. at 441.
19. *Id*.

"novel question" and "potential policy implications," the parties did not request certification of the question to the Montana Supreme Court.[20]

III. ANALYSIS

Noting that deeds conveying property interests are assessed through the rules of contract interpretation under Montana law, the court first looked at the potential meanings of "mineral" to determine whether the Deed's language encompassed the Montana Fossils.[21] Finding this inquiry inconclusive, the court then evaluated how a substance qualifies as a mineral in a property transaction under Montana law.[22] Finally, the court addressed several policy arguments concerning particular tests proffered by the parties.[23]

A. Meaning of Mineral

The court stated that contract language is interpreted in its "ordinary and popular sense" unless the parties use words technically or give them special meaning.[24] Although a word's "ordinary and popular" meaning is typically drawn from dictionary definitions, the court noted that "mineral" is notorious for having multiple definitions.[25] For example, both the Seversons and Murrays agreed that the Montana Fossils were composed entirely of hydroxylapatite or francolite, both considered inorganic minerals.[26] Therefore, the Montana Fossils qualified as minerals in a scientific sense and as defined in a host of dictionaries, including Webster's Third New International Dictionary, the New Oxford American Dictionary, and Black's Law Dictionary.[27]

Nevertheless, courts have also applied narrower use-related definitions.[28] The district court found that fossils were not minerals because fossils were not discovered via traditional mining techniques nor subject to "further refinement before becoming economically exploitable," like oil, gas, and coal.[29] Conversely, however, the Ninth Circuit noted that the Montana Fossils were indeed used for economic and commercial

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20. *Id*. at 448, n.1 (Murguia, J., dissenting).

21. *Id.* at 441–442. The court clarified that the term "surface estate" is a "misnomer," and includes everything except minerals, including property under the surface of the land. The mineral estate, meanwhile, comprises all minerals found on a property, including those found on the surface. *Id.* at n.1.

22. *Id*. at 443–444.

23. *Id*. at 445.

24. *Id*. at 442 (quoting Dollar Plus Stores, Inc. v. R-Montana Assocs., L.P., P.3d 216, 219 (Mont. 2009)).

25. *Id*. (quoting Northern Pac. Ry. Co. v. Soderberg, 188 U.S. 526, 530 (1901)).

26. *Id*. at 442, n.6.

28. *Id*. at 442.

28. *Id*. at 443.

29. *Id*.; *see* Murray v. Billings Garfield Land Co., 187 F. Supp. 3d 1203, 1212 (D. Mont. 2016).

purposes, as some had sold for millions of dollars to museums which charge admission fees.[30] Moreover, the court stated that "mineral" has never been limited to fuel substances. Oil, gas, and coal all "derive from the remains of plants and animals" and should not receive disparate treatment because they are valued for different reasons.[31]

Finally, the court observed that a previous edition of Black's Law Dictionary defined mineral to include "all fossil bodies" dug out of mines or quarries.[32] Considering the inconsistent dictionary definitions, the court held that the Deed's plain language did not exclude dinosaur fossils.

B. Montana Law

The court observed that Montana—like the rest of the nation—has long labored to "make sense of the legal morass regarding the term 'mineral.'"[33] The Montana Supreme Court first addressed the meaning of the word for a land transfer agreement in *Farley v. Booth Brothers Land and Livestock Company*.[34] Finding no statutory definition, the *Farley* court surveyed surrounding case law and settled on a test enunciated by the Texas Supreme Court in *Heinatz v. Allen*.[35] This *Heinatz* test declared that substances like sand and gravel do not qualify as minerals within the word's ordinary and natural meaning unless they have some rare and exceptional character or property which gives them special value.[36]

The Seversons argued that the Montana Supreme Court adopted the *Heinatz* test in *Farley* and therefore the Montana Fossils constituted minerals because they were both mineral in the technical sense and possessed rare and exceptional properties which gave them special value.[37] In response, the Murrays contended that the Montana Supreme Court did not adopt the *Heinatz* test in *Farley* and merely used it as a "secondary reference."[38] Rather than rely on this secondary reference, the Murrays urged the court to determine the meaning of mineral based on definitions from a host of state statutes and regulations which had "never" included dinosaur fossils.[39] Alternatively, the Murrays asserted that if the *Heinatz* test was adopted in *Farley*, it was considered categorical, meaning that all dinosaur fossils must qualify as minerals for any particular fossil to also qualify.[40] In other words, because some dinosaur fossils are "virtually worthless," dinosaur fossils in general do not exhibit the rare and

30. *Murray*, 908 F.3d at 443.
31. *Id*. at 443–444 (footnote omitted).
32. *Id*. at 444 (citing *Mineral*, BLACK'S LAW DICTIONARY (6th ed. 1990)).
33. *Id*. (citing Farley v. Booth Bros. Land & Livestock Co., 890 P.2d 377 (Mont. 1995)).
34. *Id*. at 444–445 (citing *Farley*, 890 P.2d at 379).
35. *Id*.
36. *Id*. (quoting Heinatz v. Allen, 217 S.W.2d 994 (Tex. 1949)).
37. *Id*. at 445.
38. *Id*.
39. *Id*.
41. *Id*.

exceptional properties necessary to qualify as minerals.[41] The Murrays maintained that adopting this categorical approach would reduce confusion and litigation over whether a fossil is rare and exceptional enough to be considered a mineral.[42]

The court first noted that the statutory definitions of mineral offered by the Murrays were contradictory and thus inconclusive.[43] Many of the definitions actually encompassed dinosaur fossils, and the ones that did not were irrelevant.[44] Next, the court stated that while the Montana Supreme Court in *Farley* did not explicitly adopt the *Heinatz* test, it applied the test fourteen years later when faced with a similar dispute.[45] This repeated reliance demonstrated that the Montana Supreme Court had "generally adopted the *Heinatz* test" to determine whether a substance is a mineral for the purposes of a property transaction.[46]

Additionally, the court recognized that although the *Heinatz/Farley* "rare and exceptional" standard may generate some "unpredictability," the Montana Supreme Court indicated the test was not intended to be categorical.[47] Notably, the *Farley* decision mentioned common substances like sand which may be valuable for making glass, which in turn implied that sand may exist which is "*not* valuable for making glass."[48] Accordingly, *Farley* did not hold that all sand is precluded from being a mineral just because some sand is worthless.[49] Thus, under *Farley*, the court found the Montana Fossils were minerals according to Deed's terms and belonged to the mineral estate's owners.[50]

C. Additional Policy-Based Arguments

The Murrays also argued that the *Heinatz/Farley* test did not reflect the ordinary meaning of the word "mineral," would cause needless litigation to determine rareness, and could jeopardize museum ownership of fossil collections.[51] As a federal court sitting in diversity, the court concluded it was "not free to impose [its] policy preferences over those of the Montana Supreme Court," dismissing the Murrays' arguments as meritless.[52] The court explained that, because the underlying purpose of owning a mineral estate is to "extract something valuable from the land,"[53]

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42. *Id*.
42. *Id*.
43. *Id*. at 445–446.
44. *Id*.
45. *Id*. at 446; *see* Hart v. Craig, 216 P.3d 197, 198 (Mont. 2009).
46. *Murray*, 908 F.3d at 446. The court explained that its task when sitting in diversity was to predict how the respective state court would decide the issue. *Id*. at n.10.
47. *Id*. at 447.
48. *Id*. (citing *Farley*, 890 P.2d at 379 (Mont. 1995)).
49. *Id*.
50. *Id*.
51. *Id*.
52. *Id*.
53. *Id*.

tying the definition of mineral to a substance's value is logical and reflects the ordinary and natural meaning of the term.[54] Additionally, the broad definition of "value" used in *Heinatz* would prevent excessive litigation with respect to "rareness." Finally, any concerns over museum collection ownership were merely "hypothetical" and easily resolved.[55]

DISSENT

The dissent disagreed with the majority's focus on the rare and exceptional qualities of a substance, arguing instead that *Heinatz* stood for an "ordinary and natural meaning test," which assessed "the nature of the [substance], its relation to the surface of the land, its use and value, and the method and effect of its removal."[56] Conceding that fossils qualify as minerals scientifically, the dissent nevertheless argued fossils "pertain much more closely to the surface of the land."[57] Like the limestone at question in *Heinatz*, fossils are excavated rather than mined, which interferes significantly with the surface estate.[58] The dissent also observed that fossils are used and valued differently than hydrocarbons and other minerals extracted for refinement and economic purposes. Fossils, meanwhile, derive value from characteristics like completeness and specimen species, not mineral composition.[59] Thus, the dissent agreed with the district court's conclusion that fossils were not included in the "ordinary and natural meaning of the term 'minerals,'" used in the Deed.[60]

IV. CONCLUSION

Murray illustrates the difficulty of determining what constitutes a "mineral" under Montana law. By adhering to the "rare and exceptional" test, rather than a narrower, use-based definition, *Murray* opened the door for novel substances like dinosaur fossils to qualify as minerals and become part of a property's mineral estate. The potential ramifications and disruptive nature of the holding elicited prompt reaction. The Ninth Circuit granted rehearing en banc, stripping the decision of precedential value.[61] Meanwhile, the Montana legislature passed a bill which criticized *Murray* as a "threat to private property rights" and declared dinosaur fossils as part of a property's surface estate under state statute.[62]

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54. *Id*.

55. *Id*. The court noted that if a mineral estate owner successfully sued a museum over its fossil collection, the museum would be entitled to a refund from whomever sold the fossils without full ownership. *Id*. at n.11.

56. *Id*. at 449 (Murguia, J., dissenting) (citing *Heinatz*, 217 S.W.2d at 995–996).

57. *Id*.

58. *Id*.

59. *Id*.

60. *Id*.

61. Order, April 4, 2019, No. 1:14-cv-00106-SPW.

62. Clarify Dinosaur Bones and Fossils are Part of Surface Estate, H.R. 229, 66th Leg., 2019 Sess. (Mont. 2019).