

No. 86 Original

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In the Supreme Court of the United States

October Term, 1982

STATE OF LOUISIANA,

Plaintiff,

VS.

STATE OF MISSISSIPPI, ET AL.,

Defendants.

**PETITION OF AVERY B. DILLE, JR.
FOR CLARIFICATION OF OPINION**

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TABLE OF CASES CITED

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Appellee, A. B. Dille, respectfully petitions this Court to supplement or amend the original opinion of April 2, 1984, by making more precise the effect that the Court's decision will have on his rights, as well as the rights of his two brothers, equal owners with him of the oil, gas and minerals under the Mississippi Dille riparian lands, which are presently in litigation in the United States District Court for the Southern District of Mississippi (Civil Docket No. W79-0069 (R) *sub nom.*, *Dille v. Pruet & Hughes Co. (a partnership) et al.*).

In her original Complaint filed in this cause, Louisiana elected to make the State of Mississippi and A. B. Dille the sole defendants. In commenting on the pending District Court suit, Louisiana pled that "said Court is not the forum proper to" determine state boundaries "nor is the State of Louisiana required to submit its title to

said Court, nor should it be." (Complaint p. 16) In the prayer for relief Louisiana prayed:

"3. That, on final hearing hereof, the eastern boundary line of the State of Louisiana at Giles Bend Cut-Off, including the permanent boundary as established in Giles Bend, should be recognized as fixed and determined, the Court to further adjudge that the State of Louisiana Well No. 3, hereinbefore specifically described, is and has been since its completion on or about January 14, 1972 is and has been located within the State of Louisiana.

"4. That the claim of right and title asserted by Avery B. Dille, Jr. in and to the above said well and the proceeds thereof be herewith cancelled and forever held for naught."

During the course of the hearing before the Special Master, Louisiana made no attempt to delineate a boundary other than having her expert witnesses reproduce their boundaries on the various hydrographs with the distance between the boundary and the bottom hole location of the well also shown. As the opinion of the Court noted (p. 7), Odom's line and Harrison's line "do not coincide". Smith not only depicted the location of his line on his exhibits but also gave a description of the boundary by geodetic positions.

Notwithstanding, the Special Master declined to determine any specific boundary but simply concluded that at all relevant times the well in question was located in Louisiana. The Court concurred, holding:

"We therefore confirm the Master's recommendation and conclude that at all relevant times during the period from 1972-1982 the boundary between Mississippi and Louisiana was east of the bottom hole and,

therefore, that the bottom hole was to the west of that line and within the State of Louisiana. This conclusion obviously resolves the case so far as the Louisiana and Dille leases, and the consequences that flow therefrom, are concerned."

Appellant Dille's concern over probable drainage of oil from his Mississippi riparian lands by the Louisiana well was not addressed by the Special Master (See the prayer by Dille at Page 35 of Exhibit B to the Complaint filed herein by Louisiana), nor did this Court address it other than to comment on Mississippi's concession "that possible drainage of oil from the Dille land was the Dille's private concern—not the concern of the State". (Opinion, p. 11)

The Opinion, at Page 12, finally concludes:

"[It] was the producing well's location that was the prize. If other boundary consequences mature and really come to issue between the States, either, of course, is free to institute appropriate litigation for their resolution."

If we read the Court's opinion correctly, it would appear that its decision was limited to a finding that at all times the well in question was located in Louisiana, a matter of primary concern to the two States. Avery B. Dille, Jr. had a private land controversy which may or may not be affected by the decision and, if affected, the extent thereof is not clear from the opinion. While the opinion states that if "other boundary consequences mature" each State is "free to institute appropriate litigation for their resolution" (p. 12), however, how is this statement to be reconciled with the earlier holding at Page 10 that fixing the location of the well in Louisiana "obviously resolves the case so far as the Louisiana and Dille leases and the con-

sequences that flow therefrom are concerned." Only one Dille was a party litigant. Neither Henry W. Dille nor Richard T. Dille, the owners of the other two-thirds mineral interest were parties to this Original Action nor were any of the owners of the working interests under the State of Louisiana and the Dille leases (they were identical) parties to the litigation. These working interest parties did seek to intervene but their request was denied by the Special Master (Appendix A to his Report) and no appeal was pursued.

Durfee v. Duke (1963) 375 U.S. 106, 84 S.Ct. 242, is clear authority that private land controversies do not necessarily mean that they are completely controlled by State boundary decisions of the Supreme Court.

With deference, we submit that unless the holding of the Court is clarified, the United States District Judge can become quite easily confused as to how the opinion in this case will affect the issues relative to the pending controversy in the United States District Court where drainage is alleged. And, there remains the question of the effect of the decision on those interested entities who are not parties to this Original Action.

Respectfully submitted,

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April 27, 1984

I, Mitchell Emmett Ward, certify that the foregoing Petition is presented in good faith and is not for delay.

MITCHELL EMMETT WARD

CERTIFICATE OF SERVICE

I, MITCHELL EMMETT WARD, Attorney for Avery B. Dille, Jr., and a member of the bar of the United States Supreme Court, do hereby certify that I have this day forwarded by United States Mail, postage prepaid, in the number and manner prescribed by Rule 33 of the Rules of the United States Supreme Court, true and correct copies of the foregoing Petition of Avery B. Dille, Jr. for Clarification of Opinion, to the following:

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This the 27th day of April, 1984.

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