

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

June 4, 2024

Lyle W. Cayce
Clerk

No. 22-20226

ANNE CARL, *as Co-Trustees of THE CARL/WHITE TRUST, on behalf of itself and a class of similarly situated persons*; ANDERSON WHITE, *as Co-Trustees of THE CARL/WHITE TRUST, on behalf of itself and a class of similarly situated persons*,

Plaintiffs—Appellants,

versus

HILCORP ENERGY COMPANY,

Defendant—Appellee.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:21-CV-2133

Before DENNIS, ELROD, and HO, *Circuit Judges*.

PER CURIAM:*

In this mineral royalty dispute, the lessors appeal the district court's dismissal of their claim that the lessee must pay royalties on gas used off lease for post-production services like transport and processing. We certified two questions to the Supreme Court of Texas regarding how royalties should be

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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calculated under this lease. First, we asked whether the lease could be interpreted to allow for the deduction of gas used off lease in the post-production process. *Carl v. Hilcorp Energy Co.*, 91 F.4th 311, 317 (5th Cir. 2024), *certified questions answered*, No. 24-0036, 2024 WL 2226931 (Tex. May 17, 2024). Second, we asked whether, if such gas was deductible, the deduction should be calculated by reducing the value of unit per gas or the number of units of gas on which royalties must be paid. *Id.*

In a characteristically thorough and well-reasoned opinion, the Supreme Court of Texas held that the lease plainly required the deduction of post-production costs, and the use of gas from the well for post-production operations was such a cost—even when that use occurred off lease. *Carl v. Hilcorp Energy Co.*, No. 24-0036, 2024 WL 2226931, at *2–3 (Tex. May 17, 2024). The Supreme Court of Texas declined to take a position on the accounting question because the parties did not brief the issue, though the Court noted that either method would yield the same result. *Id.* at *4.

Because the district court’s dismissal of Carl’s claims, as well as the basis for doing so, was consistent with the Supreme Court of Texas’s answers to the certified questions, we AFFIRM.