NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2013 CA 0289

ROBERT H. GATTI, SR., MARCIA JEAN WESTBROOK GATTI, RANDA DURHAM, CAVE FAMILY TRUST, REPRESENTED BY ITS TRUSTEE, STEPHANIE F. CAVE, ROBERT B. GATTI, JR., AND JENNIFER TURNER GATTI

VERSUS

THE STATE OF LOUISIANA THROUGH THE DEPARTMENT OF CONSERVATION, JAMES H. WELCH, CHESAPEAKE OPERATING, INC., J-W OPERATING, ENCANA OIL & GAS (USA), INC., EXCO OPERATING LP, JAG OPERATING, LLC, CONOCO PHILLIPS COMPANY, PETRO HAWK OPERATING COMPANY, SWEPI LP, COMSTOCK OIL & GAS – LOUISIANA LLC, EOG RESOURCES, QUESTAR EXPLORATION & PRODUCTION COMPANY, FOREST OIL PERMIAN CORPORATION, BEUSA ENERGY, INC., ARK-LA-TEX ENERGY, LLC, EL PASO E & P COMPANY, LP, GOODRICH PETROLEUM COMPANY, LLC, XTO ENERGY, INC. & CORONADO ENERGY E & P COMPANY, LLC

Judgment Rendered: JAN 15 2014

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Appealed from the
19th Judicial Trial Court
In and for the Parish of East Baton Rouge, Louisiana
Trial Court Number 589,350

Honorable William A. Morvant, Judge

* * * * * * *

Whipple J. Theriot concurs

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BEFORE: WHIPPLE, C.J., WELCH, AND THERIOT, JJ.

WELCH, J.

Plaintiffs, Robert Gatti, Sr., Marcia Gatti, Randa Durham, Cave Family Trust, represented by its trustee, Stephanie Cave, Robert Gatti, Jr., and Jennifer Gatti, appeal a judgment sustaining the peremptory, declinatory, and dilatory exceptions raising the objections of no cause of action, no right of action, prescription/peremption, lack of subject matter jurisdiction, and prematurity filed by the defendants, the State of Louisiana through the Office of Conservation and its commissioner and numerous oil and gas companies. We reverse the judgment to the extent that it sustained the exceptions with respect to plaintiffs' declaratory judgment action, pretermit ruling on the remaining exceptions, and remand.

BACKGROUND

Plaintiffs are the owners of mineral rights in the various units and fields in the Haynesville Shale, located in northwest Louisiana. On April 8, 2010, plaintiffs filed this lawsuit against the State of Louisiana, through the Office of Conservation and its Commissioner, James H. Welch (sometimes collectively referred to as "Commissioner"), Chesapeake Operating Inc., J-W Operating, Encana Oil & Gas (USA), Inc., Exco Operating, LP, JAG Operating, LLC, Conoco Phillips Company, Petrohawk Operating Company, Swepi LP, Comstock Oil & Gas-Louisiana LLC, EOG Resources, Questar Exploration & Production Company, Forest Oil Permian Corporation, Beusa Energy, Inc., Ark-LA-Tex Energy, LLC, El Paso E&P Company, LP, Goodrich Petroleum Company, LLC, XTO Energy, Inc., and Coronado Energy E&P Company, LLC (sometimes collectively referred to as "the defendants"), seeking class certification, a declaratory judgment, and damages. In their petition, plaintiffs made the following allegations: While the presence of natural gas in shale formations has long been known, the low porosity and permeability of shale as compared to sand formations has precluded economic development of shale until improvements in technology in recent years.

Principally "fracturing" and horizontal well bores have greatly increased porosity and permeability, providing sufficient quantity and flow rates for profitable natural gas operations. The first well completed in the Haynesville Zone, the SRLT 29-1 on March 22, 2007, was vertically drilled by defendant Chesapeake Operating, Inc. (Chesapeake) in the Johnson Branch Field, and was named the unit well for the subsequently formed 640 acre [unit] established by the Office of Conservation Order No. 994-D, effective July 10, 2007, with Chesapeake designated as the unit operator. Due to the low porosity and permeability of the shale, the vertically drilled SRLT 29-1 was able to drain gas from only a small area around the borehole and the remainder of the gas in the Haynesville Zone remained locked as it had been for millions of years, totally beyond the reach of the SRLT 29-1 well. Consequently, if a unit were not limited in size to accord with the true drainage area of the unit well, the plaintiff class members owning mineral rights within the true drainage area of the unit well faced an enormous dilution of their share of the unit production well.

Plaintiffs cited a portion of La. R.S. 30:9(B), which gives the Commissioner the authority to establish drilling units, providing that "[a] drilling unit, as contemplated herein, means the maximum area which may be efficiently and economically drained by one well." Plaintiffs alleged that upon completion of the SRLT 29-1 well, Chesapeake had the duty to apply for a unit boundary to accord with well recognized data. However, instead of applying for a unit limited to the small drainage of the SLRT 29-1 in fulfillment of its duty as a unit operator, at the same hearing established by Office of Conservation Order No. 994-D, Chesapeake applied for a permit to drill an "alternate unit well," the SRLT 29-2 Alt, thus seeking a clearly forbidden two-well unit. The Commissioner granted this permit and then granted a permit to drill a third well in the 640-acre unit, which plaintiffs

alleged exceeded the Commissioner's limited statutory authority mandating one-well units.

Plaintiffs further alleged that the defendant operators were well aware that approximately eight wells, not one, would be required to drain the 640 acres prescribed in the original unit order. However, the operators continued to apply for and the Commissioner continued to order 640-acre units in clear violation of the statutory requirement of one-well units contained in La. R.S. 30:9; no revision of the units were applied for or ordered to meet this statutory requirement; and natural gas production from the fields continued to be distributed according to the 640-acre drilling units.

In addition to a judgment awarding damages against the operator defendants, plaintiffs sought a declaratory judgment decreeing: that there are only three specific instances in which the Commissioner has the authority to establish a unit having an area in excess of the area drainable by one well; that except for those three instances, no authority or power is prescribed by law for the Commissioner to establish a unit having an area in excess of the area drainable by one well; and the purported creation of a unit having an area in excess of the area drainable by one well is null and void. They further sought a declaration that alternate wells are not authorized by the statute, are beyond the legal authority granted to the Commissioner, and violate La. R.S. 30:9(B).

Regarding the State of Louisiana, plaintiffs averred only that in light of the allegations of their petition and in the interest of due process, the State was being made a party to respond to its prayer for declaratory judgment.

The operator defendants filed exceptions raising numerous objections to the plaintiffs' petition. As to the declaratory judgment action, the defendants filed exceptions of no cause of action, no right of action, lack of subject matter jurisdiction, failure to exhaust administrative remedies, prematurity, and

prescription/peremption. These exceptions were all premised on the central argument that plaintiffs are attacking orders issued by the Commissioner and that La. R.S. 30:12, which sets forth the procedures for obtaining judicial review of an order or other action of the Commissioner after exhausting the administrative remedies provided by law, provides the exclusive means by which plaintiffs may challenge an order of the Commissioner in a judicial proceeding.

As to the declaratory judgment action, the defendants made these arguments in the trial court: (1) there is no provision for a declaratory judgment action in La. R.S. 30:12 and therefore it is not an available remedy; (2) a trial court lacks subject matter jurisdiction to review the Commissioner's actions in any manner other than that set forth in La. R.S. 30:12; (3) plaintiffs' attack on the orders of the Commissioner constituted an impermissible collateral attack; (4) plaintiffs failed to exhaust the administrative procedures set forth in the Conservation Act prior to filing suit, including La. R.S. 30:6(F), which gives plaintiffs the right to petition the Commissioner to call a hearing to consider revising any order; (5) because La. R.S. 30:12(A)(2) requires that any suit for review of the Commissioner's orders be brought within 60 days of the administrative action, any challenge to any order more than 60 days old must be dismissed as untimely.

The defendants excepted to the damage claim on the grounds of lack of subject matter jurisdiction, no cause of action, no right of action, prematurity and failure to exhaust administrative remedies, and failure to make amicable demand. The defendants asserted that the damage claims constitute an impermissible collateral attack on the Commissioner's orders, are premature because plaintiffs did not exhaust administrative remedies set forth in La. R.S. 30:12, and to the extent the damage claim may be construed as a claim for underpaid royalties, it must be dismissed because plaintiffs failed to follow the pre-suit demand required by the Louisiana Mineral Code and/or the mineral leases that created their royalty

interests. Finally, as to both the declaratory judgment and damage claims, the defendants raised exceptions of improper cumulation, vagueness, and ambiguity.

The State adopted the exceptions raised by the operating defendants and raised an exception of no cause of action on two additional bases. First, the State argued that the plaintiffs were attempting to have the trial court impermissibly exercise original jurisdiction in the matter, even though it had only appellate jurisdiction to review the orders of the Commissioner. Second, the State argued that granting plaintiffs the relief they sought would violate the principle of separation of powers and would thus be unconstitutional, as Louisiana law makes it clear that it is for the Office of Conservation, not the courts, to make the initial determination regarding an application for unitization or alternate unit wells.

Following a hearing, the trial court rendered judgment dismissing plaintiffs' lawsuit in its entirety without prejudice, reserving to them the right to seek further administrative remedies as may be accorded under the law. With respect to the claims and prayer for a declaratory judgment, the trial court sustained the peremptory and declinatory exceptions raising the objections of no cause of action, no right of action, prescription/peremption, and lack of subject matter jurisdiction. As to the claims and prayer for damages, the trial court sustained the defendants' peremptory, declinatory, and dilatory exceptions of no cause of action, no right of action, prescription/peremption, lack of subject matter jurisdiction, and prematurity. The court pretermitted ruling on any of the remaining exceptions.

DISCUSSION

We note that many of the parties' arguments are addressed to the merits of this case and address the question of whether the Commissioner in fact is statutorily authorized to create drilling units that cannot be drained by one well under the factual circumstances of this case. However, the exceptions raised by the defendants present a threshold procedural issue which must be resolved prior to

addressing the merits of plaintiffs' claims. In order to determine whether the trial court properly sustained the exceptions of no cause of action, lack of subject matter jurisdiction, and failure to exhaust administrative remedies, we must first decide whether La. R.S. 30:12 provides the only procedural mechanism for the plaintiffs to seek judicial review of the challenged actions of the Commissioner. In other words, the threshold issue presented by the defendants exceptions is whether La. R.S. 30:12 prohibits the use of a declaratory judgment action to adjudicate the scope of the Commissioner's statutory authority to order forced pooling of lands that, according to plaintiffs, cannot be economically drained by one well. If a declaratory judgment is available, it follows that plaintiffs were not required to follow the statutorily prescribed procedures for obtaining judicial review pursuant to La. R.S. 30:12, and the exceptions of lack of subject matter jurisdiction, failure to exhaust administrative remedies, and prescription would not serve as a bar to the declaratory judgment action.

Louisiana Revised Statute 30:12

Louisiana Revised Statute 30:12 provides in pertinent part:

> A. (1) A person who is aggrieved by any law of this state with respect to conservation of oil or gas, or both, or by a provision of this Chapter, or by a rule, regulation, or order made by the assistant secretary of the office of conservation hereunder, or by any act done or threatened thereunder, and who has exhausted his administrative remedy, may obtain court review by a suit for injunction or judicial review against the assistant secretary as defendant.
>
> (2) Suit for review shall be instituted in the district court of the parish in which the principal office of the assistant secretary is located and must be brought within sixty days of the administrative action that is the subject of the suit. In cases of judicial review of adjudication proceedings, the sixty days shall begin to run after mailing of notice of the final decision or order, or if a rehearing is requested within sixty days after the decision thereon.
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> * * *

> B. (4) The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the assistant secretary not shown in the record, proof thereon may be taken in the court. ...
>
> (5) The court may affirm the decision of the assistant secretary or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
>
> (b) In excess of the statutory authority of the agency[.]

Louisiana Revised Statute article 30:12 was originally enacted in 1940. See 1940 La. Acts No. 157, § 11. At the time of its enactment, La. R.S. 30:12 specifically stated that "[t]he right of review accorded by this section shall be inclusive of all other remedies, but the right of appeal shall lie as hereinafter set forth." 1940 La. Acts No. 157, § 11. However, in 1983, by virtue of Act 409, the legislature rewrote La. R.S. 30:12. See 1983 La. Acts No. 409, § 1. In the revision, the legislature deleted the language stating that the right of review accorded therein "shall be inclusive of all other remedies," but retained that portion of the prior version of 30:12 stating that "[t]he right of appeal shall lie as hereinafter set forth in this chapter." 1983 La. Acts No. 409, § 1; La. R.S. 30:12(D). At the same time, in Section 2 of Act 409, the legislature amended La. R.S. 49:967, the Administrative Procedure Act (APA) found in Title 49 of the Revised Statutes, to provide that certain judicial review provisions found therein shall not be applicable to any rule, regulation, or order of any agency subject to a right of review under the provisions of La. R.S. 30:12. See 1983 La. Acts. No. 409, § 2; La. R.S. 967(C).

The Declaratory Judgment Action

Louisiana Code of Civil Procedure article 1871 authorizes the judicial declaration of "rights, status, and other legal relations whether or not further relief

is or could be claimed." The action for a declaratory judgment simply functions to establish the rights of the parties or express the opinion of the court on a question of law without ordering anything to be done. **Code v. Department of Public Safety and Corrections**, 2011-1282 (La. App. 1st Cir. 10/24/12), 103 So.3d 1118, 1126-27 writ denied, 2012-2516 (La. 1/23/13), 105 So.3d 59. It further provides that the existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. La. C.C.P. art. 1871.

No Cause of Action

The exception of no cause of action tests the legal sufficiency of the petition by determining whether the law affords a remedy to the plaintiff on the facts alleged in the petition. **Louisiana Public Service Commission v. Louisiana State Legislature**, 2012-0353 (La. App. 1st Cir. 4/26/13), 117 So.3d 532, 537. The exception is triable on the face of the pleadings, and all well pleaded facts in the petition must be accepted as true. *Id.* If a petition states a cause of action on any ground or portion of the demand, the objection of no cause of action must be overruled. Because the exception raises a question of law and the trial court's decision thereon is based only on the sufficiency of the petition, a judgment sustaining an exception of no cause of action is reviewed by an appellate court *de novo*. *Id.*

Subject Matter Jurisdiction/ Exhaustion of Administative Remedies

Subject matter jurisdiction is the legal power and authority of a tribunal to adjudicate a particular matter involving the legal relations of the parties and to grant the relief to which the parties are entitled. La. C.C.P. arts. 1 & 2; **City of Denham Springs v. Perkins**, 2008-1937 (La. App. 1st Cir. 3/27/09), 10 So.3d 311, 318, writ denied, 2009-0871 (La. 5/13/09), 8 So.3d 568. Courts have original jurisdiction over all civil and criminal matters except where otherwise authorized by the Louisiana Constitution. La. Const. art. 5, Sec. 16. A trial court has general

jurisdiction unless specifically denied it. **City of Denham Springs v. Perkins**, 10 So.3d at 318. The nature of the relief demanded is determinative of a trial court's subject matter jurisdiction. **Paulsell v. State, Department of Transportation and Development**, 2012-0396 (La. App. 1st Cir. 12/28/12), 112 So.3d 856, 861, writ denied, 2013-0274 (La. 3/15/13), 109 So.3d 386.

The rule of exhaustion of administrative remedies applies when a claim is cognizable in the first instance only in an administrative agency. The grant of exclusive jurisdiction over certain matters to an agency results in the subtraction of those matters from a trial court's jurisdiction. *Id.* In exhaustion cases, judicial proceedings are premature until the administrative process has been completed. *Id.*

Characterization of Plaintiffs' Claims and Summary of the Parties' Arguments

Defendants insist that plaintiffs are not seeking a declaration of the powers of the Commissioner in the abstract, but rather, are seeking the wholesale nullification of the Commissioner's past orders relating to the establishment of the Haynesville Shale units and alternate wells. Defendants submit that all of the plaintiffs' attacks on the orders arise out of their contention that the Commissioner lacks statutory authority to establish unit boundaries or "alternate unit wells" in the forced pooling units established throughout the Haynesville Shale. According to the defendants, the plaintiffs' ultimate goal is to utilize any declaration obtained in the declaratory judgment action to nullify past orders with the ultimate goal of obtaining cancellation of mineral leases covering the Haynesville Shale formation and recovering damages representing the royalties that mineral owners are allegedly due resulting from the alleged oversizing of the units.

Defendants reurge the arguments advanced in the trial court on appeal. Essentially, they argue that the exclusive procedure for challenging the Commissioner's unitization orders is contained in La. R.S. 30:12 and it does not provide for a declaratory judgment action. Defendants cite cases in which courts

have stated that La. R.S. 30:12 provides the exclusive means of judicial review of an action of the Commissioner. See **McGowan v. Commissioner of Conservation**, 92-2189 (La. App. 1st Cir. 3/11/94), 636 So.2d 920, writ denied, 94-1605 (La. 9/30/94), 642 So.2d 877 (wherein this court stated that an action challenging a rule promulgated by the Commissioner as exceeding his statutory authority was governed by La. R.S. 30:12, which provided the exclusive means of judicial review of an action by the Commissioner, and because the plaintiff failed to allege that his substantial rights had been prejudiced by the agency action as required by La. R.S. 30:12(B), the plaintiff failed to preserve his right to judicial review under that provision and thus the propriety of the rule was not properly before the court); **Corbello v. Sutton**, 446 So.2d 301, 303 (La. 1984) (wherein the supreme court, citing the pre-1983 version of La. R.S. 30:12, stated that it provided "the exclusive right of judicial intervention into administrative orders issued by the Commissioner of Conservation, pursuant to the Conservation Act" and therefore the special right of review provided therein controlled over the provisions of the APA); see also **Trahan v. Superior Oil Co.,** 700 F.2d 1004, 1015 (5th Cir. 1983).

Defendants also point out that there is no express provision authorizing a declaratory judgment action in La. R.S. 30:12 as there is in other provisions in which the legislature authorized judicial review of administrative actions. They further claim that the statutory language of La. R.S. 30:12 and its legislative history make it clear that its procedures are exclusive and its requirements are mandatory. Defendants emphasize that the plaintiffs' claim that the Commissioner has exceeded his statutory authority is a specific ground for review listed in La. R.S. 30:12(B)(5)(b). Thus, they posit, the statute expressly contemplates the type of challenge made here, and for all of these reasons, the trial court properly sustained the exceptions of no cause of action and lack of subject matter jurisdiction.

Defendants make the following additional arguments: (1) the declaratory judgment claim constitutes an impermissible attack on the Commissioner's past orders; (2) even if the declaratory judgment action was available, declaratory relief is not appropriate in this case because it does not present an actual justiciable controversy; (3) even if the declaratory judgment action was a procedurally proper vehicle to challenge the Commissioner's past and future unitization orders, the claim was properly dismissed for the failure to exhaust administrative remedies, as La. R.S. 30:12 expressly provides that judicial review of an order of the Commissioner is available only to a person "who has exhausted his administrative remedy" and plaintiffs should have sought revision of the complained of orders from the Commissioner before filing the instant lawsuit; and (5) review with respect to any orders over 60 days old is untimely, as La. R.S. 30:12(A)(2) provides unambiguously that any suit for review of an order of the Commissioner must be brought within 60 days of the administrative action that is the subject of the suit.

The defendants further assert that the trial court's dismissal of the plaintiffs' damage claims should be affirmed on appeal on these grounds: (1) the plaintiffs did not brief this issue on appeal but focused on the propriety of the dismissal of the declaratory judgment claim; (2) the damage claim is an impermissible collateral attack on the Commissioner's orders; (3) the claim is premature because the plaintiffs failed to exhaust their administrative remedies; and (4) to the extent that their claim is for unpaid royalties, plaintiffs did not make the required demand under the Louisiana Mineral Code.

Plaintiffs submit that the issue before the trial court is whether the Commissioner exceeded his legal authority to order "forced pooling" of lands into drilling units in the Haynesville field which physically cannot be drained efficiently and economically by one well. Plaintiffs point out that La. R.S. 30:12

applies to a "person who is aggrieved by any law of this state with respect to conservation of oil or gas, or both, or by a provision of this Chapter, or by a rule, regulation, or order made by the assistant secretary of the office of conservation." Plaintiffs submit that they are not claiming injury due to any law, and they are not contesting a specific rule, regulation, or order of the Commissioner. Rather, they are seeking a declaration of the scope of the Commissioner's statutory authority and whether the Commissioner's actions in ordering unitization exceeded the statutory authority accorded to him by La. R.S. 30:9. Plaintiffs argue that the declaratory judgment action is a proper vehicle for such a determination. They insist that there is nothing in the legislative history of La. R.S. 30:12 indicating a legislative intent to prohibit or limit the instant declaratory judgment action.

In support of their claim that La. R.S. 30:12 does not preclude them from bringing the instant declaratory judgment action, plaintiffs rely on the case of **Eads Operating Company, Inc. v. Thompson**, 93-2155 (La. App. 1st Cir. 10/7/94), 646 So.2d 948, writ denied, 95-0226 (La. 4/7/95), 652 So.2d 1345, in which a litigant successfully challenged the statutory authority of the Commissioner to issue a unitization order in a declaratory judgment action brought many years after the order was issued over objections by the defendants that such was not an available remedy under La. R.S. 30:12. In that case, Eads, a mineral lessee, filed a petition for a declaratory judgment in 1985 against the Commissioner alleging, among other things, that a 1948 order of the Commissioner creating a fieldwide unit had no force or effect because the order was issued without statutory authority. Specifically, Eads asked the court to declare that the order "was beyond the statutory or other legal authority of the Commissioner of Conservation and, therefore, illegal, null and void, or in the further alternative, beyond the jurisdiction of the Commissioner." **Eads Operating Company, Inc. v. Thompson**, 537 So.2d 1187, 1190-91 (La. App. 1st Cir. 1988), writ denied, 538 So.2d 614 (La. 1989).

The defendants in the lawsuit filed exceptions of prescription, urging that the challenged action had been taken more than 60 days before the filing of the suit and prescribed pursuant to La. R.S. 30:12(A)(2). They also filed exceptions of no cause of action, claiming that La. R.S. 30:12(A)(2) provided only remedies of court review by a suit for injunction or judicial review; however, that statute did not provide for a remedy or cause of action in the form of a suit for a declaratory judgment. The trial court overruled the exceptions. A panel of this court granted writs and reversed the ruling, ordering the trial court to vacate the judgment and to enter judgment dismissing the suit against the defendants. **Eads Operating Company, Inc. v. Thompson**, CW/86/1009 (La. App. 1st Cir. 10/21/86)(unpublished). Thereafter, the supreme court vacated the judgment of this court, reinstated the trial court's judgment overruling the exceptions of no cause of action and prescription, and remanded the case to the trial court for trial on the merits. **Eads Operating Company, Inc. v. Thompson,** 498 So.2d 746 (La. 1986). Following the remand, the trial court granted the defendants' motions for summary judgment. This court reversed, the trial on the merits was held, and the trial court ruled that the Commissioner lacked statutory or other legal authority to create a compulsory unit for the field.

On appeal, this court began with the premise that the power of any administrative officer to take valid action is conditioned upon first establishing that the action falls within the legislative grant of authority. This court stated: "[T]he Commissioner of Conservation has only those powers expressly granted to him by the legislature. Absent a grant of authority by the legislature, the Commissioner is without authority to act." **Eads**, 646 So.2d at 951. After examining the relevant statutes setting forth the powers of the Commissioner, this court concluded that under the law in effect at the time the order was issued, the Commissioner was not authorized to create pool-wide units, his order could not have created a compulsory

pool-wide unit, and the unit in question did not have to be dissolved by order of the Commissioner. *Id.* at 954.

In this lawsuit, plaintiffs, like the claimant in **Eads**, are seeking, among other things, a judicial declaration that the Commissioner exceeded his statutory authority in issuing the orders. They are not challenging the procedure establishing the orders, nor are they challenging the Commissioner's findings and conclusions with regards to the facts presented at the hearings prior to the issuance of the orders. In **Eads**, the argument raised by the defendants in this case, that a declaratory judgment is not a permissible vehicle to challenge the statutory authority of the Commissioner to issue orders, was ultimately rejected, and the declaratory judgment action challenging the statutory authority of the Commissioner to issue an order was allowed to proceed.

While defendants attempt to distinguish **Eads** on a number of fronts, we find that the distinctions alluded to do not demand a different result. Nor do we agree that **McGowen** controls this case, as defendants contend.

In **McGowen**, 636 So.2d at 920, the Commissioner of Conservation promulgated amendments to Statewide Order 29-B in 1986. McGowen, the plaintiff, was cited for various violations of the newly amended statewide order and was ordered to take certain steps to rectify the violations. McGowen sought a hearing before the Commissioner, who issued a decision addressing the validity of its order concerning McGowen, which it upheld. McGowen then filed a petition for judicial review of the Commissioner's decision, arguing that Statewide Order 29-B, as applied to him, exceeded the statutory authority granted to the Commissioner in the Conservation Act. The trial court set aside the judgment and remanded the case to the Office of Conservation to hold another hearing and determine the validity of the 1986 amendments to the statewide order. On remand, the Commissioner upheld the validity of the order issued as to McGowen and the

validity of the statewide order. McGowen again sought judicial review, the trial court found no error on the Commissioner's part, and McGowen sought review of that ruling in this court. On appeal, McGowen argued that the trial court erred in failing to find that the agency exceeded its statutory authority in promulgating the amendments to the statewide order. Under those circumstances, this court stated that the litigation was governed by La. R.S. 30:12. **McGowen**, 636 So.2d at 920-21. This court stressed that McGowen's request for judicial review was brought pursuant to La. R.S. 30:12(B), which provides for the judicial review of an adjudication. **McGowen**, 636 So.2d at 921-22. This court observed that La. R.S. 30:12(B)(5) permits a court to reverse or modify the Commissioner's decision only if the substantial rights of the appellant had been prejudiced in one of the six ways enumerated therein. However, McGowen had not argued that his rights were prejudiced by the action of the agency. This court concluded that because McGowen had abandoned the argument that his rights were prejudiced, a court could not grant him the relief he sought under Section B of La. R.S. 30:12, and therefore, the issue of the validity of the amendments to the statewide order was not properly before this court. *Id.*

In **McGowen**, unlike the instant case, the plaintiff was seeking judicial review of an order rendered in connection with an adjudication proceeding he invoked in the Office of Conservation. He sought review of the Commissioner's decision pursuant La. R.S. 30:12, and this court applied that law to his petition for judicial review. In short, McGowen never sought judicial review pursuant to the declaratory judgment provisions of the code of civil procedure, and this court's pronouncements in that case have no bearing on the resolution of the issue presented in this case.

Instead, we find that this case is analogous to **Eads**, which upheld the use of a declaratory judgment action to challenge the statutory authority of the

Commissioner to issue a unitization order over objections that the action was governed by La. R.S. 30:12. Furthermore, we have reviewed the legislative history of La. R.S. 30:12, and we find nothing contained therein evidencing a legislative intent to preclude a litigant from asserting challenges to the statutory authority of the Commissioner in a declaratory judgment action. Additionally, we note that it is the paramount duty of the judicial branch of government to interpret the construction of statutes and their appropriate application. **International Paper Company, Inc. v. Hilton**, 2007-0290 (La. 10/16/07), 966 So.2d 545, 551. The determination of whether an administrative official has acted in accordance with the grant of statutory authority is the province of the courts, not the administrative agency.

For these reasons, we conclude that a declaratory judgment action is a proper procedural mechanism to contest the statutory authority of the Commissioner to issue unitization orders. Therefore, we find that the trial court erred in sustaining the exception of no cause of action and lack of subject matter jurisdiction. Because plaintiffs may seek review of the Commissioner's actions under the general provisions of the code of civil procedure and are not bound by the specific review procedure set forth in La. R.S. 30:12, it follows that they were not required to take any action to preserve the right of judicial review set forth in the Conservation Act, including exhausting administrative remedies or filing the suit within 60 days of the issuance of any unitization orders by the Commissioner. Thus, the trial court's judgment sustaining the exception of lack of subject matter jurisdiction based on the failure to exhaust administrative remedies and the exception of prescription/peremption on the failure to file suit within 60 days of the issuance of the orders must also be reversed. Furthermore, the trial court's sustaining of the exception of no right of action, apparently based on its conclusion that no cause of action existed is also reversed.

Having concluded that the declaratory judgment action may proceed, we pretermit discussion of the propriety of any rulings made by the trial court with respect to the plaintiffs' damage claims. Should the trial court determine that the Commissioner acted within his statutory authority in issuing the unitization orders, the damage claims may become moot, and any pronouncement this court may have made on those issues would merely be an advisory opinion. It is well settled that courts will not render advisory opinions as to abstract or moot controversies. See **Wayne v. Capital Area Legal Services Corporation**, 2011-1988 (La. App. 1st Cir. 9/26/12), 108 So.3d 103, 115-16, writ denied, 2012-2343 (La. 4/5/13), 110 So.3d 1072.

Finally, we decline to express any opinion regarding the objections pretermitted by the trial court, reserving to the trial court the right to rule on those exceptions on remand.

CONCLUSION

For the foregoing reasons, the trial court's judgment dismissing the declaratory judgment action is hereby reversed. The case is remanded to the trial court for proceedings consistent with this opinion. All costs of this appeal are assessed to defendant/appellees.

REVERSED AND REMANDED.