

ORIGINAL

IN THE SUPREME COURT OF OHIO

PHILLIP B. DODD et al.

CASE NO. 2013-1730

Plaintiffs-Appellants

-vs-

JOHN WILLIAM CROSKEY, et al.

Defendants-Appellees

FILED
NOV 27 2013
CLERK OF COURT
SUPREME COURT OF OHIO

APPELLEES MEMORANDUM IN RESPONSE TO APPELLANT'S MEMORANDUM
IN SUPPORT OF JURISDICTION

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WHY THIS CASE IS NOT A MATTER OF GREAT PUBLIC INTEREST

Although there are unresolved issues concerning the 1989 and the 2006 versions of the Ohio Dominant Minerals Act (RC5301.56), this case does not present an issue of great public interest that needs resolved by this Court. The sole issue decided by the Seventh District Court of Appeals that upheld the decisions of the Harrison County Common Pleas Court was the interpretation of RC 5301.56(H)(1)(a). Such a narrow decision is not one of great public interest. It is a decision based solely on one subsection of the Dominant Mineral Act as it applies to a specific fact pattern.

The Court of Appeals applied the clear statutory language of RC 5301.56 (H)(1)(a) to the facts presented and reached the only conclusion possible pursuant to the language used by the legislature.

This case was decided pursuant to RC5301.56 (H)(1)(a) and not RC 5301.56(B) as appellants argue, ,as such, it need not be reviewed.

STATEMENT OF THE CASE AND FACTS

The Appellants purchased 127.8387 acres of real estate in Green Township, Harrison County, Ohio by deed recorded on August 5, 2009. Said deed contained the following two reservations as to oil and gas ownership:

Excepting and reserving unto Samuel A. Porter and Blanche Long Porter all of the oil and gas in Warranty Deed to Consolidated Fuel Supply Company filed for record May 27, 1947 in Volume 121, Page 381 Deed Records for the 148.105 acres. (Note: No further transfers)

Excepting a one-third interest in the oil and gas to Samuel A. Porter and Blanche Long Porter in Warranty Deed filed for record May 27, 1947 in Volume 121, Page 383, Deed Records.

Said Deed also excepted three rights of way veins of coal and a lease of coal bed methane.

Appellant, with no attempt to notify the record owners of the reserved oil and gas or their heirs or assigns, on Saturday, November 27, 2010, caused a notice of intent to declare abandonment of the oil and gas under their 127.8387 acres to be published in the Harrison News Herald.

On Monday, November 29, 2010, John William Croskey caused a quit-claim deed dated November 23, 2010 to be recorded conveying any interest in the oil and gas reserved by the Porters that he had to his trust.

On December 23, within 30 days of Appellant's publication, Mr. Croskey recorded an Affidavit Preserving Minerals in the office of the Harrison County Recorder. He listed therein all the heirs of Samuel A. Porter, their addresses and how they claimed ownership in the reserved oil and gas. The Affidavit complied with Section 5301.56 (H), ORC.

On December 27, 2010, appellants recorded an Affidavit of Abandonment of the oil and gas reserved by the Porters under their 127.8387 acres.

On February 9, 2011, Appellants filed a Complaint in the Harrison County Common Pleas Court against appellees seeking to give title to the oil and gas under their 127.8387 acres and for damages against John William Croskey for slander of title for recording the quit-claim deed and the Affidavit of Preservation of Minerals.

Thereafter, appellants filed an amended Complaint demanding the same relief but adding Ian Resources, LLC as a party as they learned at a pre-trial conference that Ian Resources had been deeded a significant portion of the reserved oil and gas. Appellants title examination of the premises completed after the Croskey Affidavit was recorded, did not include the transfers to Ian Resources, LLC.

All parties filed Motions for summary judgment. Judge Michael K. Nunner of the Harrison County Common Pleas Court granted judgment to Appellees holding that:

FIRST: That the mineral interest identified by the reservation of oil and gas to Samuel A. Porter and Blanche Long Porter in instrument recorded in Deed Volume 121, Page 381 was the subject of a title transaction in the 2009 deed to appellants;

SECOND: That appellant's failed to serve numerous appellees with certified notice of their intention to record a notice of abandonment of minerals as required by Section 5301.56 (E), ORC;

THIRD: That the affidavit of John William Croskey met the requirements of Section 5301.56 (c) (2) and preserved the rights of all heirs of Samuel A. Porter and Blanche Long Porter to the reserved oil and gas.

Appellants appealed that decision to the Seventh District Court of Appeals. The Appellate Court held that appellant's 2009 deed was not the subject of a title transaction of the reserved oil and gas pursuant to the Dormant Minerals Act, that the failure to serve notice on the heirs of Samuel A. Porter was harmless error because the Croskey affidavit proved that notice was received and acted on, and that the Croskey Affidavit complied with R.C. 5301.56 (H) thereby preserving the mineral interests for appellees. Therefore the Seventh District Court of Appeals affirmed the decision of the trial court.

Appellants have sought a discretionary appeal from this decision.

PROPOSITION OF LAW

OHIO REVISED CODE SECTION 5301.56 (H)(1)(A) DOES NOT CONTAIN PROVISION FOR A SAVINGS EVENT THAT OCCURRED IN THE TWENTY YEATS PRIOR TO NOTICE BEING SERVED AND APPLIES WHEN A HOLDER OR HIS HEIRS OR ASSIGNS TIMELY FILES A CLAIM OF PRESERVATION UNLIKE OHIO REVISED CODE SECTION 5301.56(B)(3)

Appellants in the lower courts have sought a forfeiture of oil and gas reserved under their property, the reservation of which is recited in the 2009 deed to them. Both the Harrison County Common Pleas Court and the Seventh District Court of Appeals have rejected Appellant's claim that the oil and gas was abandoned.

The Ohio Dormant Minerals Act (ODMA), RC 5301.56 establishes both methods of preserving reserved mineral rights and the method of obtaining a declaration of abandonment of said rights. Both courts found that appellees preserved their ownership of the reserved mineral rights pursuant to RC 5301.56 (H)(1)(a).

RC 5301.56 (B) sets forth the circumstances under which reserved mineral interests can be deemed abandoned. The section lists events that have occurred within 20 years that prohibit abandonment. It furthermore refers to the service of notice of intent to declare abandonment under RC 5301.56 (E). Said section (E) requires the surface owner to serve notice of his intent to declare the reserved mineral interest abandoned on each holder's successors or assigns by certified mail. If service cannot be completed to any holder the owner shall publish such notice in a newspaper of general circulation in the county. Appellants caused a notice of intent to declare abandonment to be published on November 27, 2010 with no attempt to determine the heirs or assigns of the original holders.

Section (H)(1) provides that if a holder or a holders successors or assigns claim that the mineral interest has not been abandoned, not later than sixty days after the date the notice was published, shall file in the office of the county recorder where the mineral interest is located. ONE (emphasis added) of the following:

- (a) A claim to preserve the mineral interest in accordance with division (c) of this section;
- (b) An Affidavit that identifies an event described in (B)(3) that occurred within twenty years immediately preceding the date of publication.

The Croskey Affidavit recorded within 30 days of appellant's publication of the notice of intent to declare abandonment is a claim to preserve the mineral interest. The Affidavit complied with division (c) of RC 5301.56 and therefore preserved ownership on the minerals to the heirs of the original reserver (the holder)

This interpretation of the provisions of the ODMA is the only interpretation that gives meaning to all its provisions. See Roxane Laboratories, Inc. v. Tracy, 75 Ohio St. 3d 125 (1996). It is the only interpretation of the Statute that gives meaning to Section (H)(1)(a).

To interpret Section (H)(1)(a) as appellant argues renders it meaningless. Said section does not refer to an act or inaction within 20 years immediately preceeding a notice of intent to declare abandonment. Rather it refers to a present act within 60 days of such a notice. The legislature clearly had to have understood the difference between 20 years immediately preceeding an act and 60 days after such an act. The failure to include a 20 year requirement in Section (H)(1)(a) when it was included in Section (B) and in Section (H)(1)(B) clearly establishes that there is no 20 year requirement in Section (H)(1)(a).

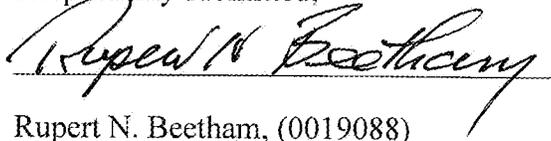
Section (H)(1)(a) is the legislative recognition of the constitutional provision that real property, the reserved mineral interest, shall be forever held inviolate. Article 1, Section 19, Ohio Constitution, and that the law abhors a forfeiture. Ohio Department of Liquor Control v. Sons of Italy Lodge 0917, 65 Ohio St. 3d 532 (1992); State v. Lillioctz, 70 Ohio St. 2d 23 (1982), Lessee of Band v. Swearingen, Ohio 395 (1824), Ensel v. Lumber Insurance Company of New York, 88 Ohio St. 269 (1913). Forfeiture of property rights. Joseph J. Freed and Associates, Inc. v. Cassinelli Apparel Corp., 23 Ohio St. 94 (1986) citing Pepper v. Knoepp, 103 Ohio App. 223 (1956); Dietrich v. Ezra Smith Co., 12 Ohio App. 243 (1920); Thomas v. Kirkbride, 15 Ohio CC 294 (1897) affirmed 60 Ohio St. 620, Hawthorne v. Cassidy, 137 N.W. 818 (1965).

For the foregoing reasons, the statutory interpretation by the lower courts is the only interpretation of RC 5301.56 that is constitutionally sound, gives meaning to all the words of the statute and protects the mineral owner, or his heirs who comply with the statute from suffering a forfeiture.

CONCLUSION

The Appellees respectfully request that this Honorable Court to deny to exercise jurisdiction as the appeal does not involve any substantial constitutional question or issue of great public interest.

Respectfully submitted,



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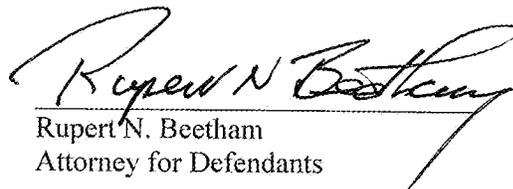
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CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing on Paul Hervey, Attorney for Plaintiffs, PO Box 1014, New Philadelphia, Ohio 44663, Attorney Ronald K. Lembright, One Cascade Plaza, 15th floor, Akron, OH 44308, Attorney Lawrence R. Bach, 1500 One Cascade Plaza, Akron, Ohio 44308, Attorney Marquette D. Evans, 920 Race St., 2nd floor, Cincinnati, OH 45202, Karen A. Chaney, 794 Breeze St., Craig, CO 81625, Linda C. Boyd, 7068 South Flower Court, Littleton, CO 80128, Terri Hocker, 204 South Buckhorn Dr., Bastrop, TX, 78602, Patty Hausman, 1130 Beta Loop, Colorado Springs, CO 80906 by mailing the same to them, postage pre-paid, this 25 day of November, 2013.



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