

ORIGINAL

IN THE SUPREME COURT OF OHIO

PHILLIP B. DODD, et al.,	:	Case No. 2013-1730
Appellants,	:	
v.	:	On Appeal from the Harrison County Court of Appeals,
JOHN CROSKEY, et al.	:	Seventh Appellate District
Appellees.	:	Court of Appeals Case No. 12 HA 6

JURISDICTIONAL MEMORANDUM OF APPELLEES AND CROSS-APPELLANTS
 KAREN A. CHANEY, PATTY HAUSMAN, LINDA C. BOYD AND TERRI HOCKER

Karen A. Chaney, *Pro Se*
 794 Breeze Street
 Craig, Colorado 81625
 (970) 701-9093
karenchaney@msn.com

Patty Hausman, *Pro Se*
 1130 Beta Loop
 Colorado Springs, Colorado 80905
 (719) 231-8849
pjhausman@hotmail.com

Linda C. Boyd, *Pro Se*
 7068 S. Flower Court
 Littleton, Colorado 80128
 (720) 339-3444
lindacboyd@yahoo.com

Terri Hocker, *Pro Se*
 204 S. Buckhorn Drive
 Bastrop, Texas 78602
 (512) 554-6742
terrihocker@yahoo.com

APPELLEES AND CROSS-APPELLANTS

RECEIVED
 DEC 03 2013
 CLERK OF COURT
 SUPREME COURT OF OHIO

FILED
 DEC 03 2013
 CLERK OF COURT
 SUPREME COURT OF OHIO

Paul Hervey (Counsel of Record)
Jilliann A. Daisher
Fitzpatrick, Zimmerman & Rose
P.O. Box 1014
New Philadelphia, Ohio 44663
Attorneys for Appellants and Cross-Appellees

Marquette D. Evans
Evans Law Office
920 Race Street, 2nd Floor
Cincinnati, Ohio 45202
Attorney for Appellee and Cross-Appellant Harriet C. Evans

Rupert Beetham
110 S. Main Street
P.O. Box 262
Cadiz, Ohio 43907
Attorney for Appellees John Croskey, Mary E. Surrey, Roy Surrey, Emma Jane Croskey,
Margaret Ann Turner, Mary Louise Morgan, Martha Beard, Lee Johnson, Edwin
Johnson, Joann Zitko, David B. Porter, Joann C. Wesley, Cindy R. Weimer, Evert Dean
Porter, Stuart Barry Porter, Brian K. Porter, Marie Elaine Porter, Kim D. Berry, Samuel
G. Boak, Lorna Bower, Sandra J. Dodson and Ian Resources, LLC.

Ronald K. Lembright
One Cascade Plaza, 15th Floor
Akron, Ohio 44308
Attorney for Appellees William L. Kalbaugh, William H. Boak, Samuel G. Boak, Jennifer
Bernay, Charlotte S. Bishop, Richard G. Davis, Harry Roy Davis, Thomas Davis, Harry
K. Kalbaugh and Michael Kalbaugh

TABLE OF CONTENTS

JURISDICTIONAL STATEMENT 1

STATEMENT OF THE CASE AND FACTS 2

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

Proposition of Law 1: THE CLEAR AND PLAIN LANGUAGE OF R.C. 5301.56(H)(1)(a) ALLOWS THE HOLDERS OF OIL AND GAS INTERESTS TO PRESERVE THEIR INTERESTS BY FILING A CLAIM WITHIN SIXTY DAYS OF RECEIVING A NOTICE THAT A SURFACE OWNER IS ATTEMPTING TO CLAIM THEM THROUGH ABANDONMENT, WITHOUT REGARD TO WHETHER A SAVINGS EVENT OCCURRED BEFORE NOTICE OF ABANDONMENT WAS FILED. 5

Proposition of Law 2: IF THE COURT ACCEPTS JURISDICTION DESPITE THE CLEARLY CORRECT APPLICATION OF R.C. 5301.56(H)(1)(a), THE COURT SHOULD HOLD THAT HARMLESS ERROR DID NOT OCCUR WHEN APPELLANTS MADE NO EFFORT TO IDENTIFY CURRENT HOLDERS, SUCCESSORS AND ASSIGNEES OF THE MINERAL INTERESTS OR TO PROVIDE NOTICE BY CERTIFIED MAIL TO THEM. 7

CONCLUSION 9

CERTIFICATE OF SERVICE 10

JURISDICTIONAL STATEMENT

The Court should decline to accept jurisdiction in this case because the judgment of the court of appeals in favor of the Appellees merely applies the very clear, plain language of Ohio Revised Code 5301.56(H)(1)(a) and does not present any issues of public or great general interest. Rather, the ruling on R.C. 5301.56(H)(1)(a) is specific to the facts of this case. It is a well-reasoned, straightforward application of the statutory language and breaks no new ground.

The essence of the Appellants' jurisdictional argument is that the Court should accept this appeal in order to "provide guidance" to the courts that may be applying the Ohio Dormant Mineral Act. There is no indication that courts in this State are unable to understand and apply the law correctly or that conflicting interpretations of the statute exist. The mere fact that cases are pending because of an oil and gas boom does not provide a reason for this Court to step in to resolve controversies that do not exist.

However, if the Court accepts jurisdiction and reverses the court of appeals judgment that Appellees' oil and gas interests were preserved by a claim filed in accordance with R.C. 5301.56(H)(1)(a), it should then reverse the judgment that the failure to satisfy statutory notice requirements was harmless error. The conclusion that the lack of notice was harmless error rests entirely on the decision that the oil and gas rights were preserved by the R.C. 5301.56(H)(1)(a) claim. If for some reason the Court disagrees with the ruling on that claim, then the Appellants' failure to comply with the notice requirements was not harmless.

STATEMENT OF THE CASE AND FACTS

This case arises from an attempt by Appellants to use the Ohio Dormant Mineral Act, R.C. 5301.56, to claim oil and gas rights in a Harrison County parcel of land after purchasing the surface rights subject to the reservation of oil and gas by Appellees' predecessors.

Appellants purchased 127.8387 acres of land in Harrison County through a deed filed on August 5, 2009. As the trial court and the court of appeals found, the deed explicitly stated that the conveyance was subject to the reservation by Samuel A. Porter and Blanche Long Porter of oil and gas rights in a warranty deed recorded on May 27, 1947. The Appellants now claim that they did not learn of the Porters' reservation until after they were approached by oil and gas companies about a lease. Unable to lease the oil and gas rights which had been reserved by the Porters, Appellants then sought to obtain these rights through the Dormant Mineral Act.

Although the statute requires notice by certified mail to the holders, successors or assignees, the Appellants did not attempt even a minimal investigation to find the Porters' heirs. As the trial court and the court of appeals found, Appellants conducted a title search to determine whether the Porters' oil and gas rights had been transferred. The court of appeals found that there is no evidence that Appellants conducted a probate search to find the Porters' heirs. Based only on the title search, Appellants then published a notice of intent to claim abandonment of oil and gas interests under their land. The notice was published on November 27, 2010 in a Harrison County newspaper and was addressed to "Samuel A. Porter and Blanche Long Porter, their unknown successors and assigns." Appellants had not served any of the Porters' heirs with notice by certified mail.

On December 23, 2010, Appellee John William Croskey filed an "Affidavit Preserving Minerals" in the Harrison County Clerk and Recorder's Office. This document explained how

the Porters obtained the property and later transferred it subject to reservations of oil and gas rights. The document stated that Mr. Croskey and 34 other relatives were heirs of the Porters and current owner of the mineral interests, and that they did not intend to abandon these rights but intended to preserve them.

In February 2011, Appellants filed an action in the Harrison County Court of Common Pleas to quiet title to the oil and gas rights, naming as defendants all of the Porters' heirs identified in the December 23, 2010 affidavit. The Appellants asked the court to declare that the oil and gas rights had been abandoned under the Dormant Mineral Act and that they were the true owners of the oil and gas reserves. Appellants additionally sought damages against Appellee John Croskey for slander of title.

Appellants moved for summary judgment under the Dormant Mineral Act in July 2011 and renewed their motion after amending their complaint to add an additional party. Appellees opposed the Appellants' motions for summary judgment and moved for summary judgment in their favor along with an order dismissing the case. On October 29, 2012, the court of common pleas granted summary judgment for the Appellees and dismissed the complaint.

The court of common pleas relied on three independent bases to grant summary judgment for the Appellees. The court found that the oil and gas rights were exempt from abandonment under the statute because they had been the subject of a title transaction when Appellants purchased the land in 2009 subject to the Porters' reservation. Additionally, the court found that Appellants had failed to comply with the Dormant Mineral Act because they had made no real attempt to discover or provide notice by certified mail to the Porters' heirs as required by the Act. Finally, the court found that Appellees had preserved their interests in accordance with the Dormant Mineral Act, protecting the oil and gas interests from abandonment.

The Appellants appealed to the Seventh District Court of Appeals, which affirmed the judgment of the trial court on the basis that the Affidavit Preserving Minerals filed by Appellee John Croskey was a claim to preserve mineral interests and prevented abandonment under R.C. 5301.56 (H)(1)(a). The court of appeals also found that Appellants did not provide notice by certified mail to Appellees, but held that any failure to comply with R.C. 5301.56 (E)(1) was harmless error because Appellee John Croskey saw the published notice and filed a timely claim that preserved the mineral interests. The court of appeals reversed the court of common pleas ruling that the oil and gas interests had been the subject of a title transaction when the Appellants bought the property subject to the Porters' reservation. Appellants have asked this Court to grant a discretionary appeal to reverse the court of appeals decision affirming the judgment of the court of common pleas in favor of Appellees.

Proposition of Law 1

THE CLEAR AND PLAIN LANGUAGE OF R.C. 5301.56(H)(1)(a) ALLOWS THE HOLDERS OF OIL AND GAS INTERESTS TO PRESERVE THEIR INTERESTS BY FILING A CLAIM WITHIN SIXTY DAYS OF RECEIVING NOTICE THAT A SURFACE OWNER IS ATTEMPTING TO CLAIM THEM THROUGH ABANDONMENT, WITHOUT REGARD TO WHETHER A SAVINGS EVENT OCCURRED BEFORE NOTICE OF ABANDONMENT WAS FILED.

As they have throughout this case, Appellants mischaracterize the remedies available under R.C. 5301.56 to the holder of a mineral interest when a surface owner contends that it has been abandoned. The court of common pleas and the court of appeals both held that R.C. 5301.56(H)(1) provides **two** separate remedies to the owner of a mineral interest when a surface owner has filed a notice of intent to declare the mineral interest abandoned. This is apparent from the plain language of the statute:

If a holder or a holder's successors or assignees claim that the mineral interest that is the subject of a notice under division (E) of this section has not been abandoned, the holder of the holders' successors or assignees, not later than sixty days after the date on which the notice was served or published, as applicable, shall file in the office of the county recorder of each county where the land that is subject to the mineral interest is located **one** 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 division (B)(3) of this section that has occurred within the twenty years immediately preceding the date on which the notice was served or published under division (E) of this section.

R.C. 5301.56(H)(1). (Emphasis added). This language could not be any clearer – holders, successors or assignees have sixty days to file **either** a claim to preserve the mineral interest **or** an affidavit describing a savings event under R.C. 5301.56(B)(3). The availability of two separate remedies after the filing of notice of intent is reinforced by R.C. 5301.56(H)(2), which provides that an abandonment may be memorialized in the land records only if holders, successors or assignees have not filed within 60 days either a claim to preserve the mineral interest **or** an affidavit identifying a savings event.

In this Court, Appellants never mention the existence of R.C. 5301.56(H)(1)(a), and fail utterly to explain why its plain language does not apply to this case. Instead, the Appellants have argued strenuously that R.C. 5301.56(B)(3) is the only remedy available to holders of mineral interests who receive notice that a surface owner intends to seek abandonment. This argument would render entire sections of R.C. 5301.56 meaningless and makes no sense. The court of appeals below correctly explained that the reference in R.C. 5301.56(H)(1)(a) to R.C. 5301.56(C), which describes the contents of a holder's claim to preserve mineral interests, does not change the meaning of R.C. 5301.56(H)(1)(a) simply because R.C. 5301.56(C) also states that an R.C. 5301.56(B) affidavit describing a savings event can also "be filed for record by its holder."

Appellants complain that the court of appeals has not applied the language of the statute, but has instead relied upon its belief about legislative intent in passing R.C. 5301.56 to alter the meaning of the statute. Nothing could be further from the truth; the court of appeals carefully analyzed the relevant sections of the statute using settled principles of statutory construction. In fact, it is Appellants who suggest without evidence that the only legislative purpose worth considering is a desire to make abandonment of mineral interests easier to accomplish. A thorough reading of the entire statute supports the conclusion that R.C. 5301.56 provides a method to transfer truly abandoned mineral interests to a surface owner while providing procedural and substantive protections to the holders, successors and assignees of mineral interests who wish to continue their ownership.

Appellants have not shown that anyone other than they are in danger of misinterpreting the plain language of R.C. 5301.56. Their mistake has been thoroughly explained by the court of appeals. There is no reason for this Court to accept jurisdiction in this case.

Proposition of Law 2

IF THE COURT ACCEPTS JURISDICTION DESPITE THE CLEARLY CORRECT APPLICATION OF R.C. 5301.56(H)(1)(a), THE COURT SHOULD HOLD THAT HARMLESS ERROR DID NOT OCCUR WHEN APPELLANTS MADE NO EFFORT TO IDENTIFY CURRENT HOLDERS, SUCCESSORS AND ASSIGNEES OF THE MINERAL INTERESTS OR TO PROVIDE NOTICE BY CERTIFIED MAIL TO THEM.

The Ohio Dormant Mineral Act contains strict procedural requirements to protect owners of mineral interests when a surface owner seeks to obtain them through the abandonment process. According to R.C. 5301.56(B), severed mineral interests may be deemed abandoned and vested in an owner of surface rights only “if the requirements established in division (E) of this section are satisfied.” The first requirement in R.C. 5301.56(E) is notice to the holders, successors and assignees of the mineral interests that are claimed to be abandoned. Service by certified mail to the last known address of each holder or each holder’s successors or assignees is specifically required, and service by publication is allowed only if service by mail cannot be completed to any holder. R.C. 5301.56(E)(1).

The court of appeals and the court of common pleas both found that Appellants made no attempt to provide notice by certified mail to any current holder of the mineral interests at issue here, although such an attempt is required by the statute. The court of appeals found that Appellants conducted only a title search, and that there was no evidence to support the claim made in their court of appeals brief that they had searched the probate records. Because it found that any failure to comply with the statutory notice requirement was harmless error, the court of appeals did not decide whether appellants’ actions qualified as an “attempt” at certified mail justifying the use of notice by publication.

If this Court accepts jurisdiction in this case on the Appellants’ R.C. 5301.56(H)(1)(a) argument, it should affirm the trial court’s judgment that they could not use the abandonment

statute because they did not comply with its notice requirements. These notice requirements should be strictly construed because, correctly applied, the statute would result in a forfeiture of severed mineral interests. State v. Lilliock, 70 Ohio St. 2d 23 (1982)

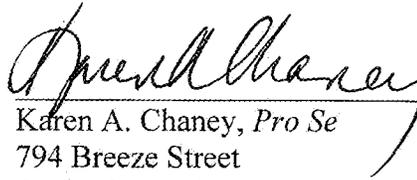
It is not necessary for the Court to describe the parameters of an investigation that must be performed in all cases before service by publication is allowable under R.C. 5301.56(E)(1). In this case, it is clear that Appellants made no real effort to identify any owner of the mineral interests reserved in their deed. In the courts below, Appellants argued that it was simply too difficult to try to find any of the heirs of Samuel A. Porter or Blanche Long Porter. The record clearly shows that they made no attempt, other than a title search performed on an uncertain date (the affidavit describing the title search upon which Appellants rely refers to items recorded after the publication of the notice to “unknown successors and assigns”) to locate any of the heirs. A search of the probate records would have disclosed Samuel A. Porter’s will and identified his heirs. An investigator could have found heirs or descendants who, as the trial court found, have lived all or most of their lives in Harrison County and are known in the community. Under these circumstances, the use of a simple title search does not excuse the Appellants’ failure to provide notice by certified mail to the Appellees here.

CONCLUSION

The court of appeals correctly applied the clear language of R.C. 5301.56(H)(1)(a) in holding that the December 23, 2010 claim preserved Appellees’ mineral interests.

However, if the Court accepts this case, it should review the court of appeals decision that the failure to provide notice by certified mail was harmless error, and hold that the title search conducted by the Appellants was insufficient to justify service by publication.

Respectfully submitted,



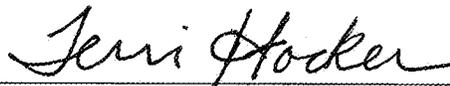
Karen A. Chaney, *Pro Se*
794 Breeze Street
Craig, Colorado 81625
(970) 701-9093



Patty Hausman, *Pro Se*
1130 Beta Loop
Colorado Springs, Colorado 80905
(719) 231-8849



Linda C. Boyd, *Pro Se*
7068 S. Flower Court
Littleton, Colorado 80218
(720) 339-34444



Terri Hocker
204 S. Buckhorn Drive
Bastrop, Texas 78602
(512) 554-6742

CERTIFICATE OF SERVICE

I certify that a copy of this Jurisdictional Memorandum was placed in the United States Mail, postage prepaid and addressed to the following on this 2nd day of December, 2013:

Rupert Beetham
110 S. Main Street, P.O. Box 262
Cadiz, Ohio 43907

Marquette D. Evans
920 Race Street, 2nd Floor
Cincinnati, Ohio 45202

Ronald K. Lembright
One Case Plaza, 15th Floor
Akron, Ohio 44308

Paul Hervey & Jillian Daisher
Fitzpatrick, Zimmerman & Rose
P.O. Box 1014
New Philadelphia, Ohio 44663

