

ORIGINAL

IN THE SUPREME COURT OF OHIO

PHILLIP B. DODD, *et al.*,

Plaintiff-Appellants,

v.

JOHN WILLIAM CROSKEY, *et al.*,

Defendant-Appellees.

CASE NO. 2013-1730

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**MEMORANDUM IN OPPOSITION OF JURISDICTION FOR APPELLEE HARRIET C. EVANS' CROSS-APPEAL BY APPELLANTS**

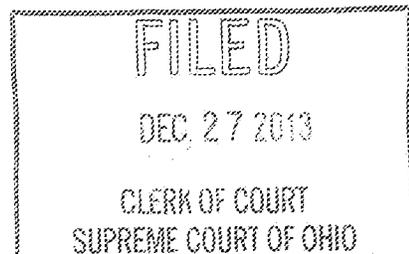
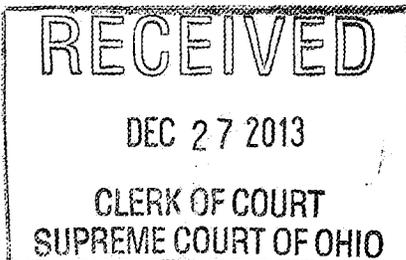
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## MEMORANDUM IN OPPOSITION TO JURISDICTION AS TO CROSS APPEALS

The Appellees have asserted two alternative propositions of law in their various cross-appeals: that the Appellants failed to comply with the notice requirements of the statute in question and that the restatement of a prior mineral reservation is a title transaction for purposes of the statute. The Appellants believe that neither of these cross-appeals are necessary for this Court's review of the Appellants' proposition of law.

The Appellees' first issue – notice – was deemed harmless error by the Court of Appeals *if it even occurred*.

Here, the failure to strictly comply with the statute does not provide a basis for granting summary judgment. The published notice reached one of the parties claiming to have interest. Appellee John William Croskey on December 23, 2010, filed an Affidavit Preserving Minerals that asserted his interest and his relatives' interest in the mineral interests. In that affidavit it provides when Samuel A Porter died, that his estate was administered in Harrison County Probate Court and indicates who received the residue of his estate. The purpose of the notice requirement is to have the persons with mineral interests receive the notice of the surface owner's intent to claim the mineral interests abandoned. Therefore, since notice was received and that party could take timely action to preserve the mineral interests, failure to strictly comply with the notice requirement, in this instance, amounts to harmless error.

*Dodd v. Croskey*, 2013-Ohio-4257, ¶59. Ohio courts show a trend of decisions which show that failure to strictly comply with notice requirements is harmless error where the party who received defective notice is still able to take action to protect their provision. See *Maritime Mfrs., Inc. v. Hi-Skipper Marina*, 70 Ohio St.2d 257, 436 N.E.2d 1034 (1982); *Fill v. Woychik*, Case No. 78 CA 53, 1978 WL 215056 (Seventh Dist.); *Leigh v. Crescent Square, Ltd.*, 80 Ohio App.3d 231, 608 N.E.2d 1166 (1992); *City of Lakewood v. Grundstein*, 2005-Ohio-2826; and *Cherry Lane Dev., L.L.C. v. Walnut, C & DD, L.L.C.*, 2012-Ohio-3559.

The Appellees incorrectly assert that there is a probate record of the estates of Samuel Porter or Blanche Long Porter that the Appellants could have reviewed. There is no indication

of such in the record. The trial court record does include an affidavit of the Appellants' abstractor that no such record could be found. Based upon the abundance of case law on harmless error as to notice, the Appellants respectfully suggest that this proposition of law by the Appellees is not of general public interest such as it needs review by this Court.

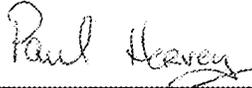
The other proposition of law by the Appellees concerns the definition of a savings event. However, the language of O.R.C. §5301.56(B)(3)(a) is clear and unambiguous. It provides that the mineral interest must be "the subject of" the title transaction. Ohio law requires that the phrase must be given its plain, common, ordinary meaning and is to be construed "according to the rules of grammar and common usage." *Smith v. Landfair*, 135 Ohio St3d 89, 2012-Ohio-5692, 984 N.E.2d 1016. The common definition of the word "subject" is "topic of interest, primary theme or basis for action". Webster's II New Riverside University Dictionary 1153 (1984).

As the appeals court ruled, it is clear that the mineral rights are not "the subject of" the 2009 title transaction. Rather, the purpose of the title transaction was to transfer the surface rights, and the language was included so as to put the buyer on notice that the mineral rights were not in fact a part of the title transaction. Unless the mineral rights are the primary basis for the title transaction, they cannot be "the subject of" the title transaction, and therefore the transaction cannot be a savings event under the Ohio Dormant Mineral Act. To give the Appellees' version of the law credence would require someone to wait 20 years after becoming an owner to vacate a mineral reservation and give no credit to the theory of "chain of title" in Ohio law. This is not an issue of controversy that requires this Court's intervention.

**CONCLUSION**

The Appellants respectfully request that this Honorable Court deny consideration of the Appellees' cross-appeals and to later grant the Appellants' request for review regarding the original proposition of law.

Respectfully submitted,



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**PROOF OF SERVICE**

A copy of the foregoing Memorandum was served by regular mail upon the following attorneys and unrepresented parties, this 23 day of December, 2013:

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