

ORIGINAL

IN THE SUPREME COURT OF OHIO

PHILLIP B. DODD, *et al.*,

CASE NO. 2013-1730

Plaintiff-Appellants,

v.

JOHN WILLIAM CROSKEY, *et al.*,

Defendant-Appellees.

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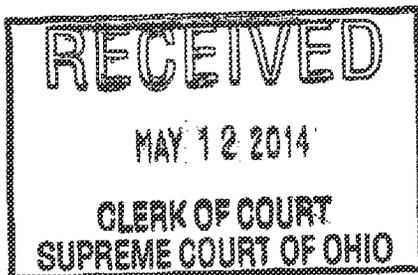
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TABLE OF CONTENTS

TABLE OF AUTHORITIES iv

STATEMENT OF THE CASE AND RELEVANT FACTS1

MEMORANDUM IN SUPPORT OF PROPOSITION OF LAW6

OHIO REVISED CODE SECTION 5301.56(B)(3) REQUIRES A SHOWING BY A PARTY CLAIMING THE PRESERVATION OF A PRIOR MINERAL INTEREST OF A “SAVINGS EVENT” THAT OCCURRED IN THE 20 YEARS PRIOR TO NOTICE BEING SERVED AND NOT A “SAVINGS EVENT” AFTER THE DATE OF THE NOTICE BEING SERVED.

CONCLUSION.....11

CERTIFICATE OF SERVICE11

APPENDIX.....12

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page(s)</u>
<i>Batchelor v. Newness</i> , 145 Ohio St. 115 (1945)	6
<i>Devitis v. Draper</i> , Monroe County CCP Case No. 2012-429, August 13, 2013	10
<i>Dodd v. Croskey</i> , 2013-Ohio-4257, Harrison County Ct. App. No. HA-2012-0006	6, 9
<i>Edwards v. Blakemore</i> , Washington Ct. App. Case No. 81 X 6 82-LW-0993 (Fourth Dist., February 12, 1982)	9
<i>Marty v. Dennis</i> , Monroe County CCP Case No. 2012-203, April 11, 2013	10
<i>Montgomery v. Hamblin</i> , 82-LW-2475, Licking Cty. App. No. CA-2843 (Fifth Dist., Nov. 8, 1982)	9
<i>Morrow v. Morrow</i> , 18 Ohio Law Abs. 235 (1934)	6
<i>Roxane Laboratories, Inc. v. Tracy</i> , 75 Ohio St.3d 125, 127, 661 N.E.2d 1011 (1996)	6
<i>Whitmer v. Mack</i> , 81-LW-2274, Stark Cty. App. No. 5538 (Fifth Dist., June 30, 1981)	9
<i>Wishnek v. Gulla</i> , 114 N.E.2d 914 (Cuyahoga County C.P., 1953)	6-7
<i>Wuenschel v. Northwood Energy Corp.</i> , 2008-Ohio-6879, Ashtabula Ct. App. No. 2008CA00039 (11 th Dist.)	10
<u>Statutes and Rules</u>	<u>Page(s)</u>
ORC §5301.332	9
Ohio Dormant Mineral Act, ORC §5301.56	3, 5, 6-10
<u>Other Authorities</u>	<u>Page(s)</u>
Merriam Webster's Collegiate Dictionary, Tenth Edition (1999)	8

STATEMENT OF THE CASE AND RELEVANT FACTS

This case involves a determination of mineral rights ownership. Appellants and spouses Philip Dodd and Julie Bologna ("Appellants") purchased three parcels totaling 127 acres of property in Harrison County in 2009. See Amended Complaint filed January 19, 2012, Exhibit B. The Appellees are the descendants of Samuel A. Porter, one of the former owners of what is now an 82-acre portion of the 127 acres described above. The mineral rights in dispute in this case shall be referred to as the "Porter mineral rights".

CHAIN OF TITLE

Appellees' relative, Samuel A. Porter, purchased 148 acres in Green Township, Harrison County, Ohio, in 1932, as recorded in Volume 96, Page 23, of the county records. Mr. Porter immediately transferred the parcel to his mother, Elizabeth C. Porter. (Volume 96, Page 24.) When she died in 1940, her interest in the parcel was transferred back to Mr. Porter, but not until 1944 (Volume 114, Page 102). There is no indication that there was any transfer to Blanche Porter, Samuel Porter's wife. (There is no indication as to when the Porters married, but it is clear that they had no children.) However, in 1947, the Porters jointly transferred the same parcel to Consolidated Fuel Company (now known as Consolidated Coal) at Volume 121, Page 381. Amended Complaint, Exhibits C and D. This deed reserved all the oil and gas rights for the property to the "Grantors". It was signed by both of the Porters, but there was no release of dower rights. At the same time, the Porters transferred another 74 acres in Shortcreek Township, Harrison County to Consolidated. As to the Shortcreek Township parcel, both Porters were listed as owners as "husband and wife." Again, they reserved the oil and gas rights. This time, both of the Porters released their dower rights.

Mr. Porter died in 1948. His will, executed in 1940, was probated and split his inheritance amongst eight relatives, the descendants of whom are the Appellees in this case. Mrs. Porter was not named or excluded in the will. **The estate inventory listed their current residence in the village, but not the reserved mineral interests out in the townships on their old farms. Mrs. Porter did not elect to take against the will, not knowing of the mineral interest.**

Mrs. Porter then executed her own will in 1950, which was admitted into probate when she passed away six weeks later. Her will left her entire estate to three of her own relatives -- who are not Appellees in this case because they have not asserted any preservation of the mineral interest. Likewise, Mrs. Porter's estate inventory did not list the mineral reservation. Although not being reviewed by this Court, it could be argued that the Appellees have no interest in the mineral rights because could have devolved to Mrs. Porter, had she known about them when she elected not to take against her husband's will.

The Appellants acquired title to a portion of these parcels in 2006, as recorded locally at Volume 156, Page 2343, of the Harrison County Records. The 1947 mineral reservation by the Porters is restated in the 2006 deed.

NOTICE AND RECORDED DOCUMENTS

Between 1947 and 2010, there was nothing recorded concerning the Porters' mineral reservation in the Harrison County records, other than the restatement of the reservation in successive deeds concerning the surface property. The Appellants became owners of part of the Porter land in 2006. They were soon approached for the oil and gas rights and attempted to

follow the newly repealed and restated Ohio Dormant Mineral Rights Act, ORC §5301.56 (hereinafter "ODMA") to clean up title to the mineral rights.

The Appellants published a notice of intent to claim abandonment of mineral rights on November 27, 2010 in a local newspaper. Amended Complaint, Exhibit E.

Two days later, on November 29, 2010, Appellee John William Croskey recorded a Quit-Claim Deed for the Porter Mineral Rights at Book 186, Page 605 of the Land Records of Harrison County, Ohio. Amended Complaint, Exhibit G. The deed listed himself as grantor and the grantees as John William Croskey and Anita M. Croskey as trustees of the John William Croskey Revocable Trust U/A/D June 1, 2007. The deed did not list how Appellee Croskey received any ownership in the Porter Mineral Rights, did not conform to the recording statute, and does not appear in the chain of title.

On December 23, 2010, Appellee Croskey recorded an Affidavit Preserving Minerals at Book 186, Page 1949-1956, claiming that he had an interest in the Porter Mineral Rights as an heir of Samuel A. Porter. He stated an intent to preserve his rights to the oil and gas. Amended Complaint, Exhibit H.

On December 27, 2010, the Appellants filed an affidavit claiming abandonment of the mineral rights with the county recorder. Amended Complaint, Exhibit F.

LITIGATION

The Appellants instituted the instant action on February 9, 2011, with a complaint to quiet title as to mineral rights as to the 82-acre portion of their 127-acre parcel in Harrison County Court of Common Pleas Case No. CVH-2011-0019. The Appellants filed a motion for summary judgment. Several Appellees responded to the motion. The trial court scheduled a pre-

trial to discuss these issues on December 9, 2011. At the pre-trial, several issues were discussed, including the fact that several Appellees had transferred their claimed ownership interest to Appellee Ian Resources, LLC. Amended Complaint, Exhibits I through Z. By entry dated December 13, 2011, the trial court deferred ruling on the motions for summary judgment.

On January 19, 2012, the Appellants moved to amend the original complaint and served a copy of the same upon all of the Appellees. The trial court granted permission for the amended complaint on the same date. All Appellees but Consolidated answered the amended complaint, although some of the answers came after the Appellants filed a motion for default judgment. No counterclaims were ever filed.

On May 3, 2012, the Appellants filed motions for default judgment and summary judgment against the Appellees. Again, several, but not all of the Appellees filed responses to this motion and their own motions for summary judgment. There were no court hearings or oral arguments of any kind on any issues in this case. Although discovery was exchanged, no depositions were taken or submitted to the trial court.

By entry dated October 29, 2012, the trial court granted the motion of several Appellees for summary judgment that they were the rightful owners of the mineral rights. The trial court did not determine the percentage interest owned by each Appellee or whether some of the rights were abandoned by Mrs. Porter's heirs. The Appellants' motion for summary judgment was overruled and their claim was dismissed. The trial court based its decision on several grounds:

1. That the Appellees had not been properly notified pursuant to statute of the Appellants' intent to claim an abandonment of the mineral interest.
2. That the Appellants' 2009 deed, which noted an exception for the subject mineral rights, was a "title transaction" pursuant to the Ohio Dormant Mineral Rights Act (ORC

§5301.56 and hereinafter referred to as "ODMA") and therefore served as a bar to the Appellants' claim of abandonment.

3. That the Appellees' filing of recorded documents after the Appellants' notice of claim served as a bar to the Appellants' claim of abandonment pursuant to the ODMA.

The Appellants timely filed a notice of appeal to the Seventh District Court of Appeals on November 5, 2012. The Appellants also requested a stay of judgment. The trial court granted a stay on December 11, 2012, upon the payment of a *supersedes* appellate bond. Said bond has not been posted by the Appellants.

The parties briefed the appellate issues and argued the case before the Seventh District Court of Appeals. On September 24, 2013, the Court of Appeals affirmed the trial court's decision, but reversed the trial court on several grounds. The Court of Appeals found that the Appellants' 2009 deed was not a "title transaction." The Court of Appeals also found that the Appellees had been properly noticed of the Appellants' intent to claim abandonment. **However, the Court of Appeals ruled that the Appellees post-notice recording of an affidavit served as a bar to the 20-year look back contemplated under the ODMA.**

The Appellants timely filed a notice of appeal with this Court and a memorandum in support of jurisdiction on one proposition of law concerning the 20-year look back. Several of the Appellees responded in opposition to the appeal. Many of these Appellees filed cross-appeal on the two issues on which the Court of Appeals ruled in Appellants' favor. On March 12, 2014, this Court by divided ruling accepted jurisdiction on the Appellants' sole proposition of law and declined jurisdiction on the Appellees' propositions of law. The trial and appellate court records have been transmitted to this Court and this matter is now properly before this Honorable Court for its review.

PROPOSITION OF LAW

OHIO REVISED CODE SECTION 5301.56(B)(3) REQUIRES A SHOWING BY A PARTY CLAIMING THE PRESERVATION OF A PRIOR MINERAL INTEREST OF A “SAVINGS EVENT” THAT OCCURRED IN THE 20 YEARS PRIOR TO NOTICE BEING SERVED AND NOT A “SAVINGS EVENT” AFTER THE DATE OF THE NOTICE BEING SERVED.

ORC §5301.56, the ODMA, is clear. A party claiming to preserve a prior mineral interest must show a savings event “within the twenty years immediately preceding the date on which notice is served or published.” The Court of Appeals has incorrectly inserted its interpretation of what the Ohio Legislature intended to expand that timeline. Strict construction of the statute and plain reading of the words is all that is required. No one had filed anything with the county record in the 20 years immediately preceding November 27, 2010, that qualified as a “savings event”. No savings event occurred within that 20 years. The Appellees cannot use the November 29, 2010, filing to defeat the Appellants’ claim of abandonment. **No matter which section is cited, every part of the ODMA requires the Appellees to identify a “savings event” that took place before November 27.**

The ODMA was designed to allow mineral interests to vest in the surface owner. It calls for the abandonment of mineral rights and vesting of those rights with the surface owner under certain circumstances. ORC §5301.56(B). To vest such a mineral interest, the surface owner must do two things – serve notice and follow it up with a recorded document. ORC §5301.56(E). There are three exceptions to the abandonment of mineral rights – the rights involve coal, the rights involve a governmental agency, or certain events have taken place in the “20 years immediately preceding the date on which notice is served or published.” ORC §5301.56(B). Those events include certain title transactions, actual production of minerals, the issuance of drilling or mining permits, or that a claim to preserve mineral interests has been filed

pursuant to statute. ORC §5301.56(B)(3). The claim to preserve mineral interests must be filed by the holder of those mineral rights. It must state the nature of the claim and the recording information upon which it is based. ORC §5301.56(C)(1)(a). Additionally, the holder of the mineral interest must identify “an event described in division (B)(3) of this section that has occurred within the 20 years **immediately preceding** the date on which the notice was served or published under division (E) of this section.” ORC §5301.6(H).

This is merely a “claim”. Without a claim, the county recorder can act to record the abandonment. ORC §5301.56(H)(2). With a claim, the interest is preserved until a judicial determination can be made. This statute requires a clear record to see the order of events – title transactions, notice publication, and claims – to help a court determine whether abandonment has occurred. Both Section (B) and (H) have their own distinct uses.

All language used in each and every statutory enactment must be considered to have a purpose. *Morrow v. Morrow*, 18 Ohio Law Abs. 235 (1934); *Batchelor v. Newness*, 145 Ohio St. 115 (1945). In construing a statute, the intent of the lawmakers is to be sought first in the language employed. “In determining the requirements of a statute, we first look to the language in the statute and if the language is unambiguous, we apply the clear meaning of the words used.” *Dodd v. Croskey*, 2013-Ohio-4257, Harrison County Ct. App. No. HA-2012-0006, ¶26, citing *Roxane Laboratories, Inc. v. Tracy*, 75 Ohio St.3d 125, 127, 661 N.E.2d 1011 (1996). If the words are free from ambiguity and doubt, and express plainly, clearly and distinctly the sense of the lawmakers, there is no occasion to resort to other means of interpretation. *Wishnek v. Gulla*, 114 N.E.2d 914 (Cuyahoga County C.P., 1953). In construing a statute, the question is not what the General Assembly intended to enact, but what the meaning was of that which the General Assembly did enact. *Id.* In interpreting a statute, courts ought not to add uncertainty to

the meaning and effect of language used in a statute by restricting the accepted and generally understood meaning of common words. *Id.*

The trial court held that Mr. Croskey's affidavit met all of the requirements under ORC §5301.56(C) and that it was effective to prevent abandonment of the mineral rights under this statute. However, this ignores the plain language of the statute. ORC §5301.56(B)(3) explicitly states that a claim to preserve the mineral interest must have been filed "within the twenty years **immediately preceding** the date on which notice is served or published" for such a claim to have the effect of preserving the mineral rights.

The trial court and Court of Appeals stated that the legislature intended to allow mineral rights holders to preserve their rights after notice has been served. However, neither the trial court, the Court of Appeals, nor the Appellees in this case provide any proof of that legislative intent. Indeed, the language of the statute indicates a contrary intent on the part of the legislature.

The word "preceding" is generally understood to mean "that immediately precedes in time or place" and "precede" means "to be, go, or come ahead or in front of". See Merriam Webster's Collegiate Dictionary, Tenth Edition. Under the ODMA, the claim to preserve the mineral rights must come in the 20 years **immediately preceding notice**. As such, any claim to preserve these rights must be made in the 20 years immediately before notice is served or published. The statute does not, in any section, provide for a claim to preserve which does not precede notice.

Based on the plain language reading of the statute, a claim to preserve mineral rights which is filed after notice is served is not effective to preserve a mineral rights holder's claim to those rights. The Court of Appeals erred when it ruled that the Appellees could preserve their mineral rights under the ODMA by filing a recorded document that does not conform to the

statutory filing requirements and to do so after receiving notice pursuant to the statute. This interpretation flies in the face of the intent of the legislature to efficiently reduce unclear chains of title for mineral rights that have been unproductive for decades. It rewards claimants who “sit on their rights” instead of taking action.

The Appellant respectfully suggests that the Court of Appeals mistook the time for filing a claim to preserve mineral interests with the time for a “savings event”. *Dodd*, ¶25. The Appellees had 60 days *after* the November 27 notice to file their claim to preserve their rights. They did that. However, they clearly had to point to a savings event that occurred *before* November 27. In every part of the statute, the same language is used: “20 years **immediately preceding** the date on which the **notice** was served or published.” The statute does not say “20 years before the claim is filed”.

The ODMA is substantially similar to the process for abandoning leases under ORC §5301.332. The lessor must file a notice of abandonment and the lessee has 60 days to file a claim that the lease has not been abandoned. If the lessee does not file the claim, the lessor can have the county recorder note the abandonment on the recorded lease. If the claim is filed, legal action must ensue to resolve the issue.

This lease abandonment statute has been around much longer than the ODMA and has been interpreted several times by the lower courts. If a lessor properly followed the abandonment statute with notice of default and the lessee does not properly file a claim, the lessor will win a quiet title action. *Edwards v. Blakemore*, Washington Ct. App. Case No. 81 X 6, 82-LW-0993 (Fourth Dist., February 12, 1982). If the lessor does not properly follow the statute, the lessee will win. *Whitmer v. Mack*, 81-LW-2274, Stark Cty. App. No. 5538 (Fifth Dist., June 30, 1981); *Montgomery v. Hamblin*, 82-LW-2475, Licking Cty. App. No. CA-2843 (Fifth Dist., Nov. 8, 1982). If the lessor follows the statute, but not the contract’s terms for lease

forfeiture, the lessee will win. *Wuenschel v. Northwood Energy Corp.*, 2008-Ohio-6879, Ashtabula Ct. App. No. 2008CA00039 (11th Dist.). There is a concept of equity in such cases, such as when the lessor intentionally sends notice to the wrong party and the correct party corrects the default immediately. *Id.*, at ¶58 and 61. The Appellant simply asks to be held to that same standard – fair dealing and following the statute.

Several courts have held that the filing of a claim under ORC §5301.56(H) is nothing more – a claim. It does not “save the day” for the mineral interest holder. It simply means that a judicial determination is required. *Devitis v. Draper*, Monroe County CCP Case No. 2012-429, August 13, 2013, at 10 (attached), *citing Marty v. Dennis*, Monroe County CCP Case No. 2012-203, April 11, 2013, at 11 (attached). To rule otherwise would allow a person with no relation to the property to file a claim and hold the mineral right hostage. It would also allow a legitimate claimant to file a claim with a fictitious “savings event” and thwart the surface owner from having any judicial review.

The plain language of the ODMA requires the Appellees to point to an event prior to the notice. The Appellees still have not done so. To date, the state legislature has not seen fit to change this statute. Rather the plain meaning of the words “immediately preceding” and “the notice” in the statute makes it clear what should be done in this case – the Appellees claim should be stricken from the recorded documents and the mineral rights should vest with the Appellants.

CONCLUSION

The Appellants respectfully request that this Honorable Court grant their position on the Proposition of Law, reverse the judgments of the lower courts on this issue, instruct the lower courts to enter a judgment in favor of the Appellants on their claim to quiet title, and to refer the matter of slander of title concerning Appellee John William Croskey back to the trial court for further adjudication.

Respectfully submitted,

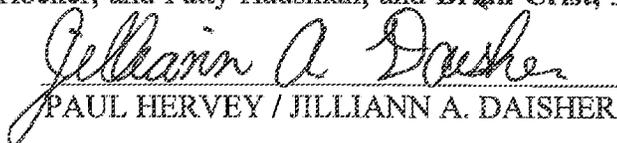


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APPENDIX

- A-1 Notice of Appeal to Supreme Court, dated November 4, 2013
- A-2 Judgment Entry and Opinion, Seventh District Court of Appeals, September 23, 2013
- A-3 Judgment Entry and Opinion, Harrison County Court of Common Pleas, October 29, 2012
- A-4 ORC §5301.56
- A-5 *Devitis v. Draper*, Monroe County CCP Case No. 2012-429, August 13, 2013.
- A-6 *Marty v. Dennis*, Monroe County CCP Case No. 2012-203, April 11, 2013.

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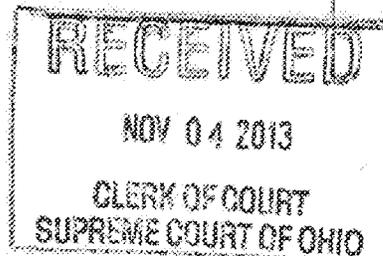
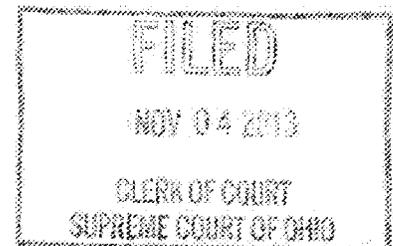
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EVART DEAN PORTER,
STUART HARRY PORTER,
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CONSOLIDATED COAL COMPANY, and
IAN RESOURCES, LLC

Defendant-Appellants.

CASE NO.

13-1730



ON APPEAL FROM THE HARRISON COUNTY COURT OF APPEALS
SEVENTH APPELLATE DISTRICT

APPELLATE CASE NO. 12 HA 6

NOTICE OF APPEAL

Now come the Plaintiff-Appellants, by and through counsel, and hereby respectfully notify this Honorable Court of their appeal of the decision of the Seventh District Court of Appeals in the above referenced case, as docketed September 23, 2013. The appeal is a case of public or great general interest, as supported by the memorandum filed this same date.

Respectfully submitted,



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A copy of the foregoing Notice was served by regular mail upon the following attorneys and unrepresented parties, this 1st day of November, 2013: **Attorney Rupert Beetham**, 110 S. Main St., P.O. Box 262, Cadiz, OH 43907, for John William 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; **Attorney Ronald K. Lembright**, One Cascade Plaza, Fifteenth Floor, Akron, OH 44308, for William L. Kalbaugh, William H. Boak, Jennifer Bernay, Charlotte S. Bishop, Richard G. Davis, Harry Roy Davis, Thomas Davis, Harry K. Kalbaugh, and Michael Kalbaugh; **Attorney Ian S. Haberman**, 225 Liberty St., Medina, OH 44256, for William H. Boak, Samuel G. Boak, and Charlotte S. Bishop; **Attorney Marquette D. Evans**, 920 Race St., Second Floor, Cincinnati, OH 45202, for Harriet C. Evans; **Karen A. Chaney**, 794 Breeze St., Craig, CO, 81625; **Linda C. Boyd**, 7068 South Flower Court, Littleton, CO, 80128; **Terri Hoeker**, 204 South Buckhorn Dr., Bastrop, TX, 78602; **Patty Hausman**, 1130 Beta Loop, Colorado Springs, CO, 80906; and **Brian Crist**, 3384 N. River Rd., Zanesville, OH 43701.



PAUL HERVEY / JILLIANN A. DAISHER

STATE OF OHIO)
)
 HARRISON COUNTY) SS: IN THE COURT OF APPEALS OF OHIO
 SEVENTH DISTRICT

PHILLIP DODD, et al.,)
)
 PLAINTIFFS-APPELLANTS,)
)
 VS.)
)
 JOHN CROSKEY, et al.,)
)
 DEFENDANTS-APPELLEES.)

CASE NO. 12 HA 6

JUDGMENT ENTRY

HARRISON COUNTY
 COURT OF APPEALS
 SEP 23 2013
 LESLIE A. MILLIKEN, CLERK

In the instant case, the trial court provided three reasons for granting summary judgment to appellees. First, the trial court found that the 2009 deed that transferred the surface right to appellants is a title transaction within the meaning of R.C. 5301.56 and thus, preserved appellees' mineral interests. We disagree with this conclusion and find that it does not support the grant of summary judgment. The mineral interests were not the "subject of" the 2009 title transaction and thus, that transfer did not preserve appellees' mineral interests. Second, the trial court determined that appellants failed to satisfy the notice requirements in R.C. 5301.56(E) and this provided an independent basis for granting summary judgment to appellees. We also disagree with this conclusion. Any deficiency in the notice provided pursuant to R.C. 5301.56(E) was harmless because at least one appellee saw the published notice and responded. Therefore, the trial court was incorrect in granting summary judgment on those two bases. Consequently, appellants' arguments concerning those reasons have merit. That said, the trial court's third reason for granting summary was correct. It correctly determined that the affidavit filed by Appellee John William Croskey complied with R.C. 5301.53(H) and accordingly preserved the mineral interests for appellees. Furthermore, appellants did not provide any evidence to the trial court to dispute the information in the

affidavit that the individuals listed in the affidavit are mineral interest holders. Therefore, the trial court's correct reasoning regarding R.C. 5301.56(H) provides the sole basis for affirming the trial court's grant of summary judgment. For the reasons stated in the Opinion rendered herein, it is the final judgment and order of this Court that the judgment of the Common Pleas Court, Harrison County, Ohio is affirmed. Costs taxed against appellants.

David W. Wilcox

Mary Rose

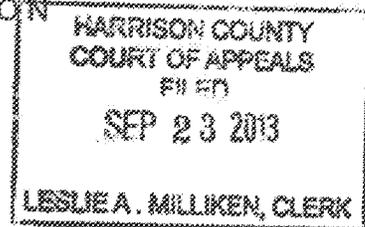
Mary Rose
JUDGES.

STATE OF OHIO, HARRISON COUNTY
IN THE COURT OF APPEALS
SEVENTH DISTRICT

PHILLIP DODD, et al.,
PLAINTIFFS-APPELLANTS,
VS.
JOHN CROSKEY, et al.,
DEFENDANTS-APPELLEES.

CASE NO. 12 HA 8

OPINION



CHARACTER OF PROCEEDINGS:

Civil Appeal from Common Pleas Court,
Case No. CV11-2011-0019.

JUDGMENT:

Affirmed.

JUDGES:

Hon. Joseph J. Vukovich
Hon. Gene Donofrio
Hon. Mary DeGenaro

Dated: September 23, 2013

STATE OF OHIO)
)
HARRISON COUNTY) SS: IN THE COURT OF APPEALS OF OHIO
 SEVENTH DISTRICT

PHILLIP DODD, et al.,)
)
 PLAINTIFFS-APPELLANTS,)
)
 VS.)
)
 JOHN CROSKEY, et al.,)
)
 DEFENDANTS-APPELLEES.)

CASE NO. 12 HA 6
JUDGMENT ENTRY

HARRISON COUNTY
COURT OF APPEALS
SEP 23 2013
LESLIE A. MILLIKEN, CLERK

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Joseph W. Wilenski

Mark T. Cooper

Mary Regan

JUDGES.

STATE OF OHIO, HARRISON COUNTY

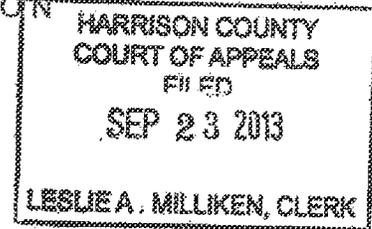
IN THE COURT OF APPEALS

SEVENTH DISTRICT

PHILLIP DODD, et al.,)
)
 PLAINTIFFS-APPELLANTS,)
)
 VS.)
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 JOHN CROSKEY, et al.,)
)
 DEFENDANTS-APPELLEES.)

CASE NO. 12 HA 6

OPINION



CHARACTER OF PROCEEDINGS:

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Case No. CVH-2011-0019.

JUDGMENT:

Affirmed.

JUDGES:

Hon. Joseph J. Vukovich
Hon. Gene Donofrio
Hon. Mary DeGenaro

Dated: September 23, 2013

APPEARANCES:

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Bastrop, Texas 78602

VUKOVICH, J.

{¶1} Plaintiffs-appellants Phillip Dodd and Julie Bologna appeal the decision of the Harrison County Common Pleas Court granting summary judgment in favor of defendants-appellees John William 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, Mary Elaine Porter, Kim D. Berry, Lorna C. Bower, Harriet J. Evans, Sandra J. Dodson, Karen A. Chaney, Patty Hausman, Linda B. Boyd, and Terri Hocker. This case is governed by the Ohio Dormant Mineral Act, R.C. 5301.56. Four issues are argued in this case.

{¶2} The first issue is whether the 2009 deed that transferred the surface rights to appellants but also contained a prior mineral reservation to Samuel A. Porter and Blanche Long Porter is a title transaction within the meaning of R.C. 5301.56. The second issue is whether appellants satisfied the notice requirement in R.C. 5301.56. The third issue is whether the affidavit filed by appellee John William Croskey, which was filed after the notice of intent to claim abandonment of mineral interests was published in the local newspaper, was a savings event under R.C. 5301.56(H). The fourth issue raised is whether the trial court erred when it did not require appellees to prove that they were the mineral interest holders.

{¶3} For the reasons expressed below, we make the following conclusions. The 2009 deed that transferred the surface rights to appellants is not a title transaction within the meaning of R.C. 5301.56. Any deficiency in the notice provided to the appellees of appellants' intent to have the mineral interests found to be abandoned is harmless because the publication notice reached at least one appellee, who filed an affidavit attempting to preserve the mineral interest. That affidavit complied with R.C. 5301.56(H) and accordingly preserved the mineral interests for appellees. Appellants did not provide any evidence to the trial court to dispute the information in the affidavit that the individuals listed in the affidavit are not

mineral interest holders. Based upon those findings, we uphold the judgment of the trial court for appellees.

Statement of Facts

{¶14} In August 2009, appellants acquired 127.8387 acres of land in Harrison County, Ohio from James Coffelt. The deed provided that the conveyance was subject to the following reservations:

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

Excepting a one-third interest in the oil and gas to Samuel A. Porter and Blanche Long Porter¹ in Warranty Deed filed for record may [sic] 27, 1947 in Volume 121, page 383, Deed Records.

August 5, 2009 Survivorship Deed.

{¶15} Shortly after acquiring the surface rights, appellants were approached by an oil and gas company seeking to purchase the mineral rights to that tract of land.

{¶16} As a result of that request, on November 27, 2010, appellants published in the Harrison News Herald a notice of intent to claim abandonment of oil and gas interests underlying their property. As the above reservations show, these interests were previously reserved by the Porters. The published notice was addressed to "Samuel A. Porter and Blanche Long Porter, their unknown successor and assigns."

{¶17} Two days later, appellee John William Croskey recorded a Quit-Claim Deed for the oil and gas interests located on the property. Then, on December 23, 2010, Croskey filed a document titled "Affidavit Preserving Minerals." Croskey

¹This trial court found that this exception contains an error. The reservation of a 1/3 interest in the oil and gas as noted in the instrument was retained by Emma A. Croskey, not Samuel A. Porter and Blanche Long Porter. The trial court, however, concluded that the error was without consequence in determining whether summary judgment should be granted to appellants. Neither party disputes this finding. Thus, it is not addressed by this court.

claimed to be an heir of the Porters and thus, owns a portion of the mineral interests. In this affidavit, Croskey also named numerous other persons that are alleged to be heirs of Samuel A. Porter and Blanche Long Porter that likewise own an interest in the oil and gas reserves.

{¶8} On February 9, 2011, appellants filed an action to quiet title to the oil and gas interests. Appellants asked the Harrison County Common Pleas Court to find that the oil and gas interests were abandoned and thus, pursuant to the Ohio Dormant Mineral Act, appellants, as the surface rights owners, were entitled to be named as owners of the oil and gas reserves. Or in other words, appellants wanted the trial court to find that the affidavit was void and did not preserve appellees' mineral interests. The complaint named all of the persons Croskey named as heirs of Samuel A. Porter and Blanche Long Porter as defendants.

{¶9} All appellees filed answers that contained denials. Thereafter, appellants moved for summary judgment claiming that pursuant to the Ohio Dormant Mineral Act they are entitled to be named the owners of the mineral interests. Appellees filed motions in opposition to summary judgment and motions for summary judgment.

{¶10} After reviewing the parties' arguments, the trial court denied appellants' summary judgment motion and granted appellees' summary judgment motion. Thus, the court deemed that the mineral interests were not abandoned and that appellees retained the mineral interests that were acquired through testate from the Porters.

{¶11} Appellants appeal from that decision.

Standard of Review

{¶12} In reviewing a summary judgment award we apply a de novo standard of review. *Cole v. Am. Industries & Resources Corp.*, 128 Ohio App.3d 546, 552, 715 N.E.2d 1179 (7th Dist.1998). Thus, we use the same test as the trial court did, Civ.R. 56(C). That rule provides that the trial court shall render summary judgment if no genuine issue of material fact exists and when construing the evidence most strongly in favor of the nonmoving party, reasonable minds can only conclude that the moving

party is entitled to judgment as a matter of law. *State ex rel. Parsons v. Fleming*, 68 Ohio St.3d 509, 511, 628 N.E.2d 1377 (1994).

OHIO DORMANT MINERAL ACT

{¶13} The arguments raised by appellants address different aspects of the Ohio Dormant Mineral Act. The Ohio Dormant Mineral Act, as codified in R.C. 5301.56, establishes a process by which mineral interests may be deemed abandoned and deemed to have vested to the owner of the surface rights.

{¶14} The trial court provided three reasons for granting summary judgment. First, it concluded that the subject mineral interests met one of the provisions in R.C. 5301.56(B) and therefore, were not abandoned. Second, it found appellants failed to comply with the notice provisions in R.C. 5301.56(E) and that was another reason supporting the grant of summary judgment. Lastly, it found that even if the interests were not abandoned and notice was properly given, the holders of the mineral interest took the appropriate steps set forth in R.C. 5301.56(H) to preserve their mineral interests.

{¶15} Appellants find fault with each reason and alternatively argue that even if the trial court was correct in all of its conclusions, it still erred in granting summary judgment because it failed to require appellees to provide proof of their ownership of the mineral interests.

{¶16} In reviewing appellants' arguments, we will first address the trial court's third reason for granting summary judgment, preservation of mineral interests, since it provides the sole and most persuasive basis for affirming the trial court's grant of summary judgment.

Act to Preserve Mineral Interests

{¶17} The argument addressing the trial court's decision that appellees' performed an act that preserved their mineral interests' states:

{¶18} "The trial court erred in finding that the Croskey affidavit was a 'savings event' under Revised Code § 5301.56."

{¶19} R.C. 5301.56(H)(1) provides that within 60 days of service or publication notice of the surface owner's intent to have the mineral interests be

deemed abandoned, the holder of the mineral interest can claim that the mineral interest has not been abandoned by filing one of two documents – an affidavit or a claim.

{¶20} The affidavit is governed by R.C. 5301.56(H)(1)(b) and that statute provides that in order to preserve the mineral interest the affidavit must identify an event listed in R.C. 5301.56(B)(3) 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)(b). The events listed in section (B)(3) automatically establish that the mineral interests have not been abandoned.

{¶21} The other document is “a claim to preserve the mineral interest.” R.C. 5301.56(H)(1)(a) states that this claim is to be made in accordance with R.C. 5301.56(C). That section states the information that must be contained in “a claim to preserve the mineral interest”; and that it must be filed within sixty days after the date of notice.

{¶22} On December 23, 2010, which was within sixty days of appellants’ published notice, appellee John William Croskey filed a document titled “Affidavit Preserving Minerals” in Harrison County Recorder’s Office. While this document is titled as an affidavit, it does not identify an event under division (B)(3) which would deem the mineral interest not excluded. Thus, it does not constitute an affidavit that is described in division (H)(1)(b). However, the trial court found that it does constitute “a claim to preserve the mineral interest” as described in division (H)(1)(a).

{¶23} Appellants maintain that finding is incorrect because appellee John William Croskey’s affidavit was not filed within the 20 years immediately preceding the notice. They contend that the 20 years immediately preceding the date of the notice requirement applies to a claim filed pursuant to R.C. 5301.56(H)(1)(a).

{¶24} This assertion is based on R.C. 5301.56(H)(1)(a)’s statement that the claim to preserve the mineral interest is to be in accordance with R.C. 5301.56(C). Appellants claim that section (C) requires a claim to preserve the mineral interest to be filed within the 20 years immediately preceding the date that notice is published under section (E). Appellants reach this conclusion because the first sentence of

section (C) states a claim to preserve a mineral interest from being deemed abandoned under section (B) may be filed for record by its holders. R.C. 5301.56(C)(1). Section (B)(3)(e) specifically deals with claims to preserve a mineral interest. That section states that a mineral interest will not be deemed abandoned if within the 20 years immediately preceding the date on which notice was served or published, the holder has filed a claim to preserve the mineral interest in accordance with R.C. 5301.56(C). R.C. 5301.56(B)(3)(e). Thus, in short, appellants argue that the 20 year requirement applies under R.C. 5301.56(H)(1)(a) because (H)(1)(a) requires that the claim must in done in accordance with R.C. 5301.56(C); and that section specifically refers to R.C. 5301.56(B), subsection (3)(e) of which requires the claim to be filed within 20 years preceding the notice.

{¶25} Appellants are correct that section (H) refers to section (C) and section (C) refers to section (B). However, their conclusion that due to those references, R.C. 5301.56(H)(1)(a) requires the claim to preserve mineral interest to be filed within the 20 years immediately preceding the notice in order to preserve the interest is incorrect.

{¶26} In determining the requirements of a statute, we first look to the specific language in the statute and if the language is unambiguous, we apply the clear meaning of the words used. *Roxane Laboratories, Inc. v. Tracy*, 75 Ohio St.3d 125, 127, 661 N.E.2d 1011 (1996). However, if the statute is ambiguous then we look to the legislative intent. *Bailey v. Republic Engineered Steels, Inc.*, 91 Ohio St.3d 38, 40, 741 N.E.2d 121 (2001).

{¶27} In reading R.C. 5301.56(H) it can be concluded that it provides two means through which a mineral interest holder can assert that the mineral interest is not abandoned. Subsection (1)(b) deals with the acts listed in R.C. 5301.56(B)(3) that occurred within the 20 years immediately preceding the notice of the surface owners' intent to have the interests deemed abandoned. R.C. 5301.56(B)(3)(e) specifically provides for the filing of a claim to preserve the mineral interest that meets the requirements in R.C. 5301.56(C). Thus, R.C. 5301.56(H)(1)(b) addresses past events that render the interest not abandoned.

{¶28} R.C. 5301.56(H)(1)(a), on the other hand, allows for a present act by the mineral interest holder that prevents the interest from being determined to be abandoned. As stated above, that section states the mineral interest holder may file a claim to preserve the mineral interest in accordance with R.C. 5301.56(C) within 60 days after the date of notice.

{¶29} That said, it is acknowledged that under R.C. 5301.56(H)(1)(a) the claim to preserve the mineral interest must be done in accordance with R.C. 5301.56(C): R.C. 5301.56(C) states:

(C)(1) A claim to preserve a mineral interest from being deemed abandoned under division (B) of this section may be filed for record by its holder. Subject to division (C)(3) of this section, the claim shall be filed and recorded in accordance with division (H) of this section and sections 317.18 to 317.201 and 5301.52 of the Revised Code, and shall consist of a notice that does all of the following:

(a) States the nature of the mineral interest claimed and any recording information upon which the claim is based;

(b) Otherwise complies with section 5301.52 of the Revised Code;

(c) States that the holder does not intend to abandon, but instead to preserve, the holder's rights in the mineral interest.

(2) A claim that complies with division (C)(1) of this section or, if applicable, divisions (C)(1) and (3) of this section preserves the rights of all holders of a mineral interest in the same lands.

(3) Any holder of an interest for use in underground gas storage operations may preserve the holder's interest, and those of any lessor of the interest, by a single claim, that defines the boundaries of the storage field or pool and its formations, without describing each separate interest claimed. The claim is prima-facie evidence of the use of each separate interest in underground gas storage operations.

R.C. 5301.56(C).

{¶30} The first sentence of section (C) does refer to section (B). However, it is only stating that a claim under division (B) may be filed for record by its holder. Here, the claim was filed under division (H)(1)(a), not division (B). The clear language of R.C. 5301.56(H)(1)(a) does not require the claim to preserve the mineral interest to have been filed within the 20 years immediately preceding the notice. Rather it requires the claim to be filed within 60 days after the notice. The mere reference in division (C) to division (B) does not mean that a claim filed under division (H)(1)(a) has the same 20 year requirement that a claim filed under division (B) does. Therefore, appellants assertion that 20 year requirement applies to a claim filed under division (H)(1)(a) fails.

{¶31} If we were to read division (H)(1)(a) in the manner urged by appellants, it would mean that a claim to preserve a mineral interest filed under that division not only has to have been filed within the 20 years immediately preceding the surface owner's notice of intent to have the mineral interests deemed abandoned, but also within 60 day after the notice. Reading it in is this manner causes two problems in the statute.

{¶32} First, it creates a redundancy in the statute. R.C. 5301.56(H)(1)(b) already governs the situation where a claim was filed within the 20 years immediately preceding the notice. As aforementioned under R.C. 5301.56(H)(1)(b) a mineral interest holder can preserve their rights by filing an affidavit that identifies an event listed in section (B)(3). R.C. 5301.56(B)(3) states that if certain events have occurred "within the twenty years immediately preceding the date on which the notice was served or published under division (E) of this section" the mineral interests have not been abandoned. One of the events listed is the filing of a claim preserving the mineral interest in accordance with the requirements in R.C. 5301.56(C). R.C. 5301.56(B)(3)(e). Consequently, if R.C. 5301.56(H)(1)(a) is read to require the claim to have been filed within the 20 years immediately preceding the notice, there is no need for that provision because it is already covered under R.C. 5301.56(H)(1)(b). The legislature would not have intended for the statute to be redundant; rather the intent is for all provisions to have meaning.

{¶33} Second, it does not give effect to the words used and not used in the statute. The specific language of R.C. 5301.56(H)(1) is:

(H)(1) 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 or the holder's 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)(a)-(b).

{¶34} R.C. 5301.56(H)(1)(b) specifically mentions the 20 year requirement, i.e. that an event has to occur within the 20 years immediately preceding notice. The legislature could have chosen to leave out the 20 year language and that requirement would still have been required because of the reference to R.C. 5301.56(B)(3). R.C. 5301.56(B)(3) specifically states that if certain events occur within the 20 years immediately preceding the notice, the mineral interests are not deemed abandoned. That said, the legislature chose to restate the 20 year requirement to ensure that that requirement was applicable. However, R.C. 5301.56(H)(1)(a) does not mention a 20 year requirement. Likewise, R.C. 5301.56(C) does not expressly state a 20 year requirement. If the legislature wanted the 20 year requirement to apply it knew the language to use, which is evidenced by the language used in R.C. 5301.56(H)(1)(b). Yet, it did not employ such language. Thus, the legislature's choice to not state the 20 year requirement in R.C.

5301.56(H)(1)(a) also lends support for the conclusion that the 20 year requirement is inapplicable to that section.

{¶35} Furthermore, the conclusion that R.C. 5301.56(H)(1)(a) allows for a mineral interest holder to take a present action by filing a claim to preserve the mineral interest after notice, even though the claim was not filed within the 20 years immediately preceding notice, is supported by the general rule that the law abhors a forfeiture. *State ex rel. Falke v. Montgomery Cnty. Residential Dev., Inc.*, 40 Ohio St. 3d 71, 73, 531 N.E.2d 688 (1988). Thus, the law requires that we favor individual property rights when interpreting forfeiture statutes. *Ohio Dep't of Liquor Control v. Sons of Italy Lodge 0917*, 65 Ohio St. 3d 532, 534, 605 N.E.2d 368 (1992). Allowing for a present act to prevent forfeiture of the mineral interest favors individual property rights.

{¶36} Therefore, considering all the above, the argument that appellees did not preserve their mineral rights lacks merit. The trial court's decision to grant summary judgment is upheld for this reason.

Mineral Interests Subject of a Title Transaction

{¶37} Appellants also argue that the trial court incorrectly determined that the mineral interests were not abandoned under R.C. 5301.56, by stating:

{¶38} "The trial court erred by finding that the restatement of a prior mineral reservation in later deeds is a 'title transaction' within the meaning of Ohio Revised Code §5301.56."

{¶39} R.C. 5301.56(B) indicates that mineral interests will not be deemed abandoned if they are coal interests, if the interests are held by the United States, the State of Ohio or any political subdivisions, or if certain enumerated actions are taken within the preceding twenty years. The mineral interests at issue in this case are not owned by a political subdivision and they are not coal interests. Therefore, in order for the interest to automatically be determined to not be abandoned one of the provisions under R.C. 5301.56(B)(3) must be applicable. The trial court found that provision (B)(3)(a) was applicable. That section states:

(3) Within the twenty years immediately preceding the date on which notice is served or published under division (E) of this section, one or more of the following has occurred:

(a) The mineral interest has been the subject of a title transaction that has been filed or recorded in the office of the county recorder of the county in which the lands are located.

R.C. 5301.56(B)(3)(a).

{¶40} In finding that this section applied, the court explained that in 2009, when appellants acquired the surface rights, the instrument that conveyed those rights to them included the reservation of the oil and gas interests to Samuel A. Porter and Blanche Long Porter. Thus, it concluded that the mineral interests were the "subject of" the title transaction and that it had been filed within 20 years immediately preceding the publishing of notice under R.C. 5301.56(E).

{¶41} There is no dispute that the 2009 deed was filed within the 20 years immediately preceding appellants' 2011 notice of intent to claim abandoned mineral interests that was published in the Harrison Herald News. The issue to be decided here is whether the oil and gas interest was the "subject of" that title transaction.

{¶42} As aforementioned, "[t]he principles of statutory construction require courts to first look at the specific language contained in the statute, and, if the language is unambiguous, to then apply the clear meaning of the words used." *Roxane Laboratories, Inc.*, 75 Ohio St.3d 125, 127, 661 N.E.2d 1011. R.C. 5301.56(B)(3)(a) is unambiguous. Therefore, the meaning of all the words used must be considered.

{¶43} Title transaction is not defined in the Ohio Dormant Mineral Act. However, it is defined in the Marketable Title Act as "any transaction affecting title to any interest in land, including title by will or descent, title by tax deed, or by trustee's, assignee's, guardian's, executor's, administrator's, or sheriff's deed, or decree of any court, as well as warranty deed, quit claim deed, or mortgage." R.C. 5301.47(F). This is a common definition of a title transaction. By this definition the 2009 deed clearly constitutes a title transaction.

{¶44} Division (3)(a), however, also requires the mineral interests to be the "subject of" a title transaction. Both parties cite this court to *Riddel v. Layman*, 5th Dist. No. 94CA114 (July 10, 1995), to support their respective positions regarding whether the mineral interests were the "subject of" the 2009 title transaction.

{¶45} In *Riddel*, Austin and Eula transferred 111 acres to Hilda, but retained 49% of the mineral interests to that property. This transfer occurred in 1965, but was not recorded until June 1973. However, in May 1973, Hilda transferred the property to the Tarboxs. That deed did not contain the reservation of mineral interests. In 1990 the Tarboxs transferred the property to Riddel and that deed also did not contain the reservation of mineral interests. In 1994, Riddel filed an action to quiet title. Eula filed an answer and counterclaim alleging to hold 49% of the mineral interests to the property. The trial court granted Eula summary judgment and held that she owned 49% of the mineral interests to the property.

{¶46} The appellate court upheld that decision. Based on the Ohio Dormant Mineral Act that was in effect at the time (which is the previous version of the Ohio Dormant Mineral Act) the appellate court stated that in order for Eula to retain her 49% mineral interest in the property there had to be a title transaction, of which the mineral interest was subject of, that had been filed or recorded in the county recorder's office within the past 20 years from the enactment of the statute. *Id.* It found that the 49% mineral interest reservation was the "subject of" the title transaction in 1965 when Austin and Eula transferred the 111 acres to Hilda. *Id.* That deed was recorded in 1973. The statute was enacted in 1989. Therefore, the recording of the 1965 deed in 1973 occurred within 20 years preceding the date the statute was enacted. *Id.*

{¶47} Despite each party's insistence, *Riddle* does not shed much light on what it means to be "subject of a title transaction." Clearly, the mineral interest in that case was the "subject of" the 1965 title transaction; in that transaction the grantor specifically retained a mineral interest. *Riddel*, however, does not address whether the mineral interest would be the "subject of" the 1973 or 1990 title transactions if the

previous mineral reservations were contained in those transactions, which is the exact issue presented to this court. Thus, this case is not instructive.

{¶48} Other than *Riddel*, there is no case law in Ohio discussing what "subject of a title transaction" means. Furthermore, "subject of" is not defined in the statute. Therefore, 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 St.3d 89, 2012-Ohio-5692, 984 N.E.2d 1016, ¶ 18. 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). Under this definition the mineral interests are not the "subject of" the title transaction. Here, the primary purpose of the title transaction is the sale of surface rights. While the deed does mention the oil and gas reservations, the deed does not transfer those rights. In order for the mineral interest to be the "subject of" the title transaction the grantor must be conveying that interest or retaining that interest. Here, the mineral interest was not being conveyed or retained by Coffelt, the party that sold the property to appellants.

{¶49} Therefore, we disagree with the trial court's conclusion that oil and gas interests were the "subject of" the 2009 title transaction. Instead we specifically find that they were not the "subject of" the 2009 title transaction. Furthermore, we note that there is no evidence in the record that the oil and gas interests were the "subject of" a title transaction in the 20 years immediately preceding the publishing of the notice to claim the mineral interests were abandoned. Consequently, the trial court's decision to grant summary judgment to appellees on the basis of R.C. 5301.56(B)(3)(a) was incorrect. This argument has merit.

{¶50} Regardless, as discussed above, summary judgment was appropriately granted on the basis that appellees took affirmative steps to preserve their mineral interests after notice of appellant's intent to have the mineral interests deemed abandoned was published.

Notice

{¶51} The argument regarding notice provides:

{¶52} "The trial court erred in finding that the appellants failed to satisfy the notice requirements of Ohio Revised Code § 5301.56."

{¶53} When mineral interest do not meet one of the requirements in R.C. 5301.56(B) to be deemed not abandoned, the surface owner may then take steps to have the mineral interest deemed to be abandoned and to have those interests reattach to the surface. This process begins with the surface owner providing notice to the holder of the mineral interest as set forth in R.C. 5301.56(E).

{¶54} Division (E)(1) requires the surface owner to serve notice to each holder or each holder's successors or assignees at the last known address of the owner's intent to declare the mineral interest abandoned. A "holder" means the record holder of a mineral interest, and any person who derives the person's rights from, or has a common source with, the record holder." R.C. 5301.56 (A)(1). Thus, holder would include any heirs or assigns of the Porters.

{¶55} R.C. 5301.56(E) requires the notice to be given by certified mail, return receipt requested. If service of notice "cannot be completed to any holder," the owner shall publish notice of its intent to declare the mineral interest abandoned at least once in a newspaper of general circulation in the county where the land that is subject to the interest is located. The notice shall contain all of the information specified in R.C. 5301.56(F).

{¶56} Here, it is undisputed that appellants did not attempt to notify any of the appellees by certified mail. It is also undisputed that Samuel A. Porter and Blanche Long Porter are deceased. Since appellants did not know the Porters' heirs they published the notice in the Harrison Herald News, a local newspaper. All parties agree that the published notice complied with the requirements in R.C. 5301.56(F).

{¶57} Appellees assert that appellants failed to comply with the mandates of R.C. 5301.56(F) because certified mail was not attempted. The trial court agreed and provided this as basis for granting summary judgment to appellees.

{¶58} We agree with the trial court and appellees that the language of the statute allowing for published notice if certified mail could not be completed indicates that there must be an attempt to notify by certified mail. Appellants complain that

there is no guidance as to the lengths surface owners must go to determine who the holders of the interests might be to attempt certified mail. They assert that they did a title search for the transfer of mineral interests, that they searched the probate records and that they could not determine who to serve by certified mail. The evidence submitted indicates that they did a title search; however, there is no indication in the affidavits that a probate records search was performed. We understand the difficulty in determining, in instances such as these, who are the heirs and assigns. That said, we do not need to determine whether the actions taken by appellants would be enough to show an attempt at certified mail.

{¶59} 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.

{¶60} Consequently, alleged inadequate notice does not provide a reason for granting summary judgment to appellees.

Ownership of Interest

{¶61} Appellants last argument is an alternative to the above arguments. They assert that even if the appellees met the requirements to preserve their mineral interests, the trial court erred when it did not require them to prove their ownership interests:

{¶62} "The trial court erred and abused its discretion in not requiring the mineral rights claimants to provide proof of their ownership interests."

{¶63} This argument lacks merit. Appellants were seeking to quiet title to the mineral interests in the land to which they owned the surface rights. They were doing this through the application of the Ohio Dormant Mineral Act. Croskey filed an affidavit preserving mineral interests claiming that he and all parties listed in the affidavit are heirs of the Porters and thus are holders of the mineral interest. The affidavit explains how the parties listed are the Porters' heirs. The trial court determined that the Croskey affidavit preserved the mineral interests. This is a finding that the parties listed in that affidavit are holders of the mineral interests.

{¶64} The party moving for summary judgment bears the initial burden of informing the trial court of the basis for its motion and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact. The moving party must specifically point to some evidence which demonstrates the non-moving party cannot support its claim. If the moving party satisfies this requirement, the burden shifts to the non-moving party to set forth specific facts demonstrating there is a genuine issue of material fact for trial. *Vahila v. Hall*, 77 Ohio St.3d 421, 429, 674 N.E.2d 1164, 1997-Ohio-259, citing *Dresher v. Burt*, 75 Ohio St.3d 280, 293, 662 N.E.2d 264 (1996).

{¶65} Appellants provided no evidence to dispute the Croskey affidavit; they did not offer any evidence that the appellees are not the heirs or assigns of the Porters. Since the sworn affidavit provided evidence that the appellees are the heirs or assigns, the burden shifted to appellants to provide conflicting evidence. Appellants failed to meet that burden.

{¶66} Appellants also assert that summary judgment should not have been granted because the trial court did not determine how much mineral interest each party owned. This issue however, was not presented to the trial court. As stated above, the trial court was asked to determine whether the mineral interests were abandoned; it was not asked to partition the mineral interests. Therefore, the trial court did not err when it did not determine how much interest each party owned.

{¶67} For those reasons, this assignment of error lacks merit.

Conclusion

{¶68} In conclusion, the trial court incorrectly determined that summary judgment was appropriate because the 2009 deed that transferred the surface rights to appellants was a title transaction within the meaning of R.C. 5301.56(B)(3)(a). Furthermore, it incorrectly determined that the failure to comply with the notice provisions in R.C. 5301.56(E) also provided a basis for granting summary judgment to appellees even though at least one appellee received the notice. That said, the trial court correctly determined that the affidavit filed after receiving the notice complied with R.C. 5301.56(H) and accordingly preserved the mineral interests for appellees. Furthermore, appellants did not provide any evidence to the trial court to dispute the information in the affidavit that the individuals listed in the affidavit are not mineral interest holders. Therefore, the judgment of the trial court is affirmed.

Donofrio, J., concurs.

DeGenaro, P.J., concurs.

APPROVED:


JOSEPH J. VUKOVICH, JUDGE

IN THE COURT OF COMMON PLEAS
HARRISON COUNTY, OHIO
GENERAL DIVISION

FILED

12 OCT 29 AM 10:13

LESLIE A. MILLIKEN
CLERK OF COURTS
HARRISON COUNTY, OHIO

PHILLIP B. DODD
and JULIE R. BOLOGNA
Plaintiffs,

CASE NO. CVH -2011-0019

vs.

JOHN WILLIAM CROSKEY, et al.
Defendants.

JUDGMENT ENTRY

This matter comes before the Court upon Plaintiffs' Motion for Summary Judgment and Defendants' Counter-Motions for Summary Judgment.

There are numerous motions for summary judgment pending herein, to wit: Plaintiff's Motion For Summary Judgment filed May 3, 2012; Motion For Summary Judgment of Defendants Lorna C. Bower, Harriet J. Evans and Sandra J. Dodson filed July 27, 2011, Motion For Summary Judgment of Defendants Karen A. Chaney, Patty Hausman, Linda C. Boyd and Terri Hocker and the Motion For Summary Judgment filed on August 11, 2011 on behalf of Defendants John William Croskey, Mary E. Surrey and Roy Surrey, Emma Jane Croskey, Margaret Ann Turner, Mary Louise Morgan, Martha Beard, Lee Johnson, Edwin Johnson, Joann Zitko, David B. Porter, John C. Wesley, Cindy R. Weimer, Evert Dean Porter, Stuart Barry Porter, Brian K. Porter, Mary Elaine Porter and Kim D. Berry. Numerous briefs and memoranda and affidavits in support of or in opposition to said motions have also been filed herein.

I. Summary Judgment

Civ. R. 56(C) provides in relevant part:

* * * Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation

may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor. * * *

The Supreme Court of Ohio has offered a succinct review of applicable law in its decision in the case of *Byrd v. Smith*, 110 Ohio St.3d 24, 2006-Ohio-3455, 850 N.E.2d 47, at 26-27:

The procedure set forth in Ohio Civ.R. 56 is modeled after the federal rule that authorizes summary judgment in appropriate cases. See *Hooten v. Safe Auto Ins. Co.*, 100 Ohio St.3d 8, 2003-Ohio-4829, 795 N.E.2d 648 at ¶16, citing 1970 Staff Notes to Civ.R. 56. Summary judgment will be granted only when there remains no genuine issue of material fact and, when construing the evidence most strongly in favor of the nonmoving party, reasonable minds can only conclude that the moving party is entitled to judgment as a matter of law. Civ.R.56(C); *Temple v. Wean United, Inc.* (1977), Ohio St.2d 317, 327, 4 O.O.3d 466, 364 N.E.2d 267. The burden of showing no genuine issue of material fact exists, falls upon the party who files for summary judgment. *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 294, 662 N.E.2d 264. Once the movant supports his or her motion with appropriate evidentiary materials, the non-moving party "may not rest upon mere allegations or denials of the party's pleadings, but the party's response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." Civ.R. 56 (E).

As the United States Supreme Court has observed, the Federal Rules of Civil Procedure are "designed 'to secure the just, speedy and inexpensive determination of every action.' Fed. Rule Civ. Proc. 1 * * *. Rule 56 must be construed with due regard not only for the rights of persons asserting claims and defenses that are adequately based in fact to have those claims and defenses tried to a jury, but also for the rights of persons opposing such claims and defenses to demonstrate in the manner provided by the Rule, prior to trial, that the claims and defenses have no

factual basis." *Celotex Corp. v. Catrett* (1986), 477 U.S. 317, 327, 106 S.Ct. 2548, 91 L.Ed.2d 265.

Before ruling on a motion for summary judgment, the trial court's obligation is to read the evidence most favorably for the nonmoving party to see if there is a "genuine issue of material fact" to be resolved. Only if there is none, does the court then decide whether the movant deserves judgment as a matter of law. As the United States Supreme Court has explained, "[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Anderson v. Liberty Lobby, Inc.* (1986) 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202.

The Court must carefully examine the materials filed herein in accordance with Civ. R. 56(C) to determine whether there are genuine issues of material fact to be resolved. In order to determine what facts may be material the Court must consider the nature of the dispute between the parties.

II. Background

Plaintiffs are the owners of the surface rights to real property located in Harrison County, Ohio and described in Exhibit A, attached hereto. Plaintiffs acquired ownership of the property by virtue of the deed recorded in Volume 180, Page 2239 of the Official Records of Harrison County, (copy attached hereto as Exhibit B).

The oil and gas rights underlying this property were reserved by Samuel A. Porter and Blanche Long Porter in a deed to Consolidated Fuel Company, recorded in Deed Book Volume 121, Page 381 and Deed Book Volume 121, Page 382 of the Deed Records of Harrison County, Ohio. In the instrument conveying property to the Consolidated Fuel Company recorded at Volume 121, page 383 of the Deed Records of Harrison County, Ohio Emma A. Croskey reserved a one-third interest in the oil and gas underlying said premises. These deeds were recorded in 1947.

On November 27, 2010, Plaintiffs published a notice of intent to claim abandonment of the oil and gas rights underlying their property which had been previously reserved by the Porters. The notice was addressed to Samuel A. Porter and Blanche Long Porter, their unknown successors and assigns. The notice was not addressed to Emma A. Croskey or her successors and assigns.

On November 29, 2010, John William Croskey recorded a Quit-Claim Deed for the oil and gas rights located on the property. This instrument purported to convey the interests of John William Croskey. On December 23, 2010 John William Croskey filed a document designated as an Affidavit Preserving Minerals at Volume 186, Pages 1949-1956 of the Official Records of Harrison County, Ohio (hereinafter "Croskey Affidavit"). In the Croskey Affidavit, Mr. Croskey asserted that he, along with numerous other persons identified therein, were the current owners of the oil and gas interests reserved by the Porters. (A copy of said affidavit is attached as Exhibit C.)

Plaintiffs' filed an action in this Court seeking a declaratory judgment that they are the true owners of the oil and gas underlying their premises by operation of the Dormant Mineral Act. Plaintiffs have also sought damages from Defendant John William Croskey for slander of title. Numerous parties have moved for summary judgment.

III. The Dormant Mineral Act

Ohio's Dormant Mineral Act, set forth in R.C. 5301.56, (copy attached as Exhibit D) establishes a process by which mineral interests may be deemed abandoned and deemed to have vested in the owner of the surface rights overlying said mineral interests. Essentially, the statute operates to forfeit title to mineral interests which have been "abandoned" by current holders and vest title to the mineral interests in the surface

owner. In deciding this case, the Court must keep in mind "the principle that forfeitures are not favored in law or equity." *State v. Lilloock*, 70 Ohio St. 2d 23, 25, 434 N.E.2d 723 (1982). "Whenever possible, such statutes must be construed so as to avoid a forfeiture of property. No forfeiture may be ordered unless the expression of the law is clear and the intent of the legislature manifest." *Id.* at 26.

The Dormant Mineral Act does not apply to certain mineral interests enumerated in the statute (R.C.5301.56(B)):

- (1) the mineral interest is in the coal;
- (2) the mineral interest is held by a governmental entity;
- (3) certain activity has taken place with respect to said mineral interest within twenty (20) years:
 - (a) the mineral interest has been the subject of a title that has been filed or recorded; or
 - (b) there has been production or withdrawal of minerals by the holder; or
 - (c) the mineral interest has been used by the holder in underground gas storage operations; or
 - (d) a drilling or mining permit has been issued to the holder; or
 - (e) a holder has filed a claim to preserve the mineral interest in accordance with R.C. 5301.56(C); or
 - (f) a separately listed tax parcel has been created for the severed mineral interest.

If the subject mineral interests do not fit within one of the aforesaid categories, the owner of the surface of the land where said mineral interests are located may start a three step process to confirm the abandonment of such mineral interest and secure the vesting of such mineral interests to said surface owner. First, the surface owner must serve notice by certified mail "to each holder or each holder's successors or assigns" of the surface owner's intent to declare the mineral interests abandoned. Second, not less than thirty nor more than sixty days after notice is accomplished the surface owners must file an affidavit of abandonment as prescribed by the statute.

If the holder or the holder's successors do not respond to the notice and take the action prescribed by R.C. 5301.56(H)(1) to preserve their mineral interest, the surface owner may move to the third step. This final step requires the surface owner to cause the

County Recorder to memorialize on the record on which the severed mineral interest is based the prescribed legend that the mineral interests have been abandoned. Then and only then, after all three steps have been completed as required by R. C. 5301.56, do the mineral interests vest in the owner of the surface

IV Plaintiff's Motion For Summary Judgment

In order for Plaintiffs to prevail upon their motion for summary judgment there must be no genuine issue of material fact and the materials submitted pursuant to Civ.R. 56(C) must establish that Plaintiffs have met each and every procedure in the three step process specified by RC 5301.56.

The first "set of hurdles" for Plaintiffs to clear are the exclusions established by R.C. 5301.56(B) which pre-empt the application of the Dormant Mineral Act in certain circumstances. As a matter of law, Plaintiffs' motion for summary judgment must fail if the "mineral interest has been the subject of a title transaction that has been filed or recorded" within twenty years preceding the commencement of efforts by Plaintiffs to utilize the Dormant Mineral Act. (See R.C. 5301.56(B)(3)(a).)

There is no disagreement between the parties that Plaintiffs claim title herein through the instrument recorded on August 5, 2009 at Volume 180 Page 2239 of the Official Records of Harrison County, Ohio. In describing the premises conveyed therein, the instrument provides:

Subject however to all easements, restrictions and reservations of record:

* * *

Subject to the following:

* * *

Excepting and reserving unto Samuel A. Porter and Blanche Long Porter all of the oil and gas in Warranty deed to Consolidated Fuel Company filed for record May 27, 1947 in Volume 121 page 381, Deed Records for the 148.105 acre. (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.

The parties disagree as to whether the inclusion of this language in the deed is sufficient to trigger the exclusion set forth in R.C. 5301.56 (B)(3)(a).

The plain language of the statute establishes that something less than the conveyance of the mineral interest must be sufficient to trigger the exclusion. The identification of "exceptions" to the property conveyed is an essential part of any deed because the exceptions are as critical as the metes and bounds description in defining the specific bundle of rights, i.e. property, conveyed by the instrument. Furthermore, the warranty covenants provided by the deed are specifically limited by the exceptions set forth with the instrument.

The Court concludes, as a matter of law, that the mineral interest identified by the reservation of oil and gas to Samuel A. Porter and Blanche Long Porter in the instrument recorded at Volume 121, page 381 of the Deed Records of Harrison County was the subject of the title transaction recorded on August 5, 2009 at Volume 180, Page 2239 of the Official Records of Harrison County, Ohio.

The deed by which Plaintiffs claim title to the surface rights contains an error in the second exception quoted above. The reservation of a one-third interest in the oil and gas as noted in the instrument recorded at Volume 121, page 383 of the Deed Records of Harrison County was retained by Emma A. Croskey, rather than Samuel A. Porter and Blanche Long Porter. The error is without consequence, however. The Court concludes, as a matter of law, that the mineral interest identified by the reservation of oil and gas to Emma A. Croskey in the instrument recorded at Volume 121, page 383 of the Deed Records of Harrison County was the subject of the title transaction recorded on August 5, 2009 at Volume 180, Page 2239 of the Official Records of Harrison County, Ohio.

V. Motion for Summary Judgment filed by
Defendants Lorna C. Bower, Harriet J. Evans
and Sandra J. Bower

Next, it is appropriate to address the motion for summary judgment filed on behalf of Defendants Lorna C. Bower, Harriet J. Evans and Sandra J. Dodson. The first argument addressed by said motion has already been addressed.

Implicit in the argument presented by Lorna C. Bower, Harriet J. Evans and Sandra Dodson is the assertion that these three individuals are holders as defined by R.C. 5301.56 (A)(1) which provides:

"Holder" means the record holder of a mineral interest, and any person who desires the person's rights from, or has a common source with, the record holder and whose claim does not indicate, expressly or by clear implication, that it is adverse to the interest of the record holder.

This is a material issue, but the Court finds that there is no question concerning this issue, based on several factors.

Plaintiff's complaint and amended complaint identify Lorna C. Bower, Harriet J. Evans and Sandra J. Dodson as individuals who may claim an interest in the mineral interests which are the subject of this litigation. The affidavit of John William Croskey titled Affidavit Preserving Minerals identifies Lorna Bower, Harriet J. Evans and "Jill Dodson Chaney" as individuals who claim ownership of the subject oil and gas interests as successors to Samuel A. Porter and Blanche Porter. (Exhibit to Plaintiffs' Reply to Motion For Summary Judgment Filed By Defendants John William Croskey, et al. attached hereto as Exhibit C.) The record is devoid of any materials which place this assertion in issue. Wherefore, the Court determines that Lorna C. Bower, Harriet J. Evans and Sandra J. Dodson are "holders" for purposes of the application of R.C. 5301.56.

As Lorna C. Bower, Harriet J. Evans and Sandra J. Dodson are holders of the subject oil and gas interests they are entitled to notice in accordance with R.C. 5301.56 (A) (1). In the absence of any contradictory materials, the affidavits of Lorna C. Bower, Harriet J. Evans and Sandra J. Dodson conclusively establish that they did not receive notice by certified mail of Plaintiff's intent to declare the subject mineral interests abandoned.

As Plaintiffs are clearly trying to establish a forfeiture of valuable resources, it is absolutely essential that Plaintiffs comply with the notice requirements of R.C. 5301.56. As a matter of law, it is not sufficient for Plaintiffs to say that they did not know who might still retain an interest in the property they seek to acquire without compensation when such persons actually exist and are living in the community where said property is

located. The fact that the numerous persons who claim title by or through the record holders, i.e. Samuel A. Porter, Blanche Long Porter, and Emma A. Croskey were served with the summons and complaint herein by certified mail, establishes that service of a notice by certified mail as provided by R.C. 5301.56(E) was possible.

VI. Motion for Summary Judgment of Defendants
Karen A. Chaney, Patty Hausman, Linda C. Boyd
And Terri Hocker

The affidavits of Karen A. Chaney, Patty Hausman, Linda C. Boyd and Terri Hocker filed herein establish, for this analysis, that they are "holders" of the oil and gas interests which are the subject of this matter. Their affidavits further establish that they did not receive notice of Plaintiffs' intent to declare said oil and gas interests abandoned as required by R.C. 5301.56 (A)(1).

VII. Motion for Summary Judgment
filed on behalf Defendants John William
Croskey, Mary E. Surrey and 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. Weiner, Evant Dean Porter,
Stuart Barry Porter, Brian K. Porter,
Marie Elaine Porter, and Kim D. Berry

The motion for summary judgment filed by Attorney Rupert N. Beetham on behalf of the aforesaid defendants incorporated the arguments raised in said defendants' memorandum in opposition to Plaintiffs' motion for summary judgment. These memoranda raised two issues which must be addressed by the Court.

These Defendants assert that the affidavit filed by John William Croskey on December 23, 2010 and recorded at Volume 186, page 1949 of the Official Records of Harrison County is sufficient to preserve the interests of all holders of the subject oil and gas and their successors in interest. Plaintiffs submit that R. C. 5301.56 prevents any holder of mineral interests from preserving their mineral interests once the owner of

surface rights has filed a notice of intent to declare such mineral interests abandoned as provided by the statute.

This discussion assumes that Plaintiffs have given notice to the record holders of the oil and gas underlying their property and all persons who derive their rights from said record holders as required by R. C. 5301.56 (E)(1). It does not appear that pre-condition has been met. Nevertheless, for the purpose of exploring and responding to the arguments submitted herein, the Court chooses to address this issue.

Plaintiffs' reading of R. C. 5301.56 is contrary to the Court's interpretation as previously set forth herein. The Court finds that the clear language of the statute provides holders of severed mineral interests with the specific right and mechanism to preserve such interests after the holders have received notice in accordance with the law. Plaintiffs' interpretation of the statute essentially eliminates the intent of the legislature as expressed in R. C. 5301.56 (H) (1). Clearly 5301.56 (C) offers an independent mechanism by which the holder of a mineral interest may take action, pro-actively, to preserve his/her mineral claim every twenty years (less one day).

The Court's examination of the statute and the affidavit filed by John William Croskey at Volume 186, page 1949 of the Official Records of Harrison County, Ohio leads inevitably to the conclusion that Defendants must prevail on this issue. The detailed affidavit provides a wealth of information concerning the identification of persons whose interests derive from the record holders. The affidavit meets the requirements specified in R. C. 5301.56 (C)(1) and was filed within thirty days of the notice published by Plaintiffs as required by R.C. 5301.56 (H)(1). Pursuant to R. C. 5301.56 (C)(2), "a claim that complies with divisions (C)(1) of this section . . . preserves the rights of all holders of a mineral interest in the same lands.

The other issue raised by the aforesaid motion for summary judgment concerns the notice published by Plaintiffs herein. Defendants' memorandum asserts that because the notice is not directed to Emma A. Croskey or her successors in interest it is defective. Emma A. Croskey is the record holder of a one-third interest in the oil and gas reserved with respect to the second tract of real estate conveyed by the instrument recorded at Volume 121 page 383-389 of the Deed Records of Harrison County, Ohio. Although the

fact of the reservation was noted, the record holder of such reservation was incorrectly identified. There is no question then, that those individuals who claim an interest in the oil and gas by or through Emma A. Croskey were not identified or notified of Plaintiffs' intent to declare such mineral interest abandoned.

VIII. Affidavits of Jennifer Bernay, Charlotte S. Bishop,
Samuel Boak, William H. Boak, Michael Kalbaugh,
William L. Kalbaugh, Harry K. Kalbaugh, Harry Roy Davis,
Richard G. Davis, and Thomas Davis

The affidavits of Jennifer Bernay, Charlotte S. Bishop, Samuel Boak, William H. Boak, Michael Kalbaugh, William L. Kalbaugh, Harry K. Kalbaugh, Harry Roy Davis, Richard G. Davis, and Thomas Davis filed herein establish, for this analysis, that they are "holders" of the oil and gas interests which are the subject of this matter. Their affidavits further establish that they did not receive notice of Plaintiffs' intent to declare said oil and gas interests abandoned as required by R.C. 5301.56 (A)(1).

IX. Conclusion

IN CONCLUSION, the Court finds that there are no genuine issues of material fact. The pleadings and the motions filed herein raise numerous issues of law which the Court has addressed by applying the plain language of R.C. 5301.56. The Court has considered the pleadings, answers to interrogatories and affidavits filed herein and concludes that reasonable minds can come to but one conclusion.

The evidence submitted herein is not subject to more than one interpretation. For the reasons set forth herein, Plaintiffs are unable as a matter of law to establish a claim for the abandonment of the oil and gas underlying the premises described in Exhibit A.

- a. Said mineral interests were the subject of a title transaction which was recorded within twenty years of Plaintiff's notice of intent to declare said minerals abandoned.
- b. The persons who claim title to said oil and gas by or through the record holders, Samuel A. Porter, Blanche Long Porter and Emma A. Croskey were not notified as required by the statute.

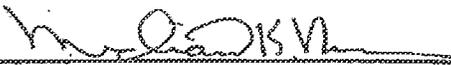
c. John William Croskey filed an affidavit which meets the requirements of the statute to preserve the interests of all persons who claim an interest in the oil and gas underlying the subject premises as successors in interest or assigns of Samuel A. Porter, Blanche Long Porter and Emma A. Croskey.

As Plaintiffs are unable to establish as a matter of law that they have complied with R. C. 5301.56 and Plaintiffs are unable to establish that Defendants have failed to comply with R. C. 5301.56 to preserve their mineral interests, Defendants are entitled to summary judgment finding that said interests are not subject to abandonment and the complaint is dismissed herein at Plaintiff's costs.

A certified copy of this judgment entry with Exhibit A attached shall be filed by the Clerk of Courts in the Official Records of Harrison County, Ohio with marginal notations to the deed recorded at Volume 180, page 2239 of the Official Records of Harrison County, Ohio and to the affidavit recorded at Volume 186, page 1949 of the Official Records of Harrison County, Ohio and to the affidavit of Abandonment recorded at Volume 186 page 2062 and re-recorded at Volume 187, page 106 of the Official Records of Harrison County, Ohio.

All court costs including recording fees are assessed against Plaintiffs.

SO ORDERED.


Michael K. Nunner, Judge

Notice: FINAL APPEALABLE ORDER

This is a final appealable order. For each party who is not in default, serve notice to the attorney for each party and to each party who represents himself or herself by regular mail service with certificate of mailing making notation of same upon case docket.


Michael K. Nunner, Judge

Stamped Copies:

Attorney Paul B. Hervey and: Phillip B. Dodd
Julie R. Bologna

Attorney Rupert N. Beetham and: John William Croskey
Mary E. Surrey
Roy Surrey
Emma Jane Croskey
Margaret Ann Turner
Mary Louise Morgan
Martina Beard
Lee Johnson
Edwin Johnson
Joann Zitko
David B. Porter
Joanne C. Wesley
Cindy Weimer
Brian Porter
Elaine Porter
Kim Berry
Ewart Dean Porter
Stewart Barry Porter

Attorney Marquette Evans and: Loma C. Bower
Sandra J. Dodson Chaney aka (Jill Dodson Chaney)
Harriet J. Evans

Karen A. Chaney
Linda C. Boyd
Patty Hansman
Terry Hocker

Attorney Lawrence R. Bach and: Charlotte S. Bishop
Samuel G. Boak
William H. Boak
William Kalbaugh
Harry Roy Davis
Thomas Davis
Richard Davis
Harry K. Kalbaugh
Michael Kalbaugh
Jennifer Bernay

Consolidated Coal Company

Brian Crist

Ian Resources, LLC

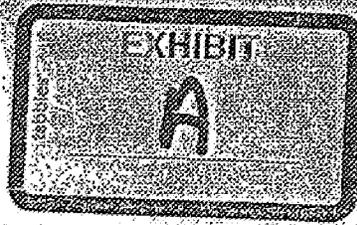


Exhibit A

EXHIBIT A

Exhibit A

Situated in the Township of Cross, County of Harrison, State of Ohio, and being part of the south half of Section 22, Township 9, Range 4 in the Old Seven Ranges, and being part of Tract 1, Tract 4 and Tract 5 of the lands claimed by R. James Coffelt and recorded in O.K.V. 156, Page 2343 of the Harrison County Record, and more particularly described as:

Beginning for reference at a marked stone found at the southwest corner of Section 22. The bearing of the south line of said section being South 89 Degrees 33 Minutes 29 Seconds East.

Thence, with the south line of said section, South 89 Degrees 33 Minutes 29 Seconds East, 239.36 Feet to a mine bolt found at the southwest corner and True Place of Beginning for the parcel herein being described;

Thence, from said beginning, North 18 Degrees 57 Minutes 37 Seconds West, 502.710 Feet to a mine bolt found;

Thence, North 12 Degrees 01 Minutes 55 Seconds West, 217.800 Feet to a mine bolt found;

Thence, North 08 Degrees 36 Minutes 55 Seconds West, 76.400 Feet to a mine bolt found in the west line of Section 22;

Thence, with said line, North 01 Degree 17 Minutes 14 Seconds East, 15.430 Feet to a point in a creek;

Thence, leaving said section line, North 69 Degrees 29 Minutes 27 Seconds East, 149.344 Feet to a mine bolt;

Thence, North 89 Degrees 21 Minutes 10 Seconds East, 189.780 Feet to an iron pin set;

Thence, North 14 Degrees 21 Minutes 10 Seconds East, 125.000 Feet to an iron pin set;

Thence, South 88 Degrees 33 Minutes 29 Seconds East, 2024.066 Feet to an iron pin set, passing on line an iron pin found at 1284.066 feet;

Thence, North 44 Degrees 20 Minutes 08 Seconds East, 644.885 Feet to an iron pin set;

Thence, North 87 Degrees 00 Minutes 00 Seconds East, 1460.000 Feet to a point in Creskey Road (CR # 78), passing on line an iron pin set at 1440.000 feet;

Thence, with said road, the following three (3) courses:

- 1) South 11 Degrees 07 Minutes 32 Seconds East, 477.700 Feet to a point;
- 2) South 11 Degrees 25 Minutes 32 Seconds East, 878.690 Feet to a point;
- 3) South 11 Degrees 10 Minutes 31 Seconds East, 325.000 Feet to a point;

Thence, leaving said road, North 88 Degrees 45 Minutes 08 Seconds West, 1992.790 Feet to a 4" x 8" stone found, passing on line an iron pin found at 30.120 feet;

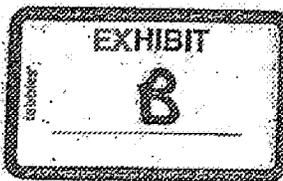
Thence, North 89 Degrees 33 Minutes 29 Seconds West, 2433.370 Feet to the PLACE OF BEGINNING, and CONTAINING 127.8387 Acres by survey.

35.2518 acres being a part of Tract 1, Auditor's Tax Parcel # 13-0000071.000,
9.8504 acres being a part of Tract 4, Auditor's Tax Parcel # 13-0000069.000,

82.7365 acres being a part of Tract 5, Auditor's Tax Parcel # 13-000073.000.

Subject however to all easements, restrictions and reservations of record;

This description is based on a field survey performed on June 20, 2009, under the supervision of Richard L. Celestino, PS # 8226, and is in accordance of Administrative Code #733-37. Iron pins set are 30" x 5/8" O.D. with plastic caps stamped "CELESTINO 8226". Bearings herein contained were determined by GPS observations, and are intended for angle calculations only.



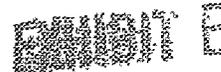
Instrument 200900001545 OR Book Page 180 2239

DEED APPROVED FOR TRANSFER
DATE 2-10-09
ROBERT L. STANLEY
HARRISON COUNTY ENGINEER

200900001545 0109
Filed for Record in
HARRISON COUNTY, OHIO
TRACY L. BOWEN, RECORDER
02-05-2009 AT 03:05 pm.
SURV DEED \$4.00
OR Book 180 Page 2239 -- 2242

200900001545
PREMIER LAND TITLE COMPANY

HARRISON COUNTY AUDITOR
PATRICK J. MOORE
REAL ESTATE TRANSFER BY JK
CONVEE 931110X
TRAN.FEE 308 DATE 2-5-09



SURVIVORSHIP DEED

(See Section 852.17 Ohio Revised Code)

R. James Coffelt, Married, of the State of Ohio, for valuable consideration paid, grants with general warranty covenants, to Phillip E. Dodd and Jose R. Bologna, Husband and Wife, for their joint lives, remainder to the survivor of them, whose home-mailing address is: 1830 Willow Oak Drive, Wexford, PA 15090, the following REAL PROPERTY:

Situated in the Township of Green, County of Harrison, State of Ohio, and being part of the south half of Section 22, Township: 9; Range 4 in the Old Seven Ranges, and being part of Tract 1, Tract 4 and Tract 5 of the lands claimed by R. James Coffelt and recorded in DEV. 156, Page 2343 of the Harrison County Records, and more particularly described as:

Beginning for reference at a marked stone found at the southwest corner of Section 22. The bearing of the south line of said section being South 88 Degrees 33 Minutes 29 Seconds East.

Thence, with the south line of said section, South 88 Degrees 33 Minutes 29 Seconds East, 229.36 Feet to a mine bolt found at the southwest corner and True Place of Beginning for the parcel herein being described;

Thence, from said beginning, North 18 Degrees 57 Minutes 37 Seconds West, 588.910 Feet to a mine bolt found;

Thence, North 12 Degrees 01 Minutes 55 Seconds West, 217.800 Feet to a mine bolt found;

Thence, North 08 Degrees 36 Minutes 55 Seconds West, 76.400 Feet to a mine bolt found in the west line of Section 22;

Thence, with said line, North 01 Degree 17 Minutes 14 Seconds East, 15.410 Feet to a point in a creek;

Thence, leaving said section line, North 89 Degrees 23 Minutes 27 Seconds East, 149.344 Feet to a mine bolt;

Thence, North 89 Degrees 21 Minutes 10 Seconds East, 189.780 Feet to an iron pin set;

Thence, North 14 Degrees 21 Minutes 10 Seconds East, 225.000 Feet to an iron pin set;

Thence, South 88 Degrees 33 Minutes 29 Seconds East, 2024.066 Feet to an iron pin set, passing on line an iron pin found at 1204.066 Feet;

Thence, North 44 Degrees 10 Minutes 08 Seconds East, 644.805 Feet to an iron pin set;

Thence, North 87 Degrees 00 Minutes 00 Seconds East, 1450.000 Feet to a point in Croskey Road (TR # 78), passing on line an iron pin set at 1440.000 feet;

Thence, with said road, the following three (3) courses:

- 1) South 11 Degrees 07 Minutes 12 Seconds East, 477.700 Feet to a point;
- 2) South 11 Degrees 25 Minutes 32 Seconds East, 478.690 Feet to a point;
- 3) South 11 Degrees 10 Minutes 32 Seconds East, 325.000 Feet to a point;

Thence, leaving said road, North 88 Degrees 45 Minutes 02 Seconds West, 1992.790 Feet to a 4" x 8" stone found, passing on line an iron pin found at 30.120 feet;

Thence, North 88 Degrees 31 Minutes 29 Seconds West, 2433.370 Feet to the PLACE OF BEGINNING, and CONTAINING 127.8387 Acres by survey.

35.2518 acres being a part of Tract 1, Auditor's Tax Parcel # 13-0000073.000,
 9.8504 acres being a part of Tract 4, Auditor's Tax Parcel # 13-0000069.000,
 82.7365 acres being a part of Tract 5, Auditor's Tax Parcel # 13-0000073.000.

Subject however to all easements, restrictions and reservations of record;

This description is based on a field survey performed on June 20, 2009, under the supervision of Richard E. Celestino, BS # 8220, and is in accordance of Administrative Code 4793-37. Iron pins set are 3/8" x 5/8" O.D. with plastic caps stamped "CELESTINO 8220". Bearings herein contained were determined by GPS observations, and are intended for angle calculations only.

Subject to the following:

Pipeline right of way granted to The Buckeye Pipeline Company by instrument filed April 18, 1952 in Volume 131, page 144, Deed Records.

Warranty Deed conveying all the coal except the No. 3 coal for the 74.687 acres and mining rights from E. C. Reed and Sarah E. Reed to The Ohio and Pennsylvania Coal Company by deed filed for record June 23, 1932 in Volume 86, Page 314, Deed Records, and further transferred to Harrison Mining Company in Volume 235, page 249, Deed Records.

Warranty Deed conveying the No. 5 coal to Ohio Pennsylvania Coal Company for 82.9 acres filed for record September 20, 1933 in Volume 86, Page 484, Deed Records.

Executor's Deed conveying all the coal except the No. 8 coal for a 148.105 acre tract from which the 121.986 is a part along with mining rights to The Ohio & Pennsylvania Coal Company by deed filed for record September 12, 1923 in Volume 85, Page 488, Deed Records, and further transferred to Harrison Mining Company in Volume 235, page 249, Deed Records. A portion of this tract No. 6-A coal was conveyed to Consolidation Coal Company and would therefore have been transferred to R. James Coffelt.

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

Excepting and reserving unto Consolidation Coal Company, its successors and assigns the power line facilities located on the surface and further excepts and reserves the right of way on which the power line facilities are located, said right of way shall be 50 feet in width by Limited Warranty Deed filed for record January 25, 1988 in Volume 228, Page 337, Deed Records

All the No. 6-A coal and mining rights conveyed by The Youngingbery and Ohio Coal Company to Consolidation coal Company for 146.5835 acres of which the 121.986 is a part of, in deed filed for record February 25, 1971 in Volume 168, page 480, Deed Records.

Easement for highway purposes granted to Board of Commissioners Harrison County, Ohio by instrument filed for record March 28, 1959 in Volume 142, page 548, Deed Records.

★ 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.

★ Memorandum of Lease for gas and coalbed methane on the 146.5835 tract between Consolidation Coal Company and L&M Energy filed for record April 9, 1988 in Volume 80, Page 127, Official Records.

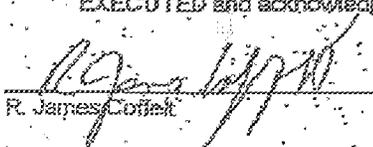
Partial No. 13-000069.001

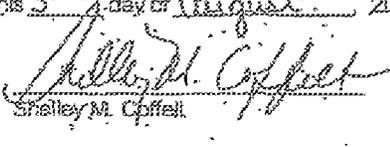
Real Estate Taxes will be pro-rated to date of closing.

Prior Instrument Reference: Volume 166, Page 2343 Official Records of Harrison County, Ohio.

Shelley M. Coffelt the wife of R. James Coffelt, the grantor, hereby releases all her rights of dower therein.

EXECUTED and acknowledged this 5th day of August, 2009.


R. James Coffelt


Shelley M. Coffelt

STATE OF OHIO, HARRISON COUNTY, SS:

The foregoing instrument was acknowledged before me this 5th day of June, 2009 by R. James Coffelt and Shelley M. Coffelt, Husband and Wife.



Annette McGue
Notary Public, State of Ohio
My Commission Expires April 11, 2011

Annette McGue

Notary Public

My Commission Expires: 4-11-11

(seal)

This instrument prepared
by Attorney D. Brad Zimmerman
New Philadelphia, Ohio

5. That Mary Belle Shepler, unmarried, conveyed her one-fourth interest in the real property described hereinafter, as Third Tract and Fourth Tract to Samuel A. Porter, Eliza Mae Corbly and Emma A. Croskey by deed of record in Volume 102, Page 93, Harrison County Deed Records.

6. That Samuel A. Porter and Blanche Long Porter, his wife, conveyed the real property described as Tract One herein to The Consolidated Fuel Company by deed of record in Volume 121, Page 3, Deed Records of Harrison County, Ohio reserving unto grantors, their heirs and assigns all the oil and gas within and underlying said lands together with all rights and privileges necessary to drill for, remove and market said oil and gas.

7. That Samuel A. Porter and Blanche Long Porter, his wife, conveyed the real property described as Tract Two herein to The Consolidated Fuel Company by deed of record in Volume 121, Page 381 Deed Records of Harrison County, Ohio reserving unto grantors, their heirs and assigns, all the oil and gas within and underlying said lands, together with all rights and privileges necessary to drill, for remove and market said oil and gas.

8. That Samuel A. Porter and Blanche Long Porter, his wife, conveyed the undivided one-third interest in the real property described herein as Tract Three and Tract Four to The Consolidated Fuel Company by deed of record in Volume 121 Page 383 Deed Records of Harrison County, Ohio, reserving unto grantors, their heirs and assigns all the oil and gas within and underlying said lands, together with all the rights and privileges necessary in drill for, remove and market said oil and gas.

9. That Emma A. Croskey, widow, conveyed to The Consolidated Fuel Company the undivided one-third interest in the real property described herein as Tract Three and Tract Four by deed of record in Volume 121, Page 384 Deed Records of Harrison County, Ohio, reserving unto grantor, her heirs and assigns, all the oil and gas within and underlying said lands, together with all the rights and privileges necessary to drill for, remove and market said oil and gas.

10. That Eliza Mae Corbly and William H. Corbly, her husband, conveyed the undivided one-third interest in the real property described herein as Tract Four to Hanna Coal Company by deed of record in Volume 109, Page 168 Harrison County Deed Records with no reservation of the oil and gas.

11. That Eliza Mae Corbly, widow, conveyed the undivided one-third interest in the real property described herein as Tract Three to Pittsburgh Consolidated Coal Company by deed of record in Volume 134, Page 627, Deed Records of Harrison County, Ohio, reserving unto grantor and her heirs and assigns the one-third interest in the oil and gas within and underlying said lands together with all rights and privileges necessary to drill, for remove and market said oil and gas.

12. That Samuel A. Porter was survived by a brother David D. Porter, a sister Emma A. Croskey, a sister Eliza Porter Corbley, and niece Alice M. Shepler, daughter of his deceased sister, Mary Bell Porter. That Samuel A. Porter died November 22, 1948. His estate was administered as Harrison County Probate Court Case No. 13675. The residue of his estate was left one-tenth to his nephew John Croskey, one-tenth to his niece Naomi Johnson, one-tenth to his niece Eliza Croskey, one-tenth to his niece Mary Croskey, one-tenth to his niece Myrtle Shepler, one-tenth to his niece Nina Corbley McGuire, two-tenths to his nephew Phillip Porter and two-tenths to his niece Doris Chauncy.

13. That Blanche Long Porter died August 13, 1950.

14. That John Croskey died December 30, 1999 survived by daughter Margaret Ann Turner, daughter Emma Jane Croskey, daughter Mary E. Surrency and son affiant.

15. That Naomi Johnson died January 20, 1996 survived by son Edwin Johnson, son Lee Johnson and daughter Martha A. Lovejoy.

16. That Martha A. Lovejoy died April 26, 2005 without issue, survived by her two siblings Edwin Johnson and Lee Johnson

17. That Eliza Windoff was survived by her brother John Croskey, her sister Naomi Johnson and her sister Mary Watson. That Eliza Croskey Windoff died August 18, 1923 without issue. Her will is on record in Volume 1191, Page 018 of the Will Records of Jefferson County, Ohio. The residue of her estate was left equally to the following nieces and nephews: Ann Turner, Jane Obradovich, William Croskey, Martha Cowley, Martha Lovejoy, Lee Johnson, Edwin Johnson, Mary Louise Morgan and Martha Beard.

18. That Ann Turner and Margaret Ann Turner are the same person.

19. That Jane Obradovich and Emma Jane Croskey are the same person.

20. That Emma A. Croskey died October 5, 1960. Her estate was administered as Case No. 15379 in the Harrison County Probate Court. She left her entire estate to her four children Naomi Johnson, Eliza Windoff, John Croskey and Mary Watson, who were her only children.

21. That Myrtle Shepler died in October of 1959 without issue, survived by her aunt Emma Croskey, cousins David Phillip Porter, Evert Porter, Doris Chauncy, children of her deceased uncle David Porter, and her cousins Nina Corbley, Corrine Haverfield, Martha Estelle, and Emma Louise Kalbaugh, children of her deceased aunt Eliza Corbley.

22. That Eliza Corbley died August 13, 1956 survived by her daughter Nina Corbley, her daughter Corrine Haverfield, her daughter Martha Estelle and her daughter Emma Louise Kalbaugh.

23. That Nina Cochley died May 28, 1983 survived by sister Corine Haverfield, sister Martha Estelle and nephew William Kalbaugh, nephew Harry R. Kalbaugh and niece Joann Davis, children of her deceased sister Emma Louise Kalbaugh.

24. That Corine Haverfield died in January of 1996 survived by grandsons Samuel G. Boak and William H. Boak, sons of her daughter Phyllis Boak who predeceased her.

25. That Martha Estelle died July 26, 1988 survived by her daughter Charal Bishop.

26. That Joann Davis died June 30, 1995 survived by son Harry Roy Davis, son Thomas Davis and son Richard Davis.

27. That Harry R. Kalbaugh died December 25, 1974 survived by son Harry K. Kalbaugh, son Michael Kalbaugh and daughter Jennifer K. Bernay.

28. That Phillip Porter died April 26, 1980 survived by daughter Joann Zitzo and granddaughter Joann Wesley, grandson David E. Porter and granddaughter Cindy R. Weimer, issue of his deceased son David R. Porter.

29. That Doris Porter Chaney died August 21, 1992 survived by son Sam Chaney, daughter Jill Rodson Chaney, daughter Harriet J. Evans and daughter Lorna Bower.

30. That Sam Chaney died August 27, 2007 survived by daughter Karen A. Chaney, daughter Linda C. Boyd, daughter Terri Hoeker and daughter Patsy Hansman.

31. That Evert Porter, brother of Phillip Porter and Doris Porter Chaney died October 2, 1995 survived by Evert Dean Porter and Stuart B. Porter.

32. That the real property under which the oil and gas and rights and privileges necessary to drill for, remove and market said oil and gas is as follows:

Situated in the County of Harrison, State of Ohio, and Township of Green and bounded and described as follows:
SE & SW Qtrs
~~PARCELS~~ Beginning at the Southeast corner of Section 22, Township 9, Range 4;
Thence North 65 deg. 04' 30" West 2680.50 feet to a stone;
Thence North 84 deg. 51' 15" West 1074.17 feet to a stone;
Thence North 5 deg. 14' East along land now owned by S.E. and H.C. Reed 2679.10 feet to land now owned (Sept. 1923) by J.T. Sparrow;
Thence South 85 deg. 05' East along the southerly boundary of land belonging to said J.T. Sparrow 1071.97 feet to a post;
Thence South 4 deg. 57' 30" West 1351.53 feet;
Thence South 85 deg. 07' East along the South boundary of land now owned by S.E. Porter 2672.37 feet;

Thence South 5 deg. 04' West along the Western boundary of land owned by S.E. Porter 1335.28 feet to the place of beginning, containing by actual survey, One Hundred Forty-Eight and 105/1000 (348.705) acres, more or less.

EXCEPTING AND RESERVING therefrom all the coal, except the No. 8 vein, together with mining rights and privileges, in and underlying the same as set forth in the deed of Barclay W. Mount, Executor of the Estate of J.B. Lyons, deceased, to The Ohio and Pennsylvania Coal Company, dated September 22, 1923, and recorded in Deed Record 86, Page 432.

Shortneck Township SE Q1E

SECOND TRACT: Being a part of Section 14 Township 9 Range 4, beginning at a stone on the Western boundary line of said Section and being corner of lands of Wm. C. Johnston and Bro. Wm. S. Fox and Sarah G. Hall, running thence 2 1/2 deg. East 22 chains to a stone;

Thence South 81 3/4 deg. East 17.50 chains to a stone in the road; where a black walnut 20 inches diameter bears S. 30 deg. West 25 links;

Thence South 73 1/2 deg. East 22.03 chains to a stone where a White oak 36 inches diameter bears N. 61 deg. East 80 links;

Thence S. 32 1/2 deg. West 3.25 chains to a stone;

Thence S. 10 1/2 deg. East 14.35 chains to a stone where black walnut 24 inches diameter bears N. 6 deg. West 31 links;

Thence N. 26 1/2 deg. West 33.83 chains to a stone where a black walnut 20 inches diameter bears N. 36 deg. West 6 1/2 links;

Thence N. 3 deg. East 2.00 chains;

Thence N. 44 deg. West 21.28 chains to the place of beginning, containing seventy-four (74) acres, more or less.

THIRD TRACT: Situated in the County of Harrison, in the State of Ohio, and in the Township of Green

Situated in the County of Harrison, in the State of Ohio, and in the Steubenville Land District and bounded and described as follows: Being the Southwest Quarter of Section No. 16 in Township No. 9 of Range No. 4 containing One Hundred and Sixty (160) acres, more or less. Being the premises conveyed by J.D. Wortman to Samuel B. Porter by deed recorded in Harrison County Ohio, Deed Book 32, Page 198.

FOURTH TRACT: Being the North one-half of the Southeast Quarter of Section 22, Township 9 and Range 4 beginning at a stone at the quarter post between sections Nos. 16 and 22;

Thence North 88 1/2 deg. West 162.16 perches to a limestone at the center of said Section;

Thence South 1 1/4 deg. West 80.96 perches to the center of the West line of said quarter;

Thence South 88 1/4 deg. East 162.32 perches to the center of the East line of said quarter section;

Thence North 1 deg. 40' East 81.24 perches to the beginning, containing 82 acres, 1 rod and 4 perches, more or less.

Thence South 5 deg. 04' West along the Western boundary of land owned by S.B. Porter 1335.78 feet to the place of beginning, containing by actual survey, One Hundred Forty-Eight and 105/1000 (148.105) acres, more or less.

EXCEPTING AND RESERVING therefrom all the coal, except the No. 8 vein, together with mining rights and privileges, in and underlying the same as set forth in the deed of Barclay W. Mount, Executor of the Estate of J.B. Lyons, deceased, to The Ohio and Pennsylvania Coal Company, dated September 22, 1923, and recorded in Deed Record 86, Page 488.

Shorter of Township SE Q1E

SECOND TRACT: Being a part of Section 14 Township 9 Range 4, beginning at a stone in the Western boundary line of said Section and being corner of lands of Wm. C. Johnston and Ben. Wm. S. Fox and Sarah G. Hall, running thence 2 1/4 deg. East 22 chains to a stone;

Thence South 81 deg. East 12.80 chains to a stone in the road, where a black walnut 20 inches diameter bears S. 30 deg. West 25 links;

Thence South 77 1/2 deg. East 21.93 chains to a stone where a White oak 36 inches diameter bears N. 61 deg. East 90 links;

Thence S. 32 1/2 deg. West 8.95 chains to a stone;

Thence S. 10 1/4 deg East 14.55 chains to a stone where black walnut 24 inches diameter bears N. 6 deg. West 31 links;

Thence N. 86 1/2 deg. West 18.83 chains to a stone where a black walnut 20 inches diameter bears N. 86 deg. West 6 1/2 links;

Thence N. 8 deg. East 2.08 chains;

Thence N. 84 deg. West 21.88 chains to the place of beginning, containing seventy-four (74) acres, more or less.

THIRD TRACT: Situated in the County of Harrison, in the State of Ohio, and in the Township of Green

Situated in the County of Harrison, in the State of Ohio, and in the Steubenville Land District and bounded and described as follows: Being the Southwest Quarter of Section No. 16 in Township No. 9 of Range No. 4 containing One Hundred and Sixty (160) acres, more or less. Being the premises surveyed by J.D. Worinman to Samuel B. Porter by deed recorded in Harrison County Ohio, Deed Book 32, Page 198.

FOURTH TRACT: Being the North one-half of the Southwest Quarter of Section 22, Township 9 and Range 4 beginning at a stone at the quarter post between sections Nos. 16 and 22;

Thence North 88 1/2 deg. West 162.16 perches to a limestone at the center of said Section;

Thence South 1 1/2 deg. West 80.95 perches to the center of the West line of said quarter;

Thence South 88 1/2 deg. East 162.32 perches to the center of the East line of said quarter section;

Thence North 1 deg. 40' East 81.24 perches to the beginning, containing 82 acres, 1 rod and 4 perches, more or less.

Harrison County, Ohio and deed from Angela Shay Allen unmarried of record in Book 27, Page 231, Official Records of Harrison County, Ohio, and the premises conveyed by James N. Richmond, Jr., unmarried and Jason Richmond, unmarried of record in Book 147, Page 164 Official Records of Harrison County, Ohio.

G. Capstone Holding Company, being part of the premises conveyed by Shell Company to R&F Coal Company by deed of record in Volume 241, Page 462, Deed Records of Harrison County, Ohio; and by Certificate of Merger of R&F Coal LLC into Capstone Holding Company of record in Book 79, Page 351, Official Records of Harrison County, Ohio.

H. David Seifsbach, being part of the premises conveyed by R. James Goffield of record in Book 180, Page 2856, Official Records of Harrison County, Ohio.

I. John A. Seleski and Judith E. Seleski, being part of the premises conveyed from James N. Richmond, Jr., with release of dower by his wife Deanne L. Richmond and Jason D. Richmond, unmarried, of record in Book 163 Page 1523, Official Records of Harrison County, Ohio; and by deed from John J. Seleski and Judith E. Seleski, husband and wife of record in Book 51, Page 882, Official Records of Harrison County, Ohio.

J. Edward R. Seleski and Marsha L. Seleski by deed from Edward L. Seleski, a single man, of record in Volume 228, page 414 Deed Records of Harrison County, Ohio

That the present owners of the minerals and oil and gas reserved by the deeds set forth in Paragraphs 6, 7, 8, 9 and 10 herein are:

- Mary E. Sorey and Roy Sorey 8718 Smith Lane, James Store, VA 23080
- Erma Jane Crostrey 2381 Hillwood Street SE, Magnolia, OH 44643
- Margaret Ann Turner 606 E. Market Street, Cadiz, OH 43907
- John W. Crostrey 150 Indian Trail, Cadiz, OH 43907
- Mary Louise Murgan 4403 Fairway Drive, Steubenville, OH 43952
- Martha Beard 310 Orbridge Court, Pittsburgh, PA 15238
- Eec Johnson 16005 Spahn Road, Fredrickstown, OH 13019
- Edwin Johnson 151 Oak Hill Lane, Clyde, NC 28721
- Joann Zrko 103 Jones Ave., Cadiz, Ohio 43907
- David B. Poster 1617 Hickory Ave., Punta Gorda, FL 33950
- Joann C. Wesley 1617 Hickory Ave., Punta Gorda, FL 33950
- Cindy R. Weimer 2672 Granham Rd., Sww, OH 44224
- Lena Bower 116 S. Main St., P.O. Box 216, New Athens, OH 43981
- Jill Dodson Chaney 3294 Devin, Grove City, OH 43123
- Harriet J. Evans 5635 Outville Rd., SW, Parkersburg, OH 44362
- Karla A. Chaney 794 Breese, Craig, CO 81625
- Linda C. Boyd 72 Dawn Heath Cir., Littleton, CO 80127
- Terry Hoeker 204 S. Buckhorn Dr., Bastrop, TX 78602
- Patty Hansman 1130 Beta Loop, Colorado Springs, CO 80906

Charlotte S. Bishop	29000 3 rd S. SE, Rm 437 Maple Creek, Grand Rapids, MI 49508
Samuel G. Book	167 Colonial Dr., Canfield, OH 44406
William H. Book	4049 Watercourse Dr., Medina, OH 44256
William Kalbaugh	26 Curisara Dr., Talmadge, OH 44278
Harry Roy Davis	317 St. David Dr., Mount Laurel, NJ
Thomas David	25615 Stillman Vly., Florence, TX 76527
Richard Davis	22834 Fairfax Village W. Dr., Spring, TX 77373
Harry Kenneth Kalbaugh	534 Willis Lane, Delaware, OH 43015
Michael Kalbaugh	10 Archer Court, Greensboro, NC 27407
Jennifer Kalbaugh-Berny	8113 Pricestley Dr., Reynoldsburgh, OH 43068
Ernst Dean Foster	2131 SE Stonacrop St., Fort Saint Lucie, FL 34984
Stuart Barry Porter	3980 Jaclynas Jetty, winter Hove, FL 33884
Brian Crist	3385 N. River Rd., Zanesville, OH 43701
Brian Porter	2500 E. 22 nd St., Apt. 101, Austin, TX 78722
Elaine Porter	25509 6 th St., Apt E., San Bernardino, CA 92410
Kim R. Berny	1900 Scofield Ridge Pkwy At. 2202, Austin, TX 78727
Consolidation Coal Company (Tract 4 only)	1800 W. Washington Blvd., P. O. Box, PA 15221

That the claimants herein do not intend to abandon their rights to the mineral interest, but intend to preserve their rights.

John William Croskrey
John William Croskrey

HURAT

Sworn to and subscribed in my presence by John William Croskrey this 23 day of

December, 2010 at CADIZ Ohio.

Ryan P. ...
Notary Public

RYAN P. ... Attorney at Law
Notary Public - State of Ohio
By appointment has no expiration
John - Sec. 14704 DC



This instrument prepared by:
RICHARD S. BEETHAM
ATTORNEY AT LAW
110 South Main Street
P.O. Box 263
Medina, Ohio 44027
(740) 942-2222

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Manual § 5.03

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§ 5301.52 Contents and filing of notice; false statements.

Practice Manuals and Treatises

Anderson's Ohio Residential Real Estate Manual § 5.04
Preserving pre-root interests

§ 5301.53 Certain rights not barred.

Practice Manuals and Treatises

Anderson's Ohio Residential Real Estate Manual § 5.05
Exceptions

§ 5301.55 Liberal construction.

Practice Manuals and Treatises

Anderson's Ohio Residential Real Estate Manual § 5.01
Overview of marketable title act
Anderson's Ohio Residential Real Estate Manual § 5.05
Exceptions

§ 5301.56 Abandonment of mineral interest and vesting in owner of surface of lands.

(A) As used in this section:

(1) "Holder" means the record holder of a mineral interest, and any person who derives the person's rights from, or has a common source with, the record holder and whose claim does not indicate, expressly or by clear implication, that it is adverse to the interest of the record holder.

(2) "Drilling or mining permit" means a permit issued under Chapter 1509, 1513, or 1514, of the Revised Code to the holder to drill an oil or gas well or to mine other minerals.

(3) "Mineral interest" means a fee interest in at least one mineral regardless of how the interest is created and of the form of the interest, which may be absolute or fractional or divided or undivided.

(4) "Mineral" means gas, oil, coal, coalbed methane gas, other gaseous, liquid, and solid hydrocarbons, sand, gravel, clay, shale, gypsum, halite, limestone, dolomite, sandstone, other stone, metalliferous or nonmetalliferous ore, or another material or substance of commercial value that is excavated in a solid state from natural deposits on or in the earth.

(5) "Owner of the surface of the lands subject to the interest" includes the owner's successors and assignees.

(B) Any mineral interest held by any person, other than the owner of the surface of the lands subject to the interest, shall be deemed abandoned and vested in the owner of the surface of the lands subject to the interest if the requirements established in division (E) of this section are satisfied and none of the following applies:

(1) The mineral interest is in coal, or in mining or other rights pertinent to or exercisable in connection with an interest in coal, as described in division (E) of section 5301.53 of the Revised Code. However, if a mineral interest includes both coal and other minerals that are not coal, the mineral interests that are not in coal may be deemed abandoned and vest in the owner of the surface of the lands subject to the interest.

(2) The mineral interest is held by the United States, this state, or any political subdivision, body politic, or agency of the United States or this state, as described in division (G) of section 5301.53 of the Revised Code.

(3) Within the twenty years immediately preceding the date on which notice is served or published under division (E) of this section, one or more of the following has occurred:

(a) The mineral interest has been the subject of a title transaction that has been filed or recorded in the office of the county recorder of the county in which the lands are located.

(b) There has been actual production or withdrawal of minerals by the holder from the lands, from lands covered by a lease to which the mineral interest is subject, from a mine a portion of which is located beneath the lands, or, in the case of oil or gas, from lands pooled, unitized, or included in unit operations, under sections 1509.26 to 1509.28 of the Revised Code, in which the mineral interest is participating, provided that the instrument or order creating or providing for the pooling or unitization of oil or gas interests has been filed or recorded in the office of the county recorder of the county in which the lands that are subject to the pooling or unitization are located.

(c) The mineral interest has been used in underground gas storage operations by the holder.

(d) A drilling or mining permit has been issued to the holder, provided that an affidavit that states the name of the permit holder, the permit number, the type of permit, and a legal description of the lands affected by the permit has been filed or recorded, in accordance with section 5301.252 [5301.25.2] of the Revised Code, in the office of the county recorder of the county in which the lands are located.

(e) A claim to preserve the mineral interest has been filed in accordance with division (C) of this section.

(f) In the case of a separated mineral interest, a separately listed tax parcel number has been created for the mineral interest in the county auditor's tax list and the county treasurer's duplicate tax list in the county in which the lands are located.

(C)(1) A claim to preserve a mineral interest from being deemed abandoned under division (B) of this section may be filed for record by its holder. Subject to division (C)(3) of this section, the claim shall be filed and recorded in accordance with division (E) of this section and sections 317.18 to 317.201 [317.20.1] and 5301.52 of the Revised Code, and shall consist of a notice that does all of the following:

(a) States the nature of the mineral interest claimed and any recording information upon which the claim is based;

(b) Otherwise complies with section 5301.52 of the Revised Code;

(c) States that the holder does not intend to abandon, but instead to preserve, the holder's rights in the mineral interest.

(3) A claim that complies with division (C)(1) of this section or, if applicable, divisions (C)(1) and (3) of this section preserves the rights of all holders of a mineral interest in the same lands.

(3) Any holder of an interest for use in underground gas storage operations may preserve the holder's interest, and those of any lessor of the interest, by a single claim, that defines the boundaries of the storage field or pool and its formations, without describing each separate interest claimed. The claim is prima-facie evidence of the use of each separate interest in underground gas storage operations.

(D)(1) A mineral interest may be preserved indefinitely from being deemed abandoned under division (B) of this section by the occurrence of any of the circumstances described in division (B)(3) of this section, including, but not limited to, successive filings of claims to preserve mineral interests under division (C) of this section.

(3) The filing of a claim to preserve a mineral interest under division (C) of this section does not affect the right of a lessor of an oil or gas lease to obtain its forfeiture under section 5301.332 [5301.33.2] of the Revised Code.

(E) Before a mineral interest becomes vested under division (B) of this section in the owner of the surface of the lands subject to the interest, the owner of the surface of the lands subject to the interest shall do both of the following:

(1) Serve notice by certified mail, return receipt requested, to each holder or each holder's successors or assignees, at the last known address of each, of the owner's intent to declare the mineral interest abandoned. If service of notice cannot be completed to any holder, the owner shall publish notice of the owner's intent to declare the mineral interest abandoned at least once in a newspaper of general circulation in each county in which the land that is subject to the interest is located. The notice shall contain all of the information specified in division (F) of this section.

(2) At least thirty, but not later than sixty days after the date on which the notice required under division (E)(1) of this section is served or published, as applicable, file in the office of the county recorder of each county in which the surface of the land that is subject to the interest is located an affidavit of abandonment that contains all of the information specified in division (G) of this section.

(F) The notice required under division (E)(1) of this section shall contain all of the following:

(1) The name of each holder and the holder's successors and assignees, as applicable;

(2) A description of the surface of the land that is subject to the mineral interest. The description shall include the volume and page number of the recorded deed or other recorded instrument under which the owner of the surface of the lands claims title or

otherwise satisfies the requirements established in division (A) (3) of section 5301.52 of the Revised Code.

(3) A description of the mineral interest to be abandoned. The description shall include the volume and page number of the recorded instrument on which the mineral interest is based.

(4) A statement attesting that nothing specified in division (B)(3) of this section has occurred within the twenty years immediately preceding the date on which notice is served or published under division (E) of this section;

(5) A statement of the intent of the owner of the surface of the lands subject to the mineral interest to file in the office of the county recorder an affidavit of abandonment at least thirty, but not later than sixty days after the date on which notice is served or published, as applicable;

(G) An affidavit of abandonment shall contain all of the following:

(1) A statement that the person filing the affidavit is the owner of the surface of the lands subject to the interest;

(2) The volume and page number of the recorded instrument on which the mineral interest is based;

(3) A statement that the mineral interest has been abandoned pursuant to division (B) of this section;

(4) A recitation of the facts constituting the abandonment;

(5) A statement that notice was served on each holder or each holder's successors or assignees or published in accordance with division (E) of this section.

(H)(1) 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 or the holder's 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.

The holder or the holder's successors or assignees shall notify the person who served or published the notice under division (E) of this section of the filing under this division.

(2) If a holder or a holder's successors or assignees who claim that the mineral interest that is the subject of a notice under division (E) of this section has not been abandoned fails to file a claim to preserve the mineral interest, files such a claim more than sixty days after the date on which the notice was served or published under division (E) of this section, fails to file 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

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the notice was served or published under division (E) of this section, or files such an affidavit more than sixty days after the date on which the notice was served or published under that division, the owner of the surface of the lands subject to the interest who is seeking to have the interest deemed abandoned and vested in the owner shall cause the county recorder of each applicable county to memorialize the record on which the severed mineral interest is based with the following: "This mineral interest abandoned pursuant to affidavit of abandonment recorded in volume . . . , page"

Immediately after the county recorder memorializes the record, the mineral interest shall vest in the owner of the surface of the lands formerly subject to the interest, and the record of the mineral interest shall cease to be notice to the public of the existence of the mineral interest or of any rights under it. In addition, the record shall not be received as evidence in any court in this state on behalf of the former holder or the former holder's successors or assignees against the owner of the surface of the lands formerly subject to the interest. However, the abandonment and vesting of a mineral interest pursuant to divisions (E) to (I) of this section only shall be effective as to the property of the owner that filed the affidavit of abandonment under division (E) of this section.

(I) For purposes of a recording under this section, a county recorder shall charge the fee established under section 317.32 of the Revised Code.

A county recorder who uses microfilm as provided under section 9.01 of the Revised Code may require the memorial "This mineral interest abandoned pursuant to affidavit of abandonment recorded in volume . . . , page" to be located on the affidavit of abandonment instead of the record on which the severed mineral interest is based, and the affidavit may be recorded under section 317.08 of the Revised Code.

HISTORY: 143 v S 223, EFF 3-22-89; 151 v H 288, § 1, eff. 6-30-06.

Effect of amendments 151 v H 288, effective June 30, 2006, rewrote the section.

Practice Manuals and Treatises Anderson's Ohio Residential Real Estate Manual § 5.01 Overview of marketable title act Anderson's Ohio Residential Real Estate Manual § 5.05 Exceptions

§ 5301.63 Solar access easements.

Practice Manuals and Treatises Anderson's Ohio Residential Real Estate Manual § 5.01 Overview of marketable title act

Practice Forms Grant of easement for solar access, Coase's Ohio Form Book Form 39.10

§ 5301.67 Definitions. CASE NOTES AND OAC INDEX

Valuation of property Wetlands designation

Valuation of property Provision to value a farm as if it was subject to an agricultural easement did not require imposition of an agricultural easement: *Stickney v. Tallis-Vermillion*, 165 Ohio App. 3d 480, 547 N.E.2d 29, 2006 Ohio 842, (2006).

Wetlands designation Property owners and a conservation easement holder who failed to show an actual designation of a portion of their property as "wetlands" from either the state or federal Environmental Protection Agency could not assert that they were entitled to wetlands protection under RC §§ 6111.04, 5301.67 — 5301.70, and OAC 3745:1-51 in a dispute with a city regarding its zoning ordinance that required that grass be trimmed. Without the official wetlands designation, the owners could not argue that the ordinance was preempted by state law. *Ligble v. City of Washington Court House*, — Ohio App. 3d —, — N.E. 2d —, 2007 Ohio App. LEXIS 1946, 2007 Ohio 2069, (Apr. 30, 2007).

§ 5301.68 Grant of conservation or agricultural easement.

An owner of land may grant a conservation easement to the department of natural resources, a park district created under Chapter 1545. of the Revised Code, a township park district created under section 511.18 of the Revised Code, a conservancy district created under Chapter 6101. of the Revised Code, a soil and water conservation district created under Chapter 1515. of the Revised Code, a county, a township, a municipal corporation, or a charitable organization that is authorized to hold conservation easements by division (B) of section 5301.69 of the Revised Code, in the form of articles of dedication, easement, covenant, restriction, or condition. An owner of land also may grant an agricultural easement to the director of agriculture; to a municipal corporation, county, township, or soil and water conservation district; or to a charitable organization described in division (B) of section 5301.69 of the Revised Code. An owner of land may grant an agricultural easement only on land that is valued for purposes of real property taxation at its current value for agricultural use under section 5713.31 of the Revised Code or that constitutes a homestead when the easement is granted.

All conservation easements and agricultural easements shall be executed and recorded in the same manner as other instruments conveying interests in land.

HISTORY: 138 v H 504 (EF 3-14-80); 145 v S 182 (EF 10-20-84); 147 v S 223 (EF 4-5-89); 143 v H 3. EF 7-26-2001; 150 v S 302, § 2, eff. 4-15-05.

Ohio Statutes

Title 53. REAL PROPERTY

Chapter 5301. CONVEYANCES; ENCUMBRANCES

Current through April 21, 2014

§ 5301.56. Mineral interests - vesting in surface owner

(A)

As used in this section:

(1)

"Holder" means the record holder of a mineral interest, and any person who derives the person's rights from, or has a common source with, the record holder and whose claim does not indicate, expressly or by clear implication, that it is adverse to the interest of the record holder.

(2)

"Drilling or mining permit" means a permit issued under Chapter 1509., 1513., or 1514. of the Revised Code to the holder to drill an oil or gas well or to mine other minerals.

(3)

"Mineral interest" means a fee interest in at least one mineral regardless of how the interest is created and of the form of the interest, which may be absolute or fractional or divided or undivided.

(4)

"Mineral" means gas, oil, coal, coalbed methane gas, other gaseous, liquid, and solid hydrocarbons, sand, gravel, clay, shale, gypsum, halite, limestone, dolomite, sandstone, other stone, metalliferous or nonmetalliferous ore, or another material or substance of commercial value that is excavated in a solid state from natural deposits on or in the earth.

(5)

"Owner of the surface of the lands subject to the interest" includes the owner's successors and assignees.

(B)

Any mineral interest held by any person, other than the owner of the surface of the lands subject to the interest, shall be deemed abandoned and vested in the owner of the surface of the lands subject to the interest if the requirements established in division (E) of this section are satisfied and none of the following applies:

(1)

The mineral interest is in coal, or in mining or other rights pertinent to or exercisable in connection with an interest in coal, as described in division (E) of section 5301.53 of the Revised Code. However, if a mineral interest includes both coal and other minerals that are not coal, the mineral interests that are not in coal may be deemed abandoned and vest in the owner of the surface of the lands subject to the interest.

(2)

The mineral interest is held by the United States, this state, or any political subdivision, body politic, or agency of the United States or this state, as described in division (G) of section 5301.53 of the Revised Code.

(3)

Within the twenty years immediately preceding the date on which notice is served or published under division (E) of this section, one or more of the following has occurred:

(a)

The mineral interest has been the subject of a title transaction that has been filed or recorded in the office of the county recorder of the county in which the lands are located.

(b)

There has been actual production or withdrawal of minerals by the holder from the lands, from lands covered by a lease to which the mineral interest is subject, from a mine a portion of which is located beneath the lands, or, in the case of oil or gas, from lands pooled, unitized, or included in unit operations, under sections 1509.26 to 1509.28 of the Revised Code, in which the mineral interest is participating, provided that the instrument or order creating or providing for the pooling or unitization of oil or gas interests has been filed or recorded in the office of the county recorder of the county in which the lands that are subject to the pooling or unitization are located.

(c)

The mineral interest has been used in underground gas storage operations by the holder.

(d)

A drilling or mining permit has been issued to the holder, provided that an affidavit that states the name of the permit holder, the permit number, the type of permit, and a legal description of the lands affected by the permit has

A-4

been filed or recorded, in accordance with section 5301.252 of the Revised Code, in the office of the county recorder of the county in which the lands are located.

(e)

A claim to preserve the mineral interest has been filed in accordance with division (C) of this section.

(f)

In the case of a separated mineral interest, a separately listed tax parcel number has been created for the mineral interest in the county auditor's tax list and the county treasurer's duplicate tax list in the county in which the lands are located.

(C)

(1)

A claim to preserve a mineral interest from being deemed abandoned under division (B) of this section may be filed for record by its holder. Subject to division (C)(3) of this section, the claim shall be recorded in accordance with division (H) of this section and sections 317.18 to 317.20 and 5301.52 of the Revised Code, and shall consist of a notice that does all of the following:

(a)

States the nature of the mineral interest claimed and any recording information upon which the claim is based;

(b)

Otherwise complies with section 5301.52 of the Revised Code;

(c)

States that the holder does not intend to abandon, but instead to preserve, the holder's rights in the mineral interest.

(2)

A claim that complies with division (C)(1) of this section or, if applicable, divisions (C)(1) and (3) of this section preserves the rights of all holders of a mineral interest in the same lands.

(3)

Any holder of an interest for use in underground gas storage operations may preserve the holder's interest, and those of any lessor of the interest, by a single claim, that defines the boundaries of the storage field or pool and its formations, without describing each separate interest claimed. The claim is prima-facie evidence of the use of each separate interest in underground gas storage

operations.

(D)

(1)

A mineral interest may be preserved indefinitely from being deemed abandoned under division (B) of this section by the occurrence of any of the circumstances described in division (B)(3) of this section, including, but not limited to, successive filings of claims to preserve mineral interests under division (C) of this section.

(2)

The filing of a claim to preserve a mineral interest under division (C) of this section does not affect the right of a lessor of an oil or gas lease to obtain its forfeiture under section 5301.332 of the Revised Code.

(E)

Before a mineral interest becomes vested under division (B) of this section in the owner of the surface of the lands subject to the interest, the owner of the surface of the lands subject to the interest shall do both of the following:

(1)

Serve notice by certified mail, return receipt requested, to each holder or each holder's successors or assignees, at the last known address of each, of the owner's intent to declare the mineral interest abandoned. If service of notice cannot be completed to any holder, the owner shall publish notice of the owner's intent to declare the mineral interest abandoned at least once in a newspaper of general circulation in each county in which the land that is subject to the interest is located. The notice shall contain all of the information specified in division (F) of this section.

(2)

At least thirty, but not later than sixty days after the date on which the notice required under division (E)(1) of this section is served or published, as applicable, file in the office of the county recorder of each county in which the surface of the land that is subject to the interest is located an affidavit of abandonment that contains all of the information specified in division (G) of this section.

(F)

The notice required under division (E)(1) of this section shall contain all of the following:

(1)

The name of each holder and the holder's successors and assignees, as applicable;

(2)

A description of the surface of the land that is subject to the mineral interest. The description shall include the volume and page number of the recorded deed or other recorded instrument under which the owner of the surface of the lands claims title or otherwise satisfies the requirements established in division (A)(3) of section 5301.52 of the Revised Code.

(3)

A description of the mineral interest to be abandoned. The description shall include the volume and page number of the recorded instrument on which the mineral interest is based.

(4)

A statement attesting that nothing specified in division (B)(3) of this section has occurred within the twenty years immediately preceding the date on which notice is served or published under division (E) of this section;

(5)

A statement of the intent of the owner of the surface of the lands subject to the mineral interest to file in the office of the county recorder an affidavit of abandonment at least thirty, but not later than sixty days after the date on which notice is served or published, as applicable.

(G)

An affidavit of abandonment shall contain all of the following:

(1)

A statement that the person filing the affidavit is the owner of the surface of the lands subject to the interest;

(2)

The volume and page number of the recorded instrument on which the mineral interest is based;

(3)

A statement that the mineral interest has been abandoned pursuant to division (B) of this section;

(4)

A recitation of the facts constituting the abandonment;

(5)

A statement that notice was served on each holder or each holder's successors or assignees or published in accordance with division (E) of this section.

(H)

(1)

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 or the holder's 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.

The holder or the holder's successors or assignees shall notify the person who served or published the notice under division (E) of this section of the filing under this division.

(2)

If a holder or a holder's successors or assignees who claim that the mineral interest that is the subject of a notice under division (E) of this section has not been abandoned fails to file a claim to preserve the mineral interest, files such a claim more than sixty days after the date on which the notice was served or published under division (E) of this section, fails to file 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, or files such an affidavit more than sixty days after the date on which the notice was served or published under that division, the owner of the surface of the lands subject to the interest who is seeking to have the interest deemed abandoned and vested in the owner shall file in the office of the county recorder of each county where the land that is subject to the mineral interest is located a notice of failure to file. The notice shall contain all of the following:

(a)

A statement that the person filing the notice is the owner of the surface of the lands subject to the mineral interest;

(b)

A description of the surface of the land that is subject to the mineral interest;

(c)

The statement: "This mineral interest abandoned pursuant to affidavit of abandonment recorded in volume ..., page"

Immediately after the notice of failure to file a mineral interest is recorded, the mineral interest shall vest in the owner of the surface of the lands formerly subject to the interest, and the record of the mineral interest shall cease to be notice to the public of the existence of the mineral interest or of any rights under it. In addition, the record shall not be received as evidence in any court in this state on behalf of the former holder or the former holder's successors or assignees against the owner of the surface of the lands formerly subject to the interest. However, the abandonment and vesting of a mineral interest pursuant to divisions (E) to (I) of this section only shall be effective as to the property of the owner that filed the affidavit of abandonment under division (E) of this section.

(I)

For purposes of a recording under this section, a county recorder shall charge the fee established under section 317.32 of the Revised Code.

Cite as R.C. § 5301.56

History. Amended by 130th General Assembly File No. 41, HB 72, §1, eff. 1/30/2014.

Effective Date: 03-22-1989; 06-30-2006

Instrument 20130069738 OR
Book Page 149 680

COURT OF COMMON PLEAS
MONROE COUNTY, OHIO
IN THE COURT OF COMMON PLEAS OF MONROE COUNTY, OHIO

2013 AUG 13 PM 2:01

RICHARD F. DEVITIS, et al.
Plaintiffs,

BETH ANN ROSE
CLERK OF COURTS

v.

Case No. 2012-429

CHARLES WILLIAM DRAPER, et al.
Defendants.

Transfer Not Necessary
Date 8-14-13 Sec. 319.202 Completed
With Pandora J. Neuhart, Auditor
Monroe County Ohio
By SRS Fee 0 Mill 0

JUDGMENT ENTRY
(Incorporating Findings of Fact and Conclusions of Law)

This matter is before the Court for non-oral hearing on Plaintiffs' Motion for Summary Judgment; Defendants' Response to Plaintiffs' Motion for Summary Judgment; Defendants' Motion for Summary Judgment; and Plaintiffs' Combined Memorandum Contra and Reply to Defendants' Response.

Based on the filings of the parties, the facts within and the applicable law, the Court hereby makes the following findings and orders.

The underlying facts are undisputed. They are as follows.

Plaintiffs, collectively, are the fee owners of certain real estate (the "Property") described in the deed dated March 1982, filed March 2, 1982 and recorded in Volume 181, Page 894 of the Deed Records of Monroe County, Ohio and the deed dated January 15, 1985, filed January 30, 1985 and recorded in Volume 188, Page 84 of the Deed Records of Monroe County, Ohio.

Plaintiffs' predecessors in title, Alverda Draper, J. Arnold Draper, and Wilda G.

Monroe County
Common Pleas
Court
Julie R. Selmon
Judge

I certify the foregoing to be a true and correct copy of the original.

Beth Ann Rose, Clerk
Common Pleas Court, Monroe County, Ohio
Deputy Clerk

FINAL APPEAL

ORDER



Original Journal Page
This Entry to be filed with the Clerk of Courts

A-5

Draper, reserved a portion of the oil and gas estate in a deed dated March 23, 1949, filed April 6, 1949 and recorded in Volume 122, Page 520 of the Deed Records of Monroe County, Ohio. This Reservation Deed contains the following reservation of oil and/or gas:

"Grantors in this deed except and reserve from the operation of this deed, one-half (1/2) [being the one sixteenth] of the royalty oil and gas in and under the above premises, to themselves and their heirs, forever."

(Hereinafter the "Severed Mineral Interest")

Defendants in this case are the heirs of Alverda Draper, J. Arnold Draper, and Wilda G. Draper and are claiming title to the Severed Mineral Interest as reserved in the Reservation Deed.

Plaintiffs, utilizing both the prior version and current version of the abandonment process outlined in ORC § 5301.56 attempted to have the Severed Mineral Interest deemed abandoned and vested in the Plaintiffs as surface owners. On April 24, 2012, Plaintiffs filed an Affidavit under ORC § 5301.252. Said Affidavit declared that none of the savings conditions outlined in ORC § 5301.56(B)(1) occurred in the twenty (20) year period prior to June 30, 2006 (the last effective date of the previous version of ORC § 5301.56). Plaintiffs claimed that because none of those savings conditions occurred in that twenty (20) year period, the Severed Mineral Interest was abandoned and vested in owners of the surface as of June 30, 2006.

Plaintiffs then proceeded to follow the amended statutory procedure outlined in ORC § 5301.56 (effective after June 30, 2006). Pursuant to ORC § 5301.56(E), on May 3, 2012, Plaintiffs served by publication in the *Monroe County Beacon* a Notice of Abandonment to

all heirs who may have a claim to the Severed Mineral Interest. On May 29, 2012, Defendants filed a Claim to Preserve claiming to own a portion of the Severed Mineral Interest. On June 6, 2012, Plaintiffs filed and recorded in Volume 221, Page 88 of the Official Records of Monroe County, Ohio an Affidavit of Abandonment. On July 5, 2012, pursuant to ORC § 5301.56(H)(2), Plaintiffs sent a letter to the Monroe County Recorder instructing her to note that the Severed Mineral Interest was abandoned pursuant to the Affidavit of Abandonment.

Certain requirements must be met before the Court can find that a party is entitled to Summary Judgment as a matter of law. Civ.R. 56(C) specifically provides that before Summary Judgment may be granted, it must be determined that:

- (1) No issue as to any material fact remains to be litigated;
- (2) the moving party is entitled judgment as a matter of law; and
- (3) it appears from the evidence that reasonable minds can come to but one conclusion and viewing such evidence most strongly in favor of the party against whom the Motion for Summary Judgment is made, that conclusion is adverse to that party.

Temple v. Wean United, Inc., 50 Ohio St. 2d 317 (1977), see also *Todd Dev. Co., Inc. v. Morgan*, 116 Ohio St. 3d 461, 463 (2008).

Additionally, the Dormant Minerals Act ("DMA"), enacted on March 22, 1989, is set forth below in its entirety:

§5301.56 Mineral Interests in Realty.

(A) As used in this section:

- (1) "Holder" means the record holder of a mineral interest, and any person who derives the person's rights from, or has a common source with, the record holder and whose claim does not indicate, expressly or by clear

implication, that it is adverse to the interest of the record holder.

(2) "Drilling or mining permit" means a permit issued under Chapter 1509., 1513., or 1514. of the Revised Code to the holder to drill an oil or gas well or to mine other minerals.

(B)(1) Any mineral interest held by any person, other than the owner of the surface of the lands subject to the interest, shall be deemed abandoned and vested in the owner of the surface if none of the following applies:

(a) The mineral interest is in coal, or in mining or other rights pertinent to or exercisable in connection with an interest in coal, as described in division (E) of section 5301.53 of the Revised Code.

(b) The mineral interest is held by the United States, this state, or any political subdivision, body politic, or agency of the United States or this state, as described in division (G) of section 5301.53 of the Revised Code.

(c) Within the preceding twenty years, one or more of the following has occurred:

(i) The mineral interest has been the subject of a title transaction that has been filed or recorded in the office of the county recorder of the county in which the lands are located;

(ii) There has been actual production or withdrawal of minerals by the holder from the lands, from lands covered by a lease to which the mineral interest is subject, from a mine a portion of which is located beneath the lands, or, in the case of oil or gas, from lands pooled, unitized, or included in unit operations, under sections 1509.26 to 1509.28 of the Revised Code, in which the mineral interest is participating, provided that the instrument or order creating or providing for the pooling or unitization of oil or gas interests has been filed or recorded in the office of the county recorder of the county in which the lands that are subject to the pooling or unitization are located;

(iii) The mineral interest has been used in underground gas storage operations by the holder;

(iv) A drilling or mining permit has been issued to the holder, provided that an affidavit that states the name of the permit holder, the permit number, the type of permit, and a legal description of the lands affected by the permit has been filed or recorded, in accordance with section 5301.252

[5301.25.2] of the Revised Code, in the office of the county recorder of the county in which the lands are located;

(v) A claim to preserve the mineral interest has been filed in accordance with division (C) of this section;

(vi) In the case of a separated mineral interest, a separately listed tax parcel number has been created for the mineral interest in the county auditor's tax list and the county treasurer's duplicate tax list in the county in which the lands are located.

(B)(2) A mineral interest shall not be deemed abandoned under division (B)(1) of this section because none of the circumstances described in that division apply, until three years from the effective date of this section.

(C)(1) A claim to preserve a mineral interest from being deemed abandoned under division (B)(1) of this section may be filed for record by its holder. Subject to division (C)(3) of this section, the claim shall be filed and recorded in accordance with sections 317.18 to 317.201 [317.20.1] and 5301.52 of the Revised Code, and shall consist of a notice that does all of the following:

(a) States the nature of the mineral interest claimed and any recording information upon which the claim is based;

(b) Otherwise complies with section 5301.52 of the Revised Code;

(c) States that the holder does not intend to abandon, but instead to preserve, his rights in the mineral interest.

(C) (2) A claim that complies with division (C)(1) of this section or, if applicable, divisions (C)(1) and (3) of this section preserves the rights of all holders of a mineral interest in the same lands.

(C)(3) Any holder of an interest for use in underground gas storage operations may preserve the holder's interest, and those of any lessor of the interest, by a single claim, that defines the boundaries of the storage field or pool and its formations, without describing each separate interest claimed. The claim is prima-facie evidence of the use of each separate interest in underground gas storage operations.

(D)(1) A mineral interest may be preserved indefinitely from being deemed abandoned under division (B)(1) of this section by the occurrence of any

of the circumstances described in division (B)(1)(c) of this section, including, but not limited to, successive filings of claims to preserve mineral interests under division (C) of this section.

(D)(2) The filing of a claim to preserve a mineral interest under division (C) of this section does not affect the right of a lessor of an oil or gas lease to obtain its forfeiture under section 5301.332 [5301.33.2] of the Revised Code.

HISTORY: 142 v S 223 Eff 3-22-89.

The current version of the Dormant Minerals Act ("DMA"), amended effective June 30, 2006, is virtually identical to the previous version set forth above, with the exception that a "notice" requirement [ORC § 5301.56(E)] has been added, whereby the surface owner of the land subject to the Severed Mineral Interest may utilize a statutory process of abandonment. That process requires the surface owner to give notice, (by certified mail, if possible, or by publication) of the intent to have the mineral interest abandoned, to the "holder" of the mineral interest or each holder's successors or assignees "before the mineral interest becomes vested" in the surface owner. [ORC § 5301.56(E)].

The surface owner [after thirty (30), but not more than sixty (60) days] then files an Affidavit of Abandonment putting on record the fact that none of the savings conditions outlined in ORC § 5301.56(B) have occurred, and therefore the interest is deemed abandoned. The surface owner must then wait an additional thirty (30) [but not more than sixty (60) days], and if nothing is filed under ORC § 5301.56(H), the surface owner may send a letter to the recorder instructing him/her to note on the "Reservation Deed" that the interest has been abandoned.

In the case before this Court, Plaintiffs maintain that both the former and current

Monroe County
Common Pleas
Court

Julie R. Selmon
Judge

version of the DMA has deemed Defendants' interest abandoned. Defendants' Motion embodies four (4) arguments: (1) a severed royalty interest cannot be deemed abandoned under either version of ORC § 5301.56; (2) Plaintiffs failed to give proper notice to Defendants based on ORC § 5301.56(E); (3) the oil and gas royalty interest was the subject of a title transaction; and (4) Defendants' Preservation Notice operated to preserve Defendants' interest in the oil and gas royalty.

1. This Court has already found that an oil and gas royalty interest may be subject to abandonment under both versions of the DMA (ORC § 5301.56). In *Neal D. Marty, et al. v. Linda Dennis (Winkler), et al.*, Monroe C.P. CVH 2012-203, this Court held that "a royalty interest may be extinguished by the previous version of the DMA," and that "[b]ecause a royalty interest is a fractional interest of the oil and gas estate . . . such an interest falls within the definition of 'Mineral Interest' outlined by [the current version of] ORC § 5301.56(A)(3)." *See Marty* at 9-10. As support for its holding, this Court cited O. Jur. 3d Mines and Minerals, Section 8 which clearly provides that "a royalty interest remains an interest in realty until the minerals are removed from the ground and materialized as personal property."

Additionally, this Court held in *Cyril T. Burkhardt v. George A. Burkhardt*, Monroe C.P. CVH 92-278, that a royalty interest, along with the minerals themselves, can be deemed abandoned under the prior version of the statute. The current version of the Dormant Minerals Act, added a definition of "Mineral Interest." ORC § 5301.56(A)(3) provides:

"Mineral Interest" means a fee interest in at least one mineral regardless of how the interest is created and the form of the interest, which may be absolute or fractional or divided or

undivided.

This Court finds, consistent with its prior holdings, that the definition of "Mineral Interest" includes an oil and gas royalty interest. Likewise, the 7th District Court in *Buegel v. Amos*, Not Reported in N.E. 2d, 1984 WL 7725 (7th Dist. , 1984) noted that "[a]n oil and gas 'royalty' has been described as that fractional interest in the production of oil or gas that was created by the owner of land, either by reservation when the mineral lease was entered into, or by direct grant to a third person." See *Buegel*, citing 38 American Jurisprudence 2d 670, Gas and Oil, Section 189. Thus, since a royalty interest is a fractional interest of the oil and gas estate, such an interest falls within the definition of "Mineral Interest" outlined by ORC § 5301.56(A)(3).

Thus, consistent with the aforementioned prior findings of this Court, Defendants' argument that a severed royalty interest cannot be deemed abandoned under either version of ORC § 5301.56 (" DMA ") is without merit.

2. This Court further finds that Defendants' argument with respect to the Notice Requirement set out in ORC § 5301.56(E) is without merit. This Court finds, more specifically, that Plaintiffs herein did not fail to meet the burden set forth in ORC § 5301.56(E) regarding Notice.

In relevant part, the present version of the DMA provides as follows (concerning the Notice Requirement):

"(E) Before a mineral interest becomes vested under Division (B) of this section, and the owner of the surface of the lands subject to the interest, the owner of the surface of the lands subject to the interest shall do both of the following:

1) Serve notice by certified mail, return receipt requested, to each holder or each holder's successors or assignees, at the last known address of each, of the owner's intent to declare the mineral interest abandoned. If service of notice cannot be completed to any holder, the owner shall publish notice of the owner's intent to declare the mineral interest abandoned at least once in a newspaper of general circulation in each County in which the land that is subject to the interest is located. The notice shall contain all of the information specified in Division (F) of this section."

In this case, this Court finds that Plaintiffs could not complete service by certified mail on the holders of the mineral interest since Plaintiffs could not ascertain the addresses for those individuals through a search of the public records of Monroe County, Ohio or otherwise. As a result, Plaintiffs served the known heirs along with their unknown heirs and assigns by publication, a method specifically provided for in the statute. The Court finds that Plaintiffs properly complied with the Notice Requirement herein and as such, Defendants' argument is without merit.

3. Additionally, Defendants claim that the Severed Mineral Interest was the subject of a "title transaction," hence satisfying a "savings event" that would prevent the DMA from extinguishing the Severed Mineral Interest. A "title transaction," as defined in ORC § 5301.47(F) means "any transaction affecting title by will or descent, title by tax deed, or by trustee's, assignee's, guardian's, executor's, administrator's, or sheriff's deed, or decree of any Court, as well as warranty deed, quit claim deed, or mortgage."

Defendants in this case claim that the deeds transferring the surface of the Property to Plaintiffs constituted "title transactions" of the Severed Mineral Interest, and the transfer operated to preserve the Severed Mineral Interest under ORC § 5301.56(B).

This Court recently dealt with this very issue in *Eisenbarth v. Reusser*, Monroe C.P. CVH 2012-292.

In *Eisenbarth*, this Court followed the reasoning in *Wendt v. Dickerson*, Case No. 2012 CV 02 0133 (Tuscarawas County C.P., 2-12-13); *Walker v. Noon*, Case No. CVH 2012-0098 (Noble County C.P.); and *Wiseman et al. v. Potts et al.*, Case No. 08 CV 0145 (Morgan County C.P. 2008).

In its finding, this Court held that a recitation of the original oil and gas reservation in subsequent transfers of the surface do not affect the Severed Mineral Interest and therefore do not constitute "title transactions" under ORC § 5301.56(B)(1)(c)(i).

Likewise, in the within case, this Court finds that the Severed Mineral Interest was not deeded, transferred or otherwise conveyed in the subsequent transactions and as a result, the Court finds that title was not affected.

4. Lastly, this Court has previously tackled the issue concerning the effect of the filing of a Claim to Preserve under ORC § 5301.56(H). Specifically, this Court recently held that: ". . .if a severed interest holder files a notice under paragraph (H) above, the landowner's statutory remedy to abandon a Severed Mineral Interest has been exhausted, requiring the filing of a lawsuit. At that point, the severed interest holder must be required to show why the severed interest has not been abandoned. A preservation notice itself cannot be the basis for establishing that the mineral interest has not been abandoned. The holder must show the existence of one of the savings conditions under ORC §5301.56(B)." *Marty v. Winkler*, Monroe C.P. CVH 2012-203 at 11.

As this Court found above, none of the savings conditions or events outlined in the

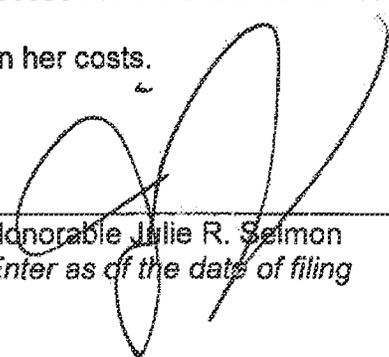
DMA occurred during any twenty-year time period at issue in this case. Accordingly, this Court finds that the oil and gas royalty interest of the Defendants herein has been abandoned pursuant to both the current and previous version of ORC § 5301.56.

Since there are no undisputed facts in the within case and since there remains no genuine issue of any material fact to be litigated, Plaintiffs are entitled to judgment as a matter of law. Plaintiffs' Motion for Summary Judgment is granted. Defendants' Motion for Summary Judgment is denied.

The Court further finds that there is no just reason for delay, and that this "Judgment Entry Incorporating Findings of Fact and Conclusions of Law" is a final appealable order, as defined under Civil Rule 54.

The costs of this proceeding are assessed to the Defendants. Judgment is hereby granted the Clerk of this Court to collect on her costs.

IT IS SO ORDERED.



Honorable Julie R. Selmon
Enter as of the date of filing

Copies to: Craig E. Sweeney, Esquire
YOSS LAW OFFICES

Bruce Smith, Esquire
GEIGER, TEEPLE, SMITH & HAHN, LLP

c: \oil&gas decisions \
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OR Book 249 Page 680 - 690

Monroe County
Common Pleas
Court

Julie R. Selmon
Judge

IN THE COURT OF COMMON PLEAS OF MONROE COUNTY, OHIO

2013 APR 11 PM 1:32

NEAL D. MARTY, *etal*,
Plaintiffs,

BETH ANN ROSE
CLERK OF COURTS

v.

Case No. 2012-203

LINDA DENNIS (WINKLER), *etal*,
Defendants.

JUDGMENT ENTRY

This matter is before the Court for non-oral hearing on the following motions:

- (1). Plaintiffs' Motion for Summary Judgment;
- (2). Defendants' Motion for Summary Judgment;
- (3). Plaintiffs' Memorandum Contra to Defendants' Motion for Summary Judgment.

Based on the filings of the parties and the applicable law, the Court makes the following findings and orders.

The Court first notes that both parties acknowledge that there is no dispute as to the facts in this case.

Neal D. Marty and Diana L. Marty, Trustees under the Diana L. Marty Trust Agreement dated the 25th day of June 2010 (hereinafter "Plaintiffs") are the fee owners of 107.39 acres, more or less, situated in Adams Township, Monroe County, Ohio. The subject property is described as Tract I and Tract II in the deed conveying the property to Plaintiffs, dated June 25, 2010, filed July 30, 2010, and recorded in Volume 193, Page 509

Monroe County
Common Pleas
Court
Julie R. Selmon
Judge

**FINAL APPEALABLE
ORDER**

COPY

A-6

of the Official Records of Monroe County, Ohio.

That part of the Plaintiffs' property that is in Section 24 is approximately sixty-eight (68) acres. This property is contained in Tract II of the above-referenced deed. This sixty-eight (68) acre parcel, or Tract II, is the only parcel in the above-referenced deed that is in dispute in this case. The sixty-eight (68) acres shall hereinafter be referred to as the "Property."

Plaintiffs' predecessors in title, John J. Winkler and Mary M. Winkler, conveyed the Property to Carl W. Ambler and Alice Mae Ambler. The instrument reflecting this transaction is the deed dated August 24, 1949, filed August 25, 1949 and recorded in Volume 123, Page 186 of the Deed Records of Monroe County, Ohio (hereinafter the "Reservation Deed"). The Reservation Deed contained the following language:

"Also excepting and reserving unto the grantors herein, their heirs and assigns, the one-half (1/2) of the oil and gas royalty, same being one-sixteenth (1/16) of all the oil and one-half (1/2) of all monies received from the sale of gas from the east half of the south east quarter of Section 24, Township 3 of Range 4, containing sixty-eight (68) acres."
(Hereinafter the "Severed Mineral Interest").

Defendants in this case are the heirs of John J. Winkler and Mary M. Winkler and are claiming title to the Severed Mineral Interest as reserved in the Reservation Deed.

On February 3, 2012, the Plaintiffs filed an Affidavit with the Monroe County Recorder's Office declaring that the reserved royalty interest of the Defendants was abandoned and vested in the Plaintiffs. This Affidavit was filed pursuant to R.C. 5301.56 as it existed prior to its most recent amendment on June 30, 2006.

Monroe County
Common Pleas
Court

Julie R. Selmon
Judge

On February 9, 2012, the Plaintiffs published a notice in the *Monroe County Beacon* again declaring that the reserved royalty interest of the Defendants was abandoned and vested in the Plaintiffs. This publication was made pursuant to the current version of R.C. 5301.56.

On March 14, 2012, the Plaintiffs filed another Affidavit of Abandonment again declaring that the reserved royalty interest was abandoned and vested in the Plaintiffs. This second Affidavit was filed purportedly pursuant to the current version of R.C. 5301.56.

On April 5, 2012, the Defendants filed their Notice to Preserve Mineral Interests with the Monroe County Recorder.

As set forth above, there is no dispute as to the facts in this case. The Plaintiffs are asking the Court to declare that any royalty interest of the Defendants in the Property has been forfeited under the current version of R.C. 5301.56 as well as the version of the statute as it existed prior to its amendment in 2006. The Defendants assert that their purported interest is only the right to receive a royalty payment and is not a mineral interest that can be forfeited under R.C. 5301.56 and that even if it is such an interest subject to forfeiture, the interest has been preserved by the filing of Defendants' Notice to Preserve Mineral Interest.

Certain requirements must be met before the Court can find that a party is entitled to Summary Judgment as a matter of law.

Civil Rule 56(C) specifically provides that before Summary Judgment may be granted, it must be determined that:

Monroe County
Common Pleas
Court
- - -
Julie R. Selmon
Judge

- (1). No issue as to any material fact remains to be litigated;
- (2). The moving party is entitled to judgment as a matter of law; *and*
- (3). It appears from the evidence that reasonable minds can come to but one conclusion and viewing such evidence most strongly in favor of the party against whom the motion for Summary Judgment is made, that conclusion is adverse to that party.

Temple v. Wean United, Inc., 50 Ohio St. 2d 317 (1977).

The Dormant Minerals Act ("DMA"), as enacted on March 13, 1989, is set forth below in its entirety:

§5301.56 Mineral Interests in Realty.

(A) As used in this section:

(1) "Holder" means the record holder of a mineral interest, and any person who derives the person's rights from, or has a common source with, the record holder and whose claim does not indicate, expressly or by clear implication, that it is adverse to the interest of the record holder.

(2) "Drilling or mining permit" means a permit issued under Chapter 1509., 1513., or 1514. of the Revised Code to the holder to drill an oil or gas well or to mine other minerals.

(B)(1) Any mineral interest held by any person, other than the owner of the surface of the lands subject to the interest, shall be deemed abandoned and vested in the owner of the surface if none of the following applies:

(a) The mineral interest is in coal, or in mining or other rights pertinent to or exercisable in connection with an interest in coal, as described in division (E) of section 5301.53 of the Revised Code.

(b) The mineral interest is held by the United States, this state, or any political subdivision, body politic, or agency of the United States or this state, as described in division (G) of section 5301.53 of the Revised Code.

(c) Within the preceding twenty years, one or more of the following has

Monroe County
Common Pleas
Court

Julie R. Selmon
Judge

occurred:

(i) The mineral interest has been the subject of a title transaction that has been filed or recorded in the office of the county recorder of the county in which the lands are located;

(ii) There has been actual production or withdrawal of minerals by the holder from the lands, from lands covered by a lease to which the mineral interest is subject, from a mine a portion of which is located beneath the lands, or, in the case of oil or gas, from lands pooled, unitized, or included in unit operations, under sections 1509.26 to 1509.28 of the Revised Code, in which the mineral interest is participating, provided that the instrument or order creating or providing for the pooling or unitization of oil or gas interests has been filed or recorded in the office of the county recorder of the county in which the lands that are subject to the pooling or unitization are located;

(iii) The mineral interest has been used in underground gas storage operations by the holder;

(iv) A drilling or mining permit has been issued to the holder, provided that an affidavit that states the name of the permit holder, the permit number, the type of permit, and a legal description of the lands affected by the permit has been filed or recorded, in accordance with section 5301.252 [5301.25.2] of the Revised Code, in the office of the county recorder of the county in which the lands are located;

(v) A claim to preserve the mineral interest has been filed in accordance with division (C) of this section;

(vi) In the case of a separated mineral interest, a separately listed tax parcel number has been created for the mineral interest in the county auditor's tax list and the county treasurer's duplicate tax list in the county in which the lands are located.

(B)(2) A mineral interest shall not be deemed abandoned under division (B)(1) of this section because none of the circumstances described in that division apply, until three years from the effective date of this section.

(C)(1) A claim to preserve a mineral interest from being deemed abandoned under division (B)(1) of this section may be filed for record by

Monroe County
Common Pleas
Court

Julie R. Selmon
Judge

its holder. Subject to division (C)(3) of this section, the claim shall be filed and recorded in accordance with sections 317.18 to 317.201 [317.20.1] and 5301.52 of the Revised Code, and shall consist of a notice that does all of the following:

(a) States the nature of the mineral interest claimed and any recording information upon which the claim is based;

(b) Otherwise complies with section 5301.52 of the Revised Code;

(c) States that the holder does not intend to abandon, but instead to preserve, his rights in the mineral interest.

(C) (2) A claim that complies with division (C)(1) of this section or, if applicable, divisions (C)(1) and (3) of this section preserves the rights of all holders of a mineral interest in the same lands.

(C)(3) Any holder of an interest for use in underground gas storage operations may preserve the holder's interest, and those of any lessor of the interest, by a single claim, that defines the boundaries of the storage field or pool and its formations, without describing each separate interest claimed. The claim is prima-facie evidence of the use of each separate interest in underground gas storage operations.

(D)(1) A mineral interest may be preserved indefinitely from being deemed abandoned under division (B)(1) of this section by the occurrence of any of the circumstances described in division (B)(1)(c) of this section, including, but not limited to, successive filings of claims to preserve mineral interests under division (C) of this section.

(D)(2) The filing of a claim to preserve a mineral interest under division (C) of this section does not affect the right of a lessor of an oil or gas lease to obtain its forfeiture under section 5301.332 [5301.33.2] of the Revised Code.

HISTORY: 142 v S 223. Effective Date: 03-22-1989

The current version of the Dormant Minerals Act, amended effective June 30, 2006, is virtually identical to the previous version set forth above, with the exception that a

Monroe County
Common Pleas
Court

Julie R. Selmon
Judge

"notice" requirement (ORC §5301.56[E]) has been added, whereby the surface owner of the land subject to the Severed Mineral Interest may utilize a statutory process of abandonment. That process requires the surface owner to give notice, (by certified mail, if possible, or by publication) of the intent to have the mineral interest abandoned, to the "holder" of the mineral interest or each holder's successors or assignees "before the mineral interest becomes vested" in the surface owner. (ORC 5301.56[E]). The surface owner (after thirty, but not more than sixty days) then files an Affidavit of Abandonment putting on record the fact that none of the savings conditions outlined in ORC §5301.56(B) have occurred, and therefore the interest is deemed abandoned. The surface owner must then wait an additional thirty (but not more than sixty) days, and if nothing is filed under ORC §5301.56(H), the surface owner may send a letter to the recorder instructing him/her to note on the "Reservation Deed" that the interest has been abandoned.

By its very terms, and in comparison with the current version of the DMA , the previous version of the DMA was self-executing in the sense that nothing was required of the surface owner before the mineral interest was deemed abandoned, except to show that none of the savings conditions set forth in paragraphs/subparagraphs (B)(c)(i)(ii)(iii)(iv)(v)(vi) had occurred within "the preceding twenty years...". The only other qualifications to have the mineral interest deemed abandoned was that the mineral interest could not involve coal (B)(a) and was not a mineral interest "held by the United States, this state, or any political subdivision..." (B)(b). The previous version of the DMA also provided that no mineral interest could be deemed abandoned based upon the absence of the

Monroe County
Common Pleas
Court

Julie R. Selmon
Judge

savings conditions set forth in (B)(1) until three years from the effective date of the law (B)(2).

Defendants assert that the Severed Mineral Interest that is the subject of this action "is not a 'mineral interest' as contemplated by the statute and therefore the Plaintiffs have no right to ask the Court to declare the [abandonment] of this right under the Dormant Minerals Act."

This Court addressed the very issue of whether a royalty interest is subject to the provisions of the previous version of the Dormant Minerals Act in *Cyril T. Burkhart v. George A. Burkhart*, Monroe C.P. CVH 92-278. The Defendants in *Burkhart* argued that because the statute does not provide a definition of "mineral interest", the statute, if read as a whole, should preclude the abandonment of a royalty interest. This Court explicitly rejected that argument, holding "[t]he Court finds that the oil and gas rights, including the royalty interest, in and under the real estate described in Paragraph 1 of the Complaint [...] are owned by the Plaintiffs and that any interests of the Defendants have been abandoned pursuant to the Dormant Minerals Act (ORC 5301.56)." *Cyril T. Burkhart v. George A. Burkhart*, Monroe C.P. CVH 92-278 at 1.

In this case, Defendants claim that "there is clearly a difference between a right to receive a royalty payment and an actual mineral interest in property." Plaintiffs agree that there is a difference, however, a royalty interest remains an interest in realty until the minerals are removed from the ground and materialized as personal property. See 68 O.Jur 3d, Mines and Minerals, Section 8.

This Court finds that the issue of whether a royalty interest may be extinguished by the previous version of the DMA has been previously decided by this Court and that decision is favorable to Plaintiffs' position and contrary to Defendants' argument.

Additionally, the Court further finds that a royalty interest is subject to abandonment under the current version of the Ohio Revised Code §5301.56.

More specifically, the current version of the Dormant Minerals Act, added a definition of "Mineral Interest". ORC §5301.56(A)(3) provides:

"Mineral Interest" means a fee interest in at least one mineral regardless of how the interest is created and the form of the interest, which may be absolute or fractional or divided or undivided.

This Court finds that the definition of a "Mineral Interest" includes an oil and gas royalty interest, as a royalty interest remains an interest in realty until the minerals are removed from the ground and materialized as personal property. See 68 O.Jur 3d, Mines and Minerals, Section 8.

Moreover, the *Buegel* Court noted that "[a]n oil and gas 'royalty' has been described as that fractional interest in the production of oil and gas that was created by the owner of land, either by reservation when the mineral lease was entered into, or by direct grant to a third person." See *Buegel v. Amos*, 1984 WL 7725 (7th District, 1984), citing 38 American Jurisprudence 2d 670, Gas and Oil, Section 189.

Because a royalty interest is a fractional interest of the oil and gas estate, this Court finds that such an interest falls within the definition of "Mineral Interest" outlined by ORC

Monroe County
Common Pleas
Court

Julie R. Selmon
Judge

§5301.56(A)(3).

In the present case, the Court finds that the undisputed facts of this case reflect that during the twenty (20) year period immediately preceding every date in which the previous version of ORC §5301.56 was effective, none of the savings conditions outlined by ORC §5301.56(B) [quoted above] occurred to keep the Severed Mineral Interest from being deemed abandoned. Defendants are unable to show any evidence to the contrary. The Severed Mineral was then deemed abandoned as of March 13, 1992, allowing for the three year grace period. Accordingly, the Court finds that the Defendants no longer have any right, title or interest in and to the mineral estate under Plaintiffs' property.

Furthermore, notwithstanding the above analysis, this Court further finds that the amended version of the DMA (effective after June 30, 2006) also operates to extinguish Defendants' interest. As outlined above, the amended version of Ohio Revised Code §5301.56 added a notice requirement. The amended version provides that the holder of a Severed Mineral Interest may file a claim at some point after he receives a notice of abandonment to stop the statutory process. See ORC §5301.56(H).

More specifically, Ohio Revised Code §5301.56(H)(1) provides:

If a holder or a holder's successors or assigns claim that the mineral interest that is the subject of a notice under division (E) of this section has not been abandoned, the holder or the holder's 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)

Monroe County
Common Pleas
Court

Julie R. Selmon
Judge

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.

The holder or the holder's successors or assignees shall notify the person who served or published the notice under division (E) of this section of the filing under this division.

Accordingly, this Court finds that if a severed interest holder files a notice under paragraph (H) above, the landowner's statutory remedy to abandon a Severed Mineral Interest has been exhausted, requiring the filing of a lawsuit. At that point, the severed interest holder must be required to show why the severed interest has not been abandoned. A preservation notice itself cannot be the basis for establishing that the mineral interest has not been abandoned. The holder must show the existence of one of the savings conditions under ORC §5301.56(B).

Again, the Court finds that Defendants in this case have not shown that existence of any of the savings conditions provided for in ORC §5301.56(B).

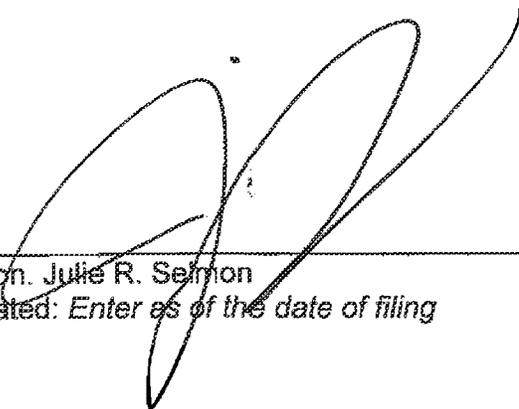
Accordingly, the Court finds that the Severed Mineral Interest in the within case is hereby deemed abandoned under the current version of the Dormant Minerals Act as well.

Based on all of the foregoing, the Court finds that no genuine issue of material fact exists in the within matter and Plaintiffs are entitled to judgment as a matter of law under both the prior and current version of the Dormant Minerals Act, Ohio Revised Code §5301.56.

Plaintiffs' Motion for Summary Judgment is granted. The Clerk shall note the same on both the Reservation Deed (Volume 123, Page 186, Deed Records of Monroe County, Ohio) and the Claim to Preserve (Monroe County, Ohio Official Records, Volume 217, Pages 263-265).

Costs assessed in full to the Defendants. Judgment granted the Clerk of Courts to collect on her costs.

IT IS SO ORDERED.



Hon. Julie R. Selmon
Dated: *Enter as of the date of filing*

Copies to: Craig E. Sweeney, Esquire
Stephen R. McCann, Esquire

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April 10, 2013 (2:38PM)Jay

Monroe County
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Judge