

ORIGINAL

IN THE SUPREME COURT OF OHIO

PHILLIP DODD, et al.,)	Case No. 2013-1730
)	
Appellants/Cross-Appellees,)	
)	
vs.)	Jurisdictional Appeal from the
)	Harrison County Court of Appeals,
JOHN CROSKEY, et al.,)	Seventh Appellate District
)	
Appellees/Cross-Appellant.)	Court of Appeals
)	Case No. 12 HA 6

MERIT BRIEF OF *AMICUS CURIAE* JON D. WALKER, JR.
IN SUPPORT OF APPELLANTS/CROSS-APPELLEES

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STATEMENT OF INTEREST OF AMICUS CURIAE

Jon D. Walker, Jr., is a party before this Court in Walker v. Nau (Noon), 2014-Ohio-1499 (7th Dist.), S. Ct. Case No. 2014-0803. The Walker case involves application of the Ohio Dormant Mineral Act, R.C. 5301.56, as enacted in 1989, and this case involves consideration of the 2006 amendment to the Act. Regardless, the proposition of law proposed by the appellee by way of the cross-appeal accepted for review by the Court's August 28, 2014 order is implicated in both cases. The lower courts have ruled that Walker is entitled to oil and gas rights as part of the ownership of his property based upon rights which vested under the 1989 version of the Dormant Mineral Act. Walker's rights vested without consequence from mere references to any prior reservation of mineral rights contained in deeds "the subject of" which was conveyance of the surface ownership.

Walker, as *amicus curiae*, joins to urge that the Court affirm the proposition that a mere reference to a severed oil and gas interest in a deed or other instrument conveying the surface does not qualify as a savings event for purposes of the Dormant Mineral Act.

STATEMENT OF FACTS

The appellants acquired title to property located in Harrison County, Ohio by mean of a deed in 2009. That deed, the subject of which was conveyance of the surface estate, referenced prior reservations of mineral rights in others – third parties who were *strangers to the surface deed* in question.

Appellants pursued the abandonment of the previously-severed mineral interests in accordance with the procedures set forth in the 2006, amended version of the Dormant Mineral Act. Appellee Evans has asserted, among other issues, that the reference to the prior reservation operated as a savings event under the DMA.

STATEMENT OF THE CASE

Appellants have pursued this declaratory judgment and quiet title action asserting ownership to the oil and gas interests underlying their property. The trial court entered judgment in favor of appellees, and the Seventh District Court of Appeals affirmed. However, as part of its decision, the Court of Appeals held that the 2009 surface transaction deed did not operate as a savings event.

Appellee Evans raised a proposition of law by way of cross-appeal in this case. Originally, the Court declined jurisdictional review as to such issue, however, following oral argument, the Court accepted Evan's Proposition of Law No. II. (Entry, August 28, 2014). Further briefing was ordered.

ARGUMENT IN OPPOSITION TO THE PROPOSITION OF LAW

Evans' Proposition of Law No. II:

A restatement of a prior mineral reservation in later deeds is a "title transaction" within the meaning of §5301.56, Ohio Revised Code.

For purposes of R.C. 5301.56(B)(3)(a), in order for a "title transaction" to qualify as a savings event, the mineral interest must be "the subject of" such title transaction. When there is a conveyance of the surface interest in land – that is, the mineral interest was previously severed and remains in the name of another – the severed interest cannot be "a subject of" the surface transaction let alone "the subject of" such conveyance. Consequently, transactions in the surface do not constitute any form of savings event under the Ohio Dormant Mineral Act, regardless of any surplusage that may refer to a prior reservation of mineral interest in some other party.

The intent of a statute is presumed to rest in the words used by the General Assembly. "Our role in cases of statutory construction is to determine legislative intent by looking to the language of the statute and the purpose to be accomplished by the statute." In Re. Foreclosure of Liens for Delinquent Taxes by Action In Rem, ___ Ohio St. 3d ___, 2014-Ohio-3656, ¶12; Boley v. Goodyear Tire & Rubber Co., 125 Ohio St. 3d 510, 2010-Ohio-2550, ¶20. "Where the statute's meaning is clear and unambiguous, we apply the statute as written." Id. "This court must give effect to the words used, refraining from inserting or deleting words." In Re. Foreclosure of Liens, supra at ¶12; Cleveland Elec. Illum. Co. v. Cleveland, 37 Ohio St. 3d 50, 53-54. "In the absence of a definition of a word or phrase used in a statute, the words are to be given their common, ordinary, and accepted meaning." In Re. Foreclosure of Liens, citing Wachendorf v. Shaver, 149 Ohio St. 231 (1948), paragraph five of the syllabus.

Here, the operative words are “the subject of a title transaction.” When the grantor of an instrument conveying the surface interest in real property does not possess any right to affect a severed mineral interest, any reference to the mineral interest contained in the deed neither conveys nor otherwise protects the mineral interest. The holder of the severed mineral interest is a stranger to any transaction in the surface alone and cannot be affected or benefitted by such transaction.

The 1989 version of R.C. 5301.56 did not provide for just any title transaction to act as a savings event; instead, the mineral interest itself had to be *the subject of* the title transaction under consideration. The word “only” did not need to be in the statute, since use of the word “the” (in the phrase “the subject of”) conveys that meaning. The 2006 statute provides as follows, in pertinent part:

- (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 . . . [if] none of the following applies:
 - ...
 - (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; (Emphasis added).

Mere reference to a prior reservation of mineral rights by another, in a later deed which does not itself create, convey or reserve any interest in the minerals, does not represent a title transaction in the mineral interest. The exception is only satisfied if the mineral interest is “*the* subject of a title

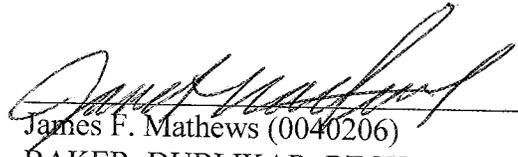
transaction,” (emphasis added) as opposed to simply “a” subject of some transaction regarding other interests between others who are not the holder.

The DMA operates to reunite previously-severed oil and gas interests with the fee ownership in the surface, in the absence of a savings event. Each savings event is directed to some effort or action of the mineral holder to utilize or preserve the interest in order to avoid the abandonment of such interest. The cross-appellant, who took no timely effort to use or preserve the mineral interest at issue in this case seeks to take advantage of the surface transactions, and ride the coattails of those transactions, as a safe harbor under the DMA. However, if the General Assembly intended for surface interest transactions to operate as savings events, then the legislature would have expressly provided for that result. Instead, R.C. 5301.56(B)(3)(a) is triggered only when the mineral interest is *the subject* matter of a title transaction. The Court of Appeals correctly recognized that “[i]n order for the mineral interest to be the ‘subject of’ the title transaction the grantor must be conveying that interest or retaining that interest.” Dodd v. Croskey, 2013-Ohio-4257 (7th Dist.), ¶48. *Accord*, Walker v. Nau (Noon), 2014-Ohio-1499 (7th Dist.), ¶27.

CONCLUSION

WHEREFORE, *amicus curiae*, Jon D. Walker, Jr., respectfully requests that the appellate court judgment be affirmed as to the issue presented in the cross-appeal and that the Court hold that a reference or mention of a severed mineral interest in a deed conveying the surface interest does not make the mineral interest “the subject of” the title transaction. “The subject of” such transaction is conveyance of the surface estate. Consequently, such a deed does not operate as a savings event for purposes of the Ohio Dormant Mineral Act.

Respectfully submitted,



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