

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF OHIO

Vernon L. **TRIBETT**, et al.,
Plaintiffs – Appellees

VS

Barbara **SHEPHERD**, et al.,
Defendants – Appellants

I On Appeal from the Seventh District
I Court of Appeals and the Common Pleas
I Court of Belmont County, Ohio
I
I Ohio Supreme Ct. Case No. 2014-1966
I
I Seventh District Case No. 13 BE 22

MEMORANDUM IN OPPOSITION TO JURISDICTION OF APPELLEES, VERNON L. TRIBETT AND SUSAN M. TRIBETT

Richard A. Myser (#0007462)*
*[Counsel of Record]
Adam L. Myser (#0090942)
Myser & Davies
320 Howard Street
Bridgeport, Ohio 43912
Telephone: (740) 635-0162
Facsimile: (740) 635-1601
Email: myser@belmontlaw.net
adam.myser@belmontlaw.net
Counsel for Appellees

Matthew W. Warnock (#00082368)*
*[Counsel of Record]
Daniel E. Gerken (#0088259)
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215-4291
Telephone: (614) 227-2300
Facsimile: (614) 227-2390
Email: mwarnock@bricker.com
dgerken@bricker.com
Counsel for Appellants

RECEIVED
DEC 10 2014
CLERK OF COURT
SUPREME COURT OF OHIO

FILED
DEC 10 2014
CLERK OF COURT
SUPREME COURT OF OHIO

TABLE OF CONTENTS

THIS CASE IS NOT OF PUBLIC OR GREAT GENERAL INTEREST 2

STATEMENT OF THE CASE AND FACTS 2

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW 4

I. **PROPOSITION OF LAW NO. I: Appellants do not have standing to bring this appeal.** 4

 A. **Appellants are not Holders or Holders’ Successors or Assignees of the oil and gas mineral interest underlying the subject property as defined in the 1989 and 2006 DMA.** 4

 i. **Appellants are not record holders of the mineral interest.** 5

 ii. **Appellants are not Holders by deriving their rights from or having a common source with the Records Holders.** 6

 iii. **Appellants are not Holders’ Successors or Assignees as stated in the 2006 DMA.** 8

RESPONSE IN OPPOSITON TO APPELLANTS’ ARGUMENTS IN SUPPORT OF PROPOSITION OF LAW 9

II. **PROPOSTION OF LAW NO. II: The 1989 DMA is self-executing in its application.** 9

III. **PROPOSTION OF LAW NO. III: The 1989 DMA with a self-executing application is constitutional.** 11

IV. **PROPOSTION OF LAW NO. IV: The 1986 Shell Mining and 1992 R&F Coal Deeds are not saving events under the 1989 DMA.** 14

V. **PROPOSTION OF LAW NO. V: The statute of limitations does not apply to the facts in this case.** 16

CONCLUSION 16

PROOF OF SERVICE 18

THIS CASE IS NOT OF PUBLIC OR GREAT GENERAL INTEREST

Appellees Vernon L. Tribett and Susan M. Tribett (hereinafter, “Appellees”) absolutely agree that the oil and gas boom in Eastern Ohio is of great interest to the public at large. However, this case specifically is not of great public importance for the following reasons.

First, all issues in this case have either already been addressed by this Court or have already been submitted to this Court for redress.¹ Second, this case presents no novel issues of law for this Court’s review. What Appellants² claim are novel issues are well settled matters of law determined by the United States Supreme Court and the Ohio Supreme Court. Third, and most important, Appellants do not have standing to bring this appeal to this Court.

STATEMENT OF THE CASE AND FACTS

Appellees take issue with the conclusory statement that, “Appellants each specifically derives his or her interest in the mineral rights from the original three mineral interest holders.”³ This statement presents the legal conclusion that Appellants are holders pursuant to the 1989 and 2006 versions of the Ohio Dormant Mineral Act⁴ (hereinafter referred to as the “1989 DMA” and “2006 DMA” respectively), and they are not.

The oil and gas in this case was severed from the surface in 1962 by Joseph H. Shepherd, John J. Shepherd, and Keith Shepherd by mineral reservation in General Warranty Deed to

¹ See *Chesapeake Exploration, LLC v. Buell*, 138 Ohio St. 3d 1446, 2014-Ohio-1182, 5 N.E.3d 665; *Corban v. Chesapeake Exploration, LLC*, 139 Ohio St. 3d 1482; 2014-Ohio-3195; 12 N.E.3d 1228; *Dodd v. Croskey*, 138 Ohio St. 3d 1432, 2014-Ohio-889, 4 N.E.3d 1050; *Walker v. Shondrick-Nau*, 140 Ohio St. 3d 1414; 2014-Ohio-3785; 15 N.E.3d 883; *Eisenbarth v. Reusser*, 2014-Ohio-3792; 18 N.E.3d 477; presented for jurisdictional appeal Oct. 10, 2014, Sup. Ct. No. 2014-1767; *Taylor v. Crosby*, 2014-Ohio-4433; 2014 Ohio App. LEXIS 4349, Sept. 24, 2014; presented for jurisdictional appeal Oct. 30, 2014, Sup. Ct. No. 2014-1886.

² Collectively referred to as, “Appellants,” are all of “Shepherds” in the Memorandum in Support of Jurisdiction of Appellants Barbara Shepherd, et al.

³ See Appellants Memorandum in Support of Jurisdiction, Statement of the Case and Facts, Pg 3.

⁴ R.C. 5301.56 (effective March 22, 1989); R.C. 5301.56 (effective June 30, 2006) (*Lexis*, 2014).

Seaway Coal Company, dated October 11, 1962, and recorded in Volume 463, Page 692 of the Records of Deeds of Belmont County, Ohio. It is undisputed that these three individuals are now deceased.

Appellees took title to the surface of the 61-Acre Property by General Warranty Deeds dated February 26, 1996, and March 7, 2006 of record in Volume 716, Page 446 and Volume 47, Page 258 of the Records of Deeds of Belmont County, Ohio, and of the Official Records of Belmont County, Ohio, respectively. Appellees claim they own the oil and gas underlying the 61-Acre Property pursuant to the 1989 DMA since in the preceding twenty-years from March 22, 1992, none of the enumerated saving events listed in the 1989 DMA took place.

Out of an over-abundance of care, and in an attempt to clear Appellees' chain of title, Appellees proceeded to conduct an abandonment proceeding in accordance with the requirements of the 2006 DMA. Appellees could not serve their Notice of Abandonment upon the deceased mineral interest holders, Joseph H Shepherd, John J. Shepherd, and Keith Shepherd, so Appellants published a Notice of Abandonment in *The Times Leader*.

On October 28, 2011, three of the Appellants herein⁵ filed an Affidavit of Claim to Preserve Mineral Interest in the Belmont County Courthouse.

On November 16, 2011, Appellants filed an Affidavit of Abandonment in the Belmont County Courthouse, pursuant to requirements of the 2006 DMA, to complete the abandonment process. Because Barbara Shepherd, Joseph A. Shepherd and David Shepherd were not holders on October 28, 2011, entitled to file an Affidavit of Claim to Preserve Mineral Interest, the contested oil and gas rights were never properly preserved.

⁵ Barbara Shepherd, Joseph A. Shepherd and David Shepherd

On April 16, 2012, Appellants filed a Complaint to Quiet Title and for Declaratory Judgment to remove the cloud placed on their title filed by three of the Appellants herein.

Appellees are otherwise satisfied with Appellants Statement of the Case and Facts which transpired from this point on.

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

I. **PROPOSITION OF LAW NO. I: Appellants do not have standing to bring this appeal.**

Standing is a threshold requirement that must be met before a court may consider the merits of a legal claim.⁶ A party's lack of standing vitiates the party's ability to invoke the jurisdiction of a court.⁷ Standing exists only when (1) the complaining party has suffered or has been threatened with direct and concrete injury in a manner or degree different from that suffered by the public in general, (2) the law in question caused the injury, and (3) the relief requested will redress the injury.⁸ In this case, Appellants have no ownership rights to the oil and gas mineral interest which are the subject of this case. Therefore, this Court cannot redress their injury and as a result, Appellants have no standing to invoke the jurisdiction of this Court.

A. **Appellants are not Holders or Holders' Successors or Assignees of the oil and gas mineral interest underlying the subject property as defined in the 1989 and 2006 DMA.**

Appellants contend, as they have in the lower Appellate Court, that they have standing to bring this appeal because they are Holders or Holders' Successors or Assignees. As Holders or Holders' Successors or Assignees, Appellants contend that they had a right to receive Notice of Mineral Abandonment by Certified Mail pursuant to the 2006 DMA, a right to record an

⁶ *Beaver Excavating Co. v. Testa*, 134 Ohio St. 3d 565, 567; 2012-Ohio-5776; 983 N.E.2d 1317 (Ohio, 2012).

⁷ *Bank of Am., N.A. v. Kuchta*, 2014-Ohio-4275, P22; 2014 Ohio LEXIS 2520 (Ohio, 2014).

⁸ *Beaver Excavating Co. v. Testa*, 134 Ohio St. 3d 565, at 567.

Affidavit of Preservation pursuant to the 2006 DMA, and a right to argue the application of the 1989 DMA. Only Holders and Holders' Successors or Assignees are afforded these rights. However, a review of the definition of a Holder or Holders' Successors or Assignees evince that Appellants are not afforded these rights, and do not have standing to bring this appeal.

The 1989 DMA provides the following definition for a holder.⁹

“Holder” means the *record holder* of a mineral interest, and any person who derives his rights from, or has a common source with, the *record holder* whose claim does not indicate, expressly or by clear implication, that it is adverse to the interest of the *record holder*.”¹⁰

i. Appellants are not record holders of the mineral interest.

The oil and gas in this case was severed from the surface in 1962 by Joseph, John, and Keith Shepherd by mineral reservation in General Warranty Deed as stated above. After the recording of this document, Joseph, John, and Keith Shepherd were the record owners of the oil and gas rights underlying the subject property, and Seaway Coal Company was the record owner of all other property rights except for the oil and gas, including but not limited to, surface rights.

During their lives, none of the above stated Shepherds, Joseph, John, or Keith, transferred their record ownership to the subject oil and gas rights to anyone including Appellants. It is undisputed that these three individuals are now deceased. Upon their deaths, none of the above stated Shepherds, Joseph, John, or Keith, had an estate that was probated in Belmont County, Ohio, to properly transfer the subject oil and gas interest. To this date, none of the above stated Shepherds, Joseph, John, or Keith, have had an estate offered for probate in Belmont County, Ohio. As a result, the record owners of the oil and gas interest underlying the subject property are Joseph H. Shepherd, John J. Shepherd, and Keith Shepherd, not Appellants.

⁹ The 2006 DMA used the same definition but alters the language to be gender neutral.

¹⁰ R.C. §5301.56(A)(1) (effective March 22, 1989 to June 29, 2006) (*Lexis*, 2014) (Emphasis added).

ii. **Appellants are not Holders by deriving their rights from or having a common source with the Record Holders.**

Ohio real property law requires evidence of ownership of an interest in real property before one can exercise legal control or legal process over an interest in real property.¹¹ Before a person can exercise any interest in real property they must first establish they are record owners. Before an owner can transfer an interest by deed, or mortgage an interest, or lease an interest or before they have standing to present their interest in a court proceeding such as a forcible entry and detainer, or foreclose, or quiet title action, they must first establish they are record owners. This record ownership is evidenced by an instrument recorded in the county records in the county in which the real property is located.

In this case, there has been no such memorialization of Appellants' interest in the Belmont County public records. In their Memorandum in Support of Jurisdiction, they claim to derive their interest in the mineral rights from the original three mineral interest holders (Joseph, John, and Keith Shepherd), but, in no instance do they identify how or where this interest is memorialized of record to make them record owners. Without such action on their part, the world does not know who they are or what fractional interest they may or may not own.

Appellants are not Holders, at most they are merely heirs. The above definition of a holder specifically and intentionally does not use the term "heirs" which has its own legal meaning. The reason the legislators chose not to use the term "heirs" is because the term "heirs" is such an indefinite and unidentifiable class of persons. Furthermore and more importantly "heirs" may often be divested of their interest by will, the probate process, the Ohio Statute of Descent and Distribution and by creditors' claims. The most appropriate definition in Black's Law Dictionary Ninth Edition for "heir" is, "A person who, under the laws of intestacy, is

¹¹ *Cartwright v. Allen*, 2012-Ohio-3631; 2012 Ohio App. LEXIS 3217, 10 (Ohio Ct. App. 2012).

entitled to receive an intestate decedent's property.”¹² It was not the intent of the legislators to have individuals “derive their rights from the record holders” by merely surviving the record holders. If the Legislature intended to include this class of persons, it could have easily said, “heirs.” It did not so choose.

Heirs may easily become a holder, but they must establish that they have in fact derived their rights from a common source with the record holder. Mere survival does not accomplish this task. In order for anyone to succeed to or “derive their rights from or have a common source with the record holders,” one must memorialize their interest some place in the county in which the mineral interest is located. This could include the County Recorder’s Office, Probate Office, Engineer’s Office, or Auditor’s Office. The purpose of this requirement is to put the rest of the world on notice who owns or who has succeeded to the severed mineral interest. A failure of this crucial step in the preservation process is the first step in abandoning the severed mineral interest.

In this case, Appellants, the twenty-eight heirs and *potential holders*, did nothing and as a consequence abandoned their mineral interest. The twenty-eight heirs did not memorialize their ownership in the severed oil and gas mineral interest anywhere. No documents were placed on record in the Belmont County Courthouse stating the mineral interest severed by Joseph H. Shepherd, John J. Shepherd and Keith Shepherd was conveyed to these heirs. The world had no notice or idea who these successors were or what percentage of ownership they possibly held in the mineral interest in question. The only holders of the mineral interest in this case are Joseph H. Shepherd, John J. Shepherd and Keith Shepherd, pursuant to the original severance in 1962.

¹² *Black’s Law Dictionary* (9th ed., 2014).

To hold otherwise would create an interpretation of the legislator's intent to completely side-step Ohio's recording statutes¹³ and the entire probate process¹⁴.

Having failed to establish their record ownership by failing to memorialize their ownership in some fashion is the root cause of abandonment. The primary purpose of the 1989 and 2006 DMA is to cure and remedy these root causes to the abandoned mineral interest dilemma.

iii. Appellants are not Holders' Successors or Assignees as stated in the 2006 DMA.

Throughout the 2006 DMA, the Legislature identifies, "any person who derives the person's rights from or has a common source with" as "the holder's successors or assignees." Black's Law Dictionary Ninth Edition defines "successor" as, "A person who succeeds to the office, rights, responsibilities, or place of another; one who replaces or follows a predecessor," and an "assignee" as, "One to whom property rights or powers are transferred by another."¹⁵

An heir could, however, be a "successor" if and when adjudicated such by a Probate Court as evidenced by a recorded Certificate of Transfer, Fiduciary Deed, or Certificate of Will. An heir could also become a "successor" statutorily pursuant to the Ohio Statute of Decent and Distribution¹⁶ and evidenced by an Affidavit for Transfer and Record of Real Estate Inherited pursuant to Ohio Revised Code §317.22.

An heir could also be or become an "assignee" if he or she has acquired the mineral interest either for consideration or for no consideration through the transfer and recordation of a deed (warranty deed, quit claim deed, fiduciary deed, etc.). An heir could also become an

¹³ R.C. §5301.23 – §5301.25 (*Lexis*, 2014).

¹⁴ Ohio Probate Code, Title 21 (*Lexis*, 2014).

¹⁵ *Black's Law Dictionary* (9th ed., 2014).

¹⁶ R.C. §2105.06 (*Lexis*, 2014).

“assignee” through a judicial proceeding (foreclosure, partition, quiet title action, declaratory judgment, etc.) evidenced by the recording of a sheriff’s deed or court order. Simply declaring oneself to be an heir of a record holder of an interest in real property does not make one a “holder” nor does it make oneself a “holder’s successor or assign” pursuant to the 2006 DMA.

In the present case, Appellants claim to be “holders” of the contested oil and gas interest by deriving their rights from Joseph H. Shepherd, John J. Shepherd, and Keith Shepherd, the record holders. They make this claim simply by declaring they are the “heirs” of the record holders. This does not make them “holders” or “holder’s successors or assigns.” Appellants have not been adjudicated nor statutorily declared holders, holder’s successors or holder’s assignees by virtue of foreclosure, partition, quiet title action, declaratory judgment or the like. There also has not been any evidence of Appellants ownership of the oil and gas in question filed for record in the Belmont County Recorder’s Office as would be evidenced by a Certificate of Transfer, Fiduciary Deed, Certificate of Will, Affidavit for Transfer and Record of Real Estate, Warranty Deed, Quit Claim Deed, or the like.

Consequently, Appellants are not Holders or Holders’ Successors or Assignees. At most they are merely heirs who are not entitled to Notice of Abandonment by Certified Mail, not entitled the right to file an Affidavit of Preservation, and not entitled to argue the application of the 1989 DMA before this Court. Consequently, this Court cannot afford them a remedy to redress their injury and therefore, Appellants do not meet the threshold requirement of standing to invoke the jurisdiction of this Court.

**RESPONSE IN OPPOSITON TO APPELLANTS’ ARGUMENTS IN SUPPORT OF
PROPOSITION OF LAW**

II. PROPOSTION OF LAW NO. II: The 1989 DMA is self-executing in its application.

Appellants contend that the 1989 DMA is ambiguous with respect to whether or not it was intended to be “self-executing.” Echoing the opinion of the lower Appellate Court in footnote 1 of their decision, the 1989 DMA is not ambiguous. A plain reading of the statute reveals the statute is self-executing in its application, and therefore, any further inquiry into legislative intent, legislative history, public policy, the consequences of an interpretation, or any other factors is inappropriate.

The 1989 DMA states that the failure of the “holder” of the severed mineral interest to take any of certain listed actions with respect to the interest for a period of twenty years caused the interest to be deemed abandoned and automatically vested in the surface owner.¹⁷ The Legislature’s choice of the word “abandoned” is significant for it typically means the absolute loss of ownership. To have abandoned property is to have lost “all right, title, claim, and possession” to it.¹⁸ The Legislature’s use of the word “vests” is also significant. Generally, it is defined as recognizing a fixed property right. “The standard definition of ‘vest’ is ‘to give an immediate fixed right of present or future enjoyment.’”¹⁹ By using “abandoned” and “vests” to describe the mineral interest, the Legislature evinced its intent that the law be self-executing, and the ownership definite and irrevocable.

In this case, the mineral interest was severed from the surface estate on October 11, 1962, by Joseph, John, and Keith Shepherd. No Saving Event took place from October 11, 1962 to March 22, 1992.²⁰ Therefore, pursuant to the 1989 DMA, the governing statute at that time, title to the oil and gas vested in the surface owner, Appellees predecessors in title, on March 22,

¹⁷ R.C. §5301.56(B) (effective March 22, 1989) (*Lexis*, 2014).

¹⁸ *Doughman v. Long*, 42 Ohio App. 3d 17; 536 N.E.2d 394, 399; 1987 Ohio App. LEXIS 10861(Ohio Ct. App. 1987).

¹⁹ *State v Zupnik*, 111 N.E.2d 42; 1952 Ohio Misc. LEXIS 349; 51 Ohio Op. 405, 43.

²⁰ First available date of minerals vesting in surface owners pursuant to Section (B)(2) of the 1989 DMA.

1992. The amendment to the statute in 2006 did not change or reverse this event. The 1989 DMA created a vested property right in the surface owner, as a matter of law.

The 1989 DMA was amended on June 30, 2006, but the 2006 DMA is not the governing law to be applied to the facts in this case. As stated above, the events that gave rise to this suit occurred during a time period when the 1989 DMA was in effect. Ohio Revised Code §1.58(A)(1) and (2) provides:

“[t]he reenactment, amendment, or repeal of a statute does not... (1) Affect the prior operation of the statute for any prior action taken thereunder, “ or “ (2) Affect any validation, cure, right, privilege, obligation, or liability previously acquired, accrued, accorded, or incurred thereunder...”²¹

Therefore, even though the Dormant Mineral Act has since been amended and the 1989 version modified, the vesting of oil and gas interest in the surface estate pursuant to the 1989 DMA is not altered. The lower Appellate Court was therefore proper in finding the 1989 DMA to be self-executing and applying the 1989 DMA to the facts of this case as it was the governing law when the events that gave rise to this suit occurred.

III. PROPOSITION OF LAW NO. III: The 1989 DMA with a self-executing application is constitutional.

The Ohio legislature when originally enacting the 1989 DMA had to weigh the property rights and the constitutionally protected due process rights of a severed oil and gas mineral interest holder against the overriding and compelling general public interest to enable and encourage the marketability and beneficial use of mineral resources and at the same time mitigate the adverse effect dormant and otherwise abandoned mineral interests have on the development of our natural resources. To protect the severed mineral interest holder’s rights and to afford him or her sufficient constitutionally protected due process and to negate the

²¹ R.C. §1.58 (*Lexis*, 2014).

retroactively applied affect of this statute, the Ohio legislature included as part of the Ohio Dormant Mineral Act, Section (B)(2) (quoted below). This meant the statute was not an immediate retroactive taking of the holder's interest thus depriving the holder his due process rights but instead gave the severed oil and gas mineral interest holder three years to activate one of the enumerated "Saving Events" to preserve his interest. If he chose not to, the abandoned mineral interest would become reunited with the surface owner.

The focus of Appellants' argument of "unconstitutionality" of the 1989 DMA, centers specifically around Article II, §28, which prohibits the General Assembly from passing retroactive laws.²² "The test for unconstitutional retroactivity requires the Court first to determine whether the General Assembly expressly intended the statute to apply retroactively."²³ If so, the court moves on to the question of whether the statute is substantive, rendering it *unconstitutionally* retroactive, as opposed to merely remedial."²⁴ "A purely remedial statute does not violate Section 28, Article II of the Ohio Constitution, even when it is applied retroactively."²⁵ The 1989 DMA is constitutional because the legislature did not expressly intend the statute to be retroactive. Even if it can be argued that the legislature "expressly intended" the 1989 DMA to look back twenty years for calculation purposes, its application is prospective and curative, not retroactive.

When enacting the 1989 DMA, the Legislature expressly did not intend for it to apply retroactively. To negate any unconstitutional retroactive effect or any unconstitutional taking without due process of law, the Ohio Legislature included as part of the statute, §5301.56(B)(2):

²² Ohio Const. Art. II, §28.

²³ *Bielat v. Bielat*, 87 Ohio St. 3d 350, 353; 2000-Ohio-451; 721 N.E.2d 28 (Ohio, 2000).

²⁴ *Id.*

²⁵ *Id.* at 354.

(2) A mineral interest shall not be abandoned under division (B)(1) of this section... until three years from the effective date of this section.²⁶

In other words, no title to any mineral interest will be deemed abandoned and vested in the surface owner until March 22, 1992, three years after the 1989 DMA went into effect. This is a prospective application of the statute and not a retroactive application.

The 1989 DMA did not proclaim any previous title transaction void. It also did not instantaneously vest a previously owned property right into someone else's ownership. The statute merely defined the parameters for dormant mineral abandonment, and afforded the severed mineral interest holder an opportunity within a three-year time period to preserve his interest from being abandoned. "It is well established that persons owning property within a State are charged with knowledge of relevant statutory provisions affecting the control or disposition of such property."²⁷ This statute therefore provided a reasonable and fair opportunity for the severed mineral interest holder to protect and preserve his voluntarily abandoned interest.

If for some reason this Court does find the 1989 DMA to be retroactive, it is merely remedial in nature. Remedial provisions have to do with the methods and procedure by which rights are recognized, protected and enforced, not with the rights themselves.²⁸ The 1989 DMA did not take away any vested property rights when it was enacted. The statute established a clear procedure for mineral interest holders to preserve their mineral interest by performing any one of certain enumerated actions. The entire purpose of the statute is remedial and curative in nature; it places valuable abandoned mineral interests back into productive use by reuniting the mineral interest with the surface estate.

²⁶ R.C. §5301.56(B)(2) (Effective March 22, 1989) (*Lexis*, 2014).

²⁷ *Texaco, Inc. v. Short*, 454 U.S. 516, 532; 102 S. Ct. 781; 70 L. Ed. 2d 738 (U.S. Sup. Ct. 1982).

²⁸ *Weil v. Taxicabs of Cincinnati, Inc.*, 139 Ohio St. 198, 205; 39 N.E.2d 148 (Ohio, 1942).

The automatic and self-executing feature of the 1989 DMA is at worst permissibly retroactive and not unconstitutional. In *Bielat v. Bielat*, the court concluded:

“Our conclusion is supported by cases that have defined remedial laws as those that “merely substitute a new or more appropriate remedy for the enforcement of an existing right.” Legislation is remedial, and therefore permissibly retroactive, when the legislation seeks only to avoid “the necessity for multiplicity of suits and the accumulation of costs [or to] promote the interest of all parties.”²⁹

The 1989 DMA provides hundreds of surface owners the ability to timely and economically recover the otherwise non-productive abandoned mineral interest underneath their surface without hundreds of expensive time consuming lawsuits and at the same time affording the severed mineral interest holder the opportunity to protect and preserve their interest. This statute is not unconstitutional, it is curative. It cures the problem of thousands of acres of non-productive abandoned mineral interests becoming available for productive use.

IV. PROPOSITION OF LAW NO. IV: The 1986 Shell Mining and 1992 R&F Coal Deeds are not saving events under the 1989 DMA.

Appellants contend that an oil and gas reservation in the muniments of a 1986 and 1992 deed make these deeds saving events under the 1989 DMA by considering them title transactions of which the mineral interest reservation is the subject thereof. Appellants provide multiple arguments to suggest this conclusion, but, under a plain interpretation of the 1989 DMA, they are wrong.

The pivotal word in the 1989 DMA is “subject.” The mineral interest must be the subject of the transaction, not just merely a reference or an aid in identifying the interest being transferred or affected. While both the 1986 and 1992 deeds contain specific references identifying and excepting the original severance of the oil and gas found in the 1962 Shepherd

²⁹ *Bielat v. Bielat*, 87 Ohio St. 3d 350, 354 (2000), quoting, *State v. Cook*, 83 Ohio St. 3d at 411, 700 N.E.2d at 577 and *Rairden v. Holden*, 15 Ohio St. at 211.

Deed these title transactions did not have as their subject the mineral interest itself. The subject, or primary purpose, of both of these deeds was the transfer of the surface of the 137 acres. The exception of the oil and gas more specifically describes just what real estate was being conveyed (entire estate minus the oil and gas).

Appellants are correct in that the Dormant Minerals Act³⁰ is within and a part of the general Marketable Title Act (hereinafter “MTA”),³¹ however, Appellants fail to recognize that the 1989 DMA contains within its chapter and within its operation a higher test to establish a saving event to prevent a mineral interest from being abandoned and vesting in the surface owner.

Although the exceptions in the 1986 and 1992 deeds may have been “specific identifications” in the “muniments of which such chain of record title is formed”³² to constitute a general saving event in accordance with the MTA, the 1989 DMA requires more. The MTA has a general savings provision which states that record marketable title shall be subject to all interest and defects inherit in the muniments of which such chain of record title is formed.³³ The 1989 DMA has a special provision, however, which states the mineral interest has been the *subject of a title transaction*.³⁴ Pursuant to Ohio Revised Code §1.51, when a general provision conflicts with a special provision and the conflict is irreconcilable, the special provision prevails as an exception to the general provision.³⁵ Therefore, even though the oil and gas reservation in the muniments of the 1986 and 1992 deeds may secure and save the oil and gas interest under the MTA, it is not enough to save said interest under the Dormant Minerals Act.

³⁰ R.C. §5301.56 (effective March 22, 1989); R.C. §5301.56 (effective June 30, 2006).

³¹ R.C. §5301.47-§5301.56 (2014).

³² R.C. §5301.49(A) (*Lexis*, 2014).

³³ R.C. §5301.49 (*Lexis*, 2014).

³⁴ R.C. §5301.56 (*Emphasis Added*) (*Lexis*, 2014).

³⁵ R.C. §1.51 (*Lexis*, 2014).

Pursuant to the 1989 DMA, the saving event must be the subject of the title transaction. The subject of the two deeds in question did not transfer an interest in oil and gas; they transferred an interest in the surface. Therefore, the 1986 and 1992 deeds are not saving events.

V. **PROPOSITION OF LAW NO. V: The statute of limitations does not apply to the facts in this case.**

Ohio Revised Code §2305.04 establishes a time limit to bring an action to recover title or possession of real estate. It provides:

“[a]n action to recover the title to or possession of real property shall be brought within twenty-one years after the cause of action accrued...”³⁶

In this case, Appellees are not attempting to recover title or possession of real estate. Appellees acquired title to their oil and gas pursuant to the 1989 DMA. Appellees filed a Quiet Title Action to remove the cloud placed on their title by Appellants, not to recover title or possession of their real estate. Therefore, the Statute of Limitations established in R.C. §2305.04 does not apply in this case. Even if it did, the cause of action did not accrue until October 28, 2011, when Appellants clouded Appellees title, and twenty-one years has not elapsed.

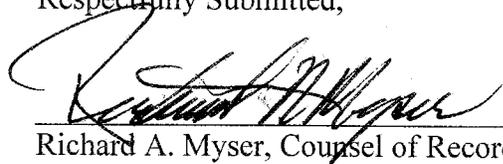
In the alternative, it can also be argued that R.C. §2305.04 does not bar Appellees claim because Appellees cause of action was filed within the twenty-one year time period required by the statute. Appellees’ cause of action accrued on March 22, 1992, the date the self-executing feature became effective. Appellees filed the quiet title action in the Belmont County Court of Common Pleas in April 2012. At that time, the limitations period had not expired.

CONCLUSION

In conclusion, Appellants have no standing to invoke the jurisdiction of this Court. Additionally, Appellants present no novel issues on appeal and this Court should deny the same.

³⁶ R.C. §2305.04 (*Lexis*, 2014).

Respectfully Submitted,



Richard A. Myser, Counsel of Record

Adam L. Myser

Myser & Davies

320 Howard Street

Bridgeport, Ohio 43912

Telephone: (740) 635-0162

Facsimile: (740) 635-1601

Email: myser@belmontlaw.net

*Counsel for Appellees Vernon L. Tribett
and Susan M. Tribett*

PROOF OF SERVICE

I hereby certify that a copy of the foregoing was sent by regular U.S. Mail this 9th day of

December, 2014, to:

Matthew W. Warnock (#00082368)*

*[Counsel of Record]

Daniel E. Gerken (#0088259)

Bricker & Eckler LLP

100 South Third Street

Columbus, Ohio 43215-4291

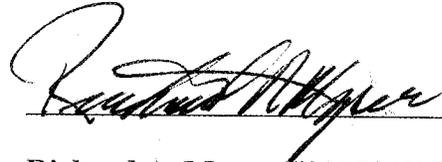
Telephone: (614) 227-2300

Facsimile: (614) 227-2390

Email: mwarnock@bricker.com

dgerken@bricker.com

Counsel for Appellants



Richard A. Myser (#0007462)*

*[Counsel of Record]

Adam L. Myser (#0090942)

Myser & Davies

320 Howard Street

Bridgeport, Ohio 43912

Telephone: (740) 635-0162

Facsimile: (740) 635-1601

Email: myser@belmontlaw.net

adam.myser@belmontlaw.net

*Counsel for Appellees Vernon L. Tribett
and Susan M. Tribett*