ORIGINAL

IN THE SUPREME COURT OF OHIO

Wayne K. Lipperman,	:	
Appellee,	:	
v.	:	Case No. 2015-0121
Nile E. Batman, et al.,	:	
Appellants.	:	

MEMORANDUM IN OPPOSITION TO JURISDICTION OF *AMICUS CURIAE* PALOMA PARTNERS III, LLC.

Matthew W. Warnock (0082368)*
**Counsel of Record*
Kara Herrnstein (0088520)
Daniel E. Gerken (0088259)
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215-4291
Telephone: (614) 227-2300
Facsimile: (614) 227-2390
E-mail: mwarnock@bricker.com; kherrnstein@bricker.com; dgerken@bricker.com
Counsel for Amicus Curiae Paloma Partners III, LLC

Richard L. Lancione (0019623)
Tracy Lancione Lloyd (0046702)
Lancione, Lloyd & Hoffman Law Offices, Co., LPA
3800 Jefferson Street
Bellaire, OH 43906
Telephone: (740) 676-2034
Facsimile: (740) 676-3931
E-mail: richardlancione@comcast.net
traceylloyd@comcast.net
Counsel for Appellants Wayne K. Lipperman

Lyle B. Brown (0069488)
Steptoe & Johnson PLLC
41 South High Street, Suite 2200
Columbus, OH 43215
Telephone: (614) 221-5100
Facsimile: (614) 221-0952
E-mail: lyle.brown@steptoe-johnson.com
Counsel for Appellees Reserve Energy Exploration Company and Equity Oil and Gas Funds, Inc.

Marion H. Little, Jr. (0042679)
Christopher J. Hogan (0079829)
Zeiger, Tigges & Little, LLP
3500 Huntington Center
41 South High Street
Columbus OH 43215
Telephone: (614) 365-9900
Facsimile: (614) 365-7900
E-mail:little@litohio.com
Counsel for Appellees XTO Energy, Inc. and Phillips Exploration, Inc.

FILED
FEB 23 2015
CLERK OF COURT
SUPREME COURT OF OHIO

Bruce Smith (0008702)
Geiger, Teeple, Robinson & McElwee
1844 West State Street, Suite A
Alliance, Ohio 44601
Telephone: (330) 821-1430
Facsimile: (330) 821-2217
E-mail: bes@ramlaw.com
Counsel for Appellees

TABLE OF CONTENTS

Page

TABLE OF CONTENTS i

STATEMENT OF THE CASE 1

STATEMENT OF INTEREST OF *AMICUS CURIAE* 1

STATEMENT OF THE FACTS 2

ARGUMENTS IN OPPOSITION TO JURISDICTION 3

Proposition of Law No. II: The act of recording an out-of-state Will is not a title transaction. 3

Proposition of Law No. I: The 1989 Dormant Minerals Act was prospective in nature and operated to have a severed oil and gas interest "Deemed abandoned and vested in the owner of the surface" if none of the savings events enumerated in ORC Section 5201.56(B) occurred in the twenty (20) year period immediately preceding any date in which the 1989 Dormant Mineral Act was in effect. 3

Proposition of Law No. III: XTO Energy, Inc. and Phillips Exploration, Inc. have no standing to appear in this case. 4

CONCLUSION 4

CERTIFICATE OF SERVICE 6

STATEMENT OF THE CASE

Although R.C. 5301.56, Ohio's Dormant Mineral Act ("DMA") is a focal point of numerous matters pending before this Court, this case should not be among them. For the reasons set forth below, *Amicus Curiae* Paloma Partners III, LLC ("Paloma") urges this Court to decline jurisdiction in this matter.

Specifically, Proposition of Law No. 1 is unnecessarily repetitive of an issue *already* before the Court in *Jon Walker, Jr. v. Patricia J. Shondrick-Nau, Executrix of the Estate of John R. Noon and Successor Trustee of the John R. Noon Trust*, Ohio Supreme Court Case Number 2014-0803 (the "*Noon* Appeal"). *See also Eisenbarth v. Reusser*, Ohio Supreme Court Case Number 2014-1767 (application for jurisdiction pending on the same issue). In fact, this Court scheduled the *Noon* Appeal for oral argument on June 23, 2015, so the issue will be timely decided. There is simply no need for the Court to accept jurisdiction over this case when the same issue is already before the Court.

Further, the legal issue raised in Proposition of Law No. 2 has been waived because it was not raised by the Appellant before either the trial court or intermediate appellate court.

Finally, Proposition of Law No. 3 is not of sufficient public or general interest to warrant this Court's review. In fact, the issue is unique to the parties in this specific action.

STATEMENT OF INTEREST OF *AMICUS CURIAE*

Paloma is a private oil and gas exploration and production company founded in 2004, and headquartered in Houston, Texas. Most recently, Paloma has made a substantial investment in leasing oil and gas mineral interests in the Appalachian Basin, including Ohio. Paloma currently holds oil and gas leases involving more than 21,000 acres in Ohio. Among the leased acreage controlled by Paloma are hundreds of net mineral acres owned by the Appellees.

STATEMENT OF THE FACTS

Paloma adopts the statement of facts set forth in the Opinion from the Seventh District Court of Appeals in this case (the "Opinion"), a copy of which was filed with this Court on January 23, 2015. For the convenience of the Court, Paloma sets forth the relevant facts below:

- The Appellant owns the surface of approximately 41.23 acres in Pultney Township, Belmont County (the "Property"), and ½ of the oil and gas mineral rights underlying the Property. Opinion at ¶ 2.

- The Appellees claim to own ½ of the oil and gas mineral rights underlying the Property through inheritance. *Id.* at ¶¶ 2 and 7.

- In 1981, Frances Batman (the mother of Appellee, Nile Batman) recorded an affidavit in the Belmont County Recorder's Office preserving her mineral interest (the "1981 Preservation Affidavit"). *Id.* at ¶¶ 4, 18.

- Neither Appellant nor Appellees dispute the fact the recordation of the 1981 Preservation Affidavit is a savings event under the DMA. *Id.* at ¶ 5.

- On April 10, 1989, a certified copy of Frances Batman's will was recorded in the Belmont County Recorder's Office. *Id.* at ¶ 18.

- Reserve Energy Exploration Company entered into an oil and gas lease with Appellant in April 2006. *Id.* at ¶ 8.

- Reserve Energy Exploration Company entered into an oil and gas lease with Appellees in November 2008. *Id.* at ¶ 8.

- In 2009, Reserve Energy Exploration Company subsequently assigned its interests in both leases to Equity Oil & Gas Funds, Inc., which then partially assigned its interests to XTO Energy and PC Exploration. *Id.*

- In the fall of 2014, XTO Energy, Inc. and Phillips Exploration, Inc. recorded a release of any interest they may have in the underlying lease(s). *Appellant Wayne K. Lipperman's Memorandum in Support of Jurisdiction*, p. 4.

ARGUMENTS IN OPPOSITION TO JURISDICTION

Proposition of Law No. II: The act of recording an out-of-state Will is not a title transaction.

The Appellant asks the Court to review the issue of whether the "act of recording an out-of-state Will" is a "title transaction." This proposition of law is inappropriate for review by this Court, however, because the Seventh District Court of Appeals did not reach the issue. Specifically, the conclusion reached by the Seventh District involved the determination that the relevant look-back period under the 1989 version of the DMA is fixed ("from March 22, 1969 to March 22, 1989"). Simply put, the April 10, 1989 recordation of the will fell outside of the lower appellate court's 20-year look-back period.

Because there was no dispute that the 1981 Preservation Affidavit constituted a title transaction, it proved unnecessary for the Seventh District to determine "whether the will was a title transaction or whether the recordation of the will relates back to the date of Frances' death." Opinion at ¶ 24 (noting that the recordation of the will is "irrelevant because the 1981 affidavit had already preserved the mineral interest for the look-back period in the 1989 act"). As a result of the Seventh District's decision not to opine on the nature of the will, this issue is not appropriate for this Court's review, and jurisdiction should be declined.

Proposition of Law No. I: The 1989 Dormant Minerals Act was prospective in nature and operated to have a severed oil and gas interest "Deemed abandoned and vested in the owner of the surface" if none of the savings events enumerated in ORC Section 5201.56(B) occurred in the twenty (20) year period immediately preceding any date in which the 1989 Dormant Mineral Act was in effect.

Although Paloma acknowledges the debate over the relevant 20-year look-back period under the 1989 version of the DMA, this is not the case for resolving this question. That case (the *Noon* Appeal) is already before the Court.

As noted above, this Court already accepted review of the very issue raised in the Appellant's first proposition of law. In the *Noon* Appeal, the issue has been fully briefed, and is scheduled for oral argument on June 23, 2015.[1] *See also Leland Eisenbarth, et al. v. Dean Reusser, et al.*, Ohio Supreme Court No. 2014-1767 (pending jurisdiction before this Court on the exact same issue raised in Appellant's first proposition of law). Because this Court already has accepted jurisdiction over the issue raised in Appellant's first proposition of law, there is simply no need for the Court to do so again.

Proposition of Law No. III: XTO Energy, Inc. and Phillips Exploration, Inc. have no standing to appear in this case.

In their final proposition of law, Appellants argue that two parties—XTO Energy, Inc. and Phillips Exploration, Inc.—lack standing to appear in this case. Paloma expresses no opinion as to the merits of this argument.

For purposes of this appeal, however, that does not matter. This proposition of law is based on the unique facts of this case, and the parties' individual connections to it. The Appellants have failed to explain how, if at all, this issue is of public or great general interest. For this reason, this proposition of law does not warrant this Court's review.

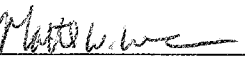
CONCLUSION

For the reasons discussed above, this case does not implicate any issues of public or great general import—the propositions of law are either (1) already before the Court, (2) not appealable, or (3) not of public or great general interest. Accordingly, Paloma respectfully requests that this Court deny jurisdiction in this case.

---

[1] The specific proposition of law accepted by the Court in the *Noon* Appeal is as follows: "To the extent the 1989 version of the DMA remains applicable, the 20-year look-back period shall be calculated starting on the date a complaint is filed which first raises a claim under the 1989 version of the DMA." Further, the *Noon* Appeal involves five other propositions of law on DMA issues, thereby making it a more appropriate vehicle for this Court to issue a comprehensive decision on the DMA.

Respectfully submitted,



Matthew W. Warnock (0082368)*
**Counsel of Record*
Kara Herrnstein (0088520)
Daniel E. Gerken (0088259)
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215-4291
Telephone: (614) 227-2300
Facsimile: (614) 227-2390
E-mail: mwarnock@bricker.com;
kherrnstein@bricker.com; dgerken@bricker.com

Counsel for Amicus Curiae Paloma Partners III, LLC

CERTIFICATE OF SERVICE

I certify that a copy of this Memorandum in Opposition to Jurisdiction was sent by ordinary U.S. mail to counsel for Appellee, at the following address on February 23, 2015:

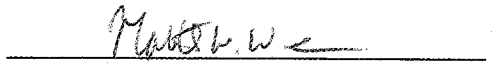
Bruce Smith
Geiger, Teeple, Robinson & McElwee
1844 West State Street, Suite A
Alliance, Ohio 44601

Richard L. Lancione
Tracy Lancione Lloyd
Lancione, Lloyd & Hoffman Law Offices, Co., LPA
3800 Jefferson Street
Bellaire, OH 43906

Marion H. Little, Jr.
Christopher J. Hogan
Zeiger, Tigges & Little, LLP
3500 Huntington Center
41 South High Street
Columbus OH 43215

Lyle B. Brown (0069488)
Steptoe & Johnson PLLC
41 South High Street, Suite 2200
Columbus, OH 43215

Bruce Smith
Geiger, Teeple, Robinson & McElwee
1844 West State Street, Suite A
Alliance, Ohio 44601



Matthew W. Warnock

Counsel for Amicus Curiae Paloma Partners III, LLC

8569351v2